

State of New York Executive Department
Office Of General Services
Procurement Services Group
Corning Tower Building - 38th Floor
Empire State Plaza
Albany, New York 12242
<http://www.ogs.state.ny.us>

CONTRACT AWARD NOTIFICATION

Title	: Group 76000 – Microcomputer Software – CA, Inc. Classification Code(s): 43
Award Number	: NEG - 21268
Contract Period	: December 10, 2008 – December 9, 2013
Bid Opening Date	: October 19, 2008
Date of Issue	: December 18, 2008
Specification Reference	: As Incorporated In The Terms and Conditions
Contractor Information	: Appears on Page 2 of this Award

Address Inquiries To:

State Agencies & Vendors	Political Subdivisions & Others
Name : Stephanie Laffin Title : Purchasing Officer I Phone : 518-473-9440 Fax : 518-486-6867 E-mail : Stephanie.laffin@ogs.state.ny.us	Customer Services Phone : 518-474-6717 Fax : 518-474-2437 E-mail : customer.services@ogs.state.ny.us

The Procurement Services Group values your input.
Complete and return "Contract Performance Report" at end of document.

Description

This document is a contract for the acquisition of CA, Inc. software, maintenance, training and related incidental services.

PR # 21268

**NEW YORK STATE OFFICE OF GENERAL SERVICES
PROCUREMENT SERVICES GROUP**

<u>CONTRACT #</u>	<u>CONTRACTOR & ADDRESS</u>	<u>TELEPHONE #</u>	<u>FED.IDENT.#</u>
PT64273	CA, Inc. One CA Plaza Islandia, NY 11749 <u>Sales/Billing/Maintenance/Service</u> Angelo DeMarco, Account Manager 520 Madison Avenue New York City, NY 10022 Deman04@ca.com <u>Contract Administer</u> David Andrews 520 Madison Avenue New York City, NY 10022 Andda15@ca.com	518-265-0912 212-415-6800 ext. 16265	13-2857434

RESELLERS

Company Name	Address	Contact	Phone/FAX /eMail	Federal ID#	Products	Platform
ASAP Software	850 Asbury Dr., Buffalo Grove, IL 60089	Dave Muehling	800-248-2727 ext. 5286 Davidmuehling@asap.com	36-3328437	Brightstor, Etrust, Allfusion XOSoft, Netvis (all commercial CA Channel products)	All GA Operating Systems
ATEC Group	1762 Central Ave., Albany, NY 12205	Lewis Needham	518-452-3700 x118 518-452-3939-FAX lneedham@atecgroup.com	72-1563114	Brightstor, Etrust, Allfusion XOSoft, Netvis (all commercial CA Channel products)	All GA Operating Systems
CDW Government, Inc.	230 N. Milwaukee Ave., Vernon Hills, IL 60061	Yolanda Aguilar	312-705-1880 yaguilar@cdwg.com	36-4230110	Unicenter, Brightstor, Etrust, Allfusion XOSoft, Netvis (all commercial CA Channel products)	All GA Operating Systems
CompuCom	7171 Forest Lane, Dallas, TX 75230	Dana Bradford	972-856-3270 972-856-5230 – FAX Dana.bradford@compucom.com	38-2363156	Unicenter, Brightstor, Etrust, Allfusion XOSoft, Netvis (all commercial CA Channel products)	All GA Operating Systems

**NEW YORK STATE OFFICE OF GENERAL SERVICES
PROCUREMENT SERVICES GROUP**

Compulink	214 West 29 th St., Suite 201, New York City, NY 10001	Denise Arboleda	212-695-5465 212-695-5560 – FAX denise@compu-link.com	112967448	Unicenter, Brightstor, Etrust, Allfusion XOSoft, Netvis (all commercial CA Channel products)	All GA Operating Systems
Computer Integrated Services Co. of New York LLC (CIS)	561 Seventh Ave., 13 th Fl., New York City, NY 10018	Michael Zepernick	212-577-6033 x225 212-577-4368 – FAX mzepernick@cisony.com	133882447	Brightstor, Etrust, Allfusion XOSoft, Netvis (all commercial CA Channel products)	All GA Operating Systems
Computer Network Solutions	11 Skyline Dr., Plainview, NY 11803	Steve Moisoff	516-937-0300 516-937-9201 – FAX smoisoff@computerns.com	11-2295037	Brightstor, Etrust, Allfusion XOSoft, Netvis (all commercial CA Channel products)	All GA Operating Systems
Custom Computer Specialists, Inc.	70 Suffolk Court, Hauppauge, NY 11788	Greg Slote	800-598-8989 800-986-5518 – FAX sales@customonline.com	11-2947640	Unicenter, Brightstor, Etrust, Allfusion XOSoft, Netvis (all commercial CA Channel products)	All GA Operating Systems
Dell Computer Corp.	One Dell Way, Round rock, TX 78682	Kay Schnuriger	800-981-9955	74-2616805	Brightstor, Etrust, Allfusion XOSoft, Netvis (all commercial CA Channel products)	All GA Operating Systems
Derive Tech	116 John Street, New York City, NY 10038	Mitch Martinez	212-363-1111 x262 212-363-6211 mmartinez@derivetech.com	13-3666427	Brightstor, Etrust, Allfusion XOSoft, Netvis (all commercial CA Channel products)	All GA Operating Systems
Dimension Data NA	One Penn Plaza, Suite 1600, New York City, NY 10019	Carmela Gregorio	212-613-2980 732-353-5257-FAX Carmela.gregorio@.didata.co m	13-2554344	All Commercial CA Channel Products	All GA Operating Systems

**NEW YORK STATE OFFICE OF GENERAL SERVICES
PROCUREMENT SERVICES GROUP**

DynTek Services	12 Metro Park Rd., Albany, NY 12205	Joe Rubino	518-207-3407 518-207-3438 – FAX Joe.rubino@dyntek.com	13-406-7484	Unicenter, Brightstor, Etrust, Allfusion XOSoft, Netvis (all commercial CA Channel products)	All GA Operating Systems
Flexible Business Systems, Inc.	85 Corporate Dr., Hauppauge, NY 11788	Rob Ree	631-756-0404 631-815-1764 0 FAX rree@flexiblesystems.com	11-277-2357	Brightstor, Etrust, Allfusion XOSoft, Netvis (all commercial CA Channel products)	All GA Operating Systems
Garnet River	8 Automation Ln. Albany, NY 12205	Michele Richens	518-275-4821 518-791-0272 – FAX mrichens@garnetriver.com	14-1824592	All Commercial CA Channel Products	All GA Operating Systems
Insight Public Sector	673 Summit Ave., Jersey City, NJ 07306	Barbara Farmer	917-297-8385 480-760-6653 – FAX Barbara.farmer@insight.com	36-3949000	Brightstor, Etrust, Allfusion XOSoft, Netvis (all commercial CA Channel products)	All GA Operating Systems
KMQ Enterprises Inc., d/b/a Tailwind Associates	1462 Erie Blvd. Schenectady, NY 12305	Bill Hawkins	518-579-3020 518-579-3021 – FAX whawkins@tailwindassoc.com	14-1770964	All Commercial CA Channel Products	All GA Operating Systems
Myriad Solutions	16843 Harbour Town Dr., Silver Spring, MD 20905	Javed Matin	301-476-9190 301-476-9195 javed@myriadinc.net	52-2179783	Brightstor, Etrust, Allfusion XOSoft, Netvis (all commercial CA Channel products)	All GA Operating Systems
PC University Distributors, Inc.	99 W. Hawthorne Ave., Valley Stream, NY 11580	Geoffrey Miller	516-596-1500 516-596-1515 – FAX gmm@pcuniversity.com	11-3318287	Brightstor, Etrust, Allfusion XOSoft, Netvis (all commercial CA Channel products)	All GA Operating Systems
Sandhill Consultants USA Limited	2515 Falcon St., East Meadow, NY 11554	Robert Lutton	905-847-5882 Robert.lutton@sandhillconsultants.com	75-3268557	CA Erwin/Arcserve/Xosoft	All GA Operating Systems

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PROCUREMENT SERVICES GROUP**

Software House Intl.	2 riverview Dr., Somerset, NY 08873	Dean Howell	845-265-9439 732-764-8889 – FAX Dean_howell@shi.com	22-3009648	Brightstor, Etrust, Allfusion XOSoft, Netvis (all commercial CA Channel products)	All GA Operating Systems
The Ergonomic Group	191 Herrick Rd., Garden City, NY 11040	Frank Scozzari	516-746-7777 x165 516-741-0145 – FAX Frank.scozzari@ergogroup.com	11-2685111	Unicenter, Brightstor, Etrust, Allfusion XOSoft, Netvis (all commercial CA Channel products)	All GA Operating Systems
Unisys Corp.	Township Line & Union Meeting Roads, Blue Bell, PA 19424	Elias Boudiwan	518-452-6168 518-452-6196 – FAX Elias boudiwan@unisys.com	38-0387840	Unicenter, Brightstor, Etrust, Allfusion XOSoft, Netvis (all commercial CA Channel products)	All GA Operating Systems

Cash Discount, If Shown, Should be Given Special Attention.

INVOICES MUST BE SENT DIRECTLY TO THE ORDERING AGENCY FOR PAYMENT.

(See "Contract Payments" and "Electronic Payments" in this document.)

AGENCIES SHOULD NOTIFY THE PROCUREMENT SERVICES GROUP PROMPTLY IF THE CONTRACTOR FAILS TO MEET DELIVERY OR OTHER TERMS OF THIS CONTRACT. PRODUCTS OR SERVICES WHICH DO NOT COMPLY WITH THE SPECIFICATIONS OR ARE OTHERWISE UNSATISFACTORY TO THE AGENCY SHOULD ALSO BE REPORTED TO THE PROCUREMENT SERVICES GROUP.

SMALL, MINORITY AND WOMEN-OWNED BUSINESSES:

The letters SB listed under the Contract Number indicate the contractor is a NYS small business. Additionally, the letters MBE and WBE indicate the contractor is a Minority-owned Business Enterprise and/or Woman-owned Business Enterprise.

NOTE TO AUTHORIZED USERS:

When placing purchase orders under the contract(s), the authorized user should be familiar with and follow the terms and conditions governing its use which usually appears at the end of this document. The authorized user is accountable and responsible for compliance with the requirements of public procurement processes. The authorized user must periodically sample the results of its procurements to determine its compliance. In sampling its procurements, an authorized user should test for reasonableness of results to ensure that such results can withstand public scrutiny.

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.

NEW YORK STATE OFFICE OF GENERAL SERVICES

PROCUREMENT SERVICES GROUP

PRICE:

Prices shall be calculated and paid in accordance with section 6 of the base agreement and Appendix E (Submission # 3) in effect at the time of order placement. Pricing set forth in Appendix E (Submission # 3) includes all applicable documentation, media, shipping, delivery and handling charges. The pricing set forth in Appendix E represents Contractor's current U.S. Commercial Price List. The NYS price for the purchase of Product shall be calculated by applying the discount specified in Section 24(f) of Appendix B to the pricing set forth in Appendix E (hereinafter "*NYS Net Price*"). Annual maintenance shall be calculated at 18% of the U.S. Commercial Price List for Distributed Products (2% discount from the U.S. Commercial Price List). Annual usage and maintenance ("UMF") for the Mainframe UMF products shall be a 2% discount off the stated UMF percent contained in Appendix E for Mainframe UMF Products. Contractor may, however, upon mutual agreement of the Authorized User, negotiate more advantageous pricing for particular orders.

CONTRACT PAYMENTS:

Payments cannot be processed by State facilities until the contract products have been delivered in satisfactory condition or services have been satisfactorily performed. Payment will be based on any invoice used in the supplier's normal course of business. However, such invoice must contain sufficient data including but not limited to contract number, description of product or service, quantity, unit and price per unit as well as federal identification number.

State facilities are required to forward properly completed vouchers to the Office of the State Comptroller for audit and payment. All facilities are urged to process every completed voucher expeditiously giving particular attention to those involving cash discounts for prompt payment.

If the contract terms indicate political subdivisions and others authorized by law are allowed to participate, those entities are required to make payments directly to the contractor. Prior to processing such payment, the contractor may be required to complete the ordering non-State agency's own voucher form.

See "Contract Billings" in Appendix B, OGS General Specifications.

ELECTRONIC PAYMENTS:

The Office of the State Comptroller (OSC) offers an "electronic payment" option in lieu of issuing checks. To obtain an electronic payment authorization form visit the OSC website at www.osc.state.ny.us or contact them by e-mail at epunit@osc.state.ny.us or by phone at 518-474-4032.

NOTE TO CONTRACTOR:

This Contract Award Notification is not an order. Do not take any action under this contract except on the basis of purchase order(s) from the agency or agencies.

WAGE RATES:

It is incumbent upon the contractor(s) to pay the prevailing rate of wages as established by the New York State Department of Labor at the time of installation. Rates in effect at the time of the bid opening were contained in the bid documents for this contract award.

PSG's DISPUTE RESOLUTION POLICY:

It is the policy of the Office of General Services' Procurement Services Group (PSG) to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to PSG bid solicitations or contract awards. PSG encourages vendors to seek resolution of disputes through consultation with PSG staff. All such matters will be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of PSG's Dispute Resolution Procedures for Vendors may be obtained by contacting the person shown on the front of this document or through the OGS website (www.ogs.state.ny.us).

**NEW YORK STATE OFFICE OF GENERAL SERVICES
PROCUREMENT SERVICES GROUP**

State of New York Office of General Services PROCUREMENT SERVICES GROUP Contract Performance Report
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Please take a moment to let us know how this contract award has measured up to your expectations. If reporting on more than one contractor or product, please make copies as needed. This office will use the information to improve our contract award, where appropriate. **Comments should include those of the product's end user.**

Contract No.: _____ **Contractor:** _____

Describe Product* Provided (Include Item No., if available): _____

***Note:** "Product" is defined as a deliverable under any Bid or Contract, which may include commodities (including printing), services and/or technology. The term "Product" includes Licensed Software.

	Excellent	Good	Acceptable	Unacceptable
• Product meets your needs				
• Product meets contract specifications				
• Pricing				

CONTRACTOR

	Excellent	Good	Acceptable	Unacceptable
• Timeliness of delivery				
• Completeness of order (fill rate)				
• Responsiveness to inquiries				
• Employee courtesy				
• Problem resolution				

Comments: _____

_____ (over)

Agency: _____ Prepared by: _____

Address: _____ Title: _____

_____ Date: _____

_____ Phone: _____

_____ E-mail: _____

Please detach or photocopy this form & return by FAX to 518/474-2437 or mail to:

OGS PROCUREMENT SERVICES GROUP
 Customer Services, 38th Floor
 Corning 2nd Tower - Empire State Plaza
 Albany, New York 12242
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**NEW YORK STATE OFFICE OF GENERAL SERVICES
PROCUREMENT SERVICES GROUP**

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

CENTRALIZED CONTRACT FOR THE ACQUISITION OF PROPRIETARY SOFTWARE & RELATED SERVICES

New York State Contract #

PT64273

Contractor Reference #

CA, INC

DESIGNATED CONTACTS: Team #12

Stephanie Laffin - Purchasing Officer I
Telephone No. (518) 473-9440
E-mail stephanie.laffin@ogs.state.ny.us

Kathy McAuley - Team Leader
Telephone No. (518) 486-6812
Email: kathy.mcauley@ogs.state.ny.us

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 INVITATION FOR BIDS, 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://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>

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

One, CA Plaza, Islandia NY, 11749

PROCUREMENT LOBBYING TERMINATION:

OGS reserves the right to terminate this contract in the event it is found that the certification filed by the Offerer/bidder in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, OGS may exercise its termination right by providing written notification to the Offerer/bidder in accordance with the written notification terms of this contract.

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 notice of intent to solicit offers/bids through final award and approval of the Procurement Contract by OGS and, if applicable, the Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j (3) (a). Designated staff, as of the date hereof, is identified on the first page of this solicitation. OGS employees are also required to obtain certain information when contacted during

June, 2006

NEW YORK STATE OFFICE OF GENERAL SERVICES

PROCUREMENT SERVICES GROUP

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.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>

NYS STANDARD VENDOR RESPONSIBILITY QUESTIONNAIRE (Appendix 1):

Bidder agrees to fully and accurately complete the NYS Standard Vendor Responsibility Questionnaire, which is attached as Appendix 1 (hereinafter the "Questionnaire"). 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 making that determination. The Bidder 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 by providing ten (10) days written notification to the Contractor. 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.

TAX LAW 5-A AMENDED APRIL 26, 2006 (APPENDIX 2):

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded state contracts for commodities, services and technology valued at more than \$100,000 to certify to the Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to contracts where the total amount of such contractors' sales delivered into New York State are in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

This law imposes upon certain contractors the obligation to certify whether or not the contractor, its affiliates, and its subcontractors are required to register to collect state sales and compensating use tax and contractors must certify to DTF that each affiliate and subcontractor exceeding such sales threshold is registered with DTF to collect New York State and local sales and compensating use taxes. The law prohibits the State Comptroller, or other approving agency, from approving a contract awarded to a contractor meeting the registration requirements but who is not so registered in accordance with the law.

Contractor certification forms and instructions for completing the forms are attached to this bid. Form No. ST-220-TD must be filed with and returned directly to DTF. Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the contractor, its affiliate(s), or its subcontractor(s), a new Form No. ST-220-TD must be filed with DTF.

Form ST-220-CA must be filed with the bid and submitted to the procuring covered agency certifying that the contractor filed the ST-220-TD with DTF. Proposed contractors should complete and return the certification forms within two business days of request (if the forms are not completed and returned with bid submission). Failure to make either of these filings may render a bidder non-responsive and non-responsible. Bidders shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

Vendors may call DTF at **1-800-698-2909** for any and all questions relating to Section 5-a of the Tax Law and relating to a company's registration status with the DTF. For additional information and frequently asked questions, please refer to the DTF web site: <http://www.nystax.gov>

INFORMATION SECURITY BREACH AND NOTIFICATION ACT

Section 208 of the State Technology Law (STL) and Section 899-aa of the General Business Law (GBL) require that State entities and persons or businesses conducting business in New York who own or license computerized data which includes private information including an individual's unencrypted personal information plus one or more of the following: social security number, driver's license number or non-driver ID, account number, credit or debit card number plus security code, access code or password which permits access to an individual's financial account, must disclose to a New York resident when their private information was, or is reasonably believed to have been, acquired by a person without valid authorization. Disclosure of breach of that private information to all individuals affected or potentially affected must occur in the most expedient time possible without unreasonable delay, after necessary measures to determine the scope of the breach and to restore integrity, but with delay if law enforcement determines it impedes a criminal investigation. When notification is necessary, the State entity or person or business conducting business in New York must also notify the following New York State agencies: the Attorney General, the Office of Cyber Security & Critical Infrastructure Coordination (CSCIC) and the Consumer Protection Board (CPB). Information relative to the law and the notification process is available at: <http://www.cscic.state.ny.us/security/securitybreach/>

NEW YORK STATE OFFICE OF GENERAL SERVICES

PROCUREMENT SERVICES GROUP

1. CONTRACT SCOPE / TERM

This document (hereinafter "Contract") sets forth the terms and conditions governing the acquisition of software, maintenance and other incidental services (including, but not limited to, consulting and training). Terms used in this document shall have the meanings set forth in Appendix B. Amendments or modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the parties and with the approval of the New York State Attorney General and Comptroller.

This Contract is to provide software licenses, technical support/maintenance, consulting services (except as excluded below), hardware and education / training only. No development or customization work will be provided under any order under this Contract. The parties expressly agree that the Contract shall not be amended to add any development or customization work as an offering.

The term of this Contract shall be five (5) years commencing on the date of approval by the New York State Comptroller effective upon mailing by OGS (see Appendix B, Clause 38). The parties may renew the contract, upon approval of the NYS Comptroller, upon expiration of the original term for an additional five (5) year term. Upon termination of the Contract, all rights and obligations set forth herein shall survive in accordance with their terms as to procurements made or individual licenses granted to Authorized Users prior to such termination.

This Contract is available for use by all Authorized Users (See Appendix B, *Definitions*, and *Participation in Centralized Contracts*) and may be extended with the joint approval of the Contractor and the Commissioner for joint purchasing by any department, agency or instrumentality of the United States government and/or any state including political subdivisions thereof ("other authorized entities"). In the event that this Contract is so extended, such other authorized entities shall be solely responsible for liability and performance under the Contract, and Contractor agrees to hold them solely responsible for such liability and performance.

2. MERGER OF APPENDICES/CONFLICT OF CLAUSES

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

Appendix A	<i>Standard Clauses for NYS Contracts</i>
Contract	(This Document)
Appendix B	OGS General Specifications for Proprietary Software
Appendix C	<u>Mandatory</u> : Contractor's Executive Law, Article 15-A (M/WBE) Requirements
Appendix D	Contract Update Form (For Product and Pricing Updates)
Appendix E	Required Contractor Submissions: # 1 Mandatory Contractor Questionnaire # 2 Contractor, Reseller & Distributor Information # 3 NYS Net Prices (Prices for Software, Maintenance, Consulting and Training Services) # 4 Maintenance & Support (Description of Services) # 5 Consulting and Training (Description of Services & Course Offerings)
Appendix F	Pricing and Licensing Policies
Appendix G	Facilities Management Agreements
Appendix H	Order Form

3. PRODUCT OFFERINGS

Products available under this Contract are set forth in Appendix E (Submission #3, 4 and 5). These offerings may be updated during the Contract term to incorporate new Product offerings, and price revisions and to delete items. Offering updates must be submitted under the Contract as soon as possible after they are announced by Contractor.

A. Developer's Software Product Line: Proprietary Product(s) developed by Contractor and offered under Contractor's U.S. Commercial Price List may be included under this Contract.

B. Third Party Products: To the extent that the Contractor's U.S. Commercial Price List includes third party Products other than Developer's proprietary line, which third party products overlap with offerings under other State

NEW YORK STATE OFFICE OF GENERAL SERVICES

PROCUREMENT SERVICES GROUP

Contracts, the State reserves the right, in its sole judgment, to exclude or delete overlapping items from this Contract, or to include such items under this Contract only if the Contractor offers it at or below the alternative Contract price. Only third party Products which are included in the Contractor's U.S. Commercial Price List may be sold under this Contract.

C. Services: Authorized Users may acquire services, including maintenance, consulting, and training, under this Contract. Consulting and training services as set forth in Appendix E (Submission #5) may be acquired from Contractor on a limited basis. Consulting and training services may not exceed twenty (20%) percent of the total order price for software licenses and maintenance. "Total order price" shall be defined as the aggregate purchase order amount for software licenses and maintenance placed by the Authorized User under this Contract in a twelve month period. Consulting and training which exceed twenty (20%) may be procured competitively using the OGS IT Services mini-bid process or another procurement process selected by the Authorized User. The Parties agree that no development or customization work can be provided under any order under this Contract.

Contractors are cautioned that when installing equipment, the installation must be consistent with the Information Security policies of the agency (or other authorized contract user). Questions about specific Information Security policies should be directed to the agency who is requesting the work.

4. CONTRACT ADMINISTRATION

A. Contract Administrator: Contractor will appoint a Contract Manager to support the updating and management of the Contract on a timely basis. Information regarding the administrator shall be set forth in Appendix E (Submission #2).

B. "Toll Free" Number: Contractor must provide a toll free telephone number for Contract administration issues, as well as other questions by Authorized Users related to the day to day operation and use of the Contract other than Product support. The toll free number must be available Monday through Friday on State business days between the hours of 8:30 a.m. to 5:30 p.m., Eastern Time. The number shall be set forth in Appendix E (Submission #2).

Contractor may additionally offer an online e-mail or Internet site for order tracking/delivery schedule information for those customers who have electronic access.

C. Procedures for Updating Contract Price & Product Listings 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, the NYS Attorney General and the NYS Comptroller. New or revised Contract terms and conditions are subject to the restrictions set forth in Appendix B, Section 40.*

The following guidelines and Appendix D, Contract Update Form attached to this Contract are subject to change at the discretion of OGS.

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

a) AUTO ADDS / DELETIONS – "Auto Adds/Deletions" are Contract changes and updates made in accordance with the previously approved Contract pricing formula; e.g., a "discount from list". "Auto Adds" do not include any price increases. "Auto Adds/Deletions" include: i) adding new products within the established, previously approved pricing structure, ii) lowering pricing for Products previously incorporated under the Contract, and iii) deleting Products previously incorporated under the Contract. For categories (i) and (ii) Auto Adds: Contractor shall automatically update the Contract price list and may proceed with selling Products without prior approval of either OGS or the Comptroller. Contractor should note, however, that all "Auto Adds" approved by OGS are subject to a post audit by the Office of the State Comptroller. For category (iii) Auto Deletions, at the end of and subject to the period specified in Appendix B, Clause 84 ("Changes in Product or Service Offerings"), Contractor may automatically update the Contract price list by deleting the Product(s), without prior approval of either OGS or the Comptroller.

All "auto adds" must be immediately posted electronically by the Contractor at the Contract web site.

b) REGULAR ADD - "Regular Adds" are requests for i) price increases for Products which are already incorporated under the Contract, and ii) addition of new products to the Contract which do not fall under the previously established price structure or discounts for Product types previously approved under the Contract.

NEW YORK STATE OFFICE OF GENERAL SERVICES

PROCUREMENT SERVICES GROUP

Regular Adds include rebundled Products or Services. Regular Adds must be submitted to OGS for prior approval, and must be accompanied by a justification of reasonableness of price. Regular Adds are subject to pre-audit by the Comptroller. If approved, OGS staff will notify Contractor in writing. Price increases or new product offerings may not be electronically posted by Contractor until after receipt of OGS approval of the "Regular Add".

c) SPECIAL ADD – Contract changes and updates that do not fall within either of the above categories will be processed as "Special Adds". Special Adds are changes that are not specifically covered by the terms of the Contract but inclusion is found to be in the best interest of the State. Contractor must provide a justification of reasonableness of the prices offered and a statement explaining why it is in the best interest of the State to approve the new Products. Special Adds are subject to pre-audit by the Office of the State Comptroller. If approved, OGS staff will notify Contractor in writing. New offerings may not be electronically posted by Contractor until after receipt of OGS approval of the "Special Add".

d) CHANGES IN RESELLER LIST - If the Contractor allows resellers to participate in the contract in accordance with the Use of Resellers/Distributors clause of this Contract, requests to add or delete resellers or to modify reseller information must be submitted for prior approval of the State. Contractor may request changes to the designated Reseller List by submission of a completed, revised Appendix E, Submission # 2.

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

- request additional information
- reject Contract updates
- remove Products from Contracts
- remove Products from Contract updates
- request additional discounts for new or existing Products

(3) PRICE JUSTIFICATION – FORMAT: Contractor is required to submit the Product and price information for the update in an Excel spreadsheet format in hard copy in triplicate and on a floppy disk or electronically via e-mail to the OGS Purchasing Officer. The list must be dated and the format should be consistent with the format of the price list(s) included in the NYS Net Price appendix of this Contract. The price list should separately include and identify (e.g., by use of separate worksheets or by using italics, bold and/or color fonts):

- Price increases
- Products being added

The State reserves the right to require a revised NYS Net Price List at any time during the Contract period, and it will be requested if there have been numerous updates since the last complete update. Each updated price list must include the date the price list was prepared.

(4) SUPPORTING DOCUMENTATION: Each update request must include the current U.S. commercial price list relevant to the Products included in the update. Requested price increases must also include a copy of the current National Consumer Price Index as described in the "Payments/Pricing" section of the Contract.

(5) COVER LETTERS: A Contract update must be accompanied by three (3) copies of the Contract Update Form set forth in Appendix E. Contractor should briefly describe the nature and purpose of the update (e.g., to restructure the pricing to its Licensees generally, and/or for new Products or services which fall into a new group or category that did not exist at the time of approval of the Contract by the New York State Comptroller, etc.). Each of the three copies of the Contract Update Form must contain original signatures by an individual authorized to sign on behalf of Contractor, and an original corporate acknowledgment (see below).

5. USE OF RE-SELLERS/DISTRIBUTORS

Contractor must provide service, sales and support staff to service Authorized Users geographically located at multiple purchasing locations throughout New York State. Contractor shall insure that sufficient resources are available directly, or

NEW YORK STATE OFFICE OF GENERAL SERVICES

PROCUREMENT SERVICES GROUP

through Resellers/Distributors to insure maximum service capability throughout the State. The State agrees to permit Contractor to utilize approved, designated value added resellers (VARs), distributors and dealers ("Resellers") to participate as alternate distribution sources for Contractor. Such participation is subject to the following conditions:

A. Designation of Reseller(s): Contractor shall specify whether orders must be placed directly with Contractor, or may be placed directly with designated Reseller(s). When Reseller(s) are submitted for approval, Contractor must provide the State, in advance, with all necessary ordering, billing addresses and Federal Identification numbers in the format provided in Appendix E (Submission #2).

B. Conditions of Participation: Reseller(s) must be approved in advance by the State as a condition of eligibility under this section. 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 (i.e., 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, and iii) those qualifying criteria met by the Reseller must be identified on the form provided in Appendix E (Submission #2) 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.

All Resellers who have been approved in accordance with the foregoing paragraph shall be eligible to quote lower pricing for procurements under this Contract which meet their qualifying criteria. Except as otherwise set forth in Appendix E (Submission #2), 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.

C. 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 Semi-Annual Reports to the State as a condition of payment, and where applicable, to Third Party Developer(s) in accordance with the reporting requirements of this Contract. In addition to inclusion of Reseller(s) volume in the Contractor's semi-annual reporting obligation to the State, at the request of Authorized User, Reseller(s) shall provide Authorized User with semi-annual reports of the individual Authorized User's Contract activity with Reseller.

D. Applicability of Contract Terms: Product ordered directly through Reseller(s) shall be limited to Products previously approved for inclusion under this Contract and shall be subject to all terms and conditions of this Contract as a condition of Reseller participation.

6. PAYMENTS/PRICING

Prices shall be calculated and paid in accordance with this section and Appendix E (Submission # 3) in effect at the time of order placement. Pricing set forth in Appendix E (Submission # 3) includes all applicable documentation, media, shipping, delivery and handling charges. The pricing set forth in Appendix E represents Contractor's current U.S. Commercial Price List. The NYS price for the purchase of Product shall be calculated by applying the discount specified in Section 24(f) of Appendix B to the pricing set forth in Appendix E (hereinafter "*NYS Net Price*"). Annual maintenance shall be calculated at 18% of the U.S. Commercial Price List for Distributed Products (2% discount from the U.S. Commercial Price List). Annual usage and maintenance ("UMF") for the Mainframe UMF products shall be a 2% discount off the stated UMF percent contained in Appendix E for Mainframe UMF Products. Contractor may, however, upon mutual agreement of the Authorized User, negotiate more advantageous pricing for particular orders.

A. Travel, Meals & Lodging Unless expressly set forth to the contrary in Appendix E (Submission # 3), NYS net prices set forth in the Contract shall be deemed inclusive of travel, meals and lodging, wherever applicable. Where travel, meals and lodging are allowed over and above the NYS Net Prices, reimbursement to Contractor for such costs for employees who do not reside in the local commuting area for the work site, shall be made in accordance with the State's Travel Reimbursement Manual published by the New York State Office of the State Comptroller. It will be the responsibility of the Authorized User to provide Contractor the most recently published reimbursement guidelines and rates.

B. Subsequent Changes to Product Offerings All changes must be in accordance with the procedures set forth below and require the advance approval of OGS.

NEW YORK STATE OFFICE OF GENERAL SERVICES

PROCUREMENT SERVICES GROUP

(1) **Adding New Products:** Where future Products become commercially available during the Contract term and are offered to New York State, the Contract may be updated to include such offerings.

(2) **Deletion of Products:** OGS reserves the right to delete any Product from the Contract at its discretion at any time.

(3) **Price Decreases:** Shall be calculated in accordance with Appendix B, Clause 24.

(4) **Price Increases:**

a) First Twelve Months Fixed Pricing offered shall be fixed for the first twelve (12) months of the Contract term from the date of Comptroller approval.

b) Price Increase Requests Contractor may thereafter request an increase in the pricing contained in Appendix E a maximum of once in any twelve month period provided that Contractor certifies in writing that the price change for Product applies to its U.S. Commercial Price List, and that Contractor documents the request to the satisfaction of the State.

c) Escalation Cap Contractor has the sole responsibility to submit to OGS a rate adjustment request which must include a copy of the index or other supporting documentation necessary to support the request. Such adjustment shall in no event exceed the lesser of five (5%) percent or the percent increase in the latest copy of the "National Consumer Price Index for All Urban Consumers (CPI-U)", as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212. In no event can prices exceed the Contractor's published U.S. Commercial List price.

d) Effective Date of Increase Price increases shall be effective upon final approval by the State, and may not be posted on the Internet prior to receipt of final approval.

C. Pricing for Machine or Platform Migrations Calculations of software pricing shall be based on the size of the machine on which the Software is installed and running.

In the event of a machine migration, Licensee will not incur an increase in maintenance or additional license fees provided that the total aggregate machine utilization by Licensee (i.e., MIPS, CPUs, or CPU partition(s), if the CPUs are partitioned) on which the Licensed Product is newly installed and running does not exceed the previously licensed capacity, in the aggregate.

In the event of software migration involving aggregate utilization of a larger machine capacity, or a different operating platform, a fee shall be paid to Licensor for the difference between the then-current NYS Net Price for the original partition, machine capacity or operating system, and the then-current NYS Net Price for the software on the new machine group or operating system.

7. DISTRIBUTION OF CONTRACTOR PRICE LIST AND CONTRACT APPENDICES

Contractor shall bear the cost of and shall effect distribution of copies of the Contract, including price lists and appendices, upon request. Contractor shall not, however, distribute Contract information unless OGS has approved it in advance. Contractor shall also be required to furnish OGS with additional copies of the approved price lists (paper copy or diskette, at the State's discretion) upon request as may be necessary in the normal course of business.

7.1 CURRENT AGREEMENTS BETWEEN CONTRACTOR AND ELIGIBLE AUTHORIZED USERS

Eligible Authorized Users, including educational institutions of the State of New York, with independent contracts for Contractor products and services may, at any time, convert any existing contract(s) with Contractor to participate under this Contract and upon doing so shall have all rights of an "Authorized User", provided that notice of such migration shall be forwarded to the Contractor.

Contractor has an affirmative responsibility to inform eligible Authorized Users, via e-mail or other formal communications, of the terms, conditions and pricing of this Contract at the earliest opportunity after approval of this Contract by all parties.

8. INTERNET ACCESS TO CONTRACT & PRICING INFORMATION

Access by Authorized Users to Contract terms and pricing information may be made available and posted on the Internet. Contractor does not currently post the Contract on its internet site. If Contractor hosts the complete Contract pricing and Product offerings at Contractor's Internet site, at Contractor's sole expense, including all subsequent changes in the Contract offerings (adds, deletes, price revisions) during the Contract term, then the following requirements shall apply:

A. Warranty Contractor warrants and represents that Contract and related information will be accurately and completely posted, maintained and displayed in an objective and timely manner which renders it clearly distinguishable

NEW YORK STATE OFFICE OF GENERAL SERVICES

PROCUREMENT SERVICES GROUP

from other, non-Contract offerings at Contractor's web site. Contractor shall indemnify the State and Contract users for damages resulting from errors or inaccuracies in such information, or from any failure to maintain or timely post Contract information in accordance with this paragraph.

B. Price Data Retention & Audit Contractor shall retain the pricing information for the preceding twelve month period. At the end of each twelve month period, the Contractor shall either electronically archive the information at the web site in a manner which allows the State to access the information or electronically transmit the information to the State. This does not relieve the Contractor from any audit requirements imposed by Appendix A, Clause 10, nor does it shorten the retention periods for information stated therein. In addition, annual audits of the information posted at Contractor's web site may be conducted by OSC, or by an independent auditor at Contractor's expense.

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

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

E. Responsibility for Content Contractor is solely responsible for administration, content, intellectual property rights and all materials at Contractor's web site. Contractor is solely responsible for its actions and those of its agents, employees, resellers, subcontractors or assigns, and agrees that neither Contractor nor any of the foregoing has any authority to act or speak on behalf of the State. Contractor agrees to comply with **Office for Technology** (<http://www.oft.state.ny.us/policy/p04-002/index.htm>), Accessibility of State Agency Web-based Intranet and Internet Information and Applications dated June 21, 2004, which requires that all New York State agencies' web sites provide universal accessibility to persons with disabilities. The State of New York has adopted the W3C Web Content Accessibility Guidelines <<http://www.w3.org/TR/WAI-WEBCONTENT/>> as a means to provide optimal access to State agency web sites and the content therein. The Contractor agrees to apply the most current version of these guidelines in the design, creation and maintenance of its linked website. Contractor agrees that its Web content shall conform with level "A", satisfying all priority one checkpoints. In addition, Contractor agrees that its site will have a contact mechanism so individuals who might have trouble accessing any portion of the site can report the problem. The Contractor agrees that the Web Accessibility Guidelines and the checkpoints and guidelines referenced therein will be used in the development of all new pages and will be the basis for bringing existing pages into compliance as required by the Office for Technology Policy 04-002.

F. On-line Price Configurator Contractor may be requested to make available an on-line configurator at its Contract web site. Directions and assistance in using the configurator and web site in general must be available at entry. This configurator must enable Authorized Users to:

- (1) view the options available for the type Product requested;
- (2) search and find Products under the approved Contract list;
- (3) calculate complete acquisition costs

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

9. REPORTING/MONITORING CONTRACT PERFORMANCE

Contractor shall electronically provide the State with verified semi-annual reports in the format required by the State showing the dollar volume of any and all sales under this Contract for the prior six-month period. Said report shall include a break out of participation by individual Authorized Users, including State and non-State governmental entities and others authorized by law. Reports shall be delivered within thirty (30) days of the close of the semi-annual period. Semi-annual periods will end on December 31st and June 30th. If the contract period begins or ends in a fractional portion of a reporting period only the actual contract sales for this fractional period should be reported in that semi-annual report. In the event that a Contractor utilizes resellers, it is the responsibility of Contractor to include all Contract revenues from these

NEW YORK STATE OFFICE OF GENERAL SERVICES

PROCUREMENT SERVICES GROUP

participants in the semi-annual report. Where third party Product is offered and delivered under this Contract, Contractor shall be required to separately report such sales volume on a semi-annual basis to the State.

10. TRAINING AND IMPLEMENTATION

Contractor is required at no extra charge to assist the Office of General Services and Authorized Users with training and implementation in use of the Contract. Training shall be limited to that information necessary for Authorized Users to properly understand contract terms and conditions, and pricing of products, etc. Any informational materials developed will be subject to approval by OGS. Contractor and OGS will jointly implement use of materials.

11. ENTIRE AGREEMENT

This Contract and the referenced appendices constitute the entire agreement between the parties thereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid. The Contract shall not be changed, modified or altered in any manner except by an instrument in writing executed by Contractor and OGS, with the approval of the Attorney General and the Comptroller for the State of New York. Licensees shall not have the authority to modify the terms of the Contract, except as to better terms and pricing for a particular procurement than those set forth herein.

12. NOTICES

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

Stephanie Laffin, Purchasing Officer I
Procurement Services Group
38th Floor, Corning Tower
Empire State Plaza
Albany, New York 12242
Phone: (518) 473-9440
Fax: (518) 486-6867
Email: Stephanie.laffin@ogs.state.ny.us

13. CAPTIONS

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

14. SEVERABILITY

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

15. DISPUTE RESOLUTION POLICY

(i). It is the policy of OGS Procurement Services Group (PSG) to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to PSG bid solicitations or contract awards. If the parties are not able to resolve their dispute between themselves as set forth below, PSG encourages vendors to seek resolution of disputes through consultation with PSG staff. Such consultation is voluntary. All such matters will be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of PSG's Dispute Resolution Procedures for Vendors may be obtained by contacting the person shown above under "Notices" or through the OGS website (www.ogs.state.ny.us).

(ii). In the event there is a dispute or controversy under this Contract, the parties agree to exercise their best efforts to resolve the dispute as soon as possible. The parties shall, without delay, continue to perform their respective obligations under this Contract which are not affected by the dispute. Primary responsibility for resolving any dispute arising under this Contract shall rest with the Authorized User's Contractor Coordinators and the Contractor's applicable Regional Manager and reseller's representative, if applicable.

NEW YORK STATE OFFICE OF GENERAL SERVICES

PROCUREMENT SERVICES GROUP

(iii). In the event the Authorized User is dissatisfied with the Contractor's Licensed Software or Services provided under this Contract, the Authorized User shall notify the Contractor in writing. In the event the Contractor has any disputes with the Authorized User, the Contractor shall so notify the Authorized User in writing. If either party notifies the other of such dispute or controversy, the other party shall then make good faith efforts to solve the problem or settle the dispute amicably, including meeting with the party's representatives to attempt diligently to reach a satisfactory result.

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

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

This Section does not apply to any breach by an Authorized User of Contractor's or its licensor's intellectual property or confidentiality rights or to any breach by Contractor of Authorized User's confidentiality rights.

16. MAINTENANCE ONLY OPTION

The Contractor and OGS agree that the following Products shall not be acquired through this Contract. The Contractor and OGS agree, however, that an Authorized User who acquired software licenses for the following Products under the provisions of PT00376 prior to its expiration on June 30, 2008 may acquire maintenance for such licenses under this Contract with no additional terms and conditions. The maintenance fee shall be the same as the other distributed Products listed in Appendix F.

- (a) CA eHealth Network Performance Manager Starter Suite
- (b) CA eHealth Network Performance Manager Foundation Suite
- (c) CA eHealth Network Performance Manager Standard Suite
- (d) CA eHealth Network Performance Manager Premium Suite
- (e) CA eHealth E2E Console;
- (f) CA eHealth Remote Poller;
- (g) CA eHealth Traffic Accountant;
- (h) CA eHealth Network Performance Manager Starter Suite Development and HA License
- (i) CA eHealth Network Performance Manager Foundation Suite Development and HA License
- (j) CA eHealth Network Performance Manager Standard Suite Development and HA License
- (k) CA eHealth Network Performance Manager Premium Suite Development and HA License
- (l) CA Wily Introscope
- (m) CA Wily Introscope for Microsoft.NET
- (n) CA Wily Introscope CEM Solution
- (o) CA Wily Introscope for BEA Weblogic Server Solution Pack
- (p) CA Wily Introscope Leakhunter

**NEW YORK STATE OFFICE OF GENERAL SERVICES
PROCUREMENT SERVICES GROUP**

(q) CA Wily Introscope Powerpack for Oracle Database

(r) CA Wily Introscope Environment Performance Agent

17. AMENDMENTS TO APPENDIX B

The Parties agree that Appendix B, setting forth the General Specifications for Centralized Contracts is amended as follows:

A. Section 5 (*Definitions*) is amended by modifying or adding the following defined terms thereto:

LICENSE EFFECTIVE DATE The date specified on a mutually agreed upon Order Form executed by 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.

ORDER FORM The standard document signed by the Contractor and Authorized User upon generation of a Purchase Order by an Authorized User to purchase product, services and/or education under this Agreement. The Order Form is attached hereto as Appendix H.

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

B. Section 24 (*Pricing*) Paragraph f. is hereby replaced in its entirety with the following language:

f. Discount Products Offered on GSA Schedule: Contractor shall provide Authorized Users of this Contract with a discount level equivalent to the discounts offered under the then-current US General Services Administration (GSA) schedule for the Contractor's Products currently offered on the GSA schedule. The discount shall be calculated on the pricing set forth in Appendix E. The Parties agree the Authorized User(s) reserve the right to seek greater discounts for transactions greater than \$500,000.

Products Not Offered on GSA Schedule: Products not available under Contractor's GSA schedule shall be offered under this Contract at a 35% discount from the price set forth in Appendix E. For these Products, the Parties agree the Authorized User(s) reserve the right to seek greater discounts on procurements of a quantity greater than one.

Price decreases shall take effect automatically during the contract term and apply to Purchase Orders submitted on or after:

(i) Commercial Price List Reductions: Where NYS Net Prices are based on a discount from Contractor's list prices, the date Contractor lowers its pricing to its customers generally or to similarly situated government customers during the Contract term; or

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

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

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

C. Section 47 (*Shipping/Receipt of Product*), paragraph b. (*Shipping Charges*) is hereby replaced in its entirety with the following language and paragraph c. (*Receipt of Product*) is deleted in its entirety:

NEW YORK STATE OFFICE OF GENERAL SERVICES
PROCUREMENT SERVICES GROUP

b. Shipping Charges (i) Software Unless otherwise stated in the Bid Specifications, all deliveries of Software shall be delivered to Authorized Users, either by electronic delivery or in tangible media F.O.B. Point of Shipment, as Contractor deems appropriate. Contractor shall be responsible for ensuring that the Bill of Lading states "charges prepaid" for all shipments.

(ii) Hardware Unless otherwise stated in the Bid Specifications, all deliveries of Hardware shall be deemed freight on board (F.O.B.) destination tailgate delivery at the dock of the Authorized User. All freight, handling and similar charges or costs incurred in connection with delivery or repair of Hardware shall be borne by Contractor. Contractor shall bear the risk of loss for, and shall procure and replace any hardware that may be damaged during shipment. Contractor shall be responsible for ensuring that the Bill of Lading states "charges prepaid" for all shipments.

D. Section 48 (*Title and Risk of Loss*) is hereby replaced in its entirety with the following language:

48. TITLE AND RISK OF LOSS Solely with respect to hardware, notwithstanding the form of shipment, title or other property interest, risk of loss shall not pass from the Contractor to the Authorized User until the Products have been received, inspected and accepted by the receiving entity. Acceptance shall occur within a reasonable time or in accordance with such other defined acceptance period as may be specified in the Bid Specifications or Purchase Order. Any delivery of Product that is substandard or does not comply with the Bid Specifications or Contract terms and conditions, may be rejected or accepted on an adjusted price basis, as determined by the Commissioner.

E. Section 51 (*Rejected Product*) is hereby replaced in its entirety with the following language:

51. 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. Solely with respect to Hardware purchased under this Agreement, 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.

F. Section 56 (*Assignment*) is hereby replaced in its entirety with the following language:

56. ASSIGNMENT The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the contract or its right, title or interest therein, or its power to execute such contract to any other person, company, firm or corporation in performance of the contract without the prior written consent of the Commissioner or Authorized User (as applicable). Failure to obtain consent to assignment from the Authorized User shall revoke and annul such Contract. 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 consent to assignment of monies becoming effective, the Contractor shall file a written notice of such monies assignment(s) with the Comptroller. Prior to a consent to assignment of a Contract, or portion thereof, becoming effective, the Contractor shall submit the request to assignment to the Commissioner and seek written agreement from the Commissioner which will be filed with the Comptroller. In accordance with State Finance Law §138, the Commissioner may, with the concurrence of the Office of the State Comptroller, waive the statutory prior written consent requirement if the assignment is due to the reorganization, merger or consolidation of Contractor's business entity. The Commissioner reserves the right to reject any proposed assignee in his/her discretion.

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.

G. Section 60 (*Termination*), paragraph a. (*For Cause*) is hereby replaced in its entirety with the following language:

a. For Cause: For a material breach that remains uncured for more than thirty (30) days or other specified period after written notice to the Contractor, the Contract or Purchase Order may be terminated by the Commissioner or Authorized User at the Contractor's expense where Contractor becomes unable or incapable of performing, or meeting any requirements or qualifications set forth in the Contract, or for non-performance, or upon a determination that Contractor

NEW YORK STATE OFFICE OF GENERAL SERVICES
PROCUREMENT SERVICES GROUP

is non-responsible. Such termination shall be upon written notice to the Contractor. In such event, the Commissioner or Authorized User may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach. 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, subject to the provisions of Appendix A.

H. Section 60 (*Termination*), paragraph c. (*For Violation of Sections 139-j and 139-k of the State Finance Law:*) is hereby replaced in its entirety with the following language:

c. For Violation of the 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 its termination right by providing written notification to the Contractor in accordance with the written notification terms of the Contract. 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, subject to the provisions of Appendix A.

I. Section 60 (*Termination*), paragraph d. (*For Violation of Revised Tax Law 5a:*) is hereby replaced in its entirety with the following language:

d. For Violation of Revised Tax Law 5a: 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 §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 its termination right by providing written notification to the Contractor. 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, subject to the provisions of Appendix A.

J. Section 63 (*Default – Authorized User*), paragraph c. (*Notice of Breach*) is hereby replaced in its entirety with the following language:

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

K. Section 65 (*Default – Remedies for Breach*), paragraph d. (*Reimbursement of Costs Incurred*) is hereby replaced in its entirety with the following language:

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

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

L. Section 69. (*Security*) is hereby replaced in its entirety with the following language:

69. SECURITY . In performing this Contract, Contractor warrants, covenants and represents that it will comply fully with the Authorized User(s)' rules, procedures and protocols ("Procedures"), including but not limited to physical, facility, documentary, information security and cyber security, provided that such Procedures do not violate any state, local or federal law. Authorized User shall indicate if there are any applicable Procedures on the Contractor's Order Form set forth in this Contract. An Order Form shall not be deemed complete unless the Authorized User completes

NEW YORK STATE OFFICE OF GENERAL SERVICES
PROCUREMENT SERVICES GROUP

the section entitled "Security Issues." The Authorized User shall make available the relevant Procedures and Contractor shall be responsible for distributing to its representatives and assessing and ensuring compliance. If any part of the Procedures should violate Contractor's Code of Ethics and Business Conduct or Contractor is otherwise unable to comply, Contractor shall notify the Authorized User in writing. The Authorized User shall be responsible for acquiring the necessary approvals for the waiver from the entity that issued the Procedure. The Contractor and the State agree that the Procedures do not modify or amend the other terms and conditions of the Contract.

M. Section 70 (*Cooperation with Third Parties*) is hereby replaced in its entirety with the following language:

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

N. Section 72 (*Additional Warranties*), paragraph b. (*Title and Ownership Warranty*) is hereby replaced in its entirety with the following language:

b. Title and Ownership Warranty Contractor warrants and represents that it has (i) full ownership, clear title free of all liens, or (ii) the right to grant perpetual license rights to any Products licensed by Authorized User under this Contract. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor fully indemnifies the Authorized User for any loss, damages or actions arising from a breach of said warranty. without limitation.

O. Section 72 (*Additional Warranties*), paragraph c. (*Contractor Compliance*) is hereby replaced in its entirety with the following language:

c. Contractor Compliance Contractor represents and warrants to pay, at its sole expense, for all applicable permits, licenses, tariffs, tolls and fees to give all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of its obligations under the Contract. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of the Commissioner that it meets or exceeds all requirements of the Bid/Contract and any applicable laws, including but not limited to, permits, insurance coverage, licensing, proof of coverage for worker's compensation, and shall provide such proof as required by the Commissioner. Failure to do so may constitute grounds for the Commissioner to cancel or suspend this Contract, in whole or in part, or to take any other action deemed necessary by the Commissioner.

P. Section 72 (*Additional Warranties*), paragraph e. (*Replacement Parts Warranty*), is hereby replaced in its entirety with the following language:

e. Replacement Parts Warranty Solely with respect to Hardware, if, during the regular or extended warranty period's faults develop, the Contractor shall promptly repair or, upon demand, replace the defective unit or component part affected. All costs for labor and material and transportation incurred to repair or replace defective Product 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.

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

Q. Section 72 (*Additional Warranties*), paragraph h. (*Workmanship Warranty*) is hereby replaced in its entirety with the following language:

h. Workmanship Warranty Contractor warrants that all components or deliverables specified and furnished by or through Contractor under the Project Definition/Work Order meet the completion criteria set forth in the Project Definition/Work Order and any subsequent statement(s) of work, and that services will be provided in a workmanlike manner in accordance with industry standards.

CONTRACTOR DOES NOT WARRANT OR GUARANTEE THAT THE PRODUCT WILL BE ERROR FREE OR OPERATE WITHOUT INTERRUPTION OR THAT CONTRACTOR WILL CORRECT ALL ERRORS. EXCEPT AS

NEW YORK STATE OFFICE OF GENERAL SERVICES

PROCUREMENT SERVICES GROUP

EXPRESSLY SET FORTH ABOVE, TO THE EXTENT PERMITTED BY LAW, NO OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, OR THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE ARE MADE BY CONTRACTOR.

R. Section 72. (*Additional Warranties*), paragraph i. (*Survival of Warranties*), is hereby replaced in its entirety with the following language:

i. **Survival of Warranties** All warranties contained in this Contract shall survive the termination of this Contract unless any such warranty expires prior to termination.

S. Section 78 (*Software License Grant*), paragraph a. (*License Scope*), is hereby replaced in its entirety with the following language:

a. **License Scope** Licensee is granted a non-exclusive, perpetual (unless otherwise specified in the Order Form) 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 (i.e., payroll size, number of employees, CPU, MIPS, MSU, concurrent user, workstation). Licensee shall have the right to use and distribute modifications or customizations of the Product to and for use by any Authorized Users otherwise licensed to use the Product, provided that any modifications, however extensive, shall not diminish Licensor's proprietary title or interest. No license, right or interest in any trademark, trade name, or service mark is granted hereunder.

T. Section 78 (*Software License Grant*), paragraph b. (*License Term*), is hereby replaced in its entirety with the following language:

b. **License Term** The Order Form shall specify if the license right is perpetual or for a specific term. The license term shall commence upon the License Effective Date, provided, however, that where an acceptance or trial period applies to the Product and the license is for a specific term, the License Term shall be extended by the time period for testing, acceptance or trial.

U. Section 78 (*Software License Grant*), paragraph d. (*Product Technical Support & Maintenance*), is hereby replaced in its entirety with the following language:

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. Maintenance term(s) and any renewal(s) thereof are independent of the expiration of the Centralized Contract term and will not automatically renew.

Maintenance shall include, at a minimum, (i) the provision of error corrections, updates, revisions, fixes, upgrade and new releases to Licensee, and (ii) Help Desk assistance with locally accessible "800" or toll free, local telephone service, or alternatively on-line Help Desk accessibility. Contractor shall maintain the Products so as to provide Licensee with the ability to utilize the Products in accordance with the Product documentation without significant functional downtime to its ongoing business operations during the maintenance term.

Authorized User shall not be required to purchase maintenance for use of Products deemed perpetual, and may discontinue maintenance at the end of any current maintenance term upon notice to Contractor. In the event that Authorized User 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 which would have been due under the Contract for the period of time that such maintenance had lapsed, at then current NYS net maintenance rates.

V. Section 78 (*Software License Grant*), paragraph e. (*Permitted License Transfers*), is hereby replaced in its entirety with the following language:

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

NEW YORK STATE OFFICE OF GENERAL SERVICES

PROCUREMENT SERVICES GROUP

specified in the license, including transfers between Agencies (“permitted license transfers”). Licensee(s) do not have to obtain the approval of Contractor for permitted license transfers, but must give thirty (30) days prior written notice to Contractor of such move(s) and certify in writing that the Product is not in use at the prior site. There shall be no additional license or other transfer fees due Contractor, provided that 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) 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 the fees due Contractor shall not exceed the fees otherwise payable for a single license for the upgrade capacity.

W. Section 78 (*Software License Grant*), paragraph f. (*Restricted Use By Outsourcers/Facilities Management, Service Bureaus/or Other Third Parties*), is replaced in its entirety with the following language:

f. Restricted Use By Outsourcers / Facilities Management, Service Bureaus / or Other Third Parties
Outsourcers, facilities management or service bureaus retained by Licensee shall have the right to use the Product to maintain Licensee’s business operations, including data processing, for the time period that they are engaged in such activities, provided that: 1) Licensee gives notice to Contractor of such party, site of intended use of the Product, and means of access; and 2) such party has executed, or agrees to execute, the Product manufacturer’s standard nondisclosure or restricted use agreement which executed agreement shall be accepted by the Contractor (“Non-Disclosure Agreement”); 3) if such party is engaged in the business of facility management, outsourcing, service bureau or other services, such third party will maintain a logical or physical partition within its computer system so as to restrict use and access to the program to that portion solely dedicated to beneficial use for Licensee and 4) a Facilities Management Agreement is executed by the parties. In no event shall Licensee assume any liability for third party’s compliance with the terms of the Non-Disclosure Agreement, nor shall the Non-Disclosure Agreement create or impose any liabilities on the State or Licensee.

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

X. Section 79 (*Product Acceptance*), is hereby replaced in its entirety with the following language:

79. PRODUCT ACCEPTANCE Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, Authorized User(s) shall have thirty (30) days from the date of delivery to accept hardware products and sixty (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. 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(s) 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 the Commissioner or Authorized User agrees to accept the Product at completion of trial use.

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 sets to be specified by User. Where using its own data or tests, Authorized User must have the tests or representative set of data available upon delivery. This demonstration will take the form of a documented installation test, capable of observation by the Authorized User, and shall be made part of the Contractor’s standard documentation. The test data shall remain accessible to the Authorized User after completion of the test.

In the event that the documented installation test cannot be completed successfully within 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 one additional thirty (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.

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 thirty (30) days to correct the deficiency, and the Authorized User shall have an additional sixty (60) days to evaluate the Product as provided herein. If the Product

NEW YORK STATE OFFICE OF GENERAL SERVICES

PROCUREMENT SERVICES GROUP

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.

Y. Section 81 (*Ownership/Title to Project Deliverables*), Paragraph a. (*Definitions*) sub-paragraph i. is hereby replaced in its entirety with the following language:

(i) For purposes of this paragraph, "Product(s)." is defined as a deliverable 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 diskette, CD, DVD or other 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).

Z. Section 81 (*Ownership/Title to Project Deliverables*), Paragraph b. (*Title to Project Deliverables*) sub-paragraph ii. is hereby replaced in its entirety with the following language:

(ii.) **Custom Products:** Contractor shall not produce or develop any Custom Products under any order under this Contract. Title to any work produced and funded by Contractor related to Contractor's intellectual property shall remain with Contractor.

AA. Section 82 (*Proof of License*), is hereby replaced in its entirety with the following language:

82. 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; or (ii) a written confirmation from the Proprietary owner in the form of a counter-signed Order Form, which shall serve as proof of license. Once Contractor countersigns an Order Form, a copy shall be sent to the Authorized User within thirty days of Contractor's signature. Contractor shall submit a sample certificate, or alternatively such written confirmation from the proprietary developer. Such certificates must be in a form acceptable to the Licensee.

BB. Section 84 (*Changes to Product or Service Offerings*), paragraph a. (*Product or Service Discontinuance*) is hereby replaced in its entirety with the following language:

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, each Licensee and each Authorized User 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 customer, or b) not less than twelve (12) months from the date of notice; and (iii) at Authorized User's option, provided that the Authorized User is under contract for maintenance on the date of notice, either: provide the Authorized User with a Product replacement or migration path with at least equivalent functionality at no additional charge to enable Authorized User to continue use and maintenance of the Product. If Contractor advises all its other supported customers that no replacement or migration path is provided for a specific product, then Contractor shall advise the Authorized User whether premium support is available. If available, such premium support may be obtained in accordance with a procurement process selected by the Authorized User.

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 15 calendar 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.

NEW YORK STATE OFFICE OF GENERAL SERVICES

PROCUREMENT SERVICES GROUP

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.

CC. Section 84 (*Changes to Product or Service Offerings*), paragraph b. (*Product or Service Re-Bundling*) is hereby replaced in its entirety with the following language:

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 State and each Authorized User 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 the best timeframe offered by Contractor to any other customer or b)not less than twelve (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.

DD. Section 84 (*Changes to Product or Service Offerings*), paragraph c. (*New Product*) is hereby added to Appendix B with the following language:

c. New Product In addition to and separate from unspecified upgrades and enhancements to be provided as maintenance under the initial term of each Order Form (together with any extension(s) or renewal(s) thereof, the "Term"), in the event Contractor develops a new release of the Product that it designates and makes generally available as a new product (typically containing new function in addition to or different from existing functionality, a "New Product"), then upon Contractor's receipt of Authorized User's written request and without additional charge, such currently unspecified New Product shall be made available for use by the Authorized User' during the Term, on the same basis as applies to such Product, even if Contractor then determines to charge a separate license fee for the New Product to Contractor's other licensees.

EE. Section 85 (*No Hardstop/Passive License Monitoring*) is hereby replaced in its entirety with the following language:

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

FF. Section 86 (*Source Code Escrow for Licensed Product*) is replaced in its entirety with the following language:

86. SOURCE CODE ESCROW FOR LICENSED PRODUCT Contractor has deposited a copy of the Source Code with Mendelsohn, Kary, Bell & Natoli, 529 Fifth Avenue, 2nd Floor, New York, NY 10017 who shall be directed to release the deposited Source Code in accordance with its standard escrow agreement with Contractor.; Contractor certifies to the State that Contractor has named the State, acting by and through the Authorized User, and the Licensee, as a named beneficiary of its established escrow arrangement. If Contractor should elect to change its designated escrow agent, it shall provide written notice within 90 days of such change to the State and Authorized User, naming and identifying such escrow agent, and who shall be directed to release the deposited Source Code in accordance with the terms of the Contract. Notwithstanding the 90 day notice, no rights of the Authorized User shall be diminished during this 90 day period. Source Code, as well as any corrections or enhancements to such source code, shall be updated for each new release of the Product in the same manner as provided above. . If source code is acquired by the State from the escrow agent under the terms of this Contract, the State may release the Source Code

NEW YORK STATE OFFICE OF GENERAL SERVICES
PROCUREMENT SERVICES GROUP

to the Licensees under this Contract who have licensed Product from Contractor, who may use such copy of the Source Code to maintain the Product.

GG. Section 87 (*Additional Terms and Conditions*), paragraph a. (*Software License*) is hereby added to Appendix B with the following language:

87. Additional Terms and Conditions

(a) Software License Contractor acknowledges that any Services to be performed pursuant to this Agreement will not customize or alter the value or functionality of the Software Programs licensed by an Authorized User from Contractor under this Agreement (the "Software") and no development activity will be included as part of the Services activity nor are the Services activity pursuant to this Agreement necessary for the Authorized Users to enjoy the full benefits of the Software's intended features and functions. Payment of any License Fee and/or maintenance fee due under any Purchase Order for the Software between the Authorized User and Contractor are not contingent upon the performance by Contractor of the Services under this Contract.

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

TABLE OF CONTENTS

1. Executory Clause
2. Non-Assignment Clause
3. Comptroller's Approval
4. Workers' Compensation Benefits
5. Non-Discrimination Requirements
6. Wage and Hours Provisions
7. Non-Collusive Bidding Certification
8. International Boycott Prohibition
9. Set-Off Rights
10. Records
11. Identifying Information and Privacy Notification
12. Equal Employment Opportunities For Minorities and Women
13. Conflicting Terms
14. Governing Law
15. Late Payment
16. No Arbitration
17. Service of Process
18. Prohibition on Purchase of Tropical Hardwoods
19. MacBride Fair Employment Principles
20. Omnibus Procurement Act of 1992
21. Reciprocity and Sanctions Provisions
22. Purchases of Apparel

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 previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

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

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

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

performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

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

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor 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) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

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

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment,

employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

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

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

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

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

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

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

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

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

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

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

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

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

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

NYS Department of Economic Development
Division for Small Business
30 South Pearl St -- 7th Floor
Albany, New York 12245
Telephone: 518-292-5220
Fax: 518-292-5884
<http://www.empire.state.ny.us>

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
30 South Pearl St -- 2nd Floor

Albany, New York 12245
Telephone: 518-292-5250
Fax: 518-292-5803
<http://www.empire.state.ny.us>

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

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

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

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

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APPENDIX B
GENERAL SPECIFICATIONS

PLEASE RETAIN THIS DOCUMENT FOR FUTURE REFERENCE

GENERAL

1. **APPLICABILITY** The terms and conditions set forth in this Appendix B are expressly incorporated in and applicable to the resulting procurement contracts let by the Office of General Services Procurement Services Group, or let by any other Authorized User where incorporated by reference in its Bid Documents. Captions are intended as descriptive and are not intended to limit or otherwise restrict the terms and conditions set forth herein.

2. **GOVERNING LAW** This procurement, the resulting contract and any purchase orders issued hereunder shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise, and actions or proceedings arising from the contract shall be heard in a court of competent jurisdiction in the State of New York.

3. **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.

4. **CONFLICT OF TERMS** Unless otherwise set forth in the procurement or contract documents, conflicts among documents shall be resolved in the following order of precedence:

- a. **Appendix A** (Standard Clauses for NYS Contracts)
- b. **Mini-Bid Project Definition** if applicable and in accordance with the terms and conditions of the Back-Drop Contract.
- c. **Contract and other writing(s)** setting forth the final agreements, clarifications and terms between the Bid Documents and Contractor's Bid. In the latter circumstance, clarifications must specifically note in writing what was offered by the Contractor and what was accepted by the State. If not, such clarifications shall be considered last in the order of precedence under this paragraph.
- d. **Bid Documents** (Other than Appendix A).
 - i. Bid Specifications prepared by the Authorized User.
 - ii. Appendix B (General Specifications).
 - iii. Incorporated Contract Appendices, if any, following the order of precedence as stated for Contract above.
- e. **Contractor's Bid or Mini-Bid Proposal**.
- f. **Unincorporated Appendices** (if any).

5. **DEFINITIONS** Terms used in this Appendix B shall have the following meanings:

AFFILIATE Any individual or other legal entity, (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) that effectively controls another company in which (a) the Bidder owns more than 50% of the ownership; or (b) any individual or other legal entity which owns more than 50% of the ownership of the Bidder. In addition, if a Bidder owns less than 50% of the ownership of another legal entity, but directs or has the right to direct such entity's daily operations, that entity will be an Affiliate.

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

ATTORNEY GENERAL Attorney General of the State of New York.

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

BID OR BID PROPOSAL An offer or proposal submitted by a Bidder to furnish a described product or a solution, perform services or means of achieving a practical end, at a stated price for the stated Contract term. As required by the Bid Documents, the Bid or proposal may be subject to modification through the solicitation by the Agency of best and final offers during the evaluation process prior to recommendation for award of the Contract.

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

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

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

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

COMPTROLLER Comptroller of the State of New York.

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

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

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

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

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

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

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

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

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

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

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

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.

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

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

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

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

LICENSEE One or more Authorized Users who acquire Product from Contractor by issuing a 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(s) who took receipt of and who is executing the Product, and who shall be solely responsible for performance and liabilities incurred. In the case of acquisitions by State Agencies, the Licensee shall be the State of New York.

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.

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

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

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

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

OGS The New York State Office of General Services.

PROCUREMENT RECORD Documentation by the Authorized User of the decisions made and approach taken during the procurement process and during the contract term.

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

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

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

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

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

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.

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

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.

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

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

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

STATE State of New York.

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

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.

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

BID SUBMISSION

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

7. 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.

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

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

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

"BID ENCLOSED (bold print, all capitals)

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

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

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

All Bids must be signed by a person authorized to commit the Bidder to the terms of the Bid Documents and the content of the Bid (offer).

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

10. AUTHENTICATION OF FACSIMILE BIDS The act of submitting a Bid by facsimile transmission, including an executed signature page or as otherwise specified in the Bid Documents, shall be deemed a confirming act by Bidder which authenticates the signing of the Bid.

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

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

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

13. EXTRANEIOUS TERMS Bids must conform to the terms set forth in the Bid Documents, as extraneous terms or material deviations (including additional, inconsistent, conflicting or alternative terms)

may render the Bid non-responsive and may result in rejection of the Bid.

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

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

- a. Each proposed extraneous term (addition, deletion, counter-offer, deviation, or modification) must be specifically enumerated in a writing which is not part of a pre-printed form; and
- b. The writing must identify the particular specification requirement (if any) that Bidder rejects or proposes to modify by inclusion of the extraneous term; and
- c. The Bidder shall enumerate the proposed addition, counter offer, modification or deviation from the Bid Document, and the reasons therefore.

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

14. CONFIDENTIAL/TRADE SECRET MATERIALS

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

b. Commissioner or Authorized User Contractor further 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. 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 Act or other applicable New York State laws and regulations. This warranty shall survive termination of this Contract.

Contractor further agrees to take appropriate steps as to its agents, Subcontractors, officers, distributors, resellers or employees regarding the obligations arising under this clause to insure such confidentiality.

15. RELEASE OF BID EVALUATION MATERIALS Requests concerning the evaluation of Bids may be submitted under the Freedom of Information Law. Information, other than statistical or factual tabulations or data such as the Bid Tabulation, shall only be released as required by law after Contract award. Bid Tabulations are not maintained for all procurements. Names of Bidders may be disclosed after Bid opening upon request. Written requests should be directed to the Commissioner.

16. FREEDOM OF INFORMATION LAW During the evaluation process, the content of each Bid will be held in confidence and details of any Bid will not be revealed (except as may be required under the Freedom of Information Law or other State law). The Freedom of Information Law provides for an exemption from disclosure for trade secrets or information the disclosure of which would cause injury to the competitive position of commercial enterprises. This exception would be effective both during and after the evaluation process. If the Bid contains any such trade secret or other confidential or proprietary information, it must be accompanied in the Bid with a written request to the Commissioner to not disclose such information. Such request must state with particularity the reasons why the information should not be available for disclosure and must be provided at the time of submission of the Bid. Notations in the header, footer or watermark of the Bid Document will not be considered sufficient to constitute a request for non-disclosure of trade secret or other confidential or proprietary information. Where a Freedom of Information request is made for trademark or other confidential or proprietary information, the Commissioner reserves the right to determine upon written notice to the Bidder whether such information qualifies for the exemption for disclosure under the law. Notwithstanding the above, where a Bid tabulation is prepared and Bids publicly opened, such Bid tabulation shall be available upon request.

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

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

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

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

b. Prevailing Wage Rate Applicable to Bid Submissions A copy of the applicable prevailing wage rates to be paid or provided are annexed to the Bid Documents. Bidders must submit Bids which are based upon the prevailing hourly wages, and supplements in cash or equivalent benefits (i.e., fringe benefits and any cash or non-cash compensation which are not wages, as defined by law) that equal or

exceed the applicable prevailing wage rate(s) for the location where the work is to be performed. 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.

c. Wage Rate Payments / Changes During Contract Term The wages to be paid under any resulting Contract shall not be less than the prevailing rate of wages and supplements as set forth by law. It is required that the Contractor keep informed of all changes in the Prevailing Wage Rates during the Contract term that apply to the classes of individuals supplied by the Contractor on any projects 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 as required by law.

d. Public Posting & Certified Payroll Records 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 New York State, such records must be kept at the work site. For building services contracts, such records must be kept at the work site while work is being performed.

iii. Submission of Certified Payroll Transcripts for Public Works Contracts Only Contractors and Subcontractors on public works projects must submit monthly payroll transcripts to the Authorized User that has prepared or directs the preparation of the plans and specifications for a public works project, as set forth in the Bid Specifications. For Mini-Bid solicitations, the payroll records must be submitted to the entity preparing the agency Mini-Bid project specification. For “agency specific” Bids, the payroll records should be submitted to the entity issuing the purchase order. For all other OGS Centralized Contracts, such records should be submitted to the individual agency issuing the purchase order(s) for the work. Upon mutual agreement of the Contractor and the Authorized User, the form of submission may be submitted in a specified disk format acceptable to the Department of Labor provided: 1) the Contractor/Subcontractor retains the original records; and, (2) an original signed letter by a duly authorized individual of the Contractor or Subcontractor attesting to the truth and accuracy of the records accompanies the disk. This provision does not apply to Article 9 of the Labor Law building services contracts.

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

Day’s Labor Eight hours shall constitute a legal day’s work for all classes of employees in this state except those engaged in farm and domestic service unless otherwise provided by law.

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.

18. TAXES

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

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

c. Pursuant to Revised Tax Law 5-a, Contractor will be required to furnish sales tax certification on its behalf and for its affiliates, and subcontractors for Contracts with a value greater than \$100,000 in accordance with provisions of the law.

d. 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.

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

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

21. PRODUCT REFERENCES

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

b. Discrepancies in References In the event of a discrepancy between the model number referenced in the Bid Specifications and the written description of the Products which cannot be reconciled,

with respect to such discrepancy, then the written description shall prevail.

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

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

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

24. PRICING

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

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

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

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

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

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

Price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after:

(i) **GSA Changes:** Where NYS Net Prices are based on an approved GSA Schedule, the date the approved GSA Schedule pricing decreases during the Contract term; or

(ii) **Commercial Price List Reductions:** Where NYS Net Prices are based on a discount from Contractor's list prices, the date Contractor lowers its pricing to its customers generally or to similarly situated government customers during the Contract term; or

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

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

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

g. Best and Final Prices As specified in the Bid Documents and Contract, a Contractor may be solicited at the time of issuance of a Purchase Order or Mini-Bid award for best and final pricing for the Product or service to be delivered to the Authorized User. Contractors are encouraged to reduce their pricing upon receipt of such request.

25. DRAWINGS

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

b. Drawings Submitted During the Contract Term Where required to develop, maintain and deliver diagrams or other technical schematics regarding the scope of work, Contractor shall do so on an ongoing basis at no additional charge, and must, as a condition of payment, update drawings and plans during the Contract term to reflect additions, alterations, and deletions. Such drawings and diagrams shall be delivered to the Authorized User's representative.

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

26. SITE INSPECTION Where a site inspection is required by the Bid Specifications or Project Definition, Bidder shall be required to inspect the site, including environmental or other conditions for pre-

existing deficiencies that may affect the installed Product, equipment, or environment or services to be provided and, which 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 which 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 complete the delivery and installation of the required Product or provide the requested service.

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

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

28. SAMPLES

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

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

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

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

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

e. Testing All samples are subject to tests in the manner and place designated by the Commissioner, either prior to or after Contract award. Unless otherwise stated in the Bid Specifications, Bidder samples consumed or rendered useless by testing will not be returned to the Bidder. Testing costs for samples that fails to meet Contract requirements may be at the expense of the Contractor.

f. Requests For Samples By Authorized Users Requests for samples by Authorized Users require the consent of the Contractor. Where Contractor refuses to furnish a sample, Authorized User may, in its sole discretion, make a determination on the performance capability of the Product or on the issue in question.

BID EVALUATION

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

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

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

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

33. EQUIVALENT OR IDENTICAL BIDS In the event two offers are found to be substantially equivalent, price shall be the basis

for determining the award recipient. If two or more Bidders submit substantially equivalent Bids as to pricing or other factors, the decision of the Commissioner to award a Contract to one or more of such Bidders shall be final.

34. PERFORMANCE AND RESPONSIBILITY QUALIFICATIONS The Commissioner reserves the right to investigate or inspect at any time whether or not the Product, services, qualifications or facilities offered by the Bidder/Contractor meet the requirements set forth in the Bid Specifications/Contract or as set forth during Contract negotiations. Contractor shall at all times during the Contract term remain responsible and responsive. A Bidder/Contractor must be prepared, if requested by the Commissioner, to present evidence of legal authority to do business in New York State, integrity, experience, ability, prior performance, organizational and financial capacity as well as where applicable, a statement as to supply, plant, machinery and capacity of the manufacturer or source for the production, distribution and servicing of the Product offered/Bid. If the Commissioner determines that the conditions and terms of the Bid Documents, Bid Specifications or Contract are not complied with, or that items, services or Product proposed to be furnished do not meet the specified requirements, or that the legal authority, integrity, experience, ability, prior performance, organization and financial capacity or facilities are not satisfactory, the Commissioner may reject such Bid or terminate the Contract.

35. DISQUALIFICATION FOR PAST PERFORMANCE AND FINDINGS OF NON-RESPONSIBILITY Bidder may be disqualified from receiving awards if Bidder, or anyone in Bidder's employment, has previously failed to perform satisfactorily in connection with public Bidding or contracts or is deemed non-responsive.

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

37. TIMEFRAME FOR OFFERS The Commissioner reserves the right to make awards within sixty (60) days after the date of the Bid opening or such other period of time as set forth in the Bid Documents, during which period, Bids must remain firm and cannot be withdrawn. Pursuant to Section 163(9)(e) of the State Finance Law and Section 2-205 of the Uniform Commercial Code when applicable, where an award is not made within the sixty (60) day period or other time specified as set forth in the Bid Documents, the Bids shall remain firm until such later time as either a Contract is awarded or the Bidder delivers to the Commissioner written notice of the withdrawal of its Bid. Any Bid which expressly states therein that acceptance must be made within a shorter specified time, may at the sole discretion of the Commissioner, be accepted or rejected.

TERMS & CONDITIONS

38. CONTRACT CREATION / EXECUTION Except for contracts governed by Article 11-B of the State Finance Law, subject to and upon receipt of all required approvals as set forth in the Bid Specifications a Contract shall be deemed executed and created with

the successful Bidder(s), upon the Commissioner's mailing or electronic communication to the address on the Bid/Contract of: (i) the final Contract Award Notice; (ii) a fully executed Contract; or (iii) a Purchase Order authorized by the Commissioner.

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

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

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

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

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

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

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

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

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

41. SCOPE CHANGES The Commissioner reserves the right, unilaterally, to require, by written order, changes by altering, adding to or deducting from the Bid Specifications, such changes to be within the general scope of the Contract. The Commissioner may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the consent of the Contractor, which consent shall not be unreasonably withheld.

42. ESTIMATED / SPECIFIC QUANTITY CONTRACTS Estimated quantity contracts are expressly agreed and understood to be made for only the quantities, if any, actually ordered during the Contract term. No guarantee of any quantity(s) is implied or given. Purchases by Authorized Users from Contracts for services and technology are voluntary.

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.

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

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

All Purchase Orders issued pursuant to Contracts let by the Commissioner must bear the appropriate Contract number and, if necessary, required State approvals. As deemed necessary, the Authorized User may confirm pricing and other Product information

with the Contractor prior to placement of the Purchase Order. The State reserves the right to require any other information from the Contractor which the State deems necessary in order to complete any Purchase Order placed under the Contract. Unless otherwise specified, all Purchase Orders against Centralized Contracts will be placed by Authorized Users directly with the Contractor and any discrepancy between the terms stated on the vendor's order form, confirmation or acknowledgment, and the Contract terms shall be resolved in favor of the terms most favorable to the Authorized User. 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 OGS 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.

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

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

47. SHIPPING/RECEIPT OF PRODUCT

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

property of the Authorized User unless otherwise specified in the Contract documents.

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

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

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

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

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

51. 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.

52. 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 appearance of the Product or render it structurally 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(s) and with proper consideration for the rights of other Contractors or workers. The Contractor shall promptly perform its work and shall coordinate its activities with those of other Contractors. The Contractor shall clean up and remove all debris and rubbish from its work as required or directed. Upon completion of the work, the building and surrounding area of work shall be left clean and in a neat, unobstructed condition, and everything in satisfactory repair and order.

53. REPAIRED OR REPLACED PARTS / COMPONENTS

Where the Contractor is required to repair, replace or substitute 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 Additional 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 manufacturer's 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.

54. ON-SITE STORAGE With the written approval of the Authorized User, materials, equipment or supplies may be stored at the Authorized User's site at the Contractor's sole risk.

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

56. ASSIGNMENT The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the contract or its right, title or interest therein, or its power to execute such contract to any other person, company, firm or corporation in performance of the contract without the prior written consent of the Commissioner or Authorized User (as applicable). Failure to obtain consent to assignment from the Authorized User shall revoke and annul such Contract. Notwithstanding the foregoing, the State shall not hinder, prevent or affect assignment of money by a Contractor for the benefit of its creditors. Prior to a consent to assignment of monies becoming effective, the Contractor shall file a written notice of such monies assignment(s) with the Comptroller. Prior to a consent to assignment of a Contract, or portion thereof, becoming effective, the Contractor

shall submit the request to assignment to the Commissioner and seek written agreement from the Commissioner which will be filed with the Comptroller. The Commissioner reserves the right to reject any proposed assignee in his/her discretion.

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.

57. SUBCONTRACTORS AND SUPPLIERS The Commissioner reserves the right to reject any proposed Subcontractor or supplier for bona fide business reasons, which may include, but are not limited to: they are on the Department of Labor's list of companies with which New York State cannot do business; the Commissioner determines that the company is not qualified; the Commissioner determines that the company is not responsible; the company has previously provided unsatisfactory work or services; the company failed to solicit minority and women's business enterprises (M/WBE) Bidders as required by prior Contracts.

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

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

60. TERMINATION

a. For Cause: For a material breach that remains uncured for more than thirty (30) days or other specified period after written notice to the Contractor, the Contract or Purchase Order may be terminated by the Commissioner or Authorized User at the Contractor's expense where Contractor becomes unable or incapable of performing, or meeting any requirements or qualifications set forth in the Contract, or for non-performance, or upon a determination that Contractor is non-responsible. Such termination shall be upon written notice to the Contractor. In such event, the Commissioner or Authorized User may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

b. For Convenience: By written notice, this Contract may be terminated at any time by the State for convenience upon sixty (60) days written notice or other specified period without penalty or other early termination charges due. Such termination of the Contract shall not

affect any project or Purchase Order that has been issued under the Contract prior to the date of such termination. If the Contract is terminated pursuant to this subdivision, the Authorized User shall remain liable for all accrued but unpaid charges incurred through the date of the termination. Contractor shall use due diligence and provide any outstanding deliverables.

c. For Violation of the 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 its termination right by providing written notification to the Contractor in accordance with the written notification terms of the Contract.

d. For Violation of Revised Tax Law 5a: 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 §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 its termination right by providing written notification to the Contractor.

61. SAVINGS/FORCE MAJEURE A force majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled. Force majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, 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 which non- performance, by exercise of reasonable diligence, cannot be prevented. Contractor shall provide the Commissioner with written notice of any force majeure occurrence as soon as the delay is known.

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:

- a. Accept allocated performance or deliveries from the Contractor. The Contractor, however, hereby agrees to grant preferential treatment to Authorized Users with respect to Product subjected to allocation; and/or
- b. Purchase from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of the Products which are the subject of the delay, which purchases may be deducted from the Contract quantities without penalty or liability to the State; or
- c. Terminate the Contract or the portion thereof which is subject to delays, and thereby discharge any unexecuted portion of the Contract or the relative part thereof.

In addition, the Commissioner reserves the right, in his/her sole discretion, to make an equitable adjustment in the Contract terms and/or pricing should extreme and unforeseen volatility in the

marketplace affect pricing or the availability of supply. "Extreme and unforeseen volatility in the marketplace" is defined as market circumstances which meet the following criteria: (i) the volatility is due to causes outside the control of Contractor; (ii) the volatility affects the marketplace or industry, not just the particular Contract source of supply; (iii) the effect on pricing or availability of supply is substantial; and (iv) the volatility so affects Contractor's performance that continued performance of the Contract would result in a substantial loss.

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

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

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

63. DEFAULT – AUTHORIZED USER

a. Breach of Authorized User Not Breach of Centralized Contract. 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 60 days of such delivery and acceptance, the Contractor may, upon 10 days advance written notice to both the Commissioner and the Authorized User's purchasing official, suspend additional shipments of Product or provision of services to such entity until such time as reasonable arrangements have been made and assurances given by such entity for current and future Contract payments.

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

d. It is understood, however, that if the Contractor's basis for declaring a breach is insufficient, the Contractor's declaration of breach and failure to service an Authorized User shall constitute a breach of its Contract and the Authorized User may thereafter seek any remedy available at law or equity.

64. INTEREST ON LATE PAYMENTS

a. State Agencies The payment of interest on certain payments due and owed by Agency may be made in accordance with Article 11-A of the State Finance Law (SFL §179-d et. Seq.) and Title 2 of the New York Code of Rules and Regulations, Part 18 (Implementation of Prompt Payment Legislation -2 NYCRR §18.1 et seq.).

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

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

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

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

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

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

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

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

Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the Contract, the ordering Authorized User may rent substitute equipment temporarily. Any sums expended for such rental shall, upon demand, be reimbursed to the Authorized User promptly by the Contractor or deducted by the Authorized User from payments

due or to become due the Contractor on the same or another transaction.

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, liquidated damages, etc., which arise from the administration of the Contract.

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

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

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

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

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

70. 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 of Product or coordination of performance of services.

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

72. ADDITIONAL WARRANTIES Where Contractor, product manufacturer or service provider generally offers additional or more advantageous warranties than set forth below, Contractor shall offer or

pass through any such warranties to Authorized Users. Contractor hereby warrants and represents:

a. Product Performance Contractor warrants and represents that Products delivered pursuant to this Contract conform to the manufacturer's specifications, performance standards and documentation, and the documentation fully describes the proper procedure for using the Products.

b. Title and Ownership Warranty Contractor warrants, represents and conveys (i) full ownership, clear title free of all liens, or (ii) the right to transfer or deliver perpetual license rights to any Products transferred to Authorized User under this Contract. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor fully indemnifies the Authorized User for any loss, damages or actions arising from a breach of said warranty without limitation.

c. Contractor Compliance Contractor represents and warrants to pay, at its sole expense, for all applicable permits, licenses, tariffs, tolls and fees to give all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of the Commissioner that it meets or exceeds all requirements of the Bid/Contract and any applicable laws, including but not limited to, permits, insurance coverage, licensing, proof of coverage for worker's compensation, and shall provide such proof as required by the Commissioner. Failure to do so may constitute grounds for the Commissioner to cancel or suspend this Contract, in whole or in part, or to take any other action deemed necessary by the Commissioner.

d. Product Warranty Unless recycled or recovered materials are available in accordance with the "Recycled 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; and no attachment or part has been substituted or applied contrary to the manufacturer's recommendations and standard practice.

Contractor further warrants and represents that components or deliverables specified and furnished by or through Contractor shall individually, and where specified and furnished as a system, be substantially uninterrupted or error-free in operation and guaranteed against faulty material and workmanship for the warranty period, or for a minimum of one (1) year from the date of acceptance, whichever is longer ("Project warranty period"). During the Project warranty period, defects in the materials or workmanship of components or deliverables specified and furnished by or through Contractor shall be repaired or replaced by Contractor at no cost or expense to the Authorized User. Contractor shall extend the Project warranty period for individual component(s), or for the System as a whole, as applicable, by the cumulative period(s) of time, after notification, during which an individual component or the System requires servicing or replacement (down time) or is in the possession of the Contractor, its agents, officers, Subcontractors, distributors, resellers or employees ("extended warranty").

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

extended warranty period(s), Contractor shall be responsible for the coordination during the Project warranty or extended warranty period(s) with ISV or other third party manufacturer(s) for warranty repair or replacement of ISV or other third party manufacturer's Product.

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

e. Replacement Parts Warranty If during the regular or extended warranty period's faults develop, the Contractor shall promptly repair or, upon demand, replace the defective unit or component part affected. All costs for labor and material and transportation incurred to repair or replace defective Product 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.

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

f. Virus Warranty The Contractor represents and warrants that Licensed Software contains no known viruses. Contractor is not responsible for viruses introduced at Licensee's site.

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

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

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

h. Workmanship Warranty Contract warrants that all components or deliverables specified and furnished by or through Contractor under the Project Definition/Work Order meet the

completion criteria set forth in the Project Definition/Work Order and any subsequent statement(s) of work, and that services will be provided in a workmanlike manner in accordance with industry standards.

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

73. LEGAL COMPLIANCE Contractor represents and warrants that it shall secure all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of the Commissioner that it meets or exceeds all requirements of the Bid and Contract and any applicable laws, including but not limited to, permits, licensing, and shall provide such proof as required by the Commissioner. Failure to comply or failure to provide proof may constitute grounds for the Commissioner to cancel 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.

74. INDEMNIFICATION Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully indemnify and save harmless the Authorized Users from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by any intentional act or negligence of Contractor, its agents, employees, partners or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the Authorized Users.

75. INDEMNIFICATION RELATING TO THIRD PARTY RIGHTS The Contractor will also indemnify and hold the Authorized Users harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs that may be finally assessed against the Authorized Users in any action for infringement of a United States Letter Patent, or of any copyright, trademark, trade secret or other third party proprietary right except to the extent such claims arise from the Authorized Users gross negligence or willful misconduct, provided that the State shall give Contractor: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action at the expense of Contractor.

If usage 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 said service or Product or part(s) thereof, as applicable, with non-infringing service or 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 the Authorized User is given a refund for any amounts paid for the period during which Usage was not feasible.

The foregoing provisions as to protection from third party rights shall not apply to any infringement occasioned by modification by the Authorized User of any Product without Contractor's approval.

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

76. LIMITATION OF LIABILITY Except as otherwise set forth in the Indemnification Paragraphs above, 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 and services provided, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed direct damages in: (i) an amount equal to two (2) times the charges specified in the Purchase Order for the Products and services, or parts thereof forming the basis of the Authorized User's claim, (said amount not to exceed a total of twelve (12) months charges payable under the applicable Purchase Order) or (ii) one million dollars (\$1,000,000), 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.

77. INSURANCE Contractor shall secure and maintain insurance coverage as specified in the Bid Documents and shall promptly provide documentation of specified coverage to the Authorized User. If specified, the Contractor may be required to add the Authorized User as an additional insured.

**THE FOLLOWING CLAUSES PERTAIN TO
TECHNOLOGY & NEGOTIATED CONTRACTS**

78. 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 (i.e., payroll size, number of employees, CPU, MIPS, MSU, concurrent user, workstation). Licensee shall have the right to use and distribute modifications or customizations of the Product to and for use by any Authorized Users otherwise licensed to use the Product, provided that any modifications, however extensive, shall not diminish Licensor's proprietary title or interest. No license, right or interest in any trademark, trade name, or service mark is granted hereunder.

b. License Term The license term shall commence upon the License Effective Date, 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. Licensed Documentation If commercially available, Licensee shall have the option to require the Contractor to deliver, at Contractor's expense: (i) one (1) hard copy and one (1) master electronic copy of the Documentation in a mutually agreeable format; (ii) based on hard copy instructions for access by downloading from the Internet (iii) hard copies of the Product Documentation by type of license in the following amounts, unless otherwise mutually agreed:

- Individual/Named User License - one (1) copy per License
- Concurrent Users - 10 copies per site
- Processing Capacity - 10 copies per site

Software media must be in a format specified by the Authorized User, without requiring any type of conversion.

Contractor hereby grants to Licensee a perpetual license right to make, reproduce (including downloading electronic copies of the Product) and distribute, either electronically or otherwise, copies of Product Documentation as necessary to enjoy full use of the Product in accordance with the terms of license.

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. Maintenance term(s) and any renewal(s) thereof are independent of the expiration of the Centralized Contract term and will not automatically renew.

Maintenance shall include, at a minimum, (i) the provision of error corrections, updates, revisions, fixes, upgrade and new releases to Licensee, and (ii) Help Desk assistance with locally accessible "800" or toll free, local telephone service, or alternatively on-line Help Desk accessibility. Contractor shall maintain the Products so as to provide Licensee with the ability to utilize the Products in accordance with the Product documentation without significant functional downtime to its ongoing business operations during the maintenance term.

Authorized User shall not be required to purchase maintenance for use of Product, and may discontinue maintenance at the end of any current maintenance term upon notice to Contractor. In the event that Authorized User 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 which would have been due under the Contract for the period of time that such maintenance had lapsed, at then current NYS net maintenance rates.

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 between Agencies ("permitted license transfers"). Licensee(s) do not have to obtain the approval of Contractor for permitted license transfers, but must give thirty (30) days prior written notice to Contractor of such move(s) and certify in writing that the Product is not in use at the prior site. There shall be no additional license or other transfer fees due Contractor, provided that: i) the maximum capacity of the consolidated machine is equal to the combined individual license capacity of all licenses running at the consolidated or transferred site (e.g., named users, seats, or MIPS); 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 Outsourcers / Facilities Management, Service Bureaus / or Other Third Parties Outsourcers, facilities management or service bureaus retained by Licensee shall have the right to use the Product to maintain Licensee's business operations, including data processing, for the time period that they are engaged in such activities, provided that: 1) Licensee gives notice to Contractor of such party, site of intended use of the Product, and means of access; and 2) such party has executed, or agrees to execute, the Product manufacturer's standard nondisclosure or restricted use agreement which executed agreement shall be accepted by the Contractor ("Non-Disclosure Agreement"); and 3) if such party is engaged in the business of facility management, outsourcing, service bureau or other services, such third party will maintain a logical or physical partition within its computer system so as to restrict use and access to the program to that portion solely dedicated to beneficial use for Licensee. In no event shall Licensee assume any liability for third party's compliance with the terms of the Non-Disclosure Agreement, nor shall the Non-Disclosure Agreement create or impose any liabilities on the State or Licensee.

Any third party with whom a Licensee has a relationship for a state function or business operation, shall have the temporary right to use Product (e.g., JAVA Applets), provided that such use shall be limited to the time period during which the third party is using the Product for the function or business activity.

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 in the event of destruction or corruption of the Product or disasters or emergencies which require Licensee to restore backup(s) or to initiate disaster recovery procedures for its platform or operating systems; ii) reproducing a reasonable number of copies of the Product and related Documentation for cold site storage. "Cold Site" storage shall be defined as a restorable back-up copy of the Product not to be installed until and after the declaration by the Licensee of a disaster; 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. "Disaster Recovery" shall be defined as the installation and storage of Product in ready-to-execute,

back-up computer systems prior to disaster or breakdown which is not used for active production or development.

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

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

- (i) Copy the Product;
- (ii) Cause or permit reverse compilation or reverse assembly of all or any portion of the Product;
- (iii) Export the Licensed Software in violation of any U.S. Department of Commerce export administration regulations.

79. PRODUCT ACCEPTANCE Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, Authorized User(s) shall have thirty (30) days from the date of delivery to accept hardware products and sixty (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. 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(s) 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 the Commissioner or Authorized User agrees to accept the Product at completion of trial use.

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 sets to be specified by User. Where using its own data or tests, Authorized User must have the tests or representative set of data available upon delivery. This demonstration will take the form of a documented installation test, capable of observation by the Authorized User, and shall be made part of the Contractor's standard documentation. The test data shall remain accessible to the Authorized User after completion of the test.

In the event that the documented installation test cannot be completed successfully within 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 thirty (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.

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 thirty (30) days to correct the deficiency, and the Authorized User shall have an additional sixty (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.

80. 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 provided that: (i) Contractor gives Licensee(s) at least thirty (30) days advance written notice, (ii) such audit is conducted during such party's normal business hours, (iii) the audit is conducted by an independent auditor chosen on mutual agreement of the parties. Contractor shall recommend a minimum of three (3) auditing/accounting firms from which the Licensee will select one (1). In no case shall the Business Software Alliance (BSA), Software Publishers Association (SPA), Software and Industry Information Association (SIIA) or Federation Against Software Theft (FAST) be used directly or indirectly to conduct audits, or be recommended by Contractor; (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; and (v) 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 NYS Net Price in effect 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.

81. OWNERSHIP/TITLE TO PROJECT DELIVERABLES

a. Definitions

(i) For purposes of this paragraph, "Products." A deliverable 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 diskette, CD, DVD or other 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 paragraph, "Existing Products." 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 paragraph, "Custom Products." Products, preliminary, final or otherwise, which are created or developed by Contractor, its Subcontractors, partners, employees or agents for Authorized User under the Contract.

b. Title to Project Deliverables Contractor acknowledges that it is commissioned by the Authorized User to perform the services detailed in the Purchase Order. Unless otherwise specified in writing in the Bid or Purchase Order, the Authorized User shall have ownership and license rights as follows:

(i) Existing Products:

1. Hardware - Title and ownership of Existing Hardware Product shall pass to Authorized User upon Acceptance.

2. Software - Title and ownership to Existing Software Product(s) delivered by Contractor under the Contract that is normally commercially distributed on a license basis by the Contractor or other independent software vendor proprietary owner ("Existing Licensed Product"), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall remain with Contractor or the proprietary owner of other independent software vendor(s) (ISV). Effective upon acceptance, such Product shall be licensed to Authorized User in accordance with the Contractor or ISV owner's standard license agreement, provided, however, that such standard license, must, at a minimum: (a) grant Authorized User a non-exclusive, perpetual license to use, execute, reproduce, display, perform, adapt (unless Contractor advises Authorized User as part of Contractor's proposal that adaptation will violate existing agreements or statutes and Contractor demonstrates such to the Authorized User's satisfaction) and distribute Existing Licensed Product to the Authorized User up to the license capacity stated in the Purchase Order or work order with all license rights necessary to fully effect the general business purpose(s) stated in the Bid 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 ISV's owner's standard license agreement, the Contractor shall be responsible for obtaining these rights at its sole cost and expense. The Authorized User shall reproduce all copyright notices and any other legend of ownership on any copies authorized under this paragraph.

(ii.) Custom Products: Effective upon creation of Custom Products, Contractor hereby conveys, assigns and transfers to Authorized User the sole and exclusive rights, title and interest in Custom Product(s), whether preliminary, final or otherwise, including all trademark and copyrights. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction and marketing by or through Contractor, its agents, employees, or Subcontractors. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under a 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 purpose(s) as stated in paragraph (b)(i)(2), above.

c. Transfers or Assignments to a Third Party Financing Agent It is understood and agreed by the parties that a condition precedent to the consummation of the purchase (s) under the Contract may be the obtaining of acceptable third party financing by the Authorized User. The Authorized User shall make the sole determination of the acceptability of any financing proposal. The Authorized User will make all reasonable efforts to obtain such financing, but makes no representation that such financing has been obtained as of the date of Bid receipt. Where financing is used, Authorized User may assign or transfer its rights in Licensed Products (existing or custom) to a third party financing entity or trustee ("Trustee") as collateral where required by the terms of the financing agreement. Trustee's sole rights with respect to transferability or use of Licensed Products shall be to exclusively sublicense to Authorized User all of 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 Product(s), the sale or other transfer shall be at fair market value determined at the time of such sale or other transfer, and must be pursuant to a separate written agreement in a form acceptable to the Authorized User which complies with the terms of this paragraph.

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

82. 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; or (ii) a written confirmation from the Proprietary owner accepting Product invoice as proof of license. Contractor shall submit a sample certificate, or alternatively such written confirmation from the proprietary developer. Such certificates must be in a form acceptable to the Licensee.

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

84. 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, each Licensee and each Authorized User 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 customer, or b) not less than twelve (12) months from the date of notice; and (iii) at Authorized User's option, provided that the Authorized User is under contract for maintenance on the date of notice, either: provide the Authorized User with a Product replacement or migration path with at least equivalent functionality at no additional charge to enable Authorized User to continue use and maintenance of the Product.

In the event that the Contractor is not the Product Manufacturer, Contractor shall be required to: (i) provide the notice required under the paragraph above, to the entities described within five (5) 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 State and each Authorized User 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 customer, or b) not less than twelve (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.

85. NO HARDSTOP/PASSIVE LICENSE MONITORING

Unless an Authorized User is otherwise specifically advised to the contrary in writing at the time of order and prior to purchase, Contractor hereby warrants and represents that the Product and all Upgrades do not and will not contain any computer code that would disable the Product or Upgrades or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as "time bombs," "time locks," or "drop dead" devices) or that would permit Contractor to access the Product to cause such disablement or impairment (sometimes referred to as a "trap door" device). Contractor agrees that in the event of a breach or alleged breach of this provision that Authorized User shall not have an adequate remedy at law, including monetary damages, and that Authorized User shall consequently be entitled to seek a temporary restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any and all remedies to which Authorized User shall be entitled.

86. SOURCE CODE ESCROW FOR LICENSED PRODUCT

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

Contract term and shall certify annually that the escrow remains in effect in compliance with the terms of this paragraph.

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

FOR NEGOTIATED CONTRACTS THE FOLLOWING CLAUSES ARE RESERVED BECAUSE BIDDING DOES NOT APPLY:

Clauses: 7, 8, 9, 10, 11, 12, 13, 16, 15, 21, 25, 26, 28, 29, 30, 31, 32, 33, 36, 49, 50, 52, 54 and 37

INDEX

	<u>Paragraph</u>		<u>Paragraph</u>
<u>A</u>			
Additional Warranties	72	Modification of Contract Terms	40
Advertising Results	20	<u>N</u>	
Applicability	1	No Hardstop/Passive License Monitoring	85
Assignment	56	<u>O</u>	
Assignment of Claim	66	On-Site Storage	54
Audit of Licensed Product Usage	80	Ownership/Title to Project Deliverables	81
Authentication of Facsimile Bids	10	<u>P</u>	
<u>B</u>			
Bid Contents	12	Participation in Centralized Contracts	39
Bid Evaluation	29	Performance and Responsibility Qualifications	34
Bid Opening	7	Performance/Bid Bond	58
Bid Submission	8	Prevailing Wage Rates Public Works & Building Services Contracts	17
<u>C</u>			
Changes to Product or Service Offerings	84	Pricing	24
Clarification/Revisions	31	Procurement Card	27
Confidential/Trade Secret Materials	14	Product Acceptance	79
Conflict of Terms	4	Product Delivery	45
Conditional Bid	30	Product References	21
Contract Billings	62	Product Substitution	50
Contract Creation/Execution	38	Product Version	83
Contract Term - Renewal	71	Products Manufactured in Public Institutions	23
Cooperation with Third Parties	70	Prompt Payment Discounts	32
<u>D</u>			
Default - Authorized User	63	Proof of License	82
Definitions	5	Purchase Orders	44
Disqualification for Past Performance	35	<u>Q</u>	
Drawings	25	Quantity Changes Prior to Award	36
<u>E</u>			
Emergency Contracts	43	<u>R</u>	
Employees/Subcontractors/Agents	55	Rejected Product	51
Equivalent or Identical Bids	33	Release of Bid Evaluation Materials	15
Estimated/Specific Quantity Contracts	42	Re-Weighing Product	49
Ethics Compliance	3	Remanufactured, Recycled, Recyclable or Recovered Materials	22
Expenses Prior to Contract Execution	19	Remedies for Breach	65
Extraneous Terms	13	Repaired or Replaced Product/Components	53
<u>F</u>			
Facsimile Submissions	9	<u>S</u>	
Freedom of Information Law	16	Samples	28
<u>G</u>			
Governing Law	2	Savings/Force Majeure	61
<u>I</u>			
Indemnification	74	Scope Changes	41
Indemnification Relating to Third Party Rights	75	Security	69
Independent Contractor	68	Site Inspection	26
Installation	52	Shipping/Receipt of Product	47
Insurance	77	Software License Grant	78
Interest on Late Payments	64	Source Code Escrow for Licensed Product	86
International Bidding	6	Subcontractors and Suppliers	57
<u>L</u>			
Late Bids	11	Suspension of Work	59
Legal Compliance	73	<u>T</u>	
Limitation of Liability	76	Taxes	18
<u>M</u>			
<u>O</u>			
<u>P</u>			
<u>Q</u>			
<u>R</u>			
<u>S</u>			
<u>T</u>			
<u>W</u>			
<u>X</u>			
<u>Y</u>			
<u>Z</u>			

APPENDIX C

**Contractor's Executive Law, Article 15-A
(M/WBE) Requirements**

CONTRACTOR'S REQUIREMENT UNDER ARTICLE 15-A

In July of 1988, Article 15-A of the Executive Law was passed by the New York State Legislature. This legislation provides specific rules, regulations and procedures for minority and women-owned enterprise participation in certain State Contracts.

The Office of General Services (OGS) is required to implement the provisions of Article 15-A for all of its Contracts (1) in excess of \$25,000 for labor, services, supplies, equipment, materials, or any combination of the foregoing and (2) for Contracts in excess of \$100,000 for real property renovation and construction. For purposes of this Contract, OGS hereby establishes a goal of 0% for minority business enterprises (MBE) participation and 0% for women-owned business enterprises (WBE) participation.

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

POLICY AND PROVISIONS

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

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

- (a) Whether the Contractor has advertised in general circulation media, trade association publications, minority-focus and women-focus media. In such event,
 - (i) whether or not certified minority or women-owned businesses which have been solicited by the Contractor exhibited interest in submitting proposals for a particular project by attending a pre-bid conference; and
 - (ii) whether certified businesses which have been solicited by the Contractor have responded in a timely fashion to the Contractor's solicitations for timely competitive bid quotations prior to the Contracting agency's bid date; and
- (b) Whether there has been written notification to appropriate certified businesses that appear in the Directory of Certified M/WBE prepared pursuant to paragraph (f) of subdivision three of section three hundred eleven of this article; and
- (c) Whether the Contractor can reasonably structure the amount of work to be performed under subcontracts in order to increase the likelihood of participation by certified businesses.

- A. **GOALS** - The MBE and WBE participation goals as stated earlier are based on the availability of M/WBEs currently certified by New York State and geographically located to be able to perform the work in the region where the project is located. The total dollar value of the Contract, scope of work, the supplies and equipment necessary to perform the project, are also considerations used to determine the percentage goals.
- B. **UTILIZATION** - The Contractor may count as M/WBE participation: subcontracting part of the Contract to certified firms or purchasing supplies and equipment used to perform the terms and conditions of the Contract from certified firms.

Upon a showing by the Contractor of every good faith effort to achieve the goal for M/WBE participation in the work, the State will waive a Contractor's failure to achieve the goal M/WBE participation.

- C. **MINORITY AND WOMEN-OWNED BUSINESS OFFICER** - The Contractor shall designate an Affirmative Action officer and assign the officer the responsibility and authority to monitor the M/WBE program for this Contract. The OGS' Office of Minority and Women-owned Business Enterprises' staff is available to help in identifying certified M/WBEs.
- D. **REQUIRED REPORTS** - The Contractor is required to submit a Utilization Plan (BDC-328) to the NYS Office of General Services within five (5) days after the opening of bids for construction Contracts exceeding \$100,000 and 14 days after notification of award for commodity and service Contracts exceeding \$25,000. The Contractor must also submit the MBE/WBE Letter of Intent to Participate (BDC-49). The Letter MBE/WBE of Intent to Participate is a commitment by the Contractor and the subcontractor/supplier that the terms and conditions for M/WBE participation on this Contract are agreed to. Any modifications or changes to the agreed participation by certified M/WBEs, over the term of the Contract, must be reported on a revised Utilization Plan.
- E. **NONDISCRIMINATION** - The Contractor agrees not to discriminate on the basis of race, creed, color, national origin, gender, age, disability, or marital status, in any respect, against any potential subcontractor, supplier, other company, firm, or enterprise in any manner relating to the performance of this Contract.

POST AWARD

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

1. (BDC-58) Cumulative Monthly Payment Statements
2. (BDC-25) Monthly Affirmation of Income Payments

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

New York State Office of General Services
Office of Minority and Women-owned Business Enterprises
35th Floor, Room 3580
Corning Tower Building
Empire State Plaza
Albany, NY 12242

The telephone numbers and addresses for New York State Department of Economic Development are as follows:

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

Telephone: (212) 803-2414

New York State Department of Economic Development
Division of Minority and Women's Business Development
30 South Pearl Street
Albany, New York 12245
Telephone: (518) 292-5250

APPENDIX D

CONTRACT UPDATE FORM



STATE OF NEW YORK
 EXECUTIVE DEPARTMENT - OFFICE OF GENERAL SERVICES
 PROCUREMENT SERVICES GROUP
 Corning Tower – 37th Floor
 Empire State Plaza
 Albany, New York 12242

CONTRACT UPDATE FORM	
OGS CONTRACT NO.: _____	DATE OF SUBMISSION: _____
CONTRACT PERIOD: From: _____ To: _____	VENDOR CONTACT: NAME: _____ PHONE NO: _____ FAX NO.: _____ E-MAIL: _____
GROUP NO. & DESCRIPTION: _____ _____	
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 **in triplicate** and submitted to the OGS Procurement Services Group for final approval. Vendors 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 **in triplicate** will be rejected.
2. *Contractor may be required to submit the Product and price information for the update in an Excel spreadsheet format in hard copy and on a floppy disk and/or electronically via e-mail to the OGS Purchasing Officer.*
3. *To expedite the processing of updates that qualify as Auto Adds, do not combine Auto Adds with Regular or Special Adds. **If more than one type of update is being submitted, they should be submitted as totally separate requests.***
4. *The list must be dated and the format should be consistent with the format of the price list(s) included in the Pricing Appendix of the Contract.*
5. *The contract update must be accompanied by either the GSA Price List and revised NYS Net Price List incorporating all changes or the US Commercial Price List and revised NYS Net Price List incorporating all changes, whichever is applicable.*

COMPLETE STATEMENTS 1 THROUGH 8 BELOW:

1. This request is an: <input type="checkbox"/> Auto Add <input type="checkbox"/> Regular Add <input type="checkbox"/> Special Add See contract for an explanation of these terms.	2. The intent of this submittal is to: <input type="checkbox"/> Add new products <input type="checkbox"/> Delete products <input type="checkbox"/> Increase pricing <input type="checkbox"/> Reduce pricing <input type="checkbox"/> Amend VAR list
--	--

3. All terms and conditions of the contract shall apply to this request. <input type="checkbox"/> Agree <input type="checkbox"/> Disagree	4. All discounts as agreed to in the contract shall apply. <input type="checkbox"/> Agree <input type="checkbox"/> Disagree
5. All discounts are: <input type="checkbox"/> GSA <input type="checkbox"/> Most Favored Nation* *Prices offered are the lowest offered to any similarly situated entity.	6. Attached documentation includes: <input type="checkbox"/> Current approved GSA (labeled "For information only") <input type="checkbox"/> Current commercial price list (labeled "For information only") <input type="checkbox"/> Revised NYS Net Price List
7. If other than an auto-ad, describe the Nature and Purpose of the update: _____ _____	
8. For a regular add, please explain how pricing has been restructured to customers, and/or identify and describe new Products or services, which fall into a new group or category that did not exist at the time of approval of the Contract by the New York State Comptroller. If not applicable, state NA: _____ _____	

The following CORPORATE ACKNOWLEDGEMENT statement is to be included in each of the three original forms. 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 Vendor Representative

<u>CORPORATE ACKNOWLEDGMENT</u>	
STATE OF	}
	:
	ss.:
COUNTY OF	}
On the ____ day of _____ in the year 20__, before me personally came: _____, to me known, who, being by me duly sworn, did depose and say that he/she/they reside(s) in _____; that he/she/they is (are) _____ (the President or other officer or director or attorney in fact duly appointed) of _____, the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by authority of the board of directors of said corporation.	
_____ Signature and Office of Person Taking Acknowledgment	

FOR STATE USE ONLY	
OGS APPROVAL: Approved _____ Approved as amended _____ Disapproved _____ Name: _____ Title: _____ Date _____	OSC APPROVAL: Approved _____ Disapproved _____ Name: _____ Title: _____ Date _____

APPENDIX E

CONTRACTOR'S REQUIRED SUBMISSIONS

SUBMISSION #1
MANDATORY CONTRACTOR QUESTIONNAIRE
 [CONTRACTOR MUST ANSWER ALL QUESTIONS]
 Page 1 of 3

1. Are you a New York State resident business?	Yes <u>X</u>	No _____
2. Total number of people employed by your firm:	Approximately <u>14,200</u> employees worldwide (as of 03/07)	
3. Total number of people employed by your firm in New York State:	Approximately <u>1,900</u> employees (as of 3/07)	
4. Is your company independently owned and operated?	Yes <u>X</u>	No _____
5. Place of manufacture or development of Product(s) offered (Please indicate "Yes" or "No" for A, B or C):		
A. All NYS manufacture/development? OR	Yes _____	No <u>X</u>
B. All manufactured/developed outside NYS? OR	Yes _____	No <u>X</u>
C. Manufactured/developed in NYS and outside NYS?	Yes <u>X</u>	No _____
6. Is your firm at least 51% owned and controlled by women, or 51% owned and controlled by minority group members, i.e., Black Hispanic, Asian, Pacific Islander, American Indian, Alaskan Native? If yes, _____ Minority Owned _____ Women Owned If yes, have you been certified or registered? _____ Yes _____ No If yes, List certification or registration authority: _____ _____	Yes _____	No <u>X</u>
7. Do any of the Products offered herein incorporate recycled materials?	Yes _____	No _____ N/A <u>X</u>
8. Do any of the Products offered herein contain remanufactured components?	Yes _____	No _____ N/A <u>X</u>
9. Are any of the Products offered herein Energy Star Compliant? If yes, which Products? _____ _____	Yes _____	No _____ N/A <u>X</u>
10. BIDDER/OFFERER DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS Pursuant to Procurement Lobbying Law (SFL §139-j)		
A. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years?		No <u>X</u>
If yes, please answer the following:		
B. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j?		
C. If yes, was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a governmental entity?		

12. Are prices quoted the same as or lower than those quoted other corporations, institutions and government agencies (including GSA/VA contracts) on similar products, quantities, terms and conditions? See "Best Pricing Offer" in Appendix B, OGS General Specifications. If "NO", please explain on a separate sheet.	Yes _____	No <u>X</u>
A. Do you have a contract with the General Services Administration (GSA) or Veterans Affairs (VA) for products offered? (Check all that apply.)	Yes <u>X</u> GSA _____ VA <u>X</u>	No _____
B. If yes, will you offer New York State your GSA or VA pricing or better?	Yes _____ GSA _____ VA _____	No <u>X</u>
C. If yes, a copy of the GSA or VA schedule is required. Have you included a copy?	Yes _____ GSA _____ VA _____	No <u>X</u>
13. If awarded a contract, will bidder accept the New York State Procurement Card?	Yes _____	No <u>X</u>
A. If yes, state any dollar limit on orders for which you will accept the NYS Procurement Card.	Up to \$ _____	
B. Additional discount for purchases made with the NYS Procurement Card:	Yes _____ _____ %	No _____
14. Will you offer a Cash Discount for payment within 15 days of delivery and/or receipt of voucher?	Yes _____ _____ %	No <u>X</u>
15. Will you offer a Cash Discount for payment within 30 days of delivery and/or receipt of voucher?	Yes _____ _____ %	No <u>X</u>

***** ALL VENDORS PLEASE TAKE NOTICE OF NUMBER 16 BELOW *****

16. NON-COLLUSION CERTIFICATION

By submission of this contract, each contractor and each person signing on behalf of any contractor certifies, and in the case of a joint contract each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

- (1) The prices in this contract have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other contractor or with any competitor;
- (2) Unless otherwise required by law, the prices which have been quoted in this contract have not been knowingly disclosed by the contractor and will not knowingly be disclosed by the contractor prior to contract award, directly or indirectly, to any other contractor or to any competitor; and
- (3) No attempt has been made or will be made by the contractor to induce any other person, partnership or corporation to submit or not to submit a contract for the purpose of restricting competition.

(Contractor's Signature)

(Name of Business)

Submission # 2 Contractor & Reseller/Distributor Information

Contractor Information (for Ordering and Contract Administration Purposes)

1. CONTRACTOR/COMPANY INFORMATION	
Company Name:	CA, Inc
Address: <small>(From first page of Contract)</small>	One CA Plaza Islandia, NY 11749
FEDERAL ID #:	13-2857434
Source Code Escrow Agent Name:	Mendelsohn, Kary, Bell & Natoli
Address:	529 Fifth Avenue, 2nd Floor, New York, NY 10017
Phone Number:	(212) 246-3220

2. CENTRALIZED CONTRACT	
Contract Administrator Name:	David Andrews
Title:	Contract Manager
Mailing Address:	520 Madison Avenue New York, NY 10022
Telephone Number:	212-415-6800 x16265
E-mail:	andda15@ca.com
FAX:	

3. SALES/BILLING	
Contact Name:	Angelo DeMarco
Title:	Account Manager
Address:	520 Madison Avenue New York, NY 10022
Telephone Number:	518-265-0912
E-mail:	deman04@ca.com
FAX:	

4. MAINTENANCE/ SERVICE	
Contact Name:	Angelo DeMarco
Title:	Account Manager
Address:	520 Madison Avenue New York, NY 10022
E-mail:	518-265-0912
WWW Address:	deman04@ca.com
Telephone Number:	FAX:
Contract "Toll" Free Support Phone Number:	Hours of Availability:

Reseller/Distributor Information	
Contractor's General Commercial Qualifying Criteria for Resellers/Distributors:	1. Attach a description of all reseller criteria following this page; or 2. If Contractor does not market or distribute product through resellers/distributors in the normal course of business, Contractor must attach a statement to that effect following this page. 3. Attach additional sheets, if necessary.
Reseller/Distributor	
(#1) Company Name:	See attached reseller list for Submission #2.
Address:	
FEDERAL ID #:	
Contract Administrator Name:	
Title:	
Telephone Number:	
E-mail:	
FAX:	
Reseller is Authorized to:	<input type="checkbox"/> Take Orders <input type="checkbox"/> Ship Direct <input type="checkbox"/> Receive Payment
Qualifying Criteria Applicable to this Reseller:	

Reseller/Distributor	
(#2) Company Name:	
Address:	
FEDERAL ID #:	
Contract Administrator Name:	
Title:	
Telephone Number:	
E-mail:	
FAX:	
Reseller is Authorized to:	<input type="checkbox"/> Take Orders <input type="checkbox"/> Ship Direct <input type="checkbox"/> Receive Payment
Qualifying Criteria Applicable to this Reseller:	

Reseller/Distributor	
(#3) Company Name:	
Address:	
FEDERAL ID #:	
Contract Administrator Name:	
Title:	
Telephone Number:	
E-mail:	
FAX:	
Reseller is Authorized to:	<input type="checkbox"/> Take Orders <input type="checkbox"/> Ship Direct <input type="checkbox"/> Receive Payment
Qualifying Criteria Applicable to this Reseller:	

Submission # 3

NYS Contract Net Price List
(NYS Net Prices For: Software, Maintenance,
Consulting & Training Services)

(to be attached by Contractor)

Pricing is Based On:

- US Commercial List, Dated _____
- GSA Supply Schedule Number _____
Dated _____
- Other: _____

Submission # 4

Maintenance & Support

(Description of Services,
including response times, severity level,
support phone numbers, hours of availability, etc.)

(to be attached by Contractor)

Submission # 5

Consulting & Training Services
(Description of Services & Course Offerings)

(to be attached by Contractor)

APPENDIX F

PRICING AND LICENSING POLICIES

Licensing & Pricing Manual for CA's Products

***THE PRICING CALCULATIONS SET FORTH HEREIN ARE BASED ON CA'S COMMERCIAL LIST PRICE. PLEASE SEE SECTION 6. PAYMENTS/PRICING OF THE NYS OGS CENTRALIZED CONTRACT FOR THE ACQUISITION OF PROPRIETARY SOFTWARE & RELATED SERVICES FOR THE APPLICABLE NYS DISCOUNT.**

Definitions

License Renewal Types

Mainframe Products:

- **UMF.** The licensee has the right to usage and maintenance of the Licensed Program during the term of the agreement. Thereafter, the license automatically renews on the same terms and conditions, but subject to an annual usage and maintenance fee ("UMF").
- **Term.** The licensee has the right to usage and maintenance of the Licensed Program during the term of the agreement. Thereafter, the license automatically renews for the same period of time on the same terms and conditions, but subject to Licensee's payment of CA's then prevailing term license fee.
- **Linux for Mainframe.** A Linux Operating System running on a Mainframe Computer

Distributed Products:

- **Perpetual.** The licensee has the right to use the Licensed Program for an indefinite period of time upon payment of the one-time license fee. If the licensee desires to receive maintenance and enhancement services, an additional annual maintenance fee is required. Continued usage of the Licensed Program on the same terms does not require payment of a fee, but continued maintenance is subject to payment of CA's then prevailing annual maintenance fee.
- **Term.** The licensee has the right to usage and maintenance of the Licensed Program during the term of the agreement. Thereafter, the license automatically renews for the same period of time on the same terms and conditions, but subject to Licensee's payment of CA's then prevailing term license fee.
- **Special Distributed.** Distributed products that follow a CA Mainframe Pricing Model.

Channel Products:

- CA products sold through a partner (reseller or distributor).

Customer Education:

- Customer Education addresses the unique education needs and learning requirements of the customer through a variety of offerings. CA's education staff helps customers plan their educational needs and determine the most appropriate methods to deliver the education. CA's Education Services Department is responsible for licensing education.

Pricing for Mainframe Products

CA's Standard Licenses

CA's software products are not sold but rather made available to our customers under license agreements that specify the rights and obligations of each party. Software products covered by a valid CA License Agreement are generally referred to herein as Licensed Programs. Licensed Programs are licensed for use in a specific computing environment, at a specific installation site, by a particular licensee and for its internal purposes to process its own data and not that of any other person or entity.

CA's standard license type for the mainframe products is an O1 Designated CPU license. "O1" refers to CA's standard payment option, described below. The basic CA license types offered for mainframe products are:

- **Designated CPU.** Under a typical Designated CPU license, the customer may use the Licensed Program on a single, designated CPU identified on a CA Order Form by operating system, manufacturer, model and serial number. The license fee for a Designated CPU license is determined by the particular "tier group" of the designated CPU. The tier groups typically reflect the processing power of the designated CPU. However, some CA products may be licensed for use on a non-tiered CPU basis.
- **MIPS Based License.** Such a license allows the customer to use the Licensed Program on one or more CPUs, limited by the aggregate MIPS rating of the CPUs covered by the license and the licensed operating system. The license imposes certain restrictions on movement of the programs between sites.

For other products and under some circumstances, CA may offer other types of licenses. The above descriptions do not address every term of CA's software licenses, nor do they establish the terms for any particular use of CA software. In every instance, use of CA software is governed by the terms of the applicable agreement actually in place.

Standard Pay Option

The O1 License. Under CA's standard mainframe product pay option, known as an O1, the customer pays a one-time fee ("OTF"), inclusive of all charges for usage and maintenance of the Licensed Program for a one-year period. Thereafter, continued usage and maintenance of the Licensed Program is subject to an annual usage and maintenance fee ("UMF"). The calculation of an O1 OTF is described below.

Designated CPU Pricing

Calculating an O1 Designated CPU Product License Fee

Formula:

$$\text{One-Time Fee} = \text{Base License Fee} * \text{Tier Price Multiplier Factor}$$

1. Determine the **Base License Fee** and **Price Table Reference** for the product by looking up the product in the applicable Mainframe Product List – Pricing under the **LICENSE FEES and TABLE REF** columns (the applicable Mainframe Product List – Pricing can be accessed through the NYS web site).
2. Determine the **CPU Tier Group** (such as DD or EE) for the CPU model on which the product will be installed by looking up the CPU model in the Pricing Calculator or on the NYS web site).
3. Using the Tier Price Multiplier Factor Tables below, determine the **Tier Price Multiplier Factor** (or "Multiplier") for the applicable Tier Group by matching the Tier Group with the Table reference.
4. Calculate the One-Time Fee by multiplying the **Base License Fee** by the Multiplier.

Pricing Multiplier Factor Tables

The **tier pricing multiplier factor** is the number by which you must multiply the Base License Fee to determine the O1 One-Time Fee for a product on the designated CPU. That factor is determined in accordance with the following tables:

Table Ref Code	10	20	30	40	50	60	70	80	90	100	110
	AA	BB	CC	DD	EE	FF	GG	HH	JJ	KK	LL
10	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
44	0.60	0.80	1.00	1.40	1.60	1.90	2.50	3.30	4.00	5.00	(2)
45	0.40	0.60	0.70	1.00	1.20	1.40	1.80	2.40	2.90	3.50	(1)
54	0.40	0.90	1.00	1.40	1.60	1.90	2.50	3.30	4.00	5.00	(2)
55	0.80	0.80	0.90	1.00	1.30	1.40	1.80	2.40	2.90	3.50	(1)
64	0.60	1.00	1.00	1.40	1.60	1.90	2.50	3.30	4.00	5.00	(2)
65	0.60	0.70	0.80	1.00	1.20	1.40	1.80	2.40	2.90	3.50	(1)
74	0.50	0.90	1.00	1.40	1.60	1.90	2.50	3.30	4.00	5.00	(2)
75	0.80	0.80	0.90	1.00	1.40	1.40	1.80	2.40	2.90	3.50	(1)
85	0.40	0.80	0.90	1.00	1.40	1.40	1.80	2.40	2.90	3.50	(1)
95	0.75	0.75	0.85	1.00	1.40	1.40	1.80	2.40	2.90	3.50	(1)
AP	1.00	1.10	1.15	1.18	1.25	1.28	1.35	1.40	1.45	1.50	(4)
4S	0.85	0.85	0.85	1.00	1.05	1.10	1.20	1.30	1.40	1.50	(3)

Table Ref Code	10	20	30	40	50	60	70	80	90	100	110
	AA	BB	CC	DD	EE	FF	GG	HH	JJ	KK	LL
BN	0.60	0.75	0.90	1.00	1.20	1.40	1.75	2.05	2.20	2.45	(5)
BP	1.00	1.05	1.10	1.20	1.25	1.30	1.50	1.85	2.05	2.40	(6)
BR	0.35	0.75	0.90	1.00	1.20	1.35	1.75	2.20	2.45	2.80	(7)
BT	0.55	0.70	0.90	1.00	1.15	1.35	1.60	1.85	1.95	2.15	(8)

For CPUs rated at greater than 400 MIPS, the Price Multiplier Factor is calculated as follows:

MIPS Range				
Up To 400	401 800	801 1200	Greater Than 1200	
Pricing Multiplier Factor Formulae				
(1)	3.5	$3.5+(MIPS-400)*0.008$	$6.7+(MIPS-800)*0.0072$	$9.58+(MIPS-1200)*0.0065$
(2)	5.0	$5.0+(MIPS-400)*0.01125$	$9.5+(MIPS-800)*0.01$	$13.5+(MIPS-1200)*0.009$
(3)	1.50	$1.5+(MIPS-400)*0.0023$	$2.4+(MIPS-800)*0.0020$	$3.2+(MIPS-1200)*0.0016$
(4)	1.50	$1.5+(MIPS-400)*0.001$	$1.9+(MIPS-800)*0.00095$	$2.28+(MIPS-1200)*0.0009$
(5)	2.45	$2.45+(MIPS-400)*0.0055$	$4.65+(MIPS-800)*0.005$	$6.65+(MIPS-1200)*0.0045$
(6)	2.4	$2.4+((MIPS-400)*0.005$	$4.4+(MIPS-800)*0.0045$	$6.2+(MIPS-1200)*0.004$
(7)	2.8	$2.8+(MIPS-400)*0.0065$	$5.4+(MIPS-800)*0.006$	$7.8+(MIPS-1200)*0.0055$
(8)	2.15	$2.15+(MIPS-400)*0.003$	$3.35+(MIPS-800)*0.0025$	$4.35+(MIPS-1200)*0.002$

VTAPE Pricing

Pricing for BrightStor CA-VTAPE Virtual Tape System is based on the number of Virtual Tape Devices (VTDs) to be licensed. The Base License Fee reflected on the Pricing List is the price per VTD. To calculate the O1 One-Time Fee, multiply the number of VTDs to be licensed by the Base License Fee.

Usage and Maintenance Fees

The UMF is the annual usage and maintenance fee payable under all licenses after expiration of the initial one, two or three year term during which the fees for usage and maintenance are included in the one-time fee or annual fee as applicable. After expiration of the initial term, payment of the annual UMF gives the customer the right to continue using the product and receiving maintenance and enhancement services. Without payment of the UMF, the license will terminate and the customer may not retain the product after expiration of the initial term.

Calculating UMF
Formula:
One-Time Fee for an O1 License * UMF %
Multiply the One-Time Fee for an O1 license for the product by the UMF % for the product listed in the applicable Mainframe Product List – Pricing in the UMF% RATE column (the applicable Mainframe Product List – Pricing can be accessed from the NYS web site).

MIPS Based Pricing Calculations

MIPS based license fees may be calculated using the alternative methods described below to determine the lowest fee applicable to a particular configuration and environment.

New Licenses

(a) New Licenses - Any Operating System (120 MIPS minimum)

The license fee for a MIPS based license for mainframe software generally (regardless of operating system) is calculated by multiplying the aggregate MIPS for the license (rounded to the next greater multiple of 100 MIPS) by 0.4% (0.004), and multiplying that factor by the published O1 license fee applicable to tier group HH for each Licensed Program.

(b) New Licenses - VSE and VM Products (60 MIPS minimum)

For VSE and VM products, the MIPS based license fee consists of the sum of the “Base MIPS Fee” and “Extended Usage Fee.”

The Base MIPS Fee is calculated by multiplying the total number of VSE/VM MIPS (rounded to the next greater multiple of 5 MIPS) by 1.7% (0.017) and multiplying that factor by the published O1 license fee applicable to tier Group DD for each Licensed Program.

The Extended Usage Fee (applicable only to multiple sites) is calculated by multiplying the number of sites exceeding one site that have the VSE or VM Licensed Program installed by the published O1 license fee applicable to tier Group BB for each Licensed Program.

MIPS Based Expansion

The Licensed MIPS Capacity and the authorized sites under a MIPS based license can be expanded by payment of a supplemental license fee (as well as a UMF adjustment), calculated as follows:

- (a) **For MVS products.** Additional MIPS may be added in multiples of 10 MIPS, with the license fee adjustment for the additional MIPS calculated by multiplying the desired incremental number of MIPS by .4% (0.004) times the published O1 license fee applicable to tier Group HH for the Licensed Program. The UMF adjustment is calculated by multiplying the license fee for the additional MIPS by the UMF rate for the Licensed Program. The UMF is prorated for the year of the MIPS increase and charged annually thereafter through the term of the agreement.

If additional sites are added, the license fee adjustment for the additional sites is calculated by multiplying the desired number of additional sites by the published O1 license fee applicable to tier Group CC for the Licensed Program.

- (b) **For VSE and VM products.** Additional MIPS may be added in multiples of 5 MIPS, with the license fee adjustment for the additional MIPS calculated by multiplying the desired incremental number of MIPS by 2% (0.02) times the published O1 license fee applicable to tier Group DD for the Licensed Program. The UMF adjustment is calculated by multiplying the license fee for the additional MIPS by the UMF rate for the Licensed Program. The UMF is prorated for the year of the MIPS increase and charged annually thereafter through the term of the agreement.

If additional sites are added, the license fee adjustment for the additional sites is calculated by multiplying the desired number of additional sites by the published license fee applicable to tier Group BB for the Licensed Program.

Pricing for Distributed Products

CA's Standard Licenses

CA's software products are not sold but rather made available to our customers under license agreements that specify the rights and obligations of each party. Software products covered by a valid CA License Agreement are generally referred to herein as Licensed Programs. Licensed Programs are ordinarily licensed for use in a specific computing environment, at a specific installation site, by a particular licensee and for its internal purposes to process its own data and not that of any other person or entity.

CA provides various licensing options, depending on the product. The Distributed Products are generally available as instance-based or tiered server-based licenses as reflected in the applicable Distributed Product List - Pricing.

- **Instance-Based License.** Under an instance-based license, the customer may use the Distributed Program based upon the defined event or occurrence for which the customer is licensed. Use of each Distributed Program is limited to a predetermined, specified applicable "instance." Depending on the Distributed Program licensed, the applicable "instance basis" may be a user, concurrent user, device, node, server, user pack or any other instance type as reflected in the applicable Distributed Product List. Each Distributed Program must be licensed for use with a specific operating system.
- **Tiered Server-Based License.** Under a tiered server-based license, the customer may use the Distributed Program on a single, designated server within a designated tier. However, some products may be licensed for use on a non-tiered server basis as reflected in the applicable Distributed Product List - Pricing. Each Distributed Program must be licensed for use with a specific operating system.

For other products and under some circumstances, CA may offer other types of licenses. The above descriptions do not address every term of CA's software licenses, nor do they establish the terms for any particular use of CA software. In every instance, use of CA software is governed by the terms of the license agreement actually in place.

Standard Pay Option

The P0 License. Under CA's standard distributed product pay option, known as a P0, the customer pays a one-time fee ("OTF") for usage of the product for an indefinite period. If the customer elects to receive maintenance, an additional annual maintenance fee is charged. The calculation of a P0 OTF is described below.

Tiered Server Pricing

Calculating a P0 Tiered Server Product License Fee

Formula:

$$\text{One-Time Fee} = \text{Base License Fee} * \text{Quantity}$$

1. Determine the license type for the product by looking up the product on the applicable Distributed Product List – Pricing (the Distributed Product List – Pricing can be accessed through the NYS web site).
2. Determine the Tier for each server to be licensed by looking up the specific model and configuration of each server in the Configurator or on the NYS web site.
3. Determine the **Base License Fee** for the product by looking up the fee at the intersection of the product and server Tier in the applicable Distributed Product List – Pricing.
4. Determine the One-Time Fee for the product on each server Tier by multiplying the quantity of each server Tier to be licensed by the Base License Fee for the product on each server Tier.
5. Determine the One-Time Fee for the product by totaling the fees to license the product on each server Tier.

Server Tiers

Server tiers can be found in the Configurator and on the NYS web site.

Desktop Tiers

Determine the Tier of a Desktop by answering the following two questions: (1) Is the customer running Linux, Win95, Win98, WinNT/Workstation, Win2000 Professional, WinME, Windows XP or Windows XP Professional; and (2) Does the machine have only a single processor?

If the answer to both questions is YES, then the machine is a Tier 0
If the answer to one or both questions is NO, then the machine is a Tier 1

Instanced-Based Pricing

Calculating a P0 Instance-Based License Fee

Formula:

$$\text{One-Time Fee} = \text{Per Instance Fee} * \text{Quantity}$$

1. Determine the number of instances to be licensed.
2. Determine the **Per Instance Fee** for the product by looking the product up in the applicable Distributed Product List – Pricing under the **Per Instance Fee** column (the applicable Distributed Product List – Pricing can be accessed through the NYS web site).
3. Calculate the One-Time Fee for the product by multiplying the Per Instance Fee by the quantity of instances to be licensed.

Maintenance Fees

CA's Distributed Products are generally licensed on a "perpetual" basis – payment of the license fee provides for indefinite use of the Licensed Program (subject to the terms and conditions of the license), but maintenance and enhancement services are provided only upon payment of an annual maintenance fee ("MF"). The MF is equal to the then prevailing P0 one-time fee, multiplied by the then prevailing maintenance rate for the Distributed Product. The maintenance rate for the Distributed Products is 20% unless otherwise mentioned in the applicable Distributed Product List.

Calculating MF

$$\text{MF} = \text{One-Time Fee for a P0 License} * 20\%$$

Multiply the One-Time Fee for a P0 license for the product by 20%.

Pricing for Special Distributed Products

CA's Standard Licenses

CA's software products are not sold but rather made available to our customers under license agreements that specify the rights and obligations of each party. Software products covered by a valid CA License Agreement are generally referred to herein as Licensed Programs. Licensed Programs are ordinarily licensed for use in a specific computing environment, at a specific installation site, by a particular licensee and for its internal purposes to process its own data and not that of any other person or entity.

CA provides various licensing options, depending on the product. The Special Distributed Products are generally available as user-based or server based licenses, as defined below.

- **User-Based License.** Under a user-based license, the customer may use the Licensed Program by or for the agreed number of licensed users. The Special Distributed Product must be licensed for use with a specific operating system.
- **Designated Server License.** Under a designated server license, the customer may use the Special Distributed Product on a single, designated server identified in the license agreement. The Licensed Programs must be licensed for use with a specific operating system.

For other products and under some circumstances, CA may offer other types of licenses. The above descriptions do not address every term of CA's software licenses, nor do they establish the terms for any particular use of CA software. In every instance, use of CA software is governed by the terms of the license agreement actually in place.

Standard Pay Option

The P0 License. Under CA's standard distributed product pay option, known as a P0, the customer pays a one-time fee ("OTF") for usage of the product for an indefinite period. If the customer elects to receive maintenance, an additional annual maintenance fee is charged. The calculation of a P0 OTF is described below.

Designated Server Pricing

Calculating a P0 Designated Server Product License Fee

Formula:

$$\text{One-Time Fee} = \text{Base License Fee} * \text{Tier Price Multiplier Factor}$$

6. Determine the **Base License Fee** and **Price Table Reference** for the product by looking up the product in the Special Distributed Product List under the **LICENSE FEES** and **TABLE REF** columns (the Special Distributed Product List can be accessed for each product brand through the NYS web site).
7. Determine the **CPU Tier Group** (such as E or F) for the CPU model on which the product will be installed by looking up the CPU model in the Pricing Calculator or on the NYS web site.
8. Using the Tier Price Multiplier Factor Tables below, determine the **Tier Price Multiplier Factor** (or "Multiplier") for the applicable Tier Group by matching the Tier Group with the Table reference.
9. Calculate the One-Time Fee by multiplying the **Base License Fee** by the Multiplier.

Tier Price Multiplier Factor Tables

The **tier pricing multiplier factor** is the number by which you must multiply the Base License Fee to determine the P0 One-Time Fee for a product.

Table Ref Code	10	20	30	40	50	60	70	80	90	100	110
	A	B	C	D	E	F	G	H	J	K	L
05	1.00	1.00	1.00	1.25	1.80	1.90	2.00	2.10	2.20	2.30	2.30
X4	0.60	0.73	1.00	1.40	2.00	2.50	3.00	3.75	4.50	5.50	6.50

Table Ref Code	B	C	D	E	F	G	H	J	K	L	M	N	Q	S	T	U	V	W
	5	10	15	18	20	30	40	50	60	70	80	90	100	110	120	130	140	150
80	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	
GX	0.30	0.55	0.60	1.00	2.85	3.90	4.90	5.40	5.50	5.70	6.30	6.50	6.55	6.60	7.59	8.58	10.12	
NX	0.15	0.30	0.60	1.00	1.20	1.40	1.60	1.80	2.00	2.20	2.40	2.60	2.80	3.00	3.20	3.40	3.60	
VX	0.15	0.30	0.60	1.00	1.20	1.40	2.20	2.64	3.15	3.60	3.88	4.15	4.50	4.80	5.52	6.24	7.36	
XV	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
X1	0.15	0.30	0.50	0.80	1.00	1.10	1.30	1.50	1.70	1.90	2.10	2.30	2.50	3.00	3.50	4.00	4.50	5.00
X3	0.30	0.45	0.60	0.80	1.00	1.20	1.40	1.60	1.80	2.00	2.50	3.00	3.50	4.00	4.50	5.00	6.00	

User Pricing

Calculating a P0 User-Based Product License Fee

To calculate:

4. Determine the number of Users to be licensed.
5. Determine the **User-Based License Fee** and the **Price Reference Table** for the product in the Special Distributed Product List in the **LICENSE FEES** and **TABLE REF** columns (the Special Distributed Product List for each product brand can be accessed through the NYS web site).
6. Calculate the One-Time Fee for each User Range based on the Factor Tables (see below), starting with the first one up to the range containing the number of Licensed Users.
7. Total the License Fees for each of the User Ranges from step 3.

User-Based License Fee Calculation Example

The **user pricing multiplier factor** is the number by which you must multiply the User-Based License Fee to determine the One-Time Fee for a product.

User-Based Factor Tables

Price Table		L1	X2	Price Table L3		
User Range		License Fee Factor	License Fee factor	Targets Per Server		License Fee Factor
1	2	1.00000	1.00000	1	50	1.00000
3	9	1.00000	0.75000	51	100	1.50000
10	24	1.00000	0.62500	101	250	0.76000
25	49	0.87750	0.50000	251	500	0.36673
50	99	0.76180	0.37500	501	1000	0.36665
100	249	0.66740	0.31250	1001	2500	0.17778
250	499	0.58032	0.25000	2501	5000	0.16000
500	999	0.50016	0.15000	5001	10000	0.12000
1000	2499	0.42008	0.12500	10001	20000	0.08333
2500	4999	0.10016	0.07500	20001	40000	0.01894
5000	9999	0.36001	0.06250	40001	+	0.00253
10000	+	0.36001	0.05000			

Price Table DV		
User Range		License Fee Factor
1	9	1.00000
10	49	0.66000
50	99	0.31000
100	499	0.24000
500	999	0.15000
1000	99999	0.05000

Maintenance Fees

CA's Special Distributed Products are generally licensed on a "perpetual" basis – payment of the one-time fee provides for indefinite use of the Special Distributed Products (subject to the terms and conditions of the license), but maintenance and enhancement services are provided only upon payment of an annual maintenance fee ("MF"). The MF is equal to the then prevailing P0 one-time fee multiplied by the then prevailing maintenance rate for the Special Distributed Products. The maintenance rate for the Special Distributed Products is 20%.

Calculating MF

MF = One-Time Fee for a P0 License * MF %

Multiply the One-Time Fee for a P0 license for the product by the MF % for the product listed in the Special Distributed Product List under the **Maint. Fee %** column (the Special Distributed Product List for each product brand can be accessed through the NYS web site).

Pricing for Linux Mainframe Products

CA Standard Licenses

CA's software products are not sold but rather made available to our customers under license agreements that specify the rights and obligations of each party. Software products covered by a valid CA License Agreement are generally referred to herein as Licensed Programs. Licensed Programs are ordinarily licensed for use in a specific computing environment, at a specific installation site, by a particular licensee and for its internal purposes to process its own data and not that of any other person or entity.

CA provides various licensing options, depending on the product. CA's Linux products which run within single or multiple images of Linux on a mainframe (Linux Mainframe Programs) are generally available as instance-based licenses as reflected in the Linux Mainframe Product List - Pricing.

- **Instance-Based License.** Under an instance-based license, the customer may use the Linux Mainframe Program based upon the defined event or occurrence for which the customer is licensed. Use of each Linux Mainframe Program is limited to a predetermined, specified applicable "instance." Depending on the Linux Mainframe Program licensed, the applicable "instance basis" may be a mainframe engine or concurrent user. In an engine based license, every mainframe engine on which the Linux Mainframe Program will be deployed must be licensed, regardless of whether the Program will be deployed on a Linux-dedicated mainframe engine (generally referred to as an IFL engine or environment) or on all or part of a general-purpose workload mainframe engine (generally referred to as a non-IFL engine or environment). Each Linux Mainframe Program must be licensed for use on the Linux operating system on the mainframe.

For pricing CA's Linux products that run on distributed servers, please refer to the applicable Distributed Product List – Pricing document on the NYS web site.

For other products and under some circumstances, CA may offer other types of licenses. The above descriptions do not address every term of CA's software licenses, nor do they establish the terms for any particular use of CA software. In every instance, use of CA software is governed by the terms of the license agreement actually in place.

Standard Pay Option

The P0 License. Under CA's standard distributed product pay option, known as a P0, the customer pays a one-time fee ("OTF") for usage of the product for an indefinite period. If the customer elects to receive maintenance, an additional annual maintenance fee is charged. The calculation of a P0 OTF is described below.

Instanced-Based Pricing

Calculating a P0 Instance-Based License Fee

Formula:

$$\text{One-Time Fee} = \text{Per Instance Fee} * \text{Quantity}$$

1. Determine the number of instances to be licensed.
2. Determine the **Per Instance Fee** for the product by looking the product up in the Linux Mainframe Product List – Pricing under the **Per Instance Fee** column (the Linux Mainframe Product List – Pricing can be accessed through the NYS web site).
3. Calculate the One-Time Fee for the product by multiplying the Per Instance Fee by the quantity of instances to be licensed.

Maintenance Fees

CA's Linux Mainframe Programs are generally licensed on a "perpetual" basis – payment of the license fee provides for indefinite use of the Licensed Program (subject to the terms and conditions of the license), but maintenance and enhancement services are provided only upon payment of an annual maintenance fee ("MF"). The MF is equal to the then prevailing P0 one-time fee, multiplied by the then prevailing maintenance rate for the Linux Mainframe Program. The maintenance rate for the Linux Mainframe products is 20% unless otherwise mentioned.

Calculating MF

$$MF = \text{One-Time Fee for a P0 License} * 20\%$$

Multiply the One-Time Fee for a P0 license for the product by 20%.

Pricing for VM for Linux Products

CA's Standard Licenses

CA's software products are not sold but rather made available to our customers under license agreements that specify the rights and obligations of each party. Software products covered by a valid CA License Agreement are generally referred to herein as Licensed Programs. Licensed Programs are ordinarily licensed for use in a specific computing environment, at a specific installation site, by a particular licensee and for its internal purposes to process its own data and not that of any other person or entity.

CA provides various licensing options, depending on the product. The VM for Linux Products represent CA's products that manage the VM or z/VM environment that is supporting Linux running on a mainframe. These products are generally available as instance-based licenses as reflected in the VM for Linux Product List - Pricing.

- **Instance-Based License.** Under an instance-based license, the customer may use the VM for Linux Program based upon the defined event or occurrence for which the customer is licensed. Use of each VM for Linux Program is limited to a predetermined, specified applicable "instance." Currently, the VM for Linux Programs are licensed on a Value Unit basis. Every mainframe engine on which the VM for Linux Program will be deployed must be licensed, regardless of whether the Program will be deployed on a Linux-dedicated mainframe engine (generally referred to as an IFL engine or environment) or all or part of a general-purpose workload mainframe engine (generally referred to as a non-IFL engine or environment). Each VM for Linux Program must be licensed for the sole purpose of managing a Linux environment on the mainframe.

For pricing CA's VM products for a purpose other than managing a Linux environment on the mainframe, please refer to the VM Mainframe Product List – Pricing document on the NYS web site.

The above descriptions do not address every term of CA's software licenses, nor do they establish the terms for any particular use of CA software. In every instance, use of CA software is governed by the terms of the license agreement actually in place.

Standard Pay Option

The P0 License. Under one of CA's standard product pay options, known as a P0, the customer pays a one-time fee ("OTF") for usage of the product for an indefinite period. If the customer elects to receive maintenance, an additional annual maintenance fee is charged. The calculation of a P0 OTF is described below.

Designating Value Units

Engine-based Value Units for a specified number of engines are determined by the following table. The engines may be general purpose engines or Integrated Facility for Linux (IFL) engines. The engines may span multiple physical machines.

	Number of Engines	Value Units per Engine
Base	1 through 3	10
Level A	4 through 6	9
Level B	7 through 9	8
Level C	10 through 12	7
Level D	13 through 16	6
Level E	17 through 20	5
Level F	21 through 25	4
Level G	26 and higher	3

Instanced-Based Pricing

Calculating a P0 Instance-Based License Fee

Formula:

$$\text{One-Time Fee} = \text{Per Instance Fee} * \text{Quantity}$$

1. Determine the number of instances (engines) to be licensed.
2. Determine the Per Instance Fee for the product (or suite of products) by looking it up in the VM for Linux Product List – Pricing under the **Per Instance Fee** column (The VM for Linux Product List – Pricing can be accessed through the NYS web site).

Calculate the One Time Fee for the product (or suite of products) by multiplying the Per Instance Fee by the total number of Value Units associated with the engines being licensed.

Maintenance Fees

CA's VM for Linux Programs are generally licensed on a "perpetual" basis – payment of the license fee provides for indefinite use of the Licensed Program (subject to the terms and conditions of the license), but maintenance and enhancement services are provided only upon payment of an annual maintenance fee ("MF"). The MF is equal to the then prevailing P0 one-time fee, multiplied by the then prevailing maintenance rate for the VM for Linux Program. The maintenance rate for the VM for Linux products is 20%.

Calculating MF

$$MF = \text{One-Time Fee for a P0 License} * 20\%$$

Multiply the One Time Fee for a P0 license for the product (or suite of products) by 20%.

Miscellaneous Terms

For those certain distributed Products with a Use Limitation based on the number of "Terabytes" the following definitions shall apply:

- (a) "Terabyte" shall mean a unit of storage capacity equal to 1,024 gigabytes.
- (b) "Terabyte Capacity" shall mean the aggregate number of raw, physical Terabytes located on any computer system owned, operated or controlled by the Licensee, regardless of location, which is capable of accessing, using, executing or benefiting from the Licensed Programs.

For distributed Clarity Products the following definitions shall apply:

- (a) "Creator" shall mean Licensee's designated users who have full use of and access to the functions within the Clarity product modules licensed (other than Clarity Studio).
- (b) "Developers" shall mean Licensee's designated users who have full use of Clarity Studio to configure and tailor the system, including creating portlets and custom pages, configuring objects through the PowerMods functionality, and tailoring the user interface menus and look-and-feel. Developers also have full Creator rights to all other licensed modules.
- (c) "Environment" shall consist of any or all of the following, provided that all of the servers in the Environment function as one logical Environment: one or more application servers, search servers, report servers, background servers, and/or database servers. Typical examples of Environments include production Environments, development Environments and test Environments.*
- (d) "Participant" shall mean Licensee's designated users who have limited rights to the functions within the Clarity product modules licensed, and may only (i) view data and run reports in all licensed modules; (ii) collaboratively participate in processes, discussions and document sharing and receive notifications in all licensed modules; (iii) view project tasks and calendars, and report and approve time and project status, in the Project Manager module; and (iv) enter and view status of ideas in the Portfolio Manager module.
- (e) "Production Environment" shall mean a computer system used to process an organization's daily work on a real-time operation and may be a mission critical computer system in the organization. Production Environments are not systems used only for development and testing.
- (f) "Viewers" shall mean Licensee's designated users who have limited rights to the functions within the Clarity product modules licensed, as indicated below, and may only (i) view data and run reports in all licensed modules; (ii) originate idea workflows, and participate in the continuation of those workflows.

* Licensee is granted the right to install and use Clarity Licensed Programs in not more than three (3) Environments, of which only one (1) may be a production Environment. Licensee may not install and use

Clarity Licensed Programs in more than three (3) Environments, nor in more than one (1) production Environment, without paying additional software license fees to CA.

For those Licensed Programs with a Use Limitation of "Federation Affiliates" the following shall apply:

Federation Affiliate Use and Acceptance. For purposes hereof, "Federation Affiliate" shall mean an internal or external corporate entity (i) with whom Licensee interoperates using CA's eTrust SiteMinder Federation Security Services software product ("FSS") or (ii) to which Licensee provides FSS or the eTrust SiteMinder SAML Affiliate Agent software product ("SAML AA"). Licensee may interoperate using FSS or distribute FSS and/or SAML AA to its Federation Affiliate(s) up to the number of Federation Affiliate licenses purchased, provided such Federation Affiliate(s) has first agreed in writing to the Federation Affiliate license provisions contained herein as well as the confidentiality provisions contained in the license agreement between CA and Licensee (the "Agreement"). If Licensee provides FSS or SAML AA to a Federation Affiliate hereunder, CA hereby grants to such Federation Affiliate, and such Federation Affiliate accepts, a license to use such software in accordance with the provisions of the Agreement, and only in relation to Licensee's use of such software. Such Federation Affiliate shall not have any right to further copy, distribute or otherwise transfer such software or any rights therein, notwithstanding any provision of the Agreement to the contrary. With regard solely to such Federation Affiliate's use of the software in accordance herewith, the term "Licensee" in the Agreement shall include such Federation Affiliate

APPENDIX G

FACILITIES MANAGEMENT SUPPLEMENTAL AGREEMENTS

VERSION A1 (FM TO PROCESS FOR CLIENT-LICENSEE – NEW PRODUCT LICENSE)

FACILITIES MANAGEMENT

SUPPLEMENTAL AGREEMENT

AMONG
CA, INC. ("CA")
AND

_____ ("LICENSEE")

AND

_____ ("FM")

This Supplemental Agreement amends and supplements the provisions of the license(s) granted by CA to Licensee for the products as identified in the attached Order Form (the "Licensed Program(s)"), as follows:

1. Licensee and FM represent to CA that they are (or are about to become) parties to a bona fide Facilities Management Agreement under which FM has undertaken (or will undertake) the operation of the Licensed Program(s) on behalf of Licensee. FM agrees to comply with the applicable license(s), including provisions relating to confidentiality, non-disclosure and use restrictions, and to operate the Licensed Program(s) only on the specified Designated CPU(s) and only at the installation site location (the "Installation") solely, on a dedicated basis, to process the data of Licensee. In no event will any Licensed Program be utilized, directly or indirectly, to process the data of FM or of any other person. If any applicable license authorizes Licensee to have access to the source code for any Licensed Program, this Supplemental Agreement shall not permit FM to have access to such source code without CA's prior written consent.
2. Unless otherwise specified on Schedule A hereto, Licensee and FM represent to CA that, to the best of their knowledge, no CA software product other than as identified in the attached Order Form has been used to process any data of Licensee. No such use will be made unless, subject to CA's acceptance, Licensee or FM obtains license(s) from CA expressly permitting such other use, except that, if applicable and specified on Schedule A, FM may use other products licensed by CA to FM in accordance with the terms and conditions of the applicable license(s).
3. If Licensee ceases data processing operations by FM at the Installation and desires to relocate the Licensed Program(s) to Licensee's own installation site location for its own operation on its own CPU(s), such relocation of the Licensed Program(s) may be effected without a relocation charge, provided all license fees ("LF"), Usage and Maintenance Fees ("UMF"), maintenance fees ("MF"), CPU upgrade fees and all other applicable fees, in accordance with NYS contract #_____ shall first be paid. Licensee shall give CA advance written notice identifying the new location and CPU(s). Within 30 days after completion of the relocation, Licensee and FM shall confirm to CA in writing that all copies of the Licensed Program(s) and all related documentation have been delivered by FM to Licensee and are no longer in use by FM or present at the original Installation. In no event shall processing occur at both locations simultaneously in excess of 30 days.
4. If the Facilities Management Agreement between Licensee and FM should terminate for any reason FM shall return to Licensee all copies of the Licensed Programs. Licensee and FM shall continue to be bound and abide by the provisions of the applicable license(s) and

hereof relating to confidentiality, non-disclosure and use restrictions.

5. If Licensee or FM shall request that CA direct to FM any invoice for payment or if payment is made by FM, such actions shall be for administrative convenience only and shall not confer any additional rights in FM or modify any obligation of Licensee.
6. Licensee and FM each agree to keep and maintain installation and usage records (including systems management facility ["SMF"] records) relating to the Licensed Program(s) and to furnish to CA copies of such records and access to their respective facilities as CA may request from time to time, but not more than bi-annually, in order to verify compliance with the provisions hereof.
7. If Licensee hereafter licenses additional CA software products for use at the Installation during the period this Supplemental Agreement remains in effect, the provisions hereof shall apply to such additional products upon the written confirmation of Licensee, FM and CA.
8. Neither Licensee nor FM may assign or otherwise transfer this Supplemental Agreement or any right or obligation hereunder without the prior written consent of CA.
9. The Effective Date of this Supplemental Agreement is _____.

LICENSEE:

By: _____
Authorized Signature

Name

Title

Date

FM:

By: _____
Authorized Signature

Name

Title

Date

CA, INC.

By: _____
Authorized Signature

Name

Title

Date

SCHEDULE A

I The CA Licensed Programs specified on the attached Order Form will be operated by FM for the benefit of Licensee only at Installation of FM___ or Licensee___ **[check one only]** as identified in the Order Form.

NOTE: COMPLETE INFORMATION IN II, III AND IV ONLY IF APPLICABLE. IF NOT, "NONE" IS THE PROPER RESPONSE.

II CA Software (other than as shown on the attached Order Form) under license granted to Licensee utilized by FM for the benefit of Licensee as of the Effective Date:

<u>Product</u>	<u>CA Supplement No.</u>	<u>Installation/Site ID #</u>	<u>CPU Model & Serial No.</u>
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III CA Software (other than as shown on the attached Order Form) under license granted to FM which is to be operated by FM for benefit of Licensee as of the Effective Date:

<u>Product</u>	<u>CA Supplement No.</u>	<u>Installation/Site ID #</u>	<u>CPU Model & Serial No.</u>
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IV CA Software (other than as shown on the attached Order Form) under license granted to Licensee which licenses are hereby terminated as of Effective Date, and as to which Licensee certifies that such CA software is no longer in use, has been deleted from all computer equipment and storage devices and, along with all related product documentation, has been either returned to CA or completely destroyed:

<u>Product</u>	<u>Original License Supplement No.</u>
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VERSION A2 (FM TO PROCESS FOR CLIENT- LICENSEE – EXISTING LICENSE)

FACILITIES MANAGEMENT

SUPPLEMENTAL AGREEMENT

AMONG
CA, INC. ("CA")
AND

_____ ("LICENSEE")

AND

_____ ("FM")

This Supplemental Agreement amends and supplements the provisions of the license(s) granted by CA to Licensee for the products(s) as identified in the attached Schedule A to this Supplemental Agreement (the "Licensed Program(s)"), as follows:

1. Licensee and FM represent to CA that they are (or are about to become) parties to a bona fide Facilities Management Agreement under which FM has undertaken (or will undertake) the operation of the Licensed Program(s) on behalf of Licensee. FM agrees to comply with the applicable license(s), including provisions relating to confidentiality, non-disclosure and use restrictions, and to operate the Licensed Program(s) only on the specified Designated CPU(s) and only at the installation site location (the "Installation") solely, on a dedicated basis, to process the data of Licensee. In no event will any Licensed Program be utilized, directly or indirectly, to process the data of FM or of any other person. If any applicable license authorizes Licensee to have access to the source code for any Licensed Program, this Supplemental Agreement shall not permit FM to have access to such source code without CA's prior written consent.
2. Unless otherwise specified on Schedule A hereto, Licensee and FM represent to CA that, to the best of their knowledge, no CA software product other than the Licensed Programs identified herein has been used to process any data of Licensee. No such use will be made unless, subject to CA's acceptance, Licensee or FM obtains license(s) from CA expressly permitting such other use, except that, if applicable and specified on Schedule A, FM may use other products licensed by CA to FM in accordance with the terms and conditions of the applicable license(s).
3. If Licensee ceases data processing operations by FM at the Installation and desires to relocate the Licensed Program(s) to Licensee's own installation site location for its own operation on its own CPU(s), such relocation of the Licensed Program(s) may be effected without a relocation charge, provided all license fees ("LF"), Usage and Maintenance Fees ("UMF"), maintenance fees ("MF"), CPU upgrade fees and all other applicable fees, in accordance with NYS contract #_____, shall first be paid. Licensee shall give CA advance written notice identifying the new location and CPU(s). Within 30 days after completion of the relocation, Licensee and FM shall confirm to CA in writing that all copies of the Licensed Program(s) and all related documentation have been delivered by FM to Licensee and are no longer in use by FM or present at the original Installation. In no event shall processing occur at both locations simultaneously in excess of 30 days.
4. If the Facilities Management Agreement between Licensee and FM should terminate for any reason FM shall return to Licensee all copies of the Licensed Programs. Licensee and

FM shall continue to be bound and abide by the provisions of the applicable license(s) and hereof relating to confidentiality, non-disclosure and use restrictions.

5. If Licensee or FM shall request that CA direct to FM any invoice for payment or if payment is made by FM, such actions shall be for administrative convenience only and shall not confer any additional rights in FM or modify any obligation of Licensee.
6. Licensee and FM each agree to keep and maintain installation and usage records (including systems management facility ["SMF"] records) relating to the Licensed Program(s) and to furnish to CA copies of such records and access to their respective facilities as CA may request from time to time, but not more than bi-annually, in order to verify compliance with the provisions hereof.
7. If Licensee hereafter licenses additional CA software products for use at the Installation during the period this Supplemental Agreement remains in effect, the provisions hereof shall apply to such additional products upon the written confirmation of Licensee, FM and CA.
8. Neither Licensee nor FM may assign or otherwise transfer this Supplemental Agreement or any right or obligation hereunder without the prior written consent of CA.
9. The Effective Date of this Supplemental Agreement is _____.

LICENSEE:

By: _____
Authorized Signature

Name

Title

Date

FM:

By: _____
Authorized Signature

Name

Title

Date

CA, INC.

By: _____
Authorized Signature

Name

Title

Date

SCHEDULE A

II The CA Licensed Programs specified below will be operated by FM for the benefit of Licensee only at Installation of FM___ or Licensee___ **[check one only]** at the following address:

LICENSE INFORMATION:

Licensed Programs CA Supplement No. Effective Date Authorized Use CPU Model & Serial No.

NOTE: COMPLETE INFORMATION IN II, III AND IV ONLY IF APPLICABLE. IF NOT, "NONE" IS THE PROPER RESPONSE.

III CA Software (other than the Licensed Programs identified above) under license granted to Licensee and utilized by FM for the benefit of Licensee as of the Effective Date:

Product CA Supplement No. Installation/Site ID # CPU Model & Serial No.

III CA Software (other than the Licensed Programs identified above) under license granted to FM which is to be operated by FM for benefit of Licensee as of the Effective Date:

Product CA Supplement No. Installation/Site ID # CPU Model & Serial No.

V CA Software (other than the Licensed Programs identified above) under license granted to Licensee which licenses are hereby terminated as of Effective Date, and as to which Licensee certifies that such CA software is no longer in use, has been deleted from all computer equipment and storage devices and, along with all related product documentation, has been either returned to CA or completely destroyed:

Product Original License Supplement No.

APPENDIX H

STANDARD PURCHASE ORDER



NYS/CA CLIENT SERVER ORDER FORM (SUBSCRIPTION NON-PERPETUAL LICENSE)

CA, Inc. ("CA") and, One CA Plaza, Islandia, NY 11749, tel: +1 631 342 6000

Date this Order Form to Become Effective:

{ _____ }

Issues Under and Pursuant to:
NEW YORK STATE CONTRACT NUMBER

{ _____ }

CA **CONTRACT NUMBER(S)**

{ _____ }

This Order Form in conjunction with the Purchase Order creates binding obligations between the parties, is issued under and expressly incorporates, in addition to the terms set forth below, all terms and conditions of the NYS Contract Master Agreement referenced above. Said agreement grants Licensee additional rights to those stated herein, including discounts to be used in calculating the pricing set forth in this order. This order may only change the terms as set forth in the Master Agreement (Appendix B Section 44).

LICENSEE NAME/ADDRESS:

If Tax Exempt Organization, Tax Exempt Number:

(exempt certificate must be attached)

Sold To ID:

LICENSEE BILLING CONTACT PERSON: (If different from above)

Phone: _____ Fax: _____

email: _____

Licensee Billing Address: (If different from above)

LICENSEE SHIPPING CONTACT PERSON: (If different from above)

Phone: _____ Fax: _____

email: _____

Licensee Shipping Address: (If different from above)

LICENSEE TECHNICAL CONTACT PERSON: (If different from above)

Phone: _____ Fax: _____

email: _____

Pay Option Conversion, previous pay option: _____

ACCEPTANCE/TEST PERIOD

This order is subject to an acceptance period in accordance with Section 79 of the NYS Master Agreement, and Licensee elects to exercise the option. OR
 Licensee agrees to waive the applicable acceptance period

NEW

PRODUCT
EXCLUSION

New Product Releases does NOT apply to this Order Form

SECURITY
ISSUES

By checking this box, the Authorized User affirms that there are additional security rules, procedures and protocols that must be adhered to in the performance of this procurement.

By checking this box, the Authorized User affirms that there are no additional security requirements for Contractor under this procurement.

HARDSTOP
OR PASSIVE
MONITORING (TO
BE
COMPLETED
BY VENDOR
PRIOR TO
ORDER.)

Software Product ordered contains a passive monitoring facility.
 Software Product ordered contains hardstop monitoring capability.



NYS/CA CLIENT SERVER ORDER FORM

LICENSE TYPE AND LENGTH

(Additional items and conditions relating to this Order Form and the pricing computed in the attached Exhibit(s), are set forth in the NYS Master Agreement and Appendix F ("CA Product Pricing Handbook"))



SP: A special payment, inclusive of usage and maintenance of the Licensed Programs for a () year () month

term expiring on _____, is \$ _____ payable as set forth below.
Thereafter, if Licensee elects to continue use and maintenance of the Licensed Program, an annual fee covering use and maintenance will be due equal to the UMF/MF fee under the Master Agreement.

	YEAR 1	YEAR 2	YEAR 3	TOTAL
AMOUNT:	\$0.00	\$0.00	\$0.00	\$0.00
DUE DATE:				

Upgrade from previous designation of: _____

(Mfgr.) (Model) (Op. Sys.) (Serial No./Tier)
 Maintenance reinstatement from _____ through _____ in the amount of \$ _____

Unicenter Power Unit to Server Tier conversion *See attached addendum, Exhibit A
 _____ (Date) _____ (Date) _____ (total)
 Exhibit A attached (check if "yes").

Licensee and CA hereby agree that this license granted as of the effective date herein of / / supersedes licensee's prior
 _____ license effective / / .

Services - Ordered (Consulting and training services may not exceed twenty (20%) percent of the total order price for software licenses and maintenance).

_____ Consulting* - Fees for services detailed in attached description in the amount of: Total Cost: \$ _____
 * THIS CONTRACT PRECLUDES CONTRACTOR FROM PRODUCING OR DEVELOPING
 ANY CUSTOM PRODUCTS FOR THIS PROCUREMENT (SEE BASE AGREEMENT, CLAUSE 3C
 AND APPENDIX B, CLAUSE 81bii.

_____ Education - Fees for education detailed in attached description in the amount of: Total Cost: \$ _____

The undersigned hereby certifies that he/she is authorized to bind the authorized user identified herein to the terms and conditions of this agreement.

CA, INC.

Licensee: _____

By: _____
(Authorized Signature)

Name: _____

Title: _____

Date: _____

By: _____
(Authorized Signature)

Name: _____

Title: _____

Date: _____



NYS/CA CLIENT SERVER ORDER FORM (PERPETUAL LICENSE)

CA, Inc. ("CA") and, One CA Plaza, Islandia, NY 11749, tel: +1 631 342 6000

Date this Order Form to Become Effective: _____

Issues Under and Pursuant to:

NEW YORK STATE CONTRACT NUMBER

{ _____ }

CA

**CONTRACT
NUMBER(S)**

{ _____ }

This Order Form in conjunction with the Purchase Order creates binding obligations between the parties, is issued under and expressly incorporates, in addition to the terms set forth below, all terms and conditions of the NYS Contract Master Agreement referenced above. Said agreement grants Licensee additional rights to those stated herein, including discounts to be used in calculating the pricing set forth in this order. This order may only change the terms as set forth in the Master Agreement (Appendix B Section 44).

LICENSEE NAME/ADDRESS:

If Tax Exempt Organization, Tax Exempt Number:

(exempt certificate must be attached)

Sold To ID: _____

[Redacted]

LICENSEE BILLING CONTACT PERSON: (If different from above)

[Redacted]

Phone:

[Redacted]

Fax:

[Redacted]

email:

[Redacted]

Licensee Billing Address: (If different from above)

[Redacted]

LICENSEE SHIPPING CONTACT PERSON: (If different from above)

[Redacted]

Phone:

[Redacted]

Fax:

[Redacted]

email:

[Redacted]

Licensee Shipping Address: (If different from above)

[Redacted]

LICENSEE TECHNICAL CONTACT PERSON: (If different from above)

[Redacted]

Phone:

[Redacted]

Fax:

[Redacted]

email:

[Redacted]

Pay Option Conversion, previous pay option:

[Redacted]

ACCEPTANCE/TEST PERIOD

This order is subject to an acceptance period in accordance with Section 79 of the NYS Master Agreement, and Licensee elects to exercise the option. OR

Licensee agrees to waive the applicable acceptance period

NEW
PRODUCT
EXCLUSION

New Product Releases does NOT apply to this Order Form

SECURITY
ISSUES

By checking this box, the Authorized User affirms that there are additional security rules, procedures and protocols that must be adhered to in the performance of this procurement.

By checking this box, the Authorized User affirms that there are no additional security requirements for Contractor under this procurement.

HARDSTOP
OR PASSIVE
MONITORING (TO
BE
COMPLETED
BY VENDOR
PRIOR TO
ORDER.)

Software Product ordered contains a passive monitoring facility.
 Software Product ordered contains hardstop monitoring capability.



NYS/CA CLIENT SERVER ORDER FORM

LICENSE TYPE AND LENGTH

(Additional items and conditions relating to this Order Form and the pricing computed in the attached Exhibit(s), are set forth in the NYS Master Agreement and Appendix F ("CA Product Pricing Handbook"))



SP: A special payment, inclusive of usage and maintenance of the Licensed Programs for a () year () month term expiring on _____, is \$ _____ payable as set forth below.
Thereafter, if Licensee elects to continue maintenance of the Licensed Program, an annual fee covering maintenance will be due equal to the maintenance fee under the Master Agreement.

	<u>YEAR 1</u>	<u>YEAR 2</u>	<u>YEAR 3</u>	<u>TOTAL</u>
AMOUNT:	\$0.00	\$0.00	\$0.00	\$0.00
DUE DATE:				

Upgrade from previous designation of:

(Mfr.) (Model) (Op. Sys.) (Serial No./Tier)

Maintenance reinstatement from _____ through _____ in the amount of \$ _____

Unicenter Power Unit to Server Tier conversion *See attached addendum, Exhibit A
(Date) (Date) (total)

Exhibit A attached (check if "yes").

Licensee and CA hereby agree that this license granted as of the effective date herein of / / supersedes licensee's prior
_____ license effective / / .

Services - Ordered (Consulting and training services may not exceed twenty (20%) percent of the total order price for software licenses and maintenance).

_____ Consulting* - Fees for services detailed in attached description in the amount of:

Total Cost: \$ _____

* THIS CONTRACT PRECLUDES CONTRACTOR FROM PRODUCING OR DEVELOPING ANY CUSTOM PRODUCTS FOR THIS PROCUREMENT (SEE BASE AGREEMENT, CLAUSE 3C AND APPENDIX B, CLAUSE 81bii.

_____ Education - Fees for education detailed in attached description in the amount of:

Total Cost: \$ _____

The undersigned hereby certifies that he/she is authorized to bind the authorized user identified herein to the terms and conditions of this agreement.

CA, INC.

Licensee: _____

By: _____
(Authorized Signature)

Name: _____

Title: _____

Date: _____

By: _____
(Authorized Signature)

Name: _____

Title: _____

Date: _____



NYS/CA MAINFRAME ORDER FORM (NON-PERPETUAL)

CA, Inc. ("CA") and, One CA Plaza, Islandia, NY 11749, tel: +1 631 342 6000

Date this Order to Become Effective:

[Redacted]

Issues Under and Pursuant to:

NEW YORK STATE CONTRACT NUMBER

{ [Redacted] }

CA

**CONTRACT
NUMBER(S)**

{ [Redacted] }

This Order Form in conjunction with the Purchase Order creates binding obligations between the parties, is issued under and expressly incorporates, in addition to the terms set forth below, all terms and conditions of the NYS Contract Master Agreement referenced above. Said agreement grants Licensee additional rights to those stated herein, including discounts to be used in calculating the pricing set forth in this order. This order may only change the terms as set forth in the Master Agreement (Appendix B Section 44).

LICENSEE NAME/ADDRESS:

[Redacted Licensee Name/Address]

If Tax Exempt Organization, Tax Exempt Number:

[Redacted]

(exempt certificate must be attached)

Sold To ID: _____

LICENSEE BILLING CONTACT PERSON: (If different from above)

Phone: _____ Fax: _____
email: _____

Licensee Billing Address: (If different from above)

LICENSEE SHIPPING CONTACT PERSON: (If different from above)

Phone: _____ Fax: _____
email: _____

Licensee Shipping Address: (If different from above)

LICENSEE TECHNICAL CONTACT PERSON: (If different from above)

Phone: _____ Fax: _____
email: _____

Pay Option Conversion, previous pay option: _____

ACCEPTANCE PERIOD

This order is subject to an acceptance period in accordance with Section 79 of the NYS Master Agreement, and Licensee elects to exercise the option. OR
 Licensee agrees to waive the applicable acceptance period

NEW
PRODUCT
EXCLUSION

New Product Releases does NOT apply to this Order Form

SECURITY
ISSUES

By checking this box, the Authorized User affirms that there are additional security rules, procedures and protocols that must be adhered to in the performance of this procurement.

By checking this box, the Authorized User affirms that there are no additional security requirements for Contractor under this procurement.

HARDSTOP
OR PASSIVE
MONITORING (TO
BE
COMPLETED
BY VENDOR
PRIOR TO
ORDER.)

Software Product ordered contains a passive monitoring facility.
Software Product ordered contains hardstop monitoring capability.



NYS/CA MAINFRAME ORDER FORM

LICENSE TYPE AND LENGTH

(Additional items and conditions relating to this Order Form and the pricing computed in the attached Exhibit(s), are set forth in the NYS Master Agreement and Appendix F ("CA Product Pricing Handbook"))



SP: A special payment, inclusive of usage and maintenance of the Licensed Programs for a () year () month term expiring on _____, is \$ _____ payable as set forth below. Thereafter, if Licensee elects to continue use and/or maintenance of the Licensed Program, an annual fee covering use and/or maintenance will be due equal to the UMF/MF fee under the Master Agreement.

	YEAR 1	YEAR 2	YEAR 3	TOTAL
AMOUNT:	\$0.00	\$0.00	\$0.00	\$0.00
DUE DATE:				

Upgrade from previous designation of: _____

(Mfgr.) (Model) (Op. Sys.) (Serial No./Tier)
Maintenance reinstatement from _____ through _____ in the amount of \$ _____
(Date) (Date) (total)

Exhibit A attached (check if "yes").

Licensee and CA hereby agree that this license granted as of the effective date herein of / / supersedes licensee's prior _____ license effective / / .

Services - Ordered (Consulting and training services may not exceed twenty (20%) percent of the total order price for software licenses and maintenance).

_____ Consulting* - Fees for services detailed in attached description in the amount of:

Total Cost: _____ \$

*** THIS CONTRACT PRECLUDES CONTRACTOR FROM PRODUCING OR DEVELOPING ANY CUSTOM PRODUCTS FOR THIS PROCUREMENT (SEE BASE AGREEMENT, CLAUSE 3C AND APPENDIX B, CLAUSE 81bii.**

_____ Education - Fees for education detailed in attached description in the amount of:

Total Cost: _____ \$

The undersigned hereby certifies that he/she is authorized to bind the authorized user identified herein to the terms and conditions of this agreement.

CA, INC.

Licensee: _____



By: _____
(Authorized Signature)

Name: _____

Title: _____

Date: _____

By: _____
(Authorized Signature)

Name: _____

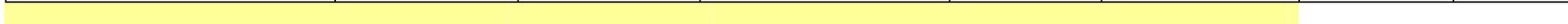
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Date: _____

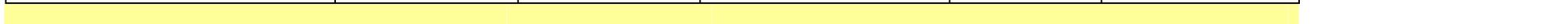
Exhibit A TO NYS/CA CLIENT SERVER ORDER FORM

Sold to ID _____
Company Name: _____
Effective Date: _____

Product Name	Supplement #	Product Code	Hardware: MFG/Type/Model	Operating System	Use Limitation	Key Required	Key Expiration



Product Name	Prevailing License Fee	Use Limitation		Total List License Fee	NYS Net License Fee
		Qty Servers	Server Tier		



NYS List Maintenance %	NYS Net Maintenance %	NYS Net Maintenance	Year 1	Year 2	Year 3

Paystream:

--	--	--

Exhibit B TO NYS/CA MAINFRAME ORDER
FORM

Licensee Site(s) and Total MIPS Capacity

Sold to ID _____
Company Name: _____
Effective
Date: _____

Total MIPS
Capacity: _____

Hardware: (Manufacture/Type/Model/Operating System)

**EXHIBIT C TO NYS/CA MAINFRAME ORDER FORM
CPU BASED LICENSES**

DESIGNATED CPU(S) INFORMATION								
CA-Supplement Number To Be Completed By Sales Accounting	Ref. #	Licensed Program(s), Materials or Services	CPU Manufacturer	Type/Model	Operating System	Designated CPU Serial Number(s)	Refer Number (Section 4)	Tier Group (See Hardware Ratings)
	1							
	2							
	3							
	4							
	5							
	6							
	7							

CPU BASED LICENSE: ILF and UMF Pricing Calculations

Ref. #	Tier Price Multiplier	Base License Fee	Initial License Fee (ILF)	NYS ILF	UMF Rate %	NYS Net UMF Rate	NYS Maintenance
1							
2							
3							
4							
5							
6							
7							