

**CENTRALIZED CONTRACT FOR THE ACQUISITION OF
FLEET MAINTENANCE SERVICES (STATEWIDE)**

BETWEEN

NEW YORK STATE

OFFICE OF GENERAL SERVICES

AND

**AUTOMOTIVE RENTALS INC. dba ARI
CONTRACT NUMBER PS69147**



**Office of
General Services**

**Procurement
Services**

THIS CENTRALIZED CONTRACT (“Contract” or “Agreement”) for the acquisition of Fleet Maintenance Services (Statewide) is made by and between the People of the State of New York, acting by and through the Commissioner of the New York State Office of General Services (“OGS”), with offices at the 36th Floor, Corning tower, Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242 (“OGS” or “State”), and Automotive Rentals Inc., DBA ARI, with offices at 4001 Leadenhall Road, Mt. Laurel, New Jersey 08054 (“Contractor”). The State and Contractor shall also be individually referred to as “Party” and collectively as “Parties”.

WHEREAS, OGS issued Request for Proposals (“RFP”) # 23168 for Fleet Maintenance Services to create a centralized contract for use by New York State Authorized Users; and

WHEREAS, OGS conducted a competitive process to identify the Bidder(s) which could provide the Fleet Maintenance Services at the best value, which was advertised on October 31, 2019 in the New York State Contract Reporter, as required by New York State Economic Development Law; and

WHEREAS, the State has determined that the Contractor submitted the best-value responsive proposal, that the Contractor is a responsible vendor; and that the Contractor is willing to provide the Fleet Maintenance Services set forth herein under the terms and conditions contained herein.

NOW THEREFORE, in consideration of the terms hereinafter mentioned and also the mutual covenants and obligations moving to each Party hereto from the other, the Parties hereby agree as follows:

Table of Contents

SECTION 1: INTRODUCTION AND GENERAL INFORMATION..... 5

1.1 Overview5

1.2 Background5

1.3 Scope5

1.4 Estimated Quantities6

1.12 Definitions7

1.13 Appendices and Attachments9

1.14 Order of Precedence/Conflict of Terms9

SECTION 2: QUALIFICATIONS OF CONTRACTOR..... 10

2.1 Staffing Plan for Contract.....10

SECTION 3: FLEET MAINTENANCE SERVICES..... 10

3.1 Automotive Repair Shops10

3.2 Monthly Enrollment Plans12

3.3 Per Occurrence Plans15

3.4 Customer Service Support Center18

3.5 Contract Website.....18

3.6 Reporting.....19

3.7 Data Import and Export.....20

3.8 Fleet Vehicle Identification Card22

3.9 Invoicing and Payments23

3.10 Contract Exit Strategy25

3.11 Additional Fleet Maintenance Services.....25

Section 4: TERMS AND CONDITIONS 27

4.1 Contract Term and Extensions27

4.2 Short term Extension28

4.3 Price28

4.4 Price Updates.....28

4.5 Best Pricing Offer28

4.6 Price Structure29

4.7 Ordering29

4.8 Purchasing Card Orders29

4.9 Minimum Order29

4.10 Invoicing and Payment.....29

4.11 Contract Administration.....29

4.12 NYS Financial System (SFS).....30

4.13 Accessibility of Information Communication Technology30

4.14 Data Ownership30

4.15 Insurance31

4.16 Report of Contract Usage31

4.17 Contractor Requirements and Procedures for Business Participation Opportunities for NYS Certified Minority- and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women31

4.18 Participation Opportunities For New York State Certified Service-Disabled Veteran Owned Businesses.37

4.19 Diesel Emission Reduction Act37

4.20 NYS Vendor Responsibility37

4.21 Non-State Agencies Participation in Centralized Contracts38

4.22 Extension of Use38

4.23 New Accounts38

4.24 Contractor’s Ability to Conduct Credit Evaluations38

4.25 Centralized Contract Modifications39

4.26 Formal Disputes During the provision of Fleet Management Services.....39

4.27 Performance and Bid Bonds39

4.28 Procurement Instructions for Authorized Users39

SECTION 5: GENERAL PROVISIONS 40

5.1 Notices40

5.2 Captions40

5.3 Severability.....40

5.4 Counterparts40

5.5 Entire Agreement41

APPENDICES

- Appendix A – *Standard Clauses for NYS Contracts* (October 2019)
- Appendix B – *General Specifications* (April 2016)
- Appendix C – *Contract Modification Procedure*

ATTACHMENTS

- Attachment 1 – *Contractor and Pricing Information*
- Attachment 2 – *Insurance Requirements*
- Attachment 3 – *Report of Contract Usage*
- Attachment 4 – *Data Export Requirements*
- Attachment 5 – *Staffing Plan for Contract*

SECTION 1: INTRODUCTION AND GENERAL INFORMATION

1.1 Overview

This Contract is for Fleet Maintenance Services as specified herein for all Authorized Users of OGS contracts. If State Agencies are acquiring Fleet Maintenance Services, they Must do so using this Contract. State Agencies Must obtain a Written waiver from the Governor's Office if they are unable to adhere to this requirement.

1.2 Background

Contractor has reviewed and agrees to the following:

- Vehicle ownership and management are decentralized and are located throughout the State. Each participating Authorized User will have its own Fleet Manager and May have differing authorization levels for various services;
- Payments Shall be made by individual Authorized Users. OGS Shall not receive centralized billings and Shall not make centralized payments on behalf of Authorized Users;
- The State has existing contracts for Vehicle and equipment parts, tires, and towing for selected highways, (e.g., The NYS Thruway, Bridge Authorities (MTA), and Long Island Parkway), with agreed-upon pricing that the State has incorporated into this Fleet Maintenance Services Contract (see Section 3.11 *Additional Fleet Maintenance Services Paragraph B Integration of Other NYS Contract Pricing*); and

The State has an existing fuel card services contract. This is a separate contract that will not be part of this Fleet Maintenance Services Contract, however, Contractor may offer integration of data from the OGS Statewide fuel card services program, as described in Section 3.11 *Additional Fleet Maintenance Services, Paragraph C Fuel Card Services Integration*.

1.3 Scope

This Contract sets forth the terms and conditions for the provision of Fleet Maintenance Services, as defined in Section 1.12 *Definitions*, to Authorized Users from a qualified provider, for Vehicles operated in NYS and nationwide.

A. This Contract provides Authorized Users with Fleet Maintenance Services, including, but not limited to:

- The administration and systematized tracking of Light Duty Vehicle and Medium to Heavy Duty Vehicle maintenance, repairs, roadside assistance and towing, using Automotive Repair Shops (to include both National Account Vendors and Independent Vendors), to ensure that proper maintenance and warranty repairs are being performed, control authorizations for unscheduled maintenance, ensure cost is competitive and reasonable, and avoid duplicate or unnecessary repairs;
- Monthly Enrollment Plans and Per Occurrence Plans for Fleet Maintenance Services, available to Authorized Users;
- Consolidated monthly billing to each Authorized User, for Vehicle maintenance and repair, roadside assistance, and towing from a network of reliable and reputable Automotive Repair Shops located in New York State, and nationwide;
- A pricing structure for Monthly Enrollment Plans and Per Occurrence Plans for Fleet Maintenance Services. The Contractor Shall apply the pricing as specified in Section 3.9 *Invoicing and Payments, Paragraph B Pricing Structure*;

- Verifying with Automotive Repair Shops that cost is reasonable based on a nationally recognized guide (e.g., Chilton Labor Time Guide Manual and Mitchell Mechanical Labor Estimating Guide), and verification that all Automotive Repair Shops are using a nationally recognized guide in estimating repair costs;
- Deduction of all applicable federal, state and local government taxes, due to the government's tax-exempt status, from the Fleet Maintenance Services administrative fees and associated Vehicle maintenance and repair costs, roadside assistance, and towing, prior to invoicing/billing the Authorized User, as specified in Section 3.9 *Invoicing and Payments*, Paragraph A *Tax Deduction*;
- Comprehensive Fleet Maintenance Services reporting capabilities, as specified in Section 3.6 *Reporting*;
- A Vehicle expense management process that includes a procedure to contain Vehicle repair costs without compromising effectiveness, including, but not limited to, negotiating the cost of repairs with Independent Vendors, implementing National Account Vendor discounts, authorizing services that are necessary for Preventive Maintenance and Vehicle repairs, and ensuring that authorization procedures for repairs are followed; and
- On-site repair and maintenance services performed at an Authorized Users' location(s). The staff provided for on-site services shall only be provided for the duration of the service.

B. EXCLUSIONS FROM SCOPE

The following Fleet Maintenance Services are excluded from the scope of this Contract. The State reserves the right to exclude additional services not listed herein.

- Credit Card Services. The ability for an Authorized User to acquire Product or services via the addition of credit card services to the Vehicle identification card provided to Authorized Users (see Section 3.8 *Fleet Vehicle Identification Card*, or with any other Fleet Maintenance Service provided under the Contract;
- Vehicle Rental. Coordinating with a Vehicle rental service, or providing the actual Vehicle rental service, for an Authorized User while a Vehicle is undergoing maintenance or repair at an Automotive Repair Shop;
- Auction Services. Facilitating auctions or providing other auction-related services, for decommissioned Authorized User Vehicles;
- Vehicle Acquisition. Providing a Vehicle to an Authorized User via a purchase or lease agreement; and
- Staff Augmentation Services. Providing temporary or permanent on-site staff at the Authorized Users' location(s) beyond the duration of a specific on-site repair and/or maintenance service. See Section 1.3 *Scope*, Paragraph A, Bullet 9.

1.4 Estimated Quantities

This Contract is an estimated quantity Contract. No specific quantities are represented or guaranteed and the State provides no guarantee of individual Authorized User participation. The Contractor Must furnish all quantities actually ordered at or below the Contract prices. The individual value of this Contract is indeterminate and will depend upon the competitiveness of the pricing offered. See Appendix B, Section 28 *Estimated/Specific Quantity Contracts* and Section 25 *Participation in Centralized Contracts*.

Numerous factors could cause the actual quantities of Products purchased under the Contract to vary substantially from the estimates in Solicitation 23168. Such factors include, but are not limited to, the following:

- This Contract May be a non-exclusive Contract.
- There is no guarantee of quantities to be purchased, nor is there any guarantee that demand will continue in any manner consistent with previous purchases.
- The individual value of this Contract is indeterminate and will depend upon actual Authorized User demand and actual quantities ordered during the Contract period.
- The State reserves the right to terminate this Contract for cause or convenience prior to the end of the term pursuant to the terms and conditions of the Contract.
- Contract pricing that is lower than anticipated could result in a higher quantity of purchases by Authorized Users than anticipated.
- Contract pricing that is higher than anticipated could result in a lower quantity of purchases by Authorized Users than anticipated.

Contractor acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of this Contract could vary substantially from the estimates provided in Solicitation 23168.

1.12 Definitions

Capitalized terms used in this Contract Shall be defined in accordance with Appendix B, Section 2 *Definitions*, or as below.

24x7x365 shall mean 24 hours a day, seven days a week, and 365 days a year (including the 366th day in a leap year).

“Aftermarket Product Additions” Shall mean the installation of non-OEM equipment (e.g., law enforcement Vehicle accessories, lighting systems, computers, radios, storage systems, and wheelchair lifts) to a Vehicle by a business other than the Vehicle OEM.

“ASE” Shall mean the National Institute for Automotive Service Excellence.

“Automotive Repair Shop(s)” Shall mean a business that is registered with the State, and licensed, if applicable, that provides: (1) diagnosis and repair of Vehicle malfunctions or damage; (2) maintenance of Vehicles; (3) repair to Vehicle bodies; (4) Vehicle glass replacement and repair; (5) Aftermarket Product Additions, or (6) Vehicle roadside assistance and towing.

“Business Day” Shall refer to Monday through Friday from 8:00 AM – 5:00 PM ET, excluding NYS Holidays and federal holidays.

“Electric Vehicle Supply Equipment (EVSE)” shall mean electric Vehicle charging station hardware, including, but not limited to, Level 1, Level 2, and DC Fast Charge.

“Executive Agency” shall mean all State departments, offices or institutions but, for the purposes of this Contract, excludes the State University of New York and City University of New York. Furthermore, such term shall not include the legislature and the judiciary. For the sake of clarity, the term “Executive Agency” does not include any public benefit corporation, public authority, or local government entity.

“Fleet Maintenance Services” Shall mean the administration and systematized tracking of Light Duty Vehicle and Medium to Heavy Duty Vehicle maintenance, repairs, roadside assistance and towing, using Automotive Repair Shops (which must include both National Account Vendors and Independent Vendors, and if applicable, may include the Contractor’s directly or indirectly owned or operated network of Automotive Repair Shops), to ensure that proper maintenance and warranty repairs are being performed, control authorizations for unscheduled maintenance, and avoid duplicate or unnecessary repairs. See also Section 1.3 *Scope*.

“Fleet Manager” Shall mean a designated Authorized User employee who is the point person for the Authorized User’s fleet maintenance and Shall be consulted first for approvals of repairs over a designated value, and for service, accident repair and general maintenance service concerns.

“GVWR” Shall refer to Gross Vehicle Weight Rating, which means the maximum total Vehicle weight, measured at the tire-ground interfaces, for which the Vehicle possesses components adequately rated to safely carry.

“Independent Vendor” Shall mean an Automotive Repair Shop that has either a single location or multiple locations in New York, and possibly in other states, with which the Contractor has a formal business relationship, and does not meet the definition of National Account Vendor.

“Light Duty Vehicle(s)” Shall mean an Authorized User Vehicle with a GVWR less than or equal to 16,000 pounds, (i.e., Class 1 through Class 4 Vehicles, as designated by the U.S. Department of Transportation), that is primarily meant for passenger transport.

“Medium to Heavy Duty Vehicle(s)” Shall mean an Authorized User Vehicle with a GVWR equal to or greater than 16,001 pounds, (i.e., Class 5 through Class 8 Vehicles, as designated by the U.S. Department of Transportation), that is primarily meant for transporting materials. For the purposes of this Contract, “Medium to Heavy Duty Vehicle(s)” Shall include Off Road Equipment.

“May” Shall mean the permissive in a clause or specification of this Contract. “May” does not mean “required”. Also see “Shall” and “Must.”

“Monthly Enrollment Plan” Shall refer to a plan for Fleet Maintenance Services pursuant to which one (1) flat administrative fee is charged by the Contractor for each monthly period (e.g., calendar month or other thirty (30)-day period), that an Authorized User Light Duty Vehicle or Medium to Heavy Duty Vehicle is enrolled. This flat administrative fee is in addition to the actual charges for the repair, maintenance, roadside assistance or towing.

“Must” denotes the imperative in a clause or specification of this Contract. “Must” is synonymous with “Shall” and “required”. Also see “May.”

“MWBE” Shall refer to a business certified with NYS Empire State Development (“ESD”) as a Minority- and/or Women-owned Business Enterprise.

“National Account Vendor” Shall mean an Automotive Repair Shop that operates facilities throughout the United States or in multi-state regions with which the Contractor has established a formal business relationship involving discounted and/or standardized fees or other arrangements that benefit the Contractor’s customers. Examples of such vendors include Goodyear®, Firestone®, and Pep Boys®.

“NYS Contract Price” Shall mean the fee charged to the Authorized User for a Fleet Maintenance Service.

“NYS Holidays” refers to the legal holidays for State employees in the classified service of the executive branch, as more particularly specified on the website of the NYS Department of Civil Service. This includes the following: New Year’s Day; Martin Luther King Day; Washington’s Birthday (observed); Memorial Day; Independence Day; Labor Day; Columbus Day; Veteran’s Day; Thanksgiving Day; and Christmas Day.

“OEM” Shall mean Original Equipment Manufacturer.

“Off Road Equipment” Shall mean non-vehicular assets that do not operate on public roadways, as defined by NYS Motor Vehicle Law, and which are not required to be licensed by the NYS Department of Motor Vehicles. Such equipment May include, but is not limited to, those assets commonly referred to as manlifts, forklifts, backhoes, front end loaders, and golf carts.

“**Per Occurrence Plan**” Shall refer to a plan for Fleet Maintenance Services pursuant to which one (1) flat administrative fee is charged each time the Authorized User uses a Fleet Maintenance Service for a Light Duty Vehicle or Medium to Heavy Duty Vehicle. This flat administrative fee is in addition to the actual charges for the repair, maintenance, roadside assistance or towing.

“**Preventive Maintenance**” Shall mean maintenance performed on a Vehicle component when it has exceeded its wear limits, or when it has exceeded its life expectancy, in order to prevent the failure of equipment before it actually occurs. Preventive Maintenance activities include, but are not limited to, equipment checks, partial or complete overhauls at specified periods, oil changes, lubrication and replacing worn parts.

“**Procurement Services**” Shall refer to a business unit of OGS, formerly known as New York State Procurement (“NYSPro”) and Procurement Services Group (“PSG”).

“**SDVOB**” Shall refer to a NYS-certified Service-Disabled Veteran-Owned Business.

“**SFTP**” Shall mean Secure File Transfer Protocol, a network protocol that provides file access, file transfer, and file management functionalities over any reliable data stream.

“**Shall**” denotes the imperative in a clause or specification of this Contract. “Shall” is synonymous with “required.” Also see “May” and “Must”.

“**Small Business**” shall have the meaning as defined in Executive Law Section 310(20).

“**Vehicle(s)**” Shall mean a mobile machine that May be used to transport passengers or cargo (e.g., cars, vans, SUVs, pickup trucks, chassis cab trucks and associated bodies, and Off-Road Equipment). Light Duty Vehicles and Medium to Heavy Duty Vehicles are collectively referred to as “Vehicles” in this Contract.

“**VMRS**” Shall mean Vehicle Maintenance Reporting Standards, developed by and for equipment users under the auspices of the ATA.

“**Written**” Any writing that makes use of words. Examples of Written communications include e-mail, Internet websites, letters, proposals, and contracts.

1.13 Appendices and Attachments

The following appendices and attachments, attached hereto, are hereby expressly made a part of this Contract as fully as if set forth at length herein.

Appendix A – *Standard Clauses for NYS Contracts (October 2019)*

Appendix B – *General Specifications (April 2016)*

Appendix C – *Contract Modification Procedure*

Attachment 1 – *Contractor and Pricing Information*

Attachment 2 – *Insurance Requirements*

Attachment 3 – *Report of Contract Usage*

Attachment 4 – *Data Export Requirements*

Attachment 5 – *Staffing Plan for Contract*

1.14 Order of Precedence/Conflict of Terms

Only documents expressly enumerated below shall be deemed a part of this Contract. Conflicts among the documents comprising the Contract Shall be resolved by giving precedence to the documents in the in the following order:

1. Appendix A – *Standard Clauses for New York State Contracts (October 2019)*;

2. The Contract;
3. Appendix B - *General Specifications (April 2016)*;
4. Appendix C – *Contract Modification Procedure*

5. Attachment 1 – *Contractor and Pricing Information*
6. Attachment 2 – *Insurance Requirements*
7. Attachment 3 – *Report of Contract Usage*
8. Attachment 4 – *Data Export Requirements*
9. Attachment 5 – *Staffing Plan for Contract*

SECTION 2: QUALIFICATIONS OF CONTRACTOR

2.1 Staffing Plan for Contract

The Contractor's staffing plan, as found in Attachment 5 – *Staffing Plan for Contract*, identifies the numbers and types of staff employed by the Contractor (excluding Automotive Repair Shops staff) that will implement the Contract. The staffing plan Shall include:

- A. Titles of employees;
- B. Job descriptions for titles;
- C. Minimum qualifications for each job title;
- D. Number of employees currently employed for each title;
- E. Notarized statement from the head of Bidder's human resources department, or equivalent, certifying the total number of employees currently in the titles identified by Bidder above, and that the employees currently meet or exceed the minimum qualifications for each of the titles; and
- F. Notarized statement from the head of Bidder's human resources department, or equivalent, certifying that personnel responding to maintenance and repair calls have a minimum of three (3) years' experience in the automotive industry as a technician or service writer, and are ASE Certified Mechanics and/or ASE Certified Master Mechanics.

Contractor Must maintain adequate staffing throughout the Contract term and Shall notify Procurement Services of substantive staffing changes to Contractor's staffing plan in Attachment 5 - *Staffing Plan for Contract*. The Contractor Must maintain or improve the described level of experience and expertise of the titles that interact directly with the Authorized Users and/or Automotive Repair Shops, and that service any other technical, financial and customer service-related needs of the Contract.

SECTION 3: FLEET MAINTENANCE SERVICES

3.1 Automotive Repair Shops

Contractor Must provide, for the life of the Contract, Automotive Repair Shops that participate in the Contract that allow Authorized Users to receive: (1) diagnosis and repair of Vehicle malfunctions or damage; (2) maintenance of Vehicles; (3) repair to Vehicle bodies; (4) Vehicle glass replacement and repair; (5) Aftermarket Product Additions; and (6) Vehicle roadside assistance and towing. These services Must be available for Light Duty Vehicles and Medium to Heavy Duty Vehicles in all counties in NYS, and locations nationwide. Fleet Maintenance Services provided in relation to Automotive Repair Shops Shall include:

- A. A list of Automotive Repair Shops in NYS available for use with the Contract, to be maintained by the Contractor and available on the Contractor's website in a database searchable by ZIP code, and available to Authorized Users via download in Excel format (Microsoft Excel 2010, or newer), and/or via email from

the Contractor when requested. At a minimum, the list Shall be updated monthly, and Shall include the following data fields for each Automotive Repair Shop:

1. Business name;
 2. Business address (physical location);
 3. County where the business is located;
 4. Phone number;
 5. Type of Automotive Repair Shop (i.e., National Account or Independent Vendor); and
 6. Type of service available (e.g., inspection, general maintenance and repair, body repair, glass repair, emergency vehicle repair, and roadside assistance/towing).
- B. A process for the Authorized User to request an addition to the list of Automotive Repair Shops available for use with the Contract.
- C. A process for the Authorized User to report an Automotive Repair Shop that is not performing work that is considered satisfactory by the Authorized User, and a Contractor response process when such reports are received.
- D. A Process to review Automotive Repair Shop estimates for potential duplicate or unnecessary repairs, prior to commencement of work. Contractor Shall be responsible for the cost of duplicate repairs (i.e., the same repair performed twice), identified by the Authorized User, when the initial repair was trackable by the Contractor at the time of the duplicate repair.
- E. A process for collecting a valid odometer reading for each Vehicle at the time of service with an Automotive Repair Shop, and for verifying that the odometer reading is obtained by the Automotive Repair Shop through a visual check of the Vehicle rather than one reported by the vehicle driver.
- F. The processing and payment for all charges associated with Automotive Repair Shops performing maintenance and repair of participating Authorized User Vehicles, and billing the Authorized User in accordance with Section 3.9 *Invoicing and Payments*. Services provided Shall include, but not be limited to:
1. A process to minimize Authorized User Vehicle repair costs that includes the review of all Automotive Repair Shop invoices to ensure cost is consistent with approved repair estimates, and that price is reasonable;
 2. Negotiation with Automotive Repair Shops to provide the lowest rate possible on individual repairs and for overall labor and parts rates on behalf of NYS, prior to authorizing a service;
 3. An audit process to review Automotive Repair Shop costs utilizing a nationally recognized guide, (e.g., Chilton Labor Time Guide Manual and Mitchell Mechanical Labor Estimating Guide), and verification that all Automotive Repair Shops are using a nationally recognized guide in estimating repair costs. The Contractor Shall have a process for accepting exceptions to nationally recognized guide(s);
 4. Any Automotive Repair Shop rebates, discounts or rewards that will be applied to Authorized User costs as listed on Attachment 1 – *Contractor and Pricing Information*; and
 5. Payments of valid invoices Shall be made according to the terms of Section 3.9 *Invoicing and Payments*, Paragraph G *Payment to Automotive Repair Shops*. Contractor practices such as “short paying” of Automotive Repair Shops for their services, merchant function charges, fees, percentage rebates and/or bank fees for EFT payments related to Fleet Maintenance Services Shall not be endorsed or accepted by the State. Short-paying does not include an Automotive Repair Shop agreement to receive a reduced amount due to the Automotive Repair Shop agreeing to Contractor’s fast-payment option in order to receive payment in approximately 72 hours.

- G. A process for assisting with the resolution of any disputes related to the Contract that occur between the Automotive Repair Shops and Authorized Users, and Contractor Shall implement this process if requested by an Authorized User.

3.2 Monthly Enrollment Plans

The Contractor Shall offer a minimum of two (2) Monthly Enrollment Plans for Fleet Maintenance Services: one (1) plan for Light Duty Vehicles; and one (1) plan for Medium to Heavy Duty Vehicles. (see Section 3.11 *Additional Fleet Maintenance Services*, Paragraph J *Additional Approved Fleet Maintenance Services and Products*, for additional services offered under the Contract that are invoiced monthly). All services listed under Section 3.1 *Automotive Repair Shops* Shall be applicable to all Monthly Enrollment Plans offered under the Contract.

A Vehicle's enrollment in a Monthly Enrollment Plan does not preclude usage of a Per Occurrence Plan by an Authorized User for that same Vehicle, or other Authorized User Vehicles (see Section 3.3 *Per Occurrence Plans*). An Authorized User May independently obtain and be invoiced for a service, (e.g., body repair, roadside assistance, and towing), for a Vehicle that is enrolled in a Monthly Enrollment Plan, from an Automotive Repair Shop that participates in the Contract, and be invoiced only for the services provided and not incur a Per Occurrence Plan administrative fee.

The Contractor Shall further provide the following additional services with each Monthly Enrollment Plan:

- A. Ongoing Fleet Maintenance Services, for each Vehicle enrolled, for one (1) flat administrative fee, invoiced monthly in arrears. There Shall be one (1) flat administrative fee for Light Duty Vehicles and one (1) for Medium to Heavy Duty Vehicles. Authorized Users Shall not be invoiced a monthly fee that has not been specified on Attachment 1 – *Contractor and Pricing Information* (e.g., Independent Vendor fee) for the Monthly Enrollment Plans;
- B. Service technicians to review and pre-approve each Vehicle maintenance and repair service 24x7x365. The Authorized User Shall have the ability to designate a dollar amount limit for Vehicle maintenance and repair costs that require prior approval from the Authorized User before work May begin. The Contractor Shall obtain Written approval from the Fleet Manager for all services estimated to exceed the designated dollar amount limit prior to authorizing the service. If an Authorized User has not pre-designated a dollar amount limit for Vehicle maintenance and repair costs that require prior Written approval before work May begin, then the dollar amount Shall be \$750. If the Fleet Manager is not immediately available to give approval, Contractor Shall obtain approval from other individual(s) designated by the Authorized User and provide email notification to the Fleet Manager;
- C. Respond to an Authorized User request for routine and emergency services within one (1) hour of the request, via telephone and/or email exchange, as specified by the Authorized User;
- D. A process to monitor Vehicle repairs to ensure the repairs are completed within a reasonable timeframe for the scope of the repair, and that includes notification of an expected repair completion date/time to the Authorized User;
- E. A process for tracking and auditing performance standards and requirements for Automotive Repair Shops. These performance standards and requirements, established by the Contractor, Shall include, at a minimum, price, quality assurance, vendor competence, cooperation and problem resolution methods, compliance with repair authorization procedures and invoicing dispute procedures. A list of Automotive Repair Shops that are unable to meet the established performance standards and requirements Shall be posted on the Contractor's website and updated at least weekly;
- F. Assistance with selection of an Automotive Repair Shop from those available for use with the Contract, when requested by an Authorized User;

-
- G. A list of Authorized User Vehicles currently enrolled in the Monthly Enrollment Plans, that is available for download from the Contractor's website and updated at least daily;
- H. The ability for Authorized Users to enroll or remove Vehicles from a Monthly Enrollment Plan at any time during a Monthly Enrollment Plan period, online, via email, and via phone. Cancellation Shall include: (1) removal from the Contract website; (2) a statement issued to the Authorized User that the Vehicle has been removed from the Monthly Enrollment Plan; and (3) a definitive cancellation code or other indicator included on the Contract website and Contract reports;
- I. A process for ensuring that all Vehicles enrolled in a Monthly Enrollment Plan are screened by the Contractor's system to ensure that the Vehicle Identification Numbers ("VINs") entered are correct, (i.e., correspond to the basic identifying information about the Vehicle, including the make, model and year). The Contractor Must also provide an online VIN decoder program to assist the Authorized User with this process;
- J. Standardized pricing with at least one (1) National Account Vendor that provides Vehicle glass replacement and repair. The standardized pricing Must include a method for determining, for each Vehicle glass part number available from the vendor, a flat rate for glass replacement that includes the price of the glass, the labor charges for the removal of the old glass, the installation of the new glass, glass cleanup and any sealants needed for the replacement. The standardized pricing Must also include a flat rate for glass repair that includes labor charges for removal of debris from the impact area and repair of the glass, and the price of materials needed for the repair. In addition, the Contractor Shall negotiate with Automotive Repair Shops that provide glass replacement and repair, for a not-to-exceed fee for glass replacement or repair, prior to Contractor authorizing each glass replacement or repair requested by an Authorized User;
- K. A negotiated storage rate for Authorized User Vehicles to be stored at each Automotive Repair Shop for the first twenty-four (24) consecutive hours, and for each twenty-four (24) hour period thereafter. Maximum reimbursable storage rate time will be for five (5) days, including weekend days, unless previously agreed upon in writing by the Authorized User. The Contractor Shall negotiate the rate for storage beyond five (5) days, and receive Written approval from the Authorized User, prior to approving continued storage of a Vehicle by an Automotive Repair Shop. Storage charges Shall only be invoiced provided that the Contractor has been notified by the Automotive Repair Shop and that the Contractor has notified the Authorized User that such charges are being initiated;
- L. A Vehicle Preventive Maintenance program which, at a minimum, is consistent with OEM specifications and warranty requirements, State inspection schedule implementation, government regulations that apply, and generally accepted fleet practices for all Vehicles enrolled in a Monthly Enrollment Plan. The Preventive Maintenance program Shall provide:
1. Preventive Maintenance schedules and maintenance activities for all Authorized Users;
 2. Preventive Maintenance services, based on Vehicle mileage, that include, at a minimum, oil and filter changes, engine tune-ups, tire rotation, tire pressure check and adjustment, and check and fill of all fluid levels. Such services Must be consistent with the OEM guidelines as detailed in the Vehicle's owner's manual. Annual NYS inspection service Shall also be included in the Preventive Maintenance schedule;
 3. Email notification to the Authorized User, via the Fleet Manager, or other individual designated by the Authorized User, of due and overdue Preventive Maintenance services for each Vehicle, within forty-eight (48) hours of notification to the Contractor that the mileage marker for the Preventive Maintenance service has been reached;
 4. The ability for the Authorized User to designate a Preventive Maintenance schedule that is above and beyond what is recommended by an OEM;

-
5. A coupon book, or email notification to the Authorized User, as specified by the Fleet Manager, that includes, at a minimum, each Preventive Maintenance service required, and the recommended or Authorized User-designated mileage increment(s) or time interval(s) for completion of the service, for each Vehicle; and
 6. A sample Preventive Maintenance schedule, provided at the Authorized User's request, for programs currently being used by other customers.
- M. Participation in quarterly account review meetings with participating Authorized Users, if requested, for the full duration of the contract, including any renewal period(s). If requested by the Authorized User, the Contractor Shall provide a report of the actual attainment of Authorized User cost savings for services listed in this section. Such meetings Shall be conducted via conference call or webcast, as specified by the Authorized User;
- N. Participation in bi-annual Contract review meetings with OGS, if requested, for the full duration of the contract, including any renewal period(s), to provide Fleet Maintenance Services program updates and other maintenance-related or accident-related issues identified by OGS or the Contractor. Such meetings Shall be conducted via conference call or webcast, as specified by OGS;
- O. A process for tracking all existing warranties for Vehicles enrolled in a Monthly Enrollment Plan and recouping warranty reimbursements on behalf of the Authorized User, and a process for recovery of post-warranty and out-of warranty repairs which includes, at a minimum:
1. Identification of OEM warranty repair opportunities for Vehicles and notification to the Authorized User(s) affected;
 2. Monitoring of repair activities and notifying Authorized Users of repairs eligible for warranty reimbursement; and
 3. Seeking reimbursement from OEMs on behalf of the Authorized User for out-of-warranty repairs or service when circumstances so warrant.
- P. A process for monitoring OEM safety recalls that affect Vehicles enrolled in a Monthly Enrollment Plan for Acura, Audi, BMW, Chrysler, Ferrari, Ford, Genesis, General Motors, Honda, Hyundai, Infiniti, Isuzu, Jaguar, Karma, Kia, Lexus, Lotus, Land Rover, Maserati, Mazda, McLaren, Mercedes-Benz, Mini, Mitsubishi, Nissan, Porsche, Saab, Scion, Subaru, Suzuki, Toyota, Volkswagen, and Volvo. This process includes, at a minimum:
1. Safety recall notifications from the OEM referenced against the State's active vehicle inventory, to identify recalls that effect State vehicles;
 2. Notifying the OGS Contract Administrator and Authorized User Fleet Managers via ARI insights®, of all open OEM safety recalls within twenty-four (24) hours after the Contractor receives notification from the OEM;
 3. Bilingual recall notifications distributed electronically in writing to the applicable Authorized User regarding the related service concern. The tracking of these email notifications can be managed via ARI insights® and can be viewed by OGS or the applicable Authorized User; and
 4. Inclusion of the status of safety recalls (e.g., open or closed) in the Vehicle data available for Authorized User enrollment and transaction reports at the Contract website (see Section 3.6 *Reporting*).

3.3 Per Occurrence Plans

A Contractor Shall offer the following Per Occurrence Plans for Fleet Maintenance Services that will provide service for Authorized Users of Light Duty Vehicles and Medium to Heavy Duty Vehicles. Per Occurrence Plans Shall provide a per-incident Fleet Maintenance Service for a Vehicle for one flat administrative fee each time the Per Occurrence Plan service is used. This flat administrative fee is in addition to the actual charges for the repair or service. All services listed under Section 3.1 *Automotive Repair Shops* Shall be applicable to the Per Occurrence Plans offered under the Contract.

For all Per Occurrence Plans, the Contractor Must provide the ability for Authorized Users to enroll or remove Vehicles from services daily, online, via email, and via phone. Removal from the Per Occurrence Plan Shall include: (1) removal from the Contractor's website; (2) a statement issued to the Authorized User that the Vehicle has been removed from the program to prevent service and billing under a program; and (3) a definitive cancellation code or other indicator included on the Contract website and Contract reports.

Usage by an Authorized User of a Per Occurrence Plan for a Vehicle does not preclude enrollment of that same Vehicle, or other Authorized User Vehicles, in a Monthly Enrollment Plan (see Section 3.2 *Monthly Enrollment Plans*). An Authorized User May independently obtain and be invoiced for a service, (e.g., body repair, roadside assistance, and towing), for a Vehicle that is enrolled in a Monthly Enrollment Plan, from an Automotive Repair Shop that participates in the Contract, and not incur a Per Occurrence Plan administrative fee.

At a minimum, the following Per Occurrence Plans Shall be offered under the Contract, see Section 3.11 *Additional Fleet Maintenance Services*, Paragraph J, *Additional Approved Fleet Maintenance Services and Products*, for additional services offered under the Contract that are invoiced on a Per Occurrence basis)

- A. Maintenance and Repair Programs. Contractor Shall offer Maintenance and Repair Programs, as described in Section 3.2 *Monthly Enrollment Plans*, on a Per Occurrence basis, for Light Duty Vehicles and for Medium to Heavy Duty Vehicles. These Per Occurrence Plans Shall include all aspects of the Monthly Enrollment Plans, except Preventive Maintenance (see Section 3.2 *Monthly Enrollment Plans*, Paragraph L).
- B. Accident Management. Contractor Shall offer the following Accident Management program options for Authorized Users of Light Duty Vehicles and Medium to Heavy Duty Vehicles. A Contractor Shall have a flat administrative fee for each of the Accident Management program options listed below. An Authorized User Shall have the ability to choose the All-In program, or one or more individual programs, at the time of the incident. *Note*: State Agencies covered by the Self-Retained Auto Program (SRAP) are instructed to follow the accident reporting procedures posted by the OGS Fleet Management office: <https://ogs.ny.gov/fleet-management>. Accident Management Programs Shall be provided under the Contract according to the following terms:
 1. All-In. The All-In Accident Management Program offered Shall include all aspects of accident management, including the individual services listed below (i.e., Documentation Only, Repair Estimates Only, Appraisal Only, and Subrogation Only). Accident management services provided Shall include administering all collision and other-than-collision (e.g., glass breakage, theft, and vandalism) claims and repairs on Vehicles including, but not limited to:
 - a) Receiving reports of accidents via a toll-free number, 24x7x365;
 - b) Taking comprehensive accident reports from Authorized Users, completing Association for Cooperative Operations Research and Development (ACORD) Automobile Loss Notice forms and forwarding via email the forms to the OGS Fleet Management office for vehicles covered under SRAP, the Authorized User's Fleet Manager and the Authorized User employee involved in the accident, or as otherwise instructed by the Authorized User;
 - c) Creating a file in the Contractor's internal information system for each accident, to track Accident Management services;

- d) Providing the ability for an Authorized User to report and view the status of Accident Management services online through the Contractor's website;
 - e) Providing a database, available online through the Contractor's website and accessible 24x7x365, to OGS to track and report all Contract Vehicle accident volume and expenses by Authorized User. Individual accident occurrences Shall be identified by, at a minimum, Authorized User agency, Vehicle, accident type and cost;
 - f) Obtaining and evaluating every damage repair estimate for accuracy and consistency with industry standards;
 - g) Arranging for towing and negotiating the cost, when necessary;
 - h) Arranging for repairs with an Automotive Repair Shop, including obtaining Authorized User authorization for the repair;
 - i) Monitoring repairs to ensure that the repair is timely, of high quality and performed at the least cost to the State;
 - j) Consolidating payment and billing of collision repairs and tracking of collision repair costs; and
 - k) Providing the Fleet Manager, and Authorized User employee permanently assigned the Vehicle, with status updates daily regarding repair status either via email or telephone.
2. Documentation Only. A Documentation Only Accident Management Program Shall be offered. Services offered Shall include, at a minimum, obtaining accident reports, claim reporting, and obtaining pictures of Vehicle damage.
3. Repair Estimates Only. A Repair Estimates Only Accident Management Program Shall be offered. Services offered Shall include, at a minimum, securing repair estimates for Vehicles from an Automotive Repair Shop.
4. Appraisal Only. An Appraisal Only Accident Management Program Shall be offered. Services offered Shall include, at a minimum, providing appraisal service for the Vehicle, in order to assess and determine the estimated value of a Vehicle involved in an accident.
5. Subrogation Only. A Subrogation Only Accident Management Program Shall be offered. A Contractor Shall track and follow up on subrogation incidents on behalf of the Authorized User. A Contractor Shall offer this service for either one flat administrative fee or for a percentage of the dollar amount recovered by the Contractor, as specified by the Authorized User at the time the service is requested. Services offered under the Contract Shall include:
- a) A review of all accident or vandalism claims for the opportunity to collect damages from a responsible (negligent) third party;
 - b) Filing a subrogation claim notice on behalf of the Authorized User, if requested, with the other party involved in the accident, or their insurance carrier;
 - c) If requested by the Authorized User, a sample report demonstrating how the subrogation claims will be tracked and followed up on; and
 - d) A quarterly accident subrogation status report, provided to the Authorized User, that identifies resolved and outstanding claims for the applicable quarter.
- C. Roadside Assistance. Contractor Shall offer administration of roadside assistance service provided by Automotive Repair Shops, 24x7x365, for Light Duty Vehicles and Medium to Heavy Duty Vehicles. Administrative fees for Per Occurrence Plan calls to Automotive Repair Shops that provide roadside assistance, and arranging for service, Shall not exceed the Per Occurrence Plan Administrative fee set forth in Attachment 1 –*Contractor and Pricing Information*. Roadside assistance Shall be provided under the Contract according to the following terms:

1. Contractor Shall contact Automotive Repair Shops that provide roadside assistance when contacted by Authorized Users, in order to provide roadside repair services in NYS, and locations nationwide. Service should be provided within two (2) hours of a service call. If the response time is expected to exceed two (2) hours, the Contractor Must notify the Authorized User at the time of the service call, and provide an anticipated response timeframe. The Authorized User reserves the right to request service from another Automotive Repair Shop, or cancel the service request, if the anticipated response time is expected to exceed two (2) hours.
 2. Roadside assistance Shall include, but is not limited to:
 - a) Battery jumpstarts and engine service;
 - b) Driver lock out service;
 - c) Flat tire assistance; and
 - d) Fuel/oil/engine fluids and water service.
 3. Upon Authorized User request, Contractor Shall provide detailed, itemized invoices for roadside assistance provided under the Contract. The Contractor will be responsible for providing detailed information to the Authorized User, including explanations regarding miscellaneous charges; and
 4. Payment to Contractor for roadside assistance Shall not be made prior to Authorized User receipt and review of Contractor's supporting details regarding the invoiced charges.
- D. Towing. A Contractor Shall offer administration of towing service provided by Automotive Repair Shops, 24x7x365, for Light Duty Vehicles and Medium to Heavy Duty Vehicles. Towing service Shall be provided under the Contract according to the following terms:
1. Contractor Shall contact an Automotive Repair Shop that provides towing service within fifteen (15) minutes of notification from an Authorized User that towing service is required, and provide the Authorized User with an estimated response time from the Automotive Repair Shop. A response time of approximately one (1) hour for the service to arrive at the scene after the call is initiated is desired. If this cannot be provided by the Automotive Repair Shop, the Contractor Shall contact other area Automotive Repair Shops to determine if a shorter response time can be provided;
 2. The Contractor Shall negotiate with the Automotive Repair Shops that provide towing services, for a not-to-exceed hookup fee, plus mileage, prior to Contractor authorizing dispatch for each towing service requested by an Authorized User;
 3. Priority Shall be given to existing State, and other applicable Authorized User-contracted towing vendors for towing services. The State currently has existing towing service contracts for limited access highways and bridges (e.g., NYS Thruway, and bridges and tunnels operated by the Metropolitan Transportation Authority), and the City of New York ("NYC") currently has existing towing service contracts for towing from NYC highways. If towing service is not available from a State or other applicable Authorized User-contracted towing vendor, the Contractor May contact other towing vendors in order to provide towing service for an Authorized User Vehicle;
 4. Calls placed to an Automotive Repair Shop that provides towing service Shall be considered the same as a call placed for a Per Occurrence Plan event and Shall not exceed the Bid Per Occurrence Plan price for towing; and
 5. Upon Authorized User request, Contractor Shall provide detailed, itemized invoices for towing services provided under the Contract. The Contractor will be responsible for providing detailed information to the Authorized User, including explanations regarding miscellaneous charges.

3.4 Customer Service Support Center

Contractor Must provide a customer service support center to support all services required in this Contract for no additional administrative fees. The customer service support center Shall be available for Authorized Users 24x7x365. Services Shall include, but not be limited to:

- A. Toll-free telephone access with average hold time of no more than one (1) minute;
- B. Authorized User assistance with initial and ongoing enrollment in Contractor programs, including but not limited to:
 - 1. Requesting, from each Authorized User at the time of enrollment, a key entry code or other specific identifier for its fleet, which Shall be incorporated into the Contractor's internal information technology system, if provided by the Authorized User;
 - 2. Assignment of a code that will be used in the Contractor's internal information technology system to identify the Authorized User as a State Agency or non-State Agency. Unless otherwise agreed upon by OGS, a State Agency Shall be coded as "1" and a non-State Agency Shall be coded as "2";
 - 3. Identifying each Authorized User in the Contractor's internal information technology system by either the specific complete name and agency abbreviation of the State Agency (e.g., Department of Transportation, DOT), or the specific complete name of the non-State Agency, (e.g., Onondaga County Water Authority), that the Authorized User represents; and
 - 4. Identifying each Authorized User in the Contractor's internal information technology system by the Agency Statewide Financial System (SFS) Department ID, if applicable; and
- C. Personnel responding to maintenance and repair calls that have a minimum of three (3) years' experience in the automotive industry as a technician or service writer and are ASE Certified Mechanics and/or ASE Certified Master Mechanics (See Attachment 5 – *Staffing Plan for Contract*).

3.5 Contract Website

Contractor Shall provide a Contract website, for no additional administrative fees, with at least the following capabilities and services:

- A. Access. Online access Must be available 24x7x365. Information technology customer service Shall be available through a toll-free number, and through email, during standard business hours;
- B. Enrollment/Cancellation. The Authorized User Shall have the ability to enroll or remove a Vehicle from Contractor programs online at the Contract website, at any time;
- C. Itemization. The Contract website Shall include itemized Vehicle Fleet Maintenance Services data for each Authorized User that includes, for each enrolled Vehicle, at a minimum, the data required under Section 3.6 *Reporting*. Costs for Fleet Maintenance Services, including Vehicle maintenance and repair Shall be posted online within one (1) hour of implementation or completion of the service;
- D. Training. The Contractor Shall provide online tutorials, webcast training and other remotely provided training requested by the Authorized User, in the use of the Contract website, at no additional fee. In-person training Shall be provided only at the request of an Authorized User. Reimbursement to the Contractor for travel, meals and lodging expenses for in-person training conducted by Contractor 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 NYS 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;

- E. Restricted Access. The Contract website Shall include security features capable of providing tiered, restricted account access for individuals within the Authorized User's organization, as designated by the Fleet Manager. Contractor Shall also have a security plan that will be utilized to ensure the protection of Authorized User information and that access to such information is controlled and restricted to authorized Contractor personnel only;
- F. Data Backup. Contractor Must demonstrate that the information included in the Contract website is backed up and stored in more than one (1) location to prevent loss of data in the event of disasters, (e.g., fires, hurricanes, tornadoes or theft). Data Must be recoverable within forty-eight (48) hours; and
- G. Performance. The Contract website Shall be available 99% of the time, measured quarterly. Quarterly periods will end on March 31st, June 30th, September 30th and December 31st. Availability Shall not include scheduled maintenance. Contractor's failure to satisfy performance standards, requirements or other service levels set forth in the Contract for the Contract website Shall result in a credit as follows: If Contractor fails to meet a Contract website performance standard as set forth in the Contract for a period of three (3) consecutive months, a 10% service credit will be deducted from each Authorized User's invoice in the month immediately following the third month.

3.6 Reporting

The Contractor Shall provide standard and ad hoc OGS and Authorized User reports including, at a minimum, the following types of reports:

- A. Authorized User online Vehicle enrollment and transaction reports. To exercise control over programs, each Authorized User requires on-demand, online reports, based on Authorized User input criteria, of Vehicle enrollment and Automotive Repair Shop data. It is anticipated that in most cases daily and monthly reporting will be necessary to provide the information needed to reconcile payments and to monitor Automotive Repair Shop usage. The Contractor Shall provide a website that OGS and the Authorized User May access to produce Authorized User transaction reports in both Excel (Microsoft Excel 2010, or newer), and text formats. OGS requires access to all Authorized User Vehicle enrollment and transaction data collected under the contract, and the ability to produce reports that include such data for multiple Authorized Users, and for statewide reports. The reports and the data collected to produce the reports are confidential and May only be shared with parties other than OGS with the prior approval of the applicable Authorized User, or as mandated by issuance of an NYS executive directive (e.g., a directive from NYS Department of Budget). Unless otherwise specified by an Authorized User, the report types that are required, include:
 - 1. Number of Vehicles enrolled in each Contractor program;
 - 2. Contractor program(s) each Vehicle is enrolled in;
 - 3. Automotive Repair Shops used by each Authorized User, monthly and annually, organized by provider type (e.g., maintenance vendor, towing);
 - 4. Authorized User spend on each type of maintenance or repair service, listed by Authorized User account, division, sub-division and Vehicle;
 - 5. Itemized maintenance and repair services and parts provided for each Vehicle, and by each Automotive Repair Shop;
 - 6. Identification of "reworks" (i.e., repeat performance of service or repair because problem has not been resolved, same problem still exists, repair or service was not satisfactory, etc.);
 - 7. Post-warranty and out-of warranty servicing and repair reports that include repair activities and post-warranty adjustment credit;

8. Manufacturer recalls affecting Vehicles enrolled in Monthly Enrollment Plans, including the status of the recall (e.g., open or closed); and
9. Accident management data that includes VIN, date and time of accident, location and cause of accident, and itemized Vehicle service and repair costs.

In addition to the report types listed above, the Authorized User Shall have the ability to produce customized ad hoc reports, based on Authorized User input criteria, on-demand, online. If requested by the Authorized User, the Contractor Shall produce these customized ad hoc reports for the Authorized User, in the format required by the Authorized User, for no additional fee.

- B. Authorized User Data Export. At the Authorized User's Written request, the Contractor Shall export Vehicle enrollment and transaction reports into a data file that May be imported by the Authorized User. Data Shall be provided in a tab-delimited or similar text file, (a fixed width text file, not comma or tab-delimited, is preferred), or Microsoft Office (2010 or newer) compatible file format that can be imported directly to Microsoft Excel or Access. At a minimum, Contractor Shall have the ability to provide Authorized Users with the data inputs identified as "Mandatory" in Attachment 4 – *Data Export Requirements*, Tab A: *Authorized User Transaction File*. Data Shall be provided at the frequency specified by the Authorized User (e.g., monthly or daily). At the Written request of the Authorized User, Contractor Shall provide details of applicable coding structures such as an update task code list with codes and descriptions where applicable. See also Section 3.7 *Data Import and Export*.
- C. Authorized User Account Review Report. At the Written request of an Authorized User, Contractor Must provide an emailed and/or webcast report that provides a review of the Authorized User's account, at no additional cost. The report Shall be made in-person only at the request of the Authorized User. Reimbursement to the Contractor for travel, meals and lodging expenses for an in-person report for employees who do not reside in the local commuting area for the report site, Shall be made in accordance with the State's Travel Reimbursement Manual published by the NYS 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.

Unless otherwise agreed upon by the Authorized User, the Account Review Report Shall include, but not be limited to:
 1. Vehicle service and repair account activity, summarized by Vehicle class and repair code;
 2. Repair trends by vendor, agency, region, and Vehicle type;
 3. Number of roadside assistance and tow occurrences, including the average response time;
 4. List of overdue, scheduled Preventive Maintenance;
 5. Subrogation summary that includes completed actions and recovery amounts, and those over 120 days old;
 6. Cost comparisons of items 1 through 5 above, described in detail, with other similar-sized fleets; and
 7. Other information as May be deemed necessary by the Fleet Manager.
- D. Report of Contract Usage. See Section 4.16 *Report of Contract Usage*. See also Attachment 3- *Report of Contract Usage*.
- E. Monthly MWBE Contractor Compliance Report. See Section 4.17 *Contractor Requirements and Procedures for Business Participation Opportunities for NYS Certified Minority- and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women*.

3.7 Data Import and Export

The Contractor Shall import Vehicle data from previous State Fleet Maintenance Services vendors' databases into the Contractor's internal information system upon Contract execution, and Shall export Vehicle data

collected under the Contract to OGS and Authorized Users during the full term of the Contract, for no additional administrative fee. The Contractor Shall provide the following import and export services:

- A. Historical data collected under OGS centralized State Contract PS66689, (Group 72002, Award 22752, Fleet Management Services), held by Automotive Rentals Inc. (ARI), Shall be imported into the Contractor's internal information technology system. At the request of OGS or an Authorized User, historical data Shall also be imported from contracts held by Authorized Users;
- B. At the request of OGS or an Authorized User, the Contractor Shall import Vehicle service and repair history from fleet management information systems that May be in use by an Authorized User;
- C. At the request of OGS or an Authorized User, the Contractor Shall export Authorized User data as described above in Section 3.6 *Reporting*, Paragraph B, *Authorized User Data Export*;
- D. Data for the Contract Shall be exported to OGS, as directed by OGS. Failure to timely provide the OGS data files in accordance with this section Shall be considered a breach of Contract, and May result in cancellation of the Contract in accordance with Appendix B, Section 43 *Termination*. Following are the required data files and the applicable terms and conditions:
 1. Daily Authorized User Transaction File. Contractor Shall provide OGS with a daily file that includes transaction data for all Authorized Users. At a minimum, this transaction file Shall include the data inputs identified as "Mandatory" in Attachment 4 – *Data Export Requirements*, Tab A: *Authorized User Transaction File*. The following terms and conditions apply to the Daily Authorized User Transaction File:
 - a) The data Shall be provided in a tab-delimited or similar text file, (a fixed width text file, not comma or tab-delimited, is preferred) or Microsoft Office (2010 or newer) compatible file format that can be imported directly to Microsoft Excel or Access;
 - b) The data file Shall have a standard name with the date created appended (e.g., "VendorName[YYYYMMDD].txt");
 - c) The data file Must be received by OGS electronically via an encrypted automated file transfer process. The file May either be exported to an OGS SFTP server (preferred method), or OGS can retrieve the file from the Contractor's SFTP server via an automated process. *Note: in order for OGS to retrieve the file from the Contractor's SFTP server, the folder Shall be secure and not shared with other Contractor customers;*
 - d) No later than four (4) calendar weeks after Contract execution, the Contractor Shall provide an initial data file for all Fleet Maintenance Services provided from the Contract term start date to the date the file is created, and work with OGS to establish a file transfer process. The file transfer process Must be established and in place no later than eight (8) calendar weeks after Contract execution;
 - e) Upon approval by OGS of the data file and file transfer process, Contractor Shall provide a data file on a daily basis. Data export Shall be automated and sent at the same time each day. The data file Shall include only new data that has not been included in previously exported files;
 - f) Data for new Contract users Must automatically be included in the data files, without OGS or Authorized User initiation;
 - g) Data for transactions Shall be provided only after the transaction has a "completed/closed" status. Transactions "in process" Shall not be included in the data file;
 - h) Data Shall contain a valid VIN for all Vehicles enrolled in Contractor Fleet Maintenance Services programs which are owned by a State Agency; and

- i) The data file Shall include standard American Trucking Association (ATA) and VMRS codes, and a description of the codes, used by the Contractor to identify Vehicle maintenance and repair services provided under the Contract. No later than four (4) calendar weeks after contract execution, the Contractor Must provide a list of the standard ATA and VMRS codes used, and a description of the maintenance services and repairs that the codes apply to. The list Shall include codes that will be used to identify incoming transactions as “preventive maintenance service” and “inspection related”. A list of the VMRS codes currently used is included on Attachment 4 – *Data Export Requirements*, Tab A: *Authorized User Transaction File*.
2. Daily State Agency AMS File. Contractor Shall provide OGS with a daily file that includes Asset Management System (AMS) data for all Authorized Users that are State Agencies. At a minimum, this AMS file Shall include the data inputs identified as “Mandatory” in Attachment 4 – *Data Export Requirements*, Tab B: *State Agency AMS File*. The terms and conditions listed above in Paragraph 1 *Daily Authorized User Transaction File*, Subparagraphs a through i, Shall also apply to the Daily State Agency AMS File;
3. Post-Warranty Data File. The Contractor Shall provide OGS with a monthly file that includes data for the recovery of post-warranty repair charges on Authorized User Vehicles enrolled in a Monthly Enrollment Plan. The format of delivery to OGS, and a timeframe for implementation, Shall be mutually agreed upon by OGS and the Contractor upon tentative award notification. At a minimum, the warranty data file Shall include:
 - a) Date range of the post-warranty data file (e.g., April 1, 2019 to April 30, 2019);
 - b) OGS Contract number;
 - c) Contractor name, address, and telephone number;
 - d) Authorized User entity name, address, and Fleet Manager name;
 - e) Authorized User Purchase Order number and date;
 - f) Post-warranty claim number;
 - g) Post-warranty claim date;
 - h) Recovered date;
 - i) Automotive Repair Shop name;
 - j) Status of warranty recovery;
 - k) Dollar amount pursued; and
 - l) Dollar amount recovered.
4. Internal Shop Management Data File. OGS reserves the right to require an export of data collected from Authorized User-owned Automotive Repair Shops through Contractor’s Internal Shop Management System provided under this Contract (see Section 3.11 *Additional Fleet Maintenance Services*, Paragraph G *Internal Shop Management System*). Data fields exported to OGS, and a timeframe for implementation Shall be mutually agreed upon by OGS and the Contractor upon an Authorized User’s utilization of the Internal Shop Management System.

3.8 Fleet Vehicle Identification Card

The Contractor Shall provide a Vehicle identification card for every Vehicle enrolled in a Fleet Maintenance Services program. This card will be connected with the service authorization and history of the Vehicle, and Shall be presented by the Authorized User at the start of every interaction between the Authorized User and Automotive Repair Shop.

- A. The Vehicle identification card Shall include:
1. Model year, make and model name of the Vehicle;
 2. Identification number assigned to the Vehicle by the Contractor;
 3. Authorized User code, assigned by the Contractor;
 4. VIN;
 5. Toll-free number to contact Contractor's customer service support center; and
 6. Directions for the Authorized User to follow in the case of an accident/emergency.
- B. Certain Authorized Users engaged in law enforcement or other investigative activities will require additional accounts or sub-accounts, in a fictitious name or names, where such cards are embossed with such fictitious name, and include generic or card issuer specific card backgrounds, where for such accounts:
1. No information is transmitted to any merchant, nor any information embossed, printed, appearing or encoded on a Fleet Vehicle Identification Card associates the card, card holder, driver, vehicle or account with the State of New York or its agencies to any person or entity other than the card issuer; and
 2. The Bidder further agrees to keep confidential the true nature and identity of the Cardholder using such fictitious name, from any third parties, except as required by law, or with and to the extent of the express Written permission of the Authorized User. See also Section 3.6 *Reporting*.

3.9 Invoicing and Payments

Unless otherwise agreed upon in writing between the Authorized User and the Contractor, Fleet Maintenance Services administrative fees and associated Vehicle maintenance and repair costs Must be separately invoiced monthly in arrears to each participating Authorized User. Authorized Users of the Contract Shall be invoiced on the same billing cycle. See also Appendix B, Section 45 *Contract Invoicing* and Section 47 *Prompt Payments*. The following billing and payment services Shall be provided by the Contractor:

- A. Tax Deduction. The Contractor Shall deduct all applicable federal, state and local government taxes for Fleet Maintenance Services administrative fees and associated Vehicle maintenance and repair costs, roadside assistance and towing prior to invoicing the Authorized User, if the Authorized User is a tax exempt organization. The Authorized User Shall certify tax exempt status, if required by the Contractor.
- B. Pricing Structure. The Contractor Shall invoice Authorized Users in accordance with the pricing indicated by the Bidder on Attachment 1 – *Contractor and Pricing Information*.
- C. Monthly Summary Invoice. Each monthly invoice Shall include a summary of monthly fees, including, but not limited to, the following level of detail:
1. Contract number;
 2. Contractor name, address, and phone number;
 3. Authorized User entity name, address, and Fleet Manager name;
 4. Authorized User code, assigned by the Contractor;
 5. Due date;
 6. Invoice number;
 7. Invoice date;

8. Fleet Maintenance Services program fees (i.e. Monthly Enrollment Plan and Per Occurrence Plan program fees);
 9. Summary total for Vehicle maintenance and repair costs; and
 10. Payment instructions including Contractor's third-party billing name, address, etc.
- D. Monthly Transaction Detail Report. In addition to the monthly summary invoice described above in Section 3.9 *Invoicing and Payments*, Paragraph C *Monthly Summary Invoice*, a transaction detail report for each Authorized User Must be available for download from a secure location at the Contractor's website or submitted directly to the Authorized User in Excel format (Microsoft Excel 2010, or newer). The transaction detail report Must match the billing cycle of the invoice and include data for all Vehicles included in the billing cycle. Unless otherwise directed by the Authorized User, the Contractor Shall include, at a minimum, the information listed below on the monthly transaction detail report.
1. Date range of the transaction detail report (e.g. April 1, 2019 to April 30, 2019);
 2. OGS Contract number;
 3. Contractor name, address, and telephone number;
 4. Authorized User entity name, address, and Fleet Manager name;
 5. Authorized User code, assigned by the Contractor;
 6. Invoice creation date;
 7. Invoice due date;
 8. Invoice number;
 9. Monthly Enrollment Plan fees invoiced, if applicable;
 10. Per Occurrence Plan fees invoiced, if applicable;
 11. The following transaction details for each maintenance and repair service included in the report:
 - a) Automotive Repair Shop business name;
 - b) Vehicle number, assigned by Contractor;
 - c) VIN;
 - d) Odometer reading at the start of service;
 - e) Vehicle license plate number;
 - f) Per Occurrence Plan fees, if applicable;
 - g) Labor rate;
 - h) Quantity of hours for work performed;
 - i) Total cost of Labor;
 - j) Description of part(s);
 - k) Total cost of parts;
 - l) Credits, if applicable;
 - m) Discounts applied;
 - n) Description of maintenance and/or repair service performed;
 - o) ATA code(s) for maintenance and/or repair service performed;
 - p) Charges for work completed for each visit, even if such work is warranty work that will eventually be paid by OEM; and

- q) Any other associated fees with the monthly invoice should be described in detail and are contingent upon Authorized User review and approval.
- E. Authorized User Invoice. The Contractor Shall ensure that Automotive Repair Shops provide the Authorized User with a customer copy of the invoice for the service performed that includes the Contractor approval number, for each transaction at the time of service;
- F. Archiving. The Contractor Shall maintain service, repair, billing and payment histories for each Vehicle in the Contractor's programs in accordance with Appendix A, Section 10 *Records*. Archived records Shall include all data collected under the full Contract term. At the request of an Authorized User, the Contractor Shall provide the report types specified in Section 3.6 *Reporting*, from archived data;
- G. Payment to Automotive Repair Shops. The Contractor Shall make payment to Automotive Repair Shops within thirty (30) days of receipt of invoice for services performed under the Contract. No payment Shall be made for unauthorized invoices; and
- H. Original Invoicing. The original Automotive Repair Shop invoice that corresponds with each Vehicle repair or service provided under the Contract Must be available and provided to OGS or the applicable Authorized User upon Written request. OGS reserves the right to request a copy of any invoice, repair order, or technician's notes related to services performed under the Contract.

3.10 Contract Exit Strategy

Upon Contract expiration or cancellation, the Contractor Must provide the following items to OGS, Authorized Users, and the replacement Contractor, if applicable. Data Shall be provided within sixty (60) days after the end of the Contract term, and the Contractor Shall bear the cost of providing the reports.

- A. All Authorized User and Vehicle data acquired under the full term of the Contract to OGS, in a format, or formats, agreed upon by OGS and the Contractor;
- B. If requested by an Authorized User, all of that Authorized User's data acquired under the full term of the Contract, in a format, or formats, agreed upon by the Authorized User and the Contractor; and
- C. Export of all Authorized User and Vehicle data acquired under the full term of the Contract to the replacement Contractor, in a format, or formats, agreed upon by OGS, the Contractor and the replacement Contractor.

3.11 Additional Fleet Maintenance Services

The following Fleet Maintenance Services shall be offered under the Contract. See also Section 1.3 *Scope*, Paragraph B for the Excluded Fleet Maintenance Services. See also Attachment 1 – *Contractor and Pricing Information* for applicable pricing information for the below Fleet Maintenance Services.

- A. Automotive Repair Shop Pricing. At the Written request of Procurement Services or an Authorized User, the Contractor Shall provide, for no additional fee, a list of pricing that National Account Vendors would ordinarily charge the public at large (e.g., "posted prices" to any customer walking in off the street), and pricing they charge for the same products and services if provided as part of the State Contract;
- B. Integration of Other NYS Contract Pricing. The Contractor Shall have the ability for Authorized Users to receive contract pricing and benefits for Vehicle parts and services from other contracts held by OGS or Authorized Users, without the need for separate transactions, Purchase Orders, invoices, etc. The Contractor Must honor the specific pricing from other NYS contracts and list the pricing/discount on the Fleet Maintenance Services Contract invoices. This service Shall be provided for no additional fee. This

applies to the following contracts for Vehicle parts and services:

1. OGS Group 30600, Award PGB-23149, Tires, Tubes, and Services, (Goodyear Tire and Rubber Company), <https://online.ogs.ny.gov/purchase/spg/awards/3060023149CAN.HTM>
 2. OGS Group 30310, Award 23123, Vehicle and Equipment Parts and Related Product (Statewide), <https://online.ogs.ny.gov/purchase/spg/awards/3031023123CAN.HTM>;
 3. Towing/roadside assistance on limited access highways and bridges (e.g., NYS Thruway, and bridges and tunnels operated by the Metropolitan Transportation Authority);
 4. OGS 30601, Award PGB-23193, Tires, Retreads (Statewide) (Goodyear Tire and Rubber Company) (upon execution), <https://online.ogs.ny.gov/purchase/spg/awards/3060023193CAN.HTM>
- C. Fuel Card Services Integration. The Contractor Shall provide the following integration of fuel card services contract data.
1. OGS Contract. Integration with the OGS Statewide fuel card services program (OGS Group 79008, Award 23062, Fuel Card Services (WEX), <https://online.ogs.ny.gov/purchase/snt/awardnotes/7900823062can.htm>) to track Vehicle mileage and communicate mileage markers for Preventive Maintenance. The Contractor Shall track Vehicle mileage status, via data that is either supplied by OGS, or directly from the fuel card services provider, for each Vehicle that participates in the OGS fuel card services contract that is also enrolled in a Monthly Enrollment Plan on the Fleet Maintenance Services Contract. The Contractor Shall contact Authorized Users (via the Fleet Manager, or other individual as directed by the Authorized User) via email within forty-eight (48) hours of notification to the Contractor that a mileage marker for Preventive Maintenance Service has been reached, and provide notification that a Vehicle has reached or exceeded the Preventive Maintenance mileage marker. The cost of this service May be included in the Monthly Enrollment Plans fee; and
 2. Authorized User Contracts. The Contractor, at the Written request of an Authorized User, Shall provide integration of Authorized User fuel card services contracts. Authorized User fuel card services data Shall be provided to the Contractor via either the Authorized User or directly from the fuel card services provider. Required services to be provided in relation to such integration, and pricing, Shall be mutually agreed upon between the Authorized User and the Contractor before implementation of the integration.
- D. Telematics. At the Written request of a Fleet Manager, the Contractor Shall provide a Vehicle tracking system capable of monitoring the location, movements, status and behavior of Authorized User Vehicles. The Contractor Shall offer the Vehicle tracking system devices and related services at a price no greater than the price set by the manufacturer, and at the time of purchase proof of manufacturer price shall be provided to the Authorized User.
- E. Data Capture - Telematics/GPS /Electric Vehicle Supply Equipment. The Contractor, at the Written request of an Authorized User, May provide integration of telematics/GPS/Electric Vehicle Supply Equipment (EVSE) data for individual Authorized User accounts. Integration May be provided for individual Authorized User contracts. Authorized User telematics/GPS/EVSE data May be provided to the Contractor via either the Authorized User or directly from the telematics/GPS/EVSE provider. Required services to be provided in relation to such integration, and pricing, Shall be mutually agreed upon between the Authorized User and the Contractor before implementation of the integration.
- F. Internal Shop Data Storage. At the Written request of an Authorized User, the Contractor Shall designate the Authorized User-owned maintenance and repair facility(ies) as an Automotive Repair Shop for use with the Contract, so that Authorized Users May utilize data storage services for these facilities in conjunction with the Contract. Contractor Shall provide Authorized Users who utilize this service with data capture or record keeping of Vehicle maintenance and repairs provided at these Authorized User-owned maintenance and repair facilities, with data entered by the Authorized User. There May be a monthly rate per Vehicle

enrolled for this service, or the Contractor May allow an Authorized User to enter repair/service history and other Vehicle data for no additional fee for this data tracking. Participation in this program by Authorized Users Shall be voluntary, and these Vehicles Shall not participate in the Preventive Maintenance program offered by the Contractor. This service Shall be identified on the Authorized User's monthly invoice as "Data Storage Service." Participating Authorized Users with Authorized User-owned maintenance and repair facilities will manage their own parts inventory, mechanic productivity, overhead, etc.

- G. Internal Shop Management System. The Contractor Shall offer software, or an internet-based system, that an Authorized User May use to track Vehicle maintenance and repairs performed at an Authorized User-owned Automotive Repair Shop. The internal shop management system should include data capture, reporting and scheduling capabilities. The Contractor May charge a monthly fee, and/or other fees that are invoiced in the Contractor's usual course of business, for use of the internal shop management system. See also Section 3.7 *Data Import and Export*, Paragraph D, Subparagraph 3 *Internal Shop Management Data File*;
- H. Driver Training Services. The Contractor Shall offer driver training services (e.g., safety programs, online driver training programs, defensive driving courses, and post-accident awareness). The Contractor Shall specify the courses offered, the certification(s) that a participant will receive at the end of the course, and the applicable fees for such programs, in the Contract. Reimbursement to the Contractor for travel, meals and lodging expenses for in-person training conducted by Contractor 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 NYS 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.
- I. Driver Risk Assessment. The Contractor Shall have a program for providing the Fleet Manager, if requested in writing, with a driver risk assessment report and recommending specialized online training, based on a comprehensive risk assessment (including, but not limited to, driver behavior, performed by the Contractor, of driver behavior, incident types, Vehicle and job function. The Contractor May charge a per-driver fee for this service;
- J. Additional Approved Fleet Maintenance Services and Products. Further information on any Additional Fleet Maintenance Services and Products approved by OGS to be included under this Contract are listed in Attachment 1 – *Contractor and Pricing Information*. Additional services or Product proposed after Contract execution May be submitted in accordance with Section 4.25 *Centralized Contract Modifications*. See also Section 1.3 *Scope*, Paragraph B for a list of excluded services.

Section 4: TERMS AND CONDITIONS

4.1 Contract Term and Extensions

- A. Base Term. The Contract Shall be in effect for a term of five (5) years. The Contract term Shall commence after all necessary approvals and Shall become effective upon mailing or electronic communication of the final executed documents to the Contractor (see Appendix B, Section 22 *Contract Creation/Execution*).
- B. Extensions. At the State's option, the Contract May be extended as set forth in Appendix B, Section 23 *Contract Term – Extension*. Whether the optional extension is exercised is at the sole discretion of the State. A Contractor Shall retain the right to decline a Contract extension offered under this section. Any Contract extension will be under the same terms and conditions, subject to any additional applicable statutory and policy requirements.
- C. The Contract term provided for in this section Shall extend six (6) months beyond its termination date only for Authorized Users whose contracts Must be registered with the Office of the New York City Comptroller. During the six (6)-month period the definition of Authorized User Shall be deemed to refer only to Authorized Users whose contracts Must be registered with the Office of the New York City Comptroller. This extension is in addition to any other extensions available under the Contract. The extension provided

for in this paragraph Shall be upon the then-existing terms and conditions; provided, however, during such extension an Authorized User, as defined in this paragraph, May agree to amend such terms and conditions solely to comply with changes in statutory requirements (e.g. changes in minimum, prevailing or living wages, or regulated services).

4.2 Short term Extension

This section Shall apply in addition to any rights set forth in Appendix B, Section 23 *Contract Term – Extension*. In the event a replacement Contract has not been issued, any Contract let and awarded hereunder by the State May be extended unilaterally by the State for an additional period of up to 30 calendar days upon notice to the Contractor with the same terms and conditions as the original Contract and any approved modifications. With the concurrence of the Contractor, the extension May be for a period of up to 90 calendar days in lieu of 30 calendar days. However, this extension automatically terminates should a replacement Contract be issued in the interim.

4.3 Price

Pricing for this Contract is set forth in Attachment 1- *Contractor and Pricing Information*. The following terms and conditions apply to Contract pricing. See also Appendix B, Section 13 *Pricing*.

- A. Monthly Enrollment Plan. See Section 3.2 *Monthly Enrollment Plans*, Paragraph A.
- B. Per Occurrence Plan. See first paragraph in Section 3.3 *Per Occurrence Plans*.
- C. Accident Management. See Section 3.3 *Per Occurrence Plans*, Paragraph B *Accident Management* and its subparagraphs.
- D. Roadside Assistance. See Section 3.3 *Per Occurrence Plans*, Paragraph C *Roadside Assistance* and its subparagraphs.
- E. Towing. See Section 3.3 *Per Occurrence Plans*, Paragraph D *Towing* and its subparagraphs.

4.4 Price Updates

The Monthly Enrollment Plans and Per Occurrence Plans administrative fees set forth in Attachment 1 – *Contractor and Pricing Information* Shall not increase during the Contract term, and the percentage (%) of the dollar amount recovered for Accident Management (Subrogation Only), Shall not decrease.

The NYS Contract Price for Fleet Maintenance Services and Products set forth in Attachment 1 – *Contractor and Pricing Information*, Section D: *Price Sheet (Other)*, if offered, Shall not increase without the prior approval of OGS. In order to request an increase in the NYS Contract Price, or a decrease in discount, a Contractor Shall follow the procedures outlined in Section 4.25 *Centralized Contract Modifications*.

Contractor May decrease administrative fees or the NYS Contract Price, or increase the Contract discounts offered at any time for Fleet Maintenance Services offered, without prior approval by OGS, provided that OGS Shall be notified at the time of the price or discount change. Such notification Shall be made by submittal of the form contained within Appendix C – *Contract Modification Procedure*.

4.5 Best Pricing Offer

During the Contract term, if the Commissioner becomes aware that the Contractor is selling substantially the same or a smaller quantity of a Product 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, after consultation with the Contractor, May be reduced to a lower price on a prospective basis at the discretion of the Commissioner. The Commissioner reserves the right to request information to verify pricing for the purposes of this clause.

4.6 Price Structure

If, during the Contract Term, the Contractor is unable or unwilling to meet contractual requirements in whole or in part based on the price structure of the Contract, it Shall immediately notify the Office of General Services, Procurement Services in writing. Such notification Shall not relieve the Contractor of its responsibilities under the Contract. The State May, but is not required to, consider an equitable adjustment in the Contract terms and/or pricing in the circumstances outlined in Appendix B, Section 44 *Savings/Force Majeure*.

Should the Commissioner in his or her sole discretion determine during the Contract Term that (i) the Contract price structure is unworkable, detrimental, or injurious to the State, or (ii) the Contract price structure results in prices which are unreasonable, excessive, or not truly reflective of current market conditions, and no adjustment in the Contract terms and/or pricing is mutually agreeable, the State May terminate the Contract upon 10 business days Written notice mailed to the Contractor.

4.7 Ordering

Purchase Orders Shall be made in accordance with the terms set forth in Appendix B, Section 30 *Purchase Orders*. Authorized Users May submit orders over the phone, and, if available, May submit orders electronically via web-based ordering, e-mail, or facsimile at any time. Orders submitted Shall be deemed received by Contractor on the date submitted.

All orders Shall reference Contract number, requisition, and/or Purchase Order number (if applicable). Upon Contractor's receipt of an order, confirmation is to be provided to the Authorized User electronically or via facsimile. Order confirmation should be sufficiently detailed, and include, at a minimum, purchase price, date of order, delivery information (if applicable), Authorized User name, and sales representative (if applicable).

4.8 Purchasing Card Orders

If the Contractor accepts orders using the State's Purchasing Card (see Appendix B, Section 15 *Purchasing Card*), also referred to as the Procurement Card, the Contractor Shall not charge or bill the Authorized User for any additional charges related to the use of the Purchasing Card, including but not limited to processing charges, surcharges or other fees.

4.9 Minimum Order

There is no minimum order for this Contract.

4.10 Invoicing and Payment

See Section 3.9 *Invoicing and Payments*.

4.11 Contract Administration

The Contractor Shall provide a sufficient number of Customer Service employees who are knowledgeable and responsive to Authorized User needs and who can effectively service the Contract. See Attachment 5 - *Staffing Plan for Contract* and Section 3.4 *Customer Service Support Center* for more information. Contractor Shall also provide an Emergency Contact in the event of an emergency occurring after business hours or on weekend/holidays.

Contractor Shall provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Information regarding the Customer Service, Emergency Contact, and Contract Administrator Shall be set forth in Attachment 1 – *Contractor and Pricing Information*. Contractor Must notify OGS within five (5) Business Days if it's Contract Administrator, Emergency Contact, or Customer Service employees change, and provide an interim contact person until the position is filled. Changes Shall be submitted electronically via e-mail to the OGS Contract Management Specialist.

4.12 NYS Financial System (SFS)

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

The State is also implementing an eProcurement application that supports the requisitioning process for State Agencies to procure Products in SFS. This application provides catalog capabilities. Contractors with Centralized Contracts have the ability to provide a "hosted" or "punch-out" catalog that integrates with SFS and is available to Authorized Users via a centralized eMarketplace website. Additional information May be found at: <https://ogs.ny.gov/procurement/emarketplace>

There are no fees required for a Contractor's participation in the catalog site development or management. Upon completion and activation of an on-line catalog, State Agencies will process their orders through the SFS functionality and other Authorized Users can access the catalog site to fulfill orders directly.

The State May be implementing additional PeopleSoft modules in the near future. Further information regarding business processes, interfaces, and file layouts currently in place May be found at: <http://www.sfs.ny.gov> and <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

4.13 Accessibility of Information Communication Technology

Contractor is solely responsible for administration, content, intellectual property rights and all materials at Contractor's website (see Section 3.5 *Contract Website*). 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 the Office of Information Technology Services policy NYS-P08-005 Accessibility of Information Communication Technology, as may be amended, the stated purpose of which is to ensure that members of the public with disabilities have comparable access to publicly-available information and services. The following language is incorporated into this Contract:

Any network-based information and applications development, or programming delivered to or by the State pursuant to this Contract or procurement, will comply with Section 508 of the Rehabilitation Act of 1973, as amended, and be consistent with New York State Enterprise IT Policy NYS-P08-005, Accessibility of Information Communication Technology, as such policy may be amended, modified or superseded (the "Accessibility Policy"). The Accessibility Policy requires that State Entity Information Communication Technology shall be accessible to persons with disabilities as determined by accessibility compliance testing. Such accessibility compliance testing will be conducted by the State and any report on the results of such testing must be satisfactory to the State.

4.14 Data Ownership

Contractor Must process all Authorized User data in accordance with the contract and Shall acquire no rights in the Authorized User data and Shall not use or disclose the Authorized User data except as provided under the resulting contract or as required by law. Authorized user data Shall mean any information, formula, algorithms, or other content that the Authorized User may provide to the Contractor, or that may be collected by the Contractor, pursuant to the Contract.

4.15 Insurance

The Contractor Shall maintain in force at all times during the terms of the Contract, policies of insurance pursuant to the requirements outlined in Attachment 2 – *Insurance Requirements*.

4.16 Report of Contract Usage

Contractor Shall submit Attachment 3 – *Report of Contract Usage* including total sales to Authorized Users of this Contract by Contractor, and all authorized resellers, dealers and distributors, if any, *no later than 15 days after the close of each calendar quarter*. Quarterly periods will end on March 31st, June 30th, September 30th and December 31st. If the Contract period begins or ends in a fractional portion of a reporting period, only the actual Contract sales for this fractional period should be included in the *quarterly* report.

Contractors Shall specify if any authorized resellers, dealers or distributors are NYS Certified Minority- and/or Women-Owned Business Enterprises (MWBES), Small Business Enterprises (SBEs), or Service-Disabled Veteran-Owned Businesses (SDVOBs).

The report is to be submitted electronically via e-mail in Microsoft Excel to OGS Procurement Services, to the attention of the individual listed on the front page of the Contract Award Notification and Shall reference the Contract Group Number, Award Number, Contract Number, Sales Period, and Contractor's name.

The report in Attachment 3 – *Report of Contract Usage* contains the minimum information required. Additional related sales information, such as detailed user purchases May be required by OGS and Must be supplied upon request. Failure to submit reports on a timely basis May result in Contract cancellation and designation of Contractor as non-responsible. OGS reserves the right to amend the report template during the Contract term.

4.17 Contractor Requirements and Procedures for Business Participation Opportunities for NYS Certified Minority- and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women

I. New York State Law

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations ("NYCRR"), the New York State Office of General Services ("OGS") is required to promote opportunities for the maximum feasible participation of New York State-certified Minority- and Women-owned Business Enterprises ("MWBES") and the employment of minority group members and women in the performance of OGS contracts.

II. General Provisions

- A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for MWBEs. Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, State or

local laws.

- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, a finding of non-responsibility, breach of contract, withholding of funds, liquidated damages pursuant to clause IX of this section, and/or enforcement proceedings as allowed by the Contract and applicable law.

III. Equal Employment Opportunity (EEO)

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000, for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to, the contracting State agency (the "Work") except where the Work is for the beneficial use of the Contractor.
 - 1. Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate or distinct from the Contract; or (ii) employment outside New York State.
 - 2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor's equal employment opportunity policy. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.

B. Form EEO 100 - Staffing Plan

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

- C. Form EEO 101 - Workforce Utilization Reporting Form (Commodities and Services) ("Form EEO-101-Commodities and Services")
 - 1. The Contractor shall submit, and shall require each of its subcontractors to submit, a Form EEO-101-Commodities and Services to OGS to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Form EEO-101-Commodities and Services must be submitted electronically to OGS at EEO_CentCon@ogs.ny.gov on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January.
 - 2. Separate forms shall be completed by Contractor and any subcontractor.
 - 3. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject

time frame, not limited to work specifically performed under the Contract.

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

IV. Contract Goals

- A. OGS hereby establishes an overall goal of 2% for MWBE participation, 1% for Minority-Owned Business Enterprises (“MBE”) participation and 1% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs). The total Contract goal can be obtained by utilizing any combination of MBE and /or WBE participation for subcontracting and supplies acquired under the Contract.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract goals established in clause IV-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>. The MWBE Regulations are located at 5 NYCRR § 140 – 145. Questions regarding compliance with MWBE participation goals should be directed to the Designated Contacts within the OGS Office of Minority- and Women Owned Businesses Enterprises. Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women’s Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.
- C. Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract (see clause VII below).

V. MWBE Utilization Plan

- A. In accordance with 5 NYCRR § 142.4, Bidders are required to submit a completed Utilization Plan on Form MWBE 100 with their bid.
- B. The Utilization Plan shall list the MWBEs the Bidder intends to use to perform the Contract, a description of the Contract scope of work the Bidder intends the MWBE to perform to meet the goals on the Contract, the estimated or, if known, actual dollar amounts to be paid to an MWBE. By signing the Utilization Plan, the Bidder acknowledges that making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by New York State Certified MWBEs after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OGS.
- C. By entering into the Contract, Bidder/Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. When an MWBE is serving as a broker on the Contract, only 25 percent of all sums paid to a broker shall be deemed to represent the commercially useful function performed by the MWBE

- D. OGS will review the submitted MWBE Utilization Plan and advise the Bidder of OGS acceptance or issue a notice of deficiency within 30 days of receipt.
- E. If a notice of deficiency is issued; Bidder agrees that it shall respond to the notice of deficiency, within seven (7) business days of receipt, by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify the Bidder and direct the Bidder to submit, within five (5) business days of notification by OGS, a request for a partial or total waiver of MWBE participation goals on Form BDC 333. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- F. OGS may disqualify a Bidder's bid/proposal as being non-responsive under the following circumstances:
 - (a) If a Bidder fails to submit an MWBE Utilization Plan;
 - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
 - (c) If a Bidder fails to submit a request for waiver; or
 - (d) If OGS determines that the Bidder has failed to document good faith efforts.
- G. If awarded a Contract, Contractor certifies that it will follow the submitted MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in clause IV-A of this Section.
- H. Bidder/Contractor further agrees that a failure to submit and/or use such completed MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OGS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

VI. Request for Waiver

- A. Prior to submission of a request for a partial or total waiver, Bidder shall contact the Designated Contacts listed on page 1 of this document for guidance.
- B. In accordance with 5 NYCRR § 142.7, a Bidder/Contractor who is able to document good faith efforts to meet the goal requirements, as set forth in clause VII below, may submit a request for a partial or total waiver on Form BDC 333, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its MWBE Utilization Plan. If a request for waiver is submitted with the MWBE Utilization Plan and is not accepted by OGS at that time, the provisions of clauses V(C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) business days of receipt.
- C. Contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If OGS, upon review of the MWBE Utilization Plan and Monthly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE contract goals.

VII. Required Good Faith Efforts

In accordance with 5 NYCRR § 142.8, Contractors must document their good faith efforts toward utilizing MWBEs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

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

VIII. Monthly MWBE Contractor Compliance Report

- A. In accordance with 5 NYCRR § 142.10, Contractor is required to report Monthly MWBE Contractor Compliance to OGS during the term of the Contract for the preceding month’s activity, documenting progress made towards achievement of the Contract MWBE goals. OGS requests that all Contractors use the New York State Contract System (“NYSCS”) to report subcontractor and supplier payments made by Contractor to MWBEs performing work under the Contract. The NYSCS may be accessed at <https://ny.newnycontracts.com/>. This is a New York State-based system that all State agencies and authorities will be implementing to ensure uniform contract compliance reporting throughout New York State.
- B. When a Contractor receives a payment from a State agency, it is the Contractor’s responsibility to pay its subcontractors and suppliers in a timely manner. On or after the first day of each month, the Contractor will receive an email or fax notification (“audit notice”) indicating that a representative of its company needs to log-in to the NYSCS to report the company’s MWBE subcontractor and supplier payments for the preceding month. The Contractor must also report when no payments have been made to a subcontractor or supplier in a particular month with entry of a zero dollar value in the NYSCS. Once subcontractor and supplier payments have been entered into the NYSCS, the subcontractor(s) and supplier(s) will receive an email or fax notification advising them to log into the NYSCS to confirm that they actually received the reported payments from the Contractor. It is the Contractor’s responsibility to educate its MWBE subcontractors and suppliers about the NYSCS and the need to confirm payments made to them in the NYSCS.
- C. To assist in the use of the NYSCS, OGS recommends that all Contractors and MWBE subcontractors and suppliers sign up for the following two webinar trainings offered through the NYSCS: **“Introduction to the System - Vendor training”** and **“Contract Compliance Reporting - Vendor Training”** to become familiar with the NYSCS. To view the training schedule and to

register visit: <https://ny.newnycontracts.com/events.asp>

- D. As soon as possible after the Contract is approved, Contractor should visit <https://ny.newnycontracts.com> and click on “**Account Lookup**” to identify the Contractor’s account by company name. Contact information should be reviewed and updated if necessary by choosing “**Change Info.**” It is important that the staff member who is responsible for reporting payment information for the Contractor be listed as a user in the NYSCS. Users who are not already listed may be added through “**Request New User.**” When identifying the person responsible, please add “**- MWBE Contact**” after his or her last name (i.e., John Doe – MWBE Contact) to ensure that the correct person receives audit notices from the NYSCS. NYSCS Technical Support should be contacted for any technical support questions by clicking on the links for “**Contact Us & Support**” then “**Technical Support**” on the NYSCS website.
- E. If Contractor is unable to report MWBE Contractor Compliance via the NYSCS, Contractor must submit a Monthly MWBE Contractor Compliance Report on Form MWBE 102 to OGS, by the 10th day of each month during the term of the Contract, for the preceding month’s activity to: OGS MWBE Office, 29th floor Corning Tower, Empire State Plaza, Albany, NY 12242. Phone: 518-486-9284; Fax: 518-486-9285.
- F. It is the Contractor’s responsibility to report subcontractor and supplier payments. Failure to respond to payment audits in a timely fashion through the NYSCS, or by paper to OGS, may jeopardize future payments pursuant to the MWBE liquidated damages clause in clause IX below.

IX. Breach of Contract and Liquidated Damages

- A. Where OGS determines that the Contractor is not in compliance with the requirements of this Contract, and the Contractor refuses to comply with such requirements, or if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, the Contractor shall be obligated to pay liquidated damages to OGS.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
 - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
 - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. If OGS determines that Contractor is liable for liquidated damages and such identified sums have not been withheld by OGS, Contractor shall pay such liquidated damages to OGS within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women’s Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

X. Fraud

Any suspicion of fraud, waste, or abuse involving the contracting or certification of MWBEs shall be immediately reported to ESD’s Division of Minority and Women’s Business Development at (855) 373-4692.

ALL FORMS ARE AVAILABLE AT: <https://ogs.ny.gov/MWBE>

4.18 Participation Opportunities For New York State Certified Service-Disabled Veteran Owned Businesses

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOBs”), thereby further integrating such businesses into New York State’s economy. OGS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OGS contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Contractors are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation May be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <https://ogs.ny.gov/Veterans/>

Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veteran’s Business Development at 518-474-2015 or VeteranDevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on the Contract.

ALL FORMS ARE AVAILABLE AT: <https://ogs.ny.gov/Veterans/>

4.19 Diesel Emission Reduction Act

Pursuant to N.Y. Environmental Conservation Law § 19-0323 (the “Law”), it is a requirement that heavy duty diesel vehicles in excess of 8,500 pounds use the best available retrofit technology (“BART”) and ultra-low sulfur diesel fuel (“ULSD”). The requirement of the Law applies to all vehicles owned, operated by or on behalf of, or leased by State Agencies and State or regional public authorities. It also requires that such vehicles owned, operated by or on behalf of, or leased by State Agencies and State or regional public authorities with more than half of its governing body appointed by the Governor utilize BART.

The Law May be applicable to vehicles used by Contractors “on behalf of” State Agencies and public authorities and require certain reports from Contractors. All heavy duty diesel vehicles Must have BART by the deadline provided in the Law. The Law also provides a list of exempted vehicles. Regulations set forth in 6 NYCRR Parts 248 and 249 provide further guidance. The Bidder hereby certifies and warrants that all heavy duty vehicles, as defined in the Law, to be used under this Contract, will comply with the specifications and provisions of the Law, and 6 NYCRR Parts 248 and 249.

4.20 NYS Vendor Responsibility

The Contractor Shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity. The Commissioner of OGS, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given Written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor Must comply with the terms of the suspension order. Contract activity May resume at such time as the Commissioner of OGS issues a Written notice authorizing a resumption of performance under the Contract.

The Contractor agrees that if it is found by the State that Contractor's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner May terminate the Contract.

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

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

4.21 Non-State Agencies Participation in Centralized Contracts

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

Upon request, all eligible non-State agencies Must furnish Contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. A list of categories of eligible entities is available on the OGS web site (<https://online.ogs.ny.gov/purchase/snt/othersuse.asp>). Questions regarding an organization's eligibility to purchase from New York State Contracts May also be directed to Procurement Services Customer Services at 518-474-6717.

4.22 Extension of Use

This Contract May be extended to additional States or governmental jurisdictions upon mutual Written agreement between New York State and the Contractor. Political subdivisions and other authorized entities within each participating state or governmental jurisdiction May also participate in the Contract if such state normally allows participation by such entities. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

4.23 New Accounts

Contractor May ask State Agencies and other Authorized Users to provide information in order to facilitate the opening of a customer account, including documentation of eligibility to use New York State Contracts, agency code, name, address, and contact person. State Agencies Shall not be required to provide credit references.

4.24 Contractor's Ability to Conduct Credit Evaluations

- A. State Agency. The Contractor is precluded from conducting credit evaluations for State Agencies.
- B. Non-State Agency. The Contractor May conduct credit evaluations for Non-State Agencies intending to use the Contract and deny services to Non-State Agencies that do not meet the Contractor's standard commercial risk qualifications. The Contractor Shall notify the Non-State Agency in writing that their use of the Contract has been denied based on an unsatisfactory credit rating.

4.25 Centralized Contract Modifications

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

4.26 Formal Disputes During the provision of Fleet Management Services

Formal disputes between Contractor and an Authorized User arising with respect to the provision of Fleet Management Services to an Authorized User shall be decided in accordance with the Authorized User’s dispute resolution procedures.

4.27 Performance and Bid Bonds

There are no bonds for this Contract. The Commissioner of OGS has determined that no performance, payment or Bid bond, or negotiable irrevocable letter of credit or other form of security for the faithful performance of the Contract is required at any time during the term of the Contract.

4.28 Procurement Instructions for Authorized Users

The following procurement instructions Shall apply to this contract.

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

- Obtaining all necessary prior approvals;
 - A summary of the Contract alternatives considered for the purchase, if any; and
 - The reason(s) supporting the resulting purchase.
- B. An Authorized User will review the Fleet Maintenance Services and associated pricing listed on the OGS website under the resultant Contract Award. OGS reserves the right to add additional procurement instructions on the OGS website, in addition to the general instructions contained in this Contract.
- C. An Authorized User Shall seek to engage the services of the Contractor by submitting a request to the Contractor by means of the contact information provided in Attachment 1 – *Contractor and Pricing Information*, or other acceptable means established between the Contractor and OGS. At a minimum, the request Shall consist of:
1. Contract number;
 2. Contractor name;
 3. Authorized User name and contact information; and
 4. A description of the Fleet Maintenance Services that will be required.
- D. An Authorized User reserves the right to secure through separate procurement methods all or part of the Fleet Maintenance Services from any other contract sources. If State Agencies are acquiring Fleet Maintenance Services, they Must do so using this Contract. State Agencies Must obtain a Written waiver from the Governor’s Office if they are unable to meet this requirement.

SECTION 5: GENERAL PROVISIONS

5.1 Notices

Any notice or communication by any Party to the other required or permitted hereunder shall be in writing and shall be deemed duly served as of (a) the date it is delivered by hand or by fax (with appropriate acknowledgement of receipt), (b) three Business Days after having been mailed by certified mail, postage prepaid, return receipt requested, or (c) the next Business Day after having been sent for delivery on the next Business Day, shipping prepaid, by a nationally recognized overnight courier, in each case to the receiving Party and addressed to the Party’s address identified on the contract landing page at www.ogs.ny.gov or such other address as a Party may designate by written notice to the other Party sent in the manner set forth herein.

5.2 Captions

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

5.3 Severability

In the event that any one or more of the provisions of this Contract shall for any reason be declared unenforceable under the laws or regulations in force, such provision will have no effect on the validity of the remainder of this Contract, which shall then be construed as if such unenforceable provision had never been written or was never contained in this Contract.

5.4 Counterparts

This Contract may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same Contract. Any signature page of any such counterpart may

be attached or appended to any counterpart to complete a fully executed counterpart of this Contract, and shall bind such Party.

5.5 Entire Agreement

This Contract and any referenced appendices and attachments constitute the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings of the Parties, whether written or oral, with respect to the subject matter hereof. No statement, promise, condition, understanding, inducement or representation, oral or written, express or implied, which is not contained herein shall be binding or valid and the Contract may not be changed, modified or altered in any manner except by an instrument in writing executed by the State and the Contractor.

[Signatures appear on next page]

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties have executed this Contract as of the date last written below. The Parties further hereby certify that original copies of this executed and approved signature page will be affixed, upon final approval, to exact copies of this Contract being executed simultaneously herewith. The acknowledgment must be fully and properly executed by an authorized person. By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this agreement, Appendix A (Standard Clauses For New York State Contracts), Appendix B (General Specifications), and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, Contractor affirms that it understands and agrees to comply with the procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

CONTRACTOR

THE PEOPLE OF THE STATE OF NEW YORK

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Company Name: Automotive Rentals Inc. dba ARI

Date: _____

Federal ID: 21-0622527

NYS Vendor ID: 1000008693

Date: _____

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

**PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.**

TABLE OF CONTENTS

	Page
1. Executory Clause	3
2. Non-Assignment Clause	3
3. Comptroller's Approval	3
4. Workers' Compensation Benefits	3
5. Non-Discrimination Requirements	3
6. Wage and Hours Provisions	3-4
7. Non-Collusive Bidding Certification	4
8. International Boycott Prohibition	4
9. Set-Off Rights	4
10. Records	4
11. Identifying Information and Privacy Notification	4
12. Equal Employment Opportunities For Minorities and Women	4-5
13. Conflicting Terms	5
14. Governing Law	5
15. Late Payment	5
16. No Arbitration	5
17. Service of Process	5
18. Prohibition on Purchase of Tropical Hardwoods	5-6
19. MacBride Fair Employment Principles	6
20. Omnibus Procurement Act of 1992	6
21. Reciprocity and Sanctions Provisions	6
22. Compliance with Breach Notification and Data Security Laws	6
23. Compliance with Consultant Disclosure Law	6
24. Procurement Lobbying	7
25. Certification of Registration to Collect Sales and Compensating Use Tax by Certain State Contractors, Affiliates and Subcontractors	7
26. Iran Divestment Act	7
27. Admissibility of Contract	7

STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, 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 § 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the

Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

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

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

a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

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

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

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

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

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

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

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

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

\$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

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

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

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

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

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

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

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

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

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

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

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

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by

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

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

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

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

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

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

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

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) 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, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5))) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

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

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

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

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

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-iran-divestment-act-2012>

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

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

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

27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

APPENDIX B
GENERAL SPECIFICATIONS

TABLE OF CONTENTS

<u>GENERAL</u>	<u>PAGE</u>	<u>TERMS & CONDITIONS (CONT.)</u>	<u>PAGE</u>
1. Ethics Compliance	1	34. Title and Risk of Loss for Products Other than Technology Products	7
2. Definitions	1	35. Product Substitution	8
<u>BID SUBMISSION</u>		36. Rejected Product	8
3. International Bidding	3	37. Installation	8
4. Bid Opening	3	38. Repaired or Replaced Products, Parts, or Components	8
5. Late Bids	3	39. Employees, Subcontractors and Agents	8
6. Confidential/Trade Secret Materials	3	40. Assignment	8
7. Prevailing Wage Rates - Public Works and Building Services Contracts	3	41. Subcontractors and Suppliers	8
8. Taxes	4	42. Suspension of Work	8
9. Expenses Prior to Contract Execution	4	43. Termination	9
10. Product References	4	44. Savings/Force Majeure	9
11. Remanufactured, Recycled, Recyclable, or Recovered Materials	4	45. Contract Invoicing	10
12. Products Manufactured in Public Institutions	4	46. Default - Authorized User	10
13. Pricing	4	47. Prompt Payments	10
14. Site Inspection	5	48. Remedies for Breach	10
15. Purchasing Card	5	49. Assignment of Claim	11
<u>BID EVALUATION</u>		50. Toxic Substances	11
16. Bid Evaluation	5	51. Independent Contractor	11
17. Tie Bids	5	52. Security	11
18. Quantity Changes Prior to Award	5	53. Cooperation with Third Parties	11
19. Timeframe for Offers	5	54. Warranties	11
20. Debriefings	5	55. Legal Compliance	12
21. Contract Publicity	5	56. Indemnification	12
<u>TERMS & CONDITIONS</u>		57. Indemnification Relating to Infringement	13
22. Contract Creation/Execution	6	58. Limitation of Liability	13
23. Contract Term – Extension	6	59. Dispute Resolution Procedures	13
24. Official Use Only/No Personal Use	6	<i>To the extent the scope of the Solicitation or Contract includes the sale, development, maintenance, or use of information technology Products such as software, computer components, systems, or networks for the processing, and distribution, or storage, or storage of data, the following clauses shall govern, as applicable.</i>	
25. Participation in Centralized Contracts	6	60. Software License Grant	14
26. Modification of Contract Terms	6	61. Product Acceptance	15
27. Scope Changes	6	62. Audit of Licensed Product Usage	16
28. Estimated/Specific Quantity Contracts	6	63. No Hardstop or Passive License Monitoring	16
29. Emergency Contracts	6	64. Ownership/Title to Project Deliverables	16
30. Purchase Orders	7	65. Proof of License	17
31. Product Delivery	7	66. Changes to Product or Service Offerings	17
32. Weekend and Holiday Deliveries	7		
33. Shipping/Receipt of Product	7		

GENERAL

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

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

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

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

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

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

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

f. CONTRACT The writings that contain the agreement of the Commissioner and the Contractor setting forth the total legal obligation between the parties as determined by applicable rules of law, and which most typically include the following classifications of public procurements:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

p. LICENSEE An Authorized User who acquires Product from Contractor by issuing a Purchase Order in accordance with the terms and conditions of the Contract; provided that, for purposes of compliance with an individual license, the term "Licensee" shall be deemed to refer separately to the individual Authorized User who took receipt of and who is executing the Product, and who shall be solely responsible for performance and liabilities incurred. In the case of acquisitions by State Agencies, the Licensee shall be the State of New York.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

gg. STATE State of New York.

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

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

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

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

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

BID SUBMISSION

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

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

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

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

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

6. CONFIDENTIAL/TRADE SECRET MATERIALS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. TAXES

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

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

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

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

10. PRODUCT REFERENCES

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

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

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

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

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

12. PRODUCTS MANUFACTURED IN PUBLIC INSTITUTIONS

Bids offering Products that are manufactured or produced in public institutions will be rejected.

13. PRICING

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

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

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

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

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

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

f. Specific price decreases:

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

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

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

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

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

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

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

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

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

BID EVALUATION

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

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

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

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

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

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

TERMS & CONDITIONS

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

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

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

25. PARTICIPATION IN CENTRALIZED CONTRACTS

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

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

c. Voluntary Extension Purchase Orders issued against a Centralized Contract by any Authorized User not provided for in the Contract shall be honored by the Contractor at its discretion and only with the approval of the OGS Commissioner and any other approvals required by law.

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

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

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

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

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

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

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

28. ESTIMATED/SPECIFIC QUANTITY CONTRACTS

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

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

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

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

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

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

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

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

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

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

33. SHIPPING/RECEIPT OF PRODUCT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43. TERMINATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45. **CONTRACT INVOICING**

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

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

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

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

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

46. **DEFAULT – AUTHORIZED USER**

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

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

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

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

47. **PROMPT PAYMENTS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

54. WARRANTIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

57. INDEMNIFICATION RELATING TO INFRINGEMENT

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

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

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

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

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

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

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

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

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

59. DISPUTE RESOLUTION PROCEDURES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

64. OWNERSHIP/TITLE TO PROJECT DELIVERABLES

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

a. Definitions

(i) For purposes of this clause, "Products" means deliverables furnished under this Contract by or through Contractor, including existing and custom Products, including, but not limited to: a) components of the hardware environment, b) printed materials (including but not limited to training manuals, system and user documentation, reports, drawings), whether printed in hard copy or maintained on electronic media c) Third-Party Software, d) modifications, customizations, custom programs, program listings, programming tools, data, modules, components, and e) any properties embodied therein, whether in tangible or intangible form (including but not limited to utilities, interfaces, templates, subroutines, algorithms, formulas, Source Code, object code).

(ii) For purposes of this clause, "Existing Products" means tangible Products and intangible licensed Products that exist prior to the commencement of work under the Contract. Contractor bears the burden of proving that a particular product was in existence prior to the commencement of the project.

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

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

(i) Existing Products:

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

2. Software - Title and ownership to Existing software Products delivered by Contractor under the Contract that is normally commercially distributed on a license basis by the Contractor or other Third-Party Software vendor ("Existing Licensed Product"), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall remain with Contractor or the Third-Party Software vendor. Effective upon acceptance, such Product shall be licensed to Authorized User in accordance with the Contractor or Third-Party Software vendor's standard license

agreement; provided, however, that such standard license, must, at a minimum: (a) grant Authorized User a non-exclusive, perpetual license to use, execute, reproduce, display, perform, adapt (unless Contractor advises Authorized User as part of Contractor's proposal that adaptation will violate existing agreements or statutes and Contractor demonstrates such to the Authorized User's satisfaction) and distribute Existing Licensed Product to the Authorized User up to the license capacity stated in the Purchase Order or work order with all license rights necessary to fully effect the general business purposes stated in the Solicitation or Authorized User's Purchase Order or work order, including the financing assignment rights set forth in paragraph (c) below; and (b) recognize the State of New York as the Licensee where the Authorized User is a State Agency, department, board, commission, office or institution. Where these rights are not otherwise covered by the Third-Party Software vendor's standard license agreement, the Contractor shall be responsible for obtaining these rights at its sole cost and expense. The Authorized User shall reproduce all copyright notices and any other legend of ownership on any copies authorized under this clause.

(ii) Custom Products: Effective upon creation of Custom Products, Contractor hereby conveys, assigns and transfers to Authorized User the sole and exclusive rights, title and interest in Custom Products, whether preliminary, final or otherwise, including all trademark and copyrights. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction and marketing by or through Contractor, its agents, employees, or Subcontractors. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under a Purchase Order, project definition or work order in the course of Contractor's business. Authorized User may, by providing written notice thereof to the Contractor, elect in the alternative to take a non-exclusive perpetual license to Custom Products in lieu of Authorized User taking exclusive ownership and title to such Products. In such case, Licensee on behalf of all Authorized Users shall be granted a non-exclusive perpetual license to use, execute, reproduce, display, perform, adapt and distribute Custom Product as necessary to fully effect the general business purposes as stated in paragraph (b)(i)(2), above.

c. Transfers or Assignments to a Third-Party Financing Agent It is understood and agreed by the parties that a condition precedent to the consummation of the purchases under the Contract may be the obtaining of acceptable third-party financing by the Authorized User. The Authorized User shall make the sole determination of the acceptability of any financing proposal. The Authorized User will make all reasonable efforts to obtain such financing, but makes no representation that such financing has been obtained as of the date of Bid receipt. Where financing is used, Authorized User may assign or transfer its rights in Licensed Products (existing or custom) to a third-party financing entity or trustee ("Trustee") as collateral where required by the terms of the financing agreement. Trustee's sole rights with respect to transferability or use of Licensed Products shall be to exclusively sublicense to Authorized User all of its Licensee's rights under the terms and conditions of the License Agreement; provided, further, however, in the event of any termination or expiration of such sublicense by reason of payment in full, all of Trustee's rights in such Licensed Product shall terminate immediately and Authorized User's prior rights to such Existing Licensed Product shall be revived.

d. Sale or License of Custom Products Involving Tax-Exempt Financing (i.e., Certificates of Participation - COPS) The Authorized User's sale or other transfer of Custom Products which were acquired by the Authorized User using third-party, tax-exempt financing may not

occur until such Custom Products are, or become, useable. In the event that the Contractor wishes to obtain ownership rights to Custom Products, the sale or other transfer shall be at fair market value determined at the time of such sale or other transfer, and must be pursuant to a separate written agreement in a form acceptable to the Authorized User which complies with the terms of this clause.

e. Contractor's Obligation with Regard to Third-Party Software

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

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

66. CHANGES TO PRODUCT OR SERVICE OFFERINGS

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

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

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

b. Product or Service Re-Bundling In the event that Contractor is the Product manufacturer and publicly announces to all U.S. customers ("date of notice") that a Product or maintenance or technical support offering is being re-bundled in a different manner from the structure or licensing model of the prior U.S. commercial offering, Contractor shall

be required to: (i) notify the Commissioner and each Licensee in writing of the intended change; (ii) continue to provide Product or withdrawn support upon the same terms and conditions as previously offered on the then-current NYS Contract for the greater of: (a) the best terms offered by Contractor to any other similarly situated, supported customer, or (b) not less than 12 months from the date of notice; and (iii) shall submit the proposed rebundling change to the Commissioner for approval prior to its becoming effective for the remainder of the Contract term. The provisions of this section do not apply if the Contractor is not the Product manufacturer.

INDEX

	<u>Clause</u>		<u>Clause</u>
	<u>No.</u>		<u>No.</u>
<u>A</u>		<u>P</u>	
Assignment	40	Participation in Centralized Contracts	25
Assignment of Claim	49	Prevailing Wage Rates - Public Works and Building Services Contracts	7
Audit of Licensed Product Usage	62	Pricing	13
		Product Acceptance	61
<u>B</u>		Product Delivery	31
Bid Evaluation	16	Product References	10
Bid Opening	4	Product Substitution	35
		Products Manufactured in Public Institutions	12
<u>C</u>		Prompt Payments	47
Changes to Product or Service Offerings	66	Proof of License	65
Confidential/Trade Secret Materials	6	Purchase Orders	30
Contract Invoicing	45	Purchasing Card	15
Contract Creation/Execution	22		
Contract Publicity	21	<u>Q</u>	
Contract Term - Extension	23	Quantity Changes Prior to Award	18
Cooperation with Third Parties	53		
		<u>R</u>	
<u>D</u>		Rejected Product	36
Debriefings	20	Remanufactured, Recycled, Recyclable, or Recovered Materials	11
Default - Authorized User	46	Remedies for Breach	48
Definitions	2	Repaired or Replaced Products, Parts, or Components	38
Dispute Resolution Procedures	59		
		<u>S</u>	
<u>E</u>		Savings/Force Majeure	44
Emergency Contracts	29	Scope Changes	27
Employees, Subcontractors and Agents	39	Security	52
Estimated/Specific Quantity Contracts	28	Site Inspection	14
Ethics Compliance	1	Shipping/Receipt of Product	33
Expenses Prior to Contract Execution	9	Software License Grant	60
		Subcontractors and Suppliers	41
<u>I</u>		Suspension of Work	42
Indemnification	56		
Indemnification Relating to Infringement	57	<u>T</u>	
Independent Contractor	51	Taxes	8
Installation	37	Termination	43
International Bidding	3	Tie Bids	17
		Timeframe for Offers	19
<u>L</u>		Title and Risk of Loss for Products Other than Technology Products	34
Late Bids	5	Toxic Substances	50
Legal Compliance	55		
Limitation of Liability	58	<u>W</u>	
		Warranties	54
<u>M</u>		Weekend and Holiday Deliveries	32
Modification of Contract Terms	26		
<u>N</u>			
No Hardstop or Passive License Monitoring	63		
<u>O</u>			
Official Use Only/No Personal Use	24		
Ownership/Title to Project Deliverables	64		

APPENDIX C

CONTRACT MODIFICATION PROCEDURE

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

- (1) **TYPES OF CONTRACT MODIFICATIONS:** In order to expedite processing of a contract modification, where proposed changes involve more than one category below, each change should be submitted to OGS as a separate request.
 - a) **UPDATES:** “Updates” are changes that do not require a change to the established Centralized Contract terms and conditions. Updates may include: Centralized Contract changes and updates made in accordance with the previously approved pricing formula (e.g. discount from list price); adding new products or services within the established, previously approved pricing structure; lowering pricing of products or services already on Contract, deleting products or services available through the Centralized Contract, adding product or service that do not fall under the previously established price structure or discounts under the Contract, re-bundled products, and other updates not listed above that are deemed to be in the best interest of the State and do not result in a change to the established Centralized Contract terms and conditions. Updates must be submitted to OGS for review, and must be accompanied by a justification of reasonableness of price if the change results in a change in pricing methodology. OGS will notify Contractor in writing if approved.
 - b) **AMENDMENTS:** “Amendments” are changes that are not specifically covered by the terms and conditions of the Centralized Contract but inclusion is found to be in the best interest of the State. Requests for product changes and other requests that would require changes to the terms and conditions of the Centralized Contract would fall into the Amendments category. Contractor must provide a written justification of reasonableness of the price levels offered in the applicable Program Agreement and a statement explaining why it is in the best interest of the State to approve the requested amendment. Amendments typically require negotiation between OGS and the Contractor. OGS will work directly with the Contractor to obtain the required documentation for each requested amendment and notify Contractor in writing if approved.
- (2) **CONTRACTOR’S SUBMISSION OF CONTRACT MODIFICATIONS:** In connection with any Contract modification, OGS reserves the right to:
 - request additional information
 - reject Contract modifications
 - remove Products from Contract modification requests
 - request additional discounts for new or existing Products
- (3) **PRICE LEVEL JUSTIFICATION – FORMAT:** Contractor is required to submit the Product and price level information for the update in an Excel spreadsheet format electronically via e-mail (and in hard copy if requested by OGS) to the OGS Contract Administrator. The list must be dated. The Product and price level information should include and identify (e.g., by use of separate worksheets or by using italics, bold and/or color fonts):
 - Price level increases
 - Price level decreases
 - Products being added
- (4) **SUPPORTING DOCUMENTATION:** Each modification request must include the current contract pricing discount relevant to the Products included in the update.
- (5) **SUBMITTAL OF MODIFICATION REQUESTS:** A Contract modification request must be accompanied by a completed Contract Modification Form. Contractor should briefly describe the nature and purpose of the update (e.g., update requested in order to reflect a recently approved GSA schedule, to restructure the price level to its customers generally, and/or for new Products which fall into a new group or category that did not exist at the time of approval of the Contract by OGS). The Contract Modification Form must contain original signatures by an individual authorized to sign on behalf of Contractor and must be notarized.

INSTRUCTIONS:

1. This form is to be used for all Contract modifications. The form is to be completed in full, signed and submitted to OGS for final approval. Any submission that is not complete and signed will be rejected.
2. Contractor is required to submit the Product and price level information for the update electronically via e-mail in an Excel spreadsheet (and in hardcopy if requested by OGS) to the OGS Contract Administrator for this Contract.
3. Price level increase requests must be submitted in accordance with the Centralized Contract.
4. If more than one type of modification is being requested, each type should be submitted as a separate request.

The Contract modification request must be accompanied by the relevant current contract pricing discount information.

CONTRACT MODIFICATION FORM	
OGS CONTRACT NO.: _____	DATE OF SUBMISSION: _____
CONTRACT DESCRIPTION: _____	
CONTRACT PERIOD: From: _____ To: _____	CONTRACTOR CONTACT: NAME: _____ PHONE NO: _____ E-MAIL: _____
NOTE: Submission of this FORM does not constitute acceptance by the State of New York until approved by the appropriate New York State representative(s).	

COMPLETE STATEMENTS 1 THROUGH 5 BELOW:

<p>1. This request is for an: <input type="checkbox"/> Update <input type="checkbox"/> Amendment See Contract Modification Procedure for an explanation of these terms.</p>	<p>2. The intent of this submittal is to request: <input type="checkbox"/> Addition of new products or services <input type="checkbox"/> Deletion of products or services <input type="checkbox"/> Change in pricing level <input type="checkbox"/> Other Update <input type="checkbox"/> Other Amendment</p>
<p>3. All discounts are: <input type="checkbox"/> GSA <input type="checkbox"/> Most Favored Nation* <input type="checkbox"/> Other (provide explanation) _____ *Prices offered are the lowest offered to any similarly situated entity.</p>	<p>4. Attached documentation includes: <input type="checkbox"/> Current approved GSA (labeled "For information only") <input type="checkbox"/> Current relevant Price List (labeled "For information only") <input type="checkbox"/> Revised NYS Net Price List(s) in same format required for this Contract <input type="checkbox"/> Current copy of the "National Consumer Price Index for All Urban Consumers (CPI-U) Northeast region" (for price increases only)</p>
THIS BOX MUST BE COMPLETE	
<p>5. Describe the nature and purpose of the modification. If applicable, please explain how pricing has been structured to Authorized Users, and/or identify and describe new Products which fall into a new group or category that did not exist at the time of approval of the Contract by OGS.</p>	

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

Signature of Authorized Contractor Representative

CORPORATE ACKNOWLEDGMENT

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.

Notary Public

OGS APPROVAL:

Approved _____ Approved as amended _____ Disapproved _____

Name: _____

Title: _____ Date _____

Attachment 1: Contractor and Pricing Information

Note: For the most recently updated version of this Attachment, please see the “Contractor Info” page located on the OGS website at: <http://www.ogs.ny.gov/purchase/spg/awards/7200223168can.HTM>

Contract #	Contractor & Address	Centralized Contract Contact	Federal ID NYS Vendor ID
PS69147	Automotive Rentals Inc. 4001 Leadenhall Road Mount Laurel, NJ 08054	Jeff Ruspantine 4001 Leadenhall Road Mount Laurel, NJ 08054 (856) 914-7580 jruspantine@arifleet.com	Federal ID 21-0622527 NYS Vendor ID 1000008693
<p>Questions for NYS contract users: 1-866-274-2065 Emergency Services (24/7/365): 1-800-CAR-CARE (1-800-227-2273) Email: ImplementNY@arifleet.com</p>			

ADDITIONAL CONTACTS (Expedited Ordering)

Name: ARI Peak Team Title: Small team environment of three ARI Client Administrators Phone: (866) 274-2065 Fax: (856) 533-9084 Email: ARIPeak@arifleet.com	Name: Frank Zerns Title: Account Executive Phone: (856) 727-6986 Email: fzerns@arifleet.com
--	--

Payment/Ordering Information

Does Contractor offer Prompt Payment Discounts?	No. ARI currently offers the State a pricing structure that reflects 15 day pricing while still providing 30 day payment terms.
Does Contractor offer Electronic Access Ordering (EDI)?	Yes

Contract Pricing

Fleet Maintenance Service (Monthly Enrollment Plans)*	Administrative Fee
Monthly Enrollment Plan (Light Duty Vehicles) [Vehicles with a GVWR less than or equal to 16,000 lbs. (i.e., Class 1 through Class 4 Vehicles, as designated by the U.S. Department of Transportation); See Contract Section 3.2 <i>Monthly Enrollment Plans</i>]	\$5.35 (per vehicle, per month)
Monthly Enrollment Plan (Medium to Heavy Duty Vehicles) [Vehicles with a GVWR equal to or greater than 16,001 lbs. (i.e., Class 5 through Class 8 Vehicles, as designated by the U.S. Department of Transportation); See Contract Section 3.2 <i>Monthly Enrollment Plans</i>]	\$22.00 (per vehicle, per month)

Fleet Maintenance Service (Per Occurrence)	Administrative Fee
Maintenance and Repair Service (Light Duty Vehicles) [Vehicles with a GVWR less than or equal to 16,000 lbs. (i.e., Class 1 through Class 4 Vehicles, as designated by the U.S. Department of Transportation); See Contract Section 3.3 <i>Per Occurrence Plans</i> , Paragraph A <i>Maintenance and Repair Programs</i>]	\$20.70 (per vehicle, per incident)
Maintenance and Repair Service (Medium to Heavy Duty Vehicles) [Vehicles with a GVWR equal to or greater than 16,001 lbs. (i.e., Class 5 through Class 8 Vehicles, as designated by the U.S. Department of Transportation); See Contract Section 3.3 <i>Per Occurrence Plans</i> , Paragraph A <i>Maintenance and Repair Programs</i>]	\$28.60 (per vehicle, per incident)
Accident Management (All-In) [See Contract Section 3.3 <i>Per Occurrence Plans</i> , Paragraph B <i>Accident Management</i> , Subparagraph 1 <i>All-In</i>]	\$225.00 (per vehicle, per incident)
Accident Management (Documentation Only) [See Contract Section 3.3 <i>Per Occurrence Plans</i> , Paragraph B <i>Accident Management</i> , Subparagraph 2 <i>Documentation Only</i>]	\$100.00 (per vehicle, per incident)
Accident Management (Repair Estimates Only) [See Contract Section 3.3 <i>Per Occurrence Plans</i> , Paragraph B <i>Accident Management</i> , Subparagraph 3 <i>Repair Estimates Only</i>]	\$125.00 (per vehicle, per incident)
Accident Management (Appraisal Only) [See Contract Section 3.3 <i>Per Occurrence Plans</i> , Paragraph B <i>Accident Management</i> , Subparagraph 4 <i>Appraisal Only</i>]	\$125.00 (per vehicle, per incident)
Accident Management (Subrogation Only) [See Contract Section 3.3 <i>Per Occurrence Plans</i> , Paragraph B <i>Accident Management</i> , Subparagraph 5 <i>Subrogation Only</i>]	\$105.00 (per vehicle, per incident)
Accident Management (Subrogation Only) [See Contract Section 3.3 <i>Per Occurrence Plans</i> , Paragraph B <i>Accident Management</i> , Subparagraph 5 <i>Subrogation Only</i>]	20% of the dollar amount recovered
Roadside Assistance (Light Duty Vehicles) [Vehicles with a GVWR less than or equal to 16,000 lbs. (i.e., Class 1 through Class 4 Vehicles, as designated by the U.S. Department of Transportation); See Contract Section 3.3 <i>Per Occurrence Plans</i> , Paragraph C <i>Roadside Assistance</i>]	\$35.00 (per vehicle, per incident)
Roadside Assistance (Medium to Heavy Duty Vehicles) [Vehicles with a GVWR equal to or greater than 16,001 lbs. (i.e., Class 5 through Class 8 Vehicles, as designated by the U.S. Department of Transportation); See Contract Section 3.3 <i>Per Occurrence Plans</i> , Paragraph C <i>Roadside Assistance</i>]	\$40.00 (per vehicle, per incident)
Towing (Light Duty Vehicles) [Vehicles with a GVWR less than or equal to 16,000 lbs. (i.e., Class 1 through Class 4 Vehicles, as designated by the U.S. Department of Transportation); See Contract Section 3.3 <i>Per Occurrence Plan</i> , Paragraph D <i>Towing</i>]	\$35.00 (per vehicle, per incident)
Towing (Medium to Heavy Duty Vehicles) [Vehicles with a GVWR equal to or greater than 16,001 lbs. (i.e., Class 5 through Class 8 Vehicles, as designated by the U.S. Department of Transportation); See Contract Section 3.3 <i>Per Occurrence Plans</i> , Paragraph D <i>Towing</i>]	\$40.00 (per vehicle, per incident)

Fleet Maintenance Service (Other Products/Services)	Pricing
<p>Automotive Repair Shop Pricing and Discounts [For additional information, see Contract Section 3.1 <i>Automotive Repair Shops</i>, Paragraph F4, and 3.11 <i>Additional Fleet Maintenance Services</i>, Paragraph A]. The Contractor has agreements with National Account Vendors for discounts for Contract Users. Current National Account Vendors located in New York State include AAMCO, Bridgestone/Firestone, Continental General, Gerber Collision, Goodyear, Jiffy Lube, Maaco, Meineke, Michelin, Midas, Monroe, Pep Boys, Sears, and Valvoline.</p> <p>At the written request of Procurement Services or an Authorized User, the Contractor shall provide, for no additional fee, a list of pricing that National Account Vendors would ordinarily charge the public at large (e.g., “posted prices” to any customer walking in off the street), and pricing they charge for the same products and services if provided as part of the State Contract.</p>	Discounts with National Account Vendors
<p>Integration of Other New York State Contract Pricing [For additional information, see Contract Section 3.11 <i>Additional Fleet Maintenance Services</i>, Paragraph B]. The Contractor shall have the ability for Authorized Users to receive contract pricing and benefits for Vehicle parts and services from other contracts held by OGS or Authorized Users, without the need for separate transactions, Purchase Orders, invoices, etc. The Contractor Must honor the specific pricing from other NYS contracts and list the pricing/discount on the Fleet Maintenance Services Contract invoices. This service Shall be provided for no additional fee. This applies to the following contracts for Vehicle parts and services:</p> <ol style="list-style-type: none"> 1. OGS Group 30600, Award PGB-23149, Tires, Tubes, and Services (Statewide) (The Goodyear Tire and Rubber Company), https://online.ogs.ny.gov/purchase/spg/awards/3060023149CAN.HTM; 2. OGS Group 30310, Award 23123, Vehicle and Equipment Parts and Related Product (Statewide), https://online.ogs.ny.gov/purchase/spg/awards/3031023123CAN.HTM; 3. Towing/roadside assistance on limited access highways and bridges (e.g., NYS Thruway, and bridges and tunnels operated by the Metropolitan Transportation Authority); 4. OGS 30601, Award PGB-23193, Tires, Retreads (Statewide) (The Goodyear Tire and Rubber Company) (upon execution), https://online.ogs.ny.gov/purchase/spg/awards/3060023193CAN.HTM; 	\$0.00
<p>Fuel Card Services Integration (OGS Contract) [For additional information, see Contract Section 3.11 <i>Additional Fleet Maintenance Services</i>, Paragraph C <i>Fuel Card Services Integration</i>, Subparagraph 1 <i>OGS Contract</i>] Integration with the OGS Statewide fuel card services program (Group 79008, Award 23062, Fuel Card Services (WEX), https://online.ogs.ny.gov/purchase/snt/awardnotes/7900823062can.htm). The cost of this service is an additional dollar amount added to the standard Monthly Enrollment Plans fee.</p>	\$0.50 (per vehicle, per month)
<p>Fuel Card Services Integration (Authorized User Contracts) [For additional information, see Contract Section 3.11 <i>Additional Fleet Maintenance Services</i>, Paragraph C <i>Fuel Card Services Integration</i>, Subparagraph 2 <i>Authorized User Contracts</i>]</p>	Fee to be negotiated with Authorized User
<p>AssetWorks System Integration The ARI insights system is currently being integrated to allow for a monthly file to upload into the AssetWorks FTP system, and this service will be available to Contract users when completed.</p>	\$0.00

<p>Telematics System (ARI/Geotab Solution) [For additional information,see Contract Section 3.11 <i>Additional Fleet Maintenance Services</i>, Paragraph D <i>Telematics</i>]. This all-in-one package includes data integration into ARI insights for alerts and reporting, consolidated contracts and billing, the expertise of the Technology Advisory Team, and first-level support and installation of Geotab telematics devices. See http://www.geotab.com/ for information about Geotab. The Contractor Shall offer the Vehicle tracking system devices and related services at a price no greater than the price set by the manufacturer, and at the time of purchase proof of manufacturer price shall be provided to the Authorized User. <i>*Note: Average installation typically ranges from \$35 to \$85 per vehicle. A consolidation of vehicles to a designated installation location typically results in lower installation and travel costs per vehicle. Authorized User is required to enter into an End User Agreement with Geotab prior to initiation of services (https://my.geotab.com/eula.html) OGS has not reviewed or approved this End User Agreement with Geotab. An Authorized User seeking to acquire this offering must review the End User Agreement terms and conditions. An Authorized User is further responsible for having its counsel review and approve the End User Agreement prior to ordering. If any terms and/or conditions of the End User Agreement are not acceptable to Authorized User's counsel, it is the responsibility of such counsel to negotiate any needed amendments.</i></p>	<p>Vehicle tracking system devices and related services at a price no greater than the price set by the manufacturer</p> <p>\$25 per vehicle, per month for service</p> <p>Additional cost* for hardware installation</p>
<p>Telematics/GPS Data Capture [For additional information,see Contract Section 3.11 <i>Additional Fleet Maintenance Services</i>, Paragraph E <i>Telematics/GPS Data Capture</i>] The Contractor, at the written request of an Authorized User, May provide integration of telematics/GPS data for individual Authorized User accounts. Integration May be provided for individual Authorized User contracts. Authorized User telematics/GPS data May be provided to the Contractor via either the Authorized User or directly from the telematics/GPS provider. Required services to be provided in relation to such integration, and pricing, Shall be mutually agreed upon between the Authorized User and the Contractor before implementation of the integration.</p>	<p>Fee to be negotiated with Authorized User</p>
<p>Internal Shop Data Storage [For additional information,see Contract Section 3.11 <i>Additional Fleet Maintenance Services</i>, Paragraph F <i>Internal Shop Data Storage</i>] At the written request of an Authorized User, the Contractor shall designate the Authorized User-owned maintenance and repair facility(ies) as an Automotive Repair Shop for use with the Contract, so that Authorized Users may utilize data storage services for these facilities in conjunction with the Contract. Contractor shall provide Authorized Users who utilize this service with data capture or record keeping of Vehicle maintenance and repairs provided at these Authorized User-owned maintenance and repair facilities, with data entered by the Authorized User. There may be a monthly rate per Vehicle enrolled for this service, or the Contractor may allow an Authorized User to enter repair/service history and other Vehicle data for no additional fee for this data tracking. Participation in this program by Authorized Users shall be voluntary, and these Vehicles shall not participate in the Preventive Maintenance program offered by the Contractor. This service shall be identified on the Authorized User's monthly invoice as "Data Storage Service." Participating Authorized Users with Authorized User-owned maintenance and repair facilities will manage their own parts inventory, mechanic productivity, overhead, etc.</p>	<p>Fee to be negotiated with Authorized User</p>
<p>Internal Shop Management System (ARI Garage Management System) [For additional information,see Contract Section 3.11 <i>Additional Fleet Maintenance Services</i>, Paragraph G <i>Internal Shop Management System</i>]. All-inclusive management solution for fleets that utilize outside vendors and operate internal maintenance facilities. ARI's Garage Management System (GMS) helps manage technicians, vehicle preventive maintenance (PM) schedules, and unscheduled repairs and parts inventories – while simultaneously consolidating all vendor-in/vendor-out data.</p>	<p>\$500 (per garage, per month enrolled. \$3.00 per vehicle per month. Installation (one-time, per garage fee of \$1,650.)</p>

<p>Driver Training Services [For additional information, see Contract Section 3.11 <i>Additional Fleet Maintenance Services</i>, Paragraph H <i>Driver Training Services</i>]</p>	<p>\$6 (per module; see “Driver Training Services” section below)</p>
<p>Driver Safety Programs [For additional information, see Contract Section 3.11 <i>Additional Fleet Maintenance Services</i>, Paragraph I <i>Driver Safety Programs</i> ARI offers a full menu of safety services designed to help the State improve driver performance, lower accident rates, and streamline administrative efforts and costs. These services are available separately, or they can be combined to offer a more comprehensive program. Safety services include:</p> <ul style="list-style-type: none"> • Motor Vehicle Records (MVRs) <ul style="list-style-type: none"> ○ With ARI’s Motor Vehicle Record (MVR) assessments, you can verify each driver’s licensure and driving history upon hire, and use follow-up MVR checks to identify high-risk drivers within your fleet. Violation points are normalized across states in ARI’s systems, providing a simplified and efficient view for multi-state fleets. With prompt access to results in ARI’s online portal, advanced alerts, and rich reporting—as well as seamless integration with telematics data—you’ll be able to improve driver safety, reduce exposure, and favorably impact insurance premiums. ○ Annual Motor Vehicle Record (MVR) checks leave potential driver infractions or convictions undetected for the majority of the year, exposing your company to considerable risk. With our MVR Monitoring (Driver Monitoring), you’ll reduce your reliance on driver self-reporting and eliminate visibility gaps that occur in between annual MVR checks. With monitoring available in all 50 states for fleet and car allowance drivers, real-time alerts, and the ability to automatically assign targeted online safety training modules, you’ll be able to quickly spot high-risk driving behavior and mitigate its adverse impact on your business. • Skills Assessment <ul style="list-style-type: none"> ○ You can use our driver skills assessment to identify which drivers need additional coaching. Using this program, you’ll be able to simulate real-world driving situations, assess how drivers handle each scenario, identify skills in need of improvement, and prescribe targeted training based on each driver’s specific needs and deficiencies. • Online Training Catalog Policy Testing <ul style="list-style-type: none"> ○ With our online safety training modules, you can use engaging, interactive exercises to help drivers understand how to address a variety of situations, test their comprehension, and certify those that pass, helping you feel confident in the capabilities of every individual you put out on the road. • Driver Risk Assessment <ul style="list-style-type: none"> ○ You can use our driver skills assessment to identify which drivers need additional coaching. Using this program, you’ll be able to simulate real-world driving situations, assess how drivers handle each scenario, identify skills in need of improvement, and prescribe targeted training based on each driver’s specific needs and deficiencies. • Custom Policy Module <ul style="list-style-type: none"> ○ Our training solution allows your organization to eliminate a portion of your fleet risk by ensuring compliance with your vehicle policy. ARI confirms drivers actually understand the fleet policy by assigning the driver a customized online version of 	<p>\$7* MVR Checks (per occurrence) \$3 Driver Monitoring (per driver, per month) \$15 Skills Assessment (per driver, per occurrence) \$6 Online Training Catalog Modules (per occurrence) \$15 Driver Skills Assessment (per driver, per occurrence) \$6 Custom Policy Module (per assignment) plus \$2,000 (one-time set up fee)</p>

<p>the policy, then test the driver to certify comprehension. Managers can view real time status of their drivers’ scores and progress. In addition, drivers electronically acknowledge that they read the policy and can print a certificate of completion. Lastly, the vehicle policy can begin with a video message or letter from senior management demonstrating the importance of the organization’s vehicle safety policy.</p> <p>*Note: Additional vendor administration and NYS pass-through fees apply to MVRs.</p>	
---	--

Driver Training Services

The following online driver training modules are offered under the contract:

Aggressive Driving	Intersections and Right-of-Way
Alcohol, Drugs and Driving	Limited Visibility Conditions
Avoiding Animals and Debris	Parking Lot Safety
Avoiding Auto Theft	Proactive Driving
Avoiding Crashes	Sharing the Road with Others
Cell Phone & Texting Distractions	Speed Management
Changing Lanes	Towing and Trailers
Driving and Adverse Weather	Understanding Distracted Driving
Drowsy Driving Causes & Countermeasures	Understanding Drowsy Driving
Eco Driving Techniques	Understanding Eco Driving
Emotions and Driving	Vehicle Backing Safety
Highway Driving	Vehicle Maintenance
Safety Devices	Cargo Van Safety
Low Speed Vehicle Safety	Passenger/Shuttle Van Safety

Once a training module is completed by a driver, the driver will receive a certificate of completion.

Attachment 2: Insurance Requirements

Contractors shall be required to procure, at their sole cost and expense, and shall maintain in force at all times during the term of the Contract, policies of insurance as required by this Attachment. All insurance required by this Attachment shall be written by companies that have an A.M. Best Company rating of “A-,” Class “VII” or better. In addition, companies writing insurance intended to comply with the requirements of this Attachment should be licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York. OGS may, in its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when certificates and/or other policy documents are accompanied by a completed Excess Lines Association of New York (ELANY) affidavit or other documents demonstrating the company’s strong financial rating. If, during the term of a policy, the carrier’s A.M. Best rating falls below “A-,” Class “VII,” the insurance must be replaced, on or before the renewal date of the policy, with insurance that meets the requirements above.

The Contractor shall deliver to OGS evidence of the insurance required by this Contract in a form satisfactory to OGS. Policies must be written in accordance with the requirements of the paragraphs below, as applicable. Acceptance and/or approval by OGS does not, and shall not be construed to, relieve Contractors of any obligations, responsibilities or liabilities under the Contract.

The Contractor shall not take any action or omit to take any action that would suspend or invalidate any of the required coverages during the term of the Contract.

A. General Conditions Applicable to Insurance. All policies of insurance required by the Contract shall comply with the following requirements:

1. **Coverage Types and Policy Limits.** The types of coverage and policy limits required from Contractors are specified in Paragraph B *Insurance Requirements* below.
2. **Policy Forms.** Except as otherwise specifically provided herein, or agreed to in writing by OGS, all policies of insurance required by this Attachment shall be written on an occurrence basis.
3. **Certificates of Insurance/Notices.** Contractor shall provide OGS with a Certificate or Certificates of Insurance, in a form satisfactory to OGS as detailed below, and pursuant to the timelines set forth in Section 13 below. Certificates should reference the Contract number and shall name The New York State Office of General Services, Bureau of Risk and Insurance Management (BRIM), 32nd Floor, Corning Tower, Empire State Plaza, Albany, New York 12242 as the certificate holder.

Certificates of Insurance shall:

- Be in the form approved by OGS and in accordance with the New York State Insurance Law (e.g., an ACORD certificate);
- Disclose any deductible, self-insured retention, aggregate limit or exclusion to the policy that materially changes the coverage required by this Contract;
- Be signed by an authorized representative of the insurance carrier; and
- Contain the following concepts in the Description of Operations / Locations / Vehicles section of the Certificate or on a submitted endorsement: Additional insured protection afforded is on a primary and non-contributory basis. A waiver of subrogation is granted in favor of the additional insureds.

Only original documents (certificates of insurance and any endorsements and other attachments) or electronic versions of the same that can be directly traced back to the insurer, agent or broker via e-mail distribution or similar means will be accepted.

OGS generally requires Contractors to submit only certificates of insurance and additional insured endorsements, although OGS reserves the right to request other proof of insurance. Contractors should refrain from submitting entire insurance policies, unless specifically requested by OGS. If an entire insurance policy is submitted but not requested, OGS shall not be obligated to review and shall not be chargeable with knowledge of its contents. In addition, submission of an entire insurance policy not requested by OGS does not constitute proof of compliance with the insurance requirements and does not discharge Contractors from submitting the requested insurance documentation.

4. **Primary Coverage.** All liability insurance policies shall provide that the required coverage shall be primary and non-contributory to other insurance available to the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this Solicitation and their officers, agents, and employees. Any other insurance maintained by the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use this Contract and their officers, agents, and employees shall be excess of and shall not contribute with the Contractor's insurance.
5. **Breach for Lack of Proof of Coverage.** The failure to comply with the requirements of this Attachment at any time during the term of this Contract shall be considered a breach of the terms of this Contract and shall allow the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use this Contract and their officers, agents, and employees to avail themselves of all remedies available under this Contract, at law or in equity.
6. **Self-Insured Retention/Deductibles.** Certificates of Insurance must indicate the applicable deductibles/self-insured retentions for each listed policy. Deductibles or self-insured retentions above \$100,000.00 are subject to approval from OGS. Such approval shall not be unreasonably withheld, conditioned or delayed. Contractors shall be solely responsible for all claim expenses and loss payments within the deductibles or self-insured retentions. If the Contractor is providing the required insurance through self-insurance, evidence of the financial capacity to support the self-insurance program along with a description of that program, including, but not limited to, information regarding the use of a third-party administrator shall be provided upon request.
7. **Subcontractors.** Prior to the commencement of any work by a Subcontractor, the Contractor shall require such Subcontractor to procure policies of insurance as required by this Attachment and maintain the same in force during the term of any work performed by that Subcontractor. An Additional Insured Endorsement CG 20 38 04 13 (or the equivalent) evidencing such coverage shall be provided to the Contractor prior to the commencement of any work by a subcontractor and pursuant to the timelines set forth in Section A.13. below, as applicable, and shall be provided to OGS upon request. For subcontractors that are self-insured, the subcontractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the subcontractor would have been required to pursuant to this section had the subcontractor obtained such insurance policies.
8. **Waiver of Subrogation.** For all liability policies and the workers' compensation insurance required below, the Bidder/Contractor shall cause to be included in its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if the Contractor waives or has waived before the casualty, the right of recovery against The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use this Contract and their officers, agents, and employees or (ii) any other form of permission for the release of The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use this Contract and their officers, agents, and employees. A Waiver of Subrogation

Endorsement shall be provided upon request. A blanket Waiver of Subrogation Endorsement evidencing such coverage is also acceptable.

9. ***Additional Insured.*** The Contractor shall cause to be included in each of the liability policies required below coverage for on-going and completed operations naming as additional insureds (via ISO coverage forms CG 20 10 04 13 or CG 20 38 04 13 and CG 20 37 04 13 and form CA 20 48 10 13, or a form or forms that provide equivalent coverage): The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use this Contract and their officers, agents, and employees. An Additional Insured Endorsement evidencing such coverage shall be provided to OGS pursuant to the timelines set forth in Section 13 below. A blanket Additional Insured Endorsement evidencing such coverage is also acceptable. For Contractors who are self-insured, the Contractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the Contractor would have been required to pursuant to this Attachment had the Contractor obtained such insurance policies.
10. ***Excess/Umbrella Liability Policies.*** Required insurance coverage limits may be provided through a combination of primary and excess/umbrella liability policies. If coverage limits are provided through excess/umbrella liability policies, then a Schedule of underlying insurance listing policy information for all underlying insurance policies (insurer, policy number, policy term, coverage and limits of insurance), including proof that the excess/umbrella insurance follows form must be provided upon request.
11. ***Notice of Cancellation or Non-Renewal.*** Policies shall be written so as to include the requirements for notice of cancellation or non-renewal in accordance with the New York State Insurance Law. Within five (5) business days of receipt of any notice of cancellation or non-renewal of insurance, the Contractor shall provide OGS with a copy of any such notice received from an insurer together with proof of replacement coverage that complies with the insurance requirements of this Contract.
12. ***Policy Renewal/Expiration*** Upon policy renewal/expiration, evidence of renewal or replacement of coverage that complies with the insurance requirements set forth in this Contract shall be delivered to OGS. If, at any time during the term of this Contract, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this Contract, or proof thereof is not provided to OGS, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by OGS.
13. ***Deadlines for Providing Insurance Documents after Renewal or Upon Request.*** As set forth herein, certain insurance documents must be provided to the OGS BRIM contact identified in the Contract Award Notice after renewal or upon request. This requirement means that the Contractor shall provide the applicable insurance document to OGS as soon as possible but in no event later than the following time periods:
 - For certificates of insurance: 5 business days
 - For information on self-insurance or self-retention programs: 15 calendar days
 - For other requested documentation evidencing coverage: 15 calendar days
 - For additional insured and waiver of subrogation endorsements: 30 calendar days

Notwithstanding the foregoing, if the Contractor shall have promptly requested the insurance documents from its broker or insurer and shall have thereafter diligently taken all steps necessary to obtain such documents from its insurer and submit them to OGS, OGS shall extend the time period for a reasonable period under the circumstances, but in no event shall the extension exceed 30 calendar days.

B. Insurance Requirements

Bidders and Contractors shall obtain and maintain in full force and effect, throughout the term of any Contract resulting from this Solicitation, at their own expense, the following insurance with limits not less than those described below and as required by the terms of this Contract, or as required by law, whichever is greater:

Insurance Type		Proof of Coverage is Due
Commercial General Liability	Not less than \$2,000,000 each occurrence	In accordance with Contract
General Aggregate	\$2,000,000	
Products – Completed Operations Aggregate	\$2,000,000	
Personal and Advertising Injury	\$1,000,000	
Medical Expenses Limit	\$5,000	
Business Automobile Liability Insurance	Not less than \$2,000,000 each occurrence	
Workers' Compensation		
Disability Benefits		

1. **Commercial General Liability Insurance:** Such liability shall be written on the current edition of ISO occurrence form CG 00 01, or a substitute form providing equivalent coverage and shall not exclude liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract).

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

- General Aggregate
- Products – Completed Operations Aggregate
- Personal and Advertising Injury
- Each Occurrence

Coverage shall include (or otherwise not exclude), but not be limited to, the following:

- Premises liability;
- Independent contractors;
- Blanket contractual liability, including tort liability of another assumed in a contract;
- Defense and/or indemnification obligations, including obligations assumed under this Contract;
- Cross liability for additional insureds;
- Products/completed operations for a term of no less than one (1) year, commencing upon acceptance of the work, as required by the Contract;

2. **Business Automobile Liability Insurance:** Such insurance shall cover liability arising out of any automobile used in connection with performance under this Contract, including owned, leased, hired and non-owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Laws of the State of New York to bear, license plates.

In the event that the Contractor does not own, lease or hire any automobiles used in connection with performance under this Contract, the Contractor does not need to obtain Business Automobile Liability Insurance, but must attest to the fact that the Contractor does not own, lease or hire any automobiles used in connection with performance under this Contract on a form provided by OGS. If, however, during the term of the Contract, the Contractor acquires, leases or hires any automobiles that will be used in connection

with performance under this Contract, the Contractor must obtain Business Automobile Liability Insurance that meets all of the requirements of this section and provide proof of such coverage to OGS in accordance with the insurance requirements of this Contract.

In the event that the Contractor does not own or lease any automobiles used in connection with performance under this Contract, but the Contractor does hire and/or utilize non-owned automobiles in connection with performance under this Contract, the Contractor must: (i) obtain Business Automobile Liability Insurance as required by this Contract, except that such insurance may be limited to liability arising out of hired and/or non-owned automobiles, as applicable; and (ii) attest to the fact that the Contractor does not own or lease any automobiles used in connection with performance under this Contract, on a form provided by OGS. If, however, during the term of this Contract, the Contractor acquires or leases any automobiles that will be used in connection with performance under this Contract, the Contractor must obtain Business Automobile Liability Insurance that meets all of the requirements of this Attachment and provide proof of such coverage to OGS in accordance with the insurance requirements of this Contract.

3. Workers' Compensation Insurance and Disability Benefits Requirements

Sections 57 and 220 of the New York State Workers' Compensation Law require the heads of all municipal and state entities to ensure that businesses applying for contracts have appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals.

Failure to provide proper proof of such coverage or a legal exemption will result in a rejection of any contract renewal. Proof of workers' compensation and disability

benefits coverage, or proof of exemption must be submitted to OGS at the time of policy renewal, contract renewal and upon request. Proof of compliance must be submitted on one of the following

forms designated by the New York State Workers' Compensation Board. **An ACORD form is not acceptable proof of New York State workers' compensation or disability benefits insurance coverage.**

The failure to comply with the requirements of this Attachment at any time during the term of this Contract shall be considered a breach of the terms of this Contract and shall allow the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use this Contract and their officers, agents, and employees to avail themselves of all remedies available under this Contract, at law or in equity.

Proof of Compliance with Workers' Compensation Coverage Requirements:

- Form CE-200, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required*, which is available on the Workers' Compensation Board's website (www.wcb.ny.gov);
- Form C-105.2 (9/07), *Certificate of Workers' Compensation Insurance*, sent to OGS by the Contractor's insurance carrier upon request, or if coverage is provided by the New York State Insurance Fund, they will provide Form U-26.3 to OGS upon request from the Contractor; or
- Form SI-12, *Certificate of Workers' Compensation Self-Insurance*, available from the New York State Workers' Compensation Board's Self-Insurance Office, or
- Form GSI-105.2, *Certificate of Participation in Workers' Compensation Group Self-Insurance*, available from the Contractor's Group Self-Insurance Administrator.

Proof of Compliance with Disability Benefits Coverage Requirements:

- Form CE-200, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required*, which is available on the Workers' Compensation Board's website (www.wcb.ny.gov);
- Form DB-120.1, *Certificate of Disability Benefits Insurance*, sent to OGS by the Contractor's insurance carrier upon request; or
- Form DB-155, *Certificate of Disability Benefits Self-Insurance*, available from the New York State Workers' Compensation Board's Self-Insurance Office.

An instruction manual clarifying the New York State Workers' Compensation Law requirements is available for download at the New York State Workers' Compensation Board's website, <http://www.wcb.ny.gov>. Once on the site, click on the Employers/Businesses tab and then click on Employers' Handbook.

Group 72002, Award 23168 Fleet Maintenance Services

ATTACHMENT 3 – REPORT OF CONTRACT USAGE

Enter your Contact information in the cells below. The information entered below will be prepopulated on the FMS Management Fees Tab and the FMS Service Summary Tab.

Contractor Name:	
NYS Contract Number:	PS69147
OGS Group Number	72002
OGS Award Number	23168

Contract Reporting Period (Dates):	
Contact Name:	
Contact E-Mail:	
Contact Phone Number:	

The Contractor shall furnish a report of all Fleet Maintenance Services provided under the Contract during each quarterly period, no later than fifteen (15) days following the close of the quarterly period. Quarterly periods will end on March 31st, June 30th, September 30th and December 31st. Purchases by all Authorized Users under the Contract shall be reported in the same report and be indicated as required. All fields of information shall be accurate and complete. The report is to be submitted electronically via electronic mail utilizing the template provided, in Microsoft Excel 2010, or newer (or as otherwise directed by OGS), to the attention of the individual shown on the front page of the Contract Award Notification and shall reference the OGS group number, award number, Contract Number, sales period, and Contractor's (or other authorized agent) name, and all other fields required. OGS reserves the right to amend the report template during the Contract term.

Tabs included in this workbook:

Tab
Instructions
FMS Management Fees
FMS Service Summary
State Agency Listing

Contractor Name:	0
Contract Reporting Period:	0
Contract Number:	PS69147
OGS Group Number	72002
OGS Award Number	23168

						Monthly Enrollment Plan			Monthly Enrollment Plan			Per Occurrence Plan		
						Light Duty Vehicles (< or = to 16,000 lbs. GVWR)			Medium to Heavy Duty Vehicles (= to or >16,001 lbs. GVWR)			Maintenance and Repair Service (Light Duty Vehicles)		
Contractor Invoice Number	Contractor Invoice Run Date	Contractor Invoice Due Date	Authorized User Client Code	"1" for State Agency or "2" for Non-State Entity (see "State Agency" tab)	Authorized User Entity Name	Vehicles Billed	Per Vehicle Fee	Total Invoiced Fee	Vehicles Billed	Per Vehicle Fee	Total Invoiced Fee	# of Occur. Billed	Per Occur. Fee	Total Invoiced Fee
123456	04/01/20	05/01/20	AB123	1	NYS Department of Transportation	60	\$5.35	\$321.00	10	\$22.00	\$220.00	75	\$20.70	\$1,552.50
123457	04/01/20	05/01/20	AB246	2	Town of Ballston	60	\$5.35	\$321.00	10	\$22.00	\$220.00	75	\$20.70	\$1,552.50
								\$0.00			\$0.00			\$0.00
								\$0.00			\$0.00			\$0.00
								\$0.00			\$0.00			\$0.00
								\$0.00			\$0.00			\$0.00
								\$0.00			\$0.00			\$0.00
								\$0.00			\$0.00			\$0.00
								\$0.00			\$0.00			\$0.00
								\$0.00			\$0.00			\$0.00
								\$0.00			\$0.00			\$0.00
								\$0.00			\$0.00			\$0.00
								\$0.00			\$0.00			\$0.00
								\$0.00			\$0.00			\$0.00
								\$0.00			\$0.00			\$0.00
								\$0.00			\$0.00			\$0.00
								\$0.00			\$0.00			\$0.00
								\$0.00			\$0.00			\$0.00
								\$0.00			\$0.00			\$0.00
								\$0.00			\$0.00			\$0.00
								\$0.00			\$0.00			\$0.00
								\$0.00			\$0.00			\$0.00
								\$0.00			\$0.00			\$0.00
								\$0.00			\$0.00			\$0.00
								\$0.00			\$0.00			\$0.00
								\$0.00			\$0.00			\$0.00
								\$0.00			\$0.00			\$0.00
								\$0.00			\$0.00			\$0.00

Per Occurrence Plan			Per Occurrence Plan			Per Occurrence Plan			Per Occurrence Plan			Per Occurrence Plan			Per Occurrence Plan		
Maintenance and Repair Service (Medium to Heavy Duty Vehicles)			Accident Management: All-In			Accident Management: Documentation Only			Accident Management: Repair Estimates Only			Accident Management: Appraisal Only			Accident Management: Subrogation Only		
# of Occur. Billed	Per Occur. Fee	Total Invoiced Fee	# of Occur. Billed	Per Occur. Fee	Total Invoiced Fee	# of Occur. Billed	Per Occur. Fee	Total Invoiced Fee	# of Occur. Billed	Per Occur. Fee	Total Invoiced Fee	# of Occur. Billed	Per Occur. Fee	Total Invoiced Fee	# of Occur. Billed	Per Occur. Fee	Total Invoiced Fee
75	\$28.60	\$2,145.00	5	\$225.00	\$1,125.00	5	\$100.00	\$500.00	5	\$125.00	\$625.00	5	\$125.00	\$625.00	5	\$105.00	\$525.00
75	\$28.60	\$2,145.00	5	\$225.00	\$1,125.00	5	\$100.00	\$500.00	5	\$125.00	\$625.00	5	\$125.00	\$625.00	5	\$105.00	\$525.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00

Per Occurrence Plan			Per Occurrence Plan			Other Services			Other Services			Other Services			Other Services		
Roadside Assistance / Towing (Light Duty Vehicles)			Roadside Assistance / Towing (Medium to Heavy Duty Vehicles)			Fuel Card Services Integration			Garage Management System			Telematics/GPS			Driver Training Services		
# of Occur. Billed	Per Occur. Fee	Total Invoiced Fee	# of Occur. Billed	Per Occur. Fee	Total Invoiced Fee	Vehicles Billed	Per Vehicle Fee	Total Invoiced Fee	Garages Billed	Per Garage Fee	Total Invoiced Fee	Vehicles Billed	Per Vehicle Fee	Total Invoiced Fee	Modules Billed	Per Module Fee	Total Invoiced Fee
5	\$35.00	\$175.00	5	\$40.00	\$200.00	5	\$0.50	\$2.50	5	\$500.00	\$2,500.00	100	\$25.00	\$2,500.00	100	\$6.00	\$600.00
5	\$35.00	\$175.00	5	\$40.00	\$200.00	5	\$0.50	\$2.50	5	\$500.00	\$2,500.00	100	\$25.00	\$2,500.00	100	\$6.00	\$600.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00
		\$0.00			\$0.00			\$0.00			\$0.00			\$0.00			\$0.00

Other Services			
Driver Safety Programs			
# of Occur. Billed	Avg. Per Occur. Fee	Total Invoiced Fee	Total Invoiced Management Fees
10	\$7.00	\$70.00	\$13,686.00
10	\$7.00	\$70.00	\$13,686.00
		\$0.00	\$0.00
		\$0.00	\$0.00
		\$0.00	\$0.00
		\$0.00	\$0.00
		\$0.00	\$0.00
		\$0.00	\$0.00
		\$0.00	\$0.00
		\$0.00	\$0.00
		\$0.00	\$0.00
		\$0.00	\$0.00
		\$0.00	\$0.00
		\$0.00	\$0.00
		\$0.00	\$0.00
		\$0.00	\$0.00
		\$0.00	\$0.00
		\$0.00	\$0.00
		\$0.00	\$0.00
		\$0.00	\$0.00
		\$0.00	\$0.00
		\$0.00	\$0.00
		\$0.00	\$0.00
		\$0.00	\$0.00
		\$0.00	\$0.00
		\$0.00	\$0.00
		\$0.00	\$0.00

Contractor Name:	0
Contract Reporting Period:	0
Contract Number:	PS69147
OGS Group Number	72002
OGS Award Number	23168

Contractor Invoice Number	Contractor Invoice Run Date	Contractor Invoice Due Date	Authorized User Client Code	"1" for State Agency or "2" for Non-State Entity (see "State Agency" tab)	Authorized User Entity Name	REPAIR & MAINTENANCE	OIL & LUBE	TIRES	ACCIDENT REPAIRS	OTHER	GRAND TOTAL
123456	04/01/20	05/01/20	AB123	1	NYS Department of Transportation	\$2,892.09	\$5,672.14	\$411.02	\$47.40	\$100.00	\$9,122.65
123457	04/01/20	05/01/20	AB246	2	Town of Ballston	\$1,705.43	\$3,259.40	\$20.00	\$25.25	\$100.00	\$5,110.08
											\$0.00
											\$0.00
											\$0.00
											\$0.00
											\$0.00
											\$0.00
											\$0.00
											\$0.00
											\$0.00

Group 72002-23168 Fleet Maintenance Services

ATTACHMENT 4 – DATA EXPORT REQUIREMENTS

Data for the Contract Shall be exported to OGS, as directed by OGS. Failure to timely provide the OGS data files in accordance with this section Shall be considered a breach of Contract, and May result in cancellation of the Contract in accordance with Appendix B, Section 43 *Termination* . Contractor Shall provide OGS with a daily file that includes transaction data for all Authorized Users (Section A) and for State Agencies (Section B). At a minimum, these transaction files Shall include the data inputs identified as “Mandatory” in Section A and Section B.

Worksheets included in this workbook:

Worksheet/Tab
Attachment Summary
A. AU Transaction File
B. State Agency AMS File

Section A: Authorized User Transaction File

Data for all Authorized Users of the Contract shall be exported to OGS, as directed by OGS Fleet Management. See Contract Section 3.7 *Data Import and Export*, Paragraph D. At the written request of OGS or an Authorized User, the Contractor shall export Authorized User data as described in Contract Section 3.6 *Reporting*, Paragraph B, *Authorized User Data Export*. At a minimum, the Contractor shall have the ability to provide the data inputs identified below as "Mandatory." OGS reserves the right to require data collected from Authorized User-owned Automotive Repair Shops, if Internal Shop Management is provided under the contract (see Contract Section 3.11 *Additional Fleet Maintenance Services*, Paragraph G *Internal Shop Management System*). Data fields exported to OGS, and a timeframe for implementation shall be mutually agreed upon by OGS and the Contractor upon an Authorized User's utilization of the Internal Shop Management System. **Note: The Contractor shall not be held responsible for providing data that the Authorized User, or third party, if applicable, has not made available to the Contractor. Character lengths listed are considered minimum unless "character length may vary" is stated in the "Description/Comments" column.**

Field Name	Field Type	Character Length	Example Data	Description / Comments	Mandatory
Start File Indicator					
Record Type	Varchar	1	N/A	Contractor-specified; code that indicates start of file	Yes
File Date	Varchar	8	03302015	File run date (date file created); MMDDYYYY format	Yes
Client Name	Varchar	20	N/A	Contractor-specified; use to pull in all records tied to the contract (e.g., State of New York or contract number); character length may vary	Yes
Inventory Header					
Record Type	Varchar	1	N/A	Contractor-specified; code that indicates change in inventory record	Yes
Acct Num	Varchar	4	N/A	Contractor-specified; account number for Authorized User (Agency); character length may vary	Yes
VIN	Varchar	17	1FTRX14W67FB58955	Vehicle Identification Number	Yes
Contract User Type	Varchar	1	1	Identifies whether account holder is a NYS Agency or other Authorized User (non-NYS Agency); (i.e., "1" for State Agency, "2" for Other).	Yes
Account Services for Vehicle	Varchar	1	M	Contractor-specified; code that indicates the Fleet Maintenance Service(s) a Vehicle is currently enrolled in; character length may vary. <i>Note: This will require multiple fields if the Vehicle is enrolled in more than one program. Also, enrollment may change over the life of the contract.</i>	Yes
Vehicle Number	Varchar	6	074107	Authorized User-specified Vehicle identification code	Yes
Model Year	Varchar	4	2013	Vehicle model year	Yes
Make	Varchar	20	Ford	Vehicle make name; character length may vary	Yes
Model	Varchar	20	Escort	Vehicle model name; character length may vary	Yes
PO Header					
Record Type	Varchar	1	N/A	Contractor-specified; code used to manage transaction	Yes
Acct Num	Varchar	4	N/A	Contractor-specified; account number for individual customer/driver; character length may vary	Yes
Unit Code	Varchar	6	AB1234	Authorized User-specified Vehicle identification code	Yes
PO Number	Varchar	10	N/A	Contractor-specified; purchase order number for the transaction; character length may vary	Yes
PO Date	Varchar	8	03022015	Date that the purchase order was issued; MMDDYYYY format	Yes
PO Total	Explicit Number (pad right blanks)	9	243.50	Total dollar amount cost of transaction that appears on purchase order	Yes
Vendor Code	Varchar	10	N/A	Contractor-specified Automotive Repair Shop identification code; character length may vary	Yes
Vendor Name	Varchar	40	John Smith Auto Repair	Automotive Repair Shop name; character length may vary.	Yes
Vendor Address	Varchar	81	125 Example St	Automotive Repair Shop address (e.g., physical address, mailing address or corporate/national account address); character length may vary. <i>Note: It is not mandatory that address related data (i.e., Street Address, City, State, and Zip Code) be provided in separate fields, but it is preferred.</i>	Yes
Vendor City	Varchar	30	Albany	Automotive Repair Shop city; character length may vary	Yes
Vendor State	Varchar	2	NY	Automotive Repair Shop state	Yes
Vendor Zip	Varchar	5	12204	Automotive Repair Shop ZIP code	Yes
Primary Tax ID	Varchar	9	452793768	Automotive Repair Shop FEIN (Federal Employer Identification Number)	Yes
Client Authorization	Varchar	25	Prior approval required for repairs over \$500	Information on NYS authorizations required by the Authorized User for Vehicle maintenance and repair costs before work may begin (e.g., designated dollar amount that requires prior approval); character length may vary	No
Bill Paid Date	Varchar	8	03302015	Date that Automotive Repair Shop Invoice was paid by the Contractor; MMDDYYYY format	No
Event ID	Varchar	20	AB12345	Identification code used to link a maintenance record to a related accident record; character length may vary	Yes
Odometer	Explicit Number (pad right blanks)	10	20500	The number indicated on the odometer of a Vehicle, rounded to the nearest mile, at the start of service by an Automotive Repair Shop; character length may vary.	Yes
PO Detail					

Section A: Authorized User Transaction File

Data for all Authorized Users of the Contract shall be exported to OGS, as directed by OGS Fleet Management. See Contract Section 3.7 *Data Import and Export*, Paragraph D. At the written request of OGS or an Authorized User, the Contractor shall export Authorized User data as described in Contract Section 3.6 *Reporting*, Paragraph B, *Authorized User Data Export*. At a minimum, the Contractor shall have the ability to provide the data inputs identified below as "Mandatory." OGS reserves the right to require data collected from Authorized User-owned Automotive Repair Shops, if Internal Shop Management is provided under the contract (see Contract Section 3.11 *Additional Fleet Maintenance Services*, Paragraph G *Internal Shop Management System*). Data fields exported to OGS, and a timeframe for implementation shall be mutually agreed upon by OGS and the Contractor upon an Authorized User's utilization of the Internal Shop Management System. **Note: The Contractor shall not be held responsible for providing data that the Authorized User, or third party, if applicable, has not made available to the Contractor. Character lengths listed are considered minimum unless "character length may vary" is stated in the "Description/Comments" column.**

Field Name	Field Type	Character Length	Example Data	Description / Comments	Mandatory
Record Type	Varchar	1	N/A	Contractor-specified; code that indicates line item details record for the transaction that appears on the purchase order	Yes
PO Number	Varchar	10	N/A	Contractor-specified; purchase order number for the transaction; character length may vary	Yes
Purchase Type	Varchar	5	Part	Type of purchase (e.g., Part or Labor)	Yes
Maintenance Type	Varchar	20	Maintenance Repair	Type of service provided to the Authorized User (e.g., Maintenance Repair, Preventive Maintenance); character length may vary	No
Charge Code	Varchar	6	N/A	Contractor-specified; code for each charge that appears on the purchase order; character length may vary	Yes
Charge Code Description	Varchar	100	N/A	Contractor-specified; description of the charge code; character length may vary	Yes
Repair Code	Varchar	10	13002012	Standard ATA or VMRS code used by Automotive Repair Shop for the maintenance or repair performed on the Vehicle (see below for a list of VMRS codes currently used by the State).	Yes
Repair Code Description	Varchar	100	Rear Brake, Shoe & Lining Assembly	ATA-specified description of the VMRS code	Yes
Charge Amount	Explicit Number (pad right blanks)	9	286.50	Total dollar amount cost of the line item detailed	Yes
Unit Price	Explicit Number (pad right blanks)	9	143.25	Unit price of the part or service purchased	Yes
Quantity Purchased	Explicit Number (pad right blanks)	9	2	Quantity of the part or service purchased	Yes
Repair Date	Varchar	8	03032015	Date that maintenance or repair service was completed; MMDDYYYY format	Yes
PO Line Item Description	Varchar	100	SN-95 13" Front Replacement Rotor Ring Set	Description of the part or service purchased; character length may vary	Yes
Correction	Varchar	25	Replace	Correction to record, if applicable (e.g., Replace, Repair, Inspect, Preventative Maint., Diagnose, Towing, Adjust); character length may vary	No
Cause	Varchar	30	Maintenance	Cause of issue (e.g., Does not operate properly, maintenance, worn, road service); character length may vary	Yes
In/Out of Network	Varchar	15	N/A	Contractor-specified; code that indicates if service was performed at an in or out of network Automotive Repair Shop, if applicable; character length may vary	Yes
Warranty	Varchar	3	No	Indicates if service performed was a warranty service (i.e., Yes or No).	Yes
Post Warranty	Varchar	3	No	Indicates if the service performed was determined to be done under warranty later (i.e., Yes or No).	Yes
Accident					
Record Type	Varchar	1	N/A	Contractor-specified; code that indicates an accident record	Yes
Account Number	Varchar	4	N/A	Contractor-specified; account number for Authorized User (Agency); character length may vary	Yes
Customer Vehicle ID	Varchar	6	AB1234	Authorized User-specified Vehicle identification code	Yes
VIN	Varchar	17	1FTRX14W67FB58955	Vehicle Identification Number of the Authorized User Vehicle involved in the accident	Yes
Claim Number	Varchar	10	N/A	Contractor-specified; accident claim number; character length may vary	No
Accident Type ID	Varchar	3	N/A	Contractor-specified; accident type identification code; character length may vary	No
Close Date	Varchar	8	04012015	Date that accident repair was completed; MMDDYYYY format	Yes
Accident Date Time	Varchar	14	03022015-12:15	Date and time that the accident occurred; MMDDYYYY-HH:MM format	Yes
Driver First Name	Varchar	25	Robert	Authorized User Vehicle operator first name	Yes
Driver Last Name	Varchar	25	Smith	Authorized User Vehicle operator last name	Yes
Accident Location Street Intersection	Varchar	50	Main Street at Example Avenue	Information that identifies where the accident occurred (e.g., street address and/or intersection); character length may vary	Yes

Section A: Authorized User Transaction File

Data for all Authorized Users of the Contract shall be exported to OGS, as directed by OGS Fleet Management. See Contract Section 3.7 *Data Import and Export*, Paragraph D. At the written request of OGS or an Authorized User, the Contractor shall export Authorized User data as described in Contract Section 3.6 *Reporting*, Paragraph B, *Authorized User Data Export*. At a minimum, the Contractor shall have the ability to provide the data inputs identified below as "Mandatory." OGS reserves the right to require data collected from Authorized User-owned Automotive Repair Shops, if Internal Shop Management is provided under the contract (see Contract Section 3.11 *Additional Fleet Maintenance Services*, Paragraph G *Internal Shop Management System*). Data fields exported to OGS, and a timeframe for implementation shall be mutually agreed upon by OGS and the Contractor upon an Authorized User's utilization of the Internal Shop Management System. **Note: The Contractor shall not be held responsible for providing data that the Authorized User, or third party, if applicable, has not made available to the Contractor. Character lengths listed are considered minimum unless "character length may vary" is stated in the "Description/Comments" column.**

Field Name	Field Type	Character Length	Example Data	Description / Comments	Mandatory
Accident Location City	Varchar	25	Albany	City where accident occurred; character length may vary	Yes
Accident Location State	Varchar	2	NY	State where accident occurred	No
Accident Type	Varchar	45	N/A	Contractor-specified; description of Accident Type ID (Row 61); character length may vary	Yes
Accident Type Description	Varchar	1000	Driver states that another vehicle hit their car on the driver side while they were parked on Main Street.	Narrative description of the accident that occurred; character length may vary	Yes
Damage Description	Varchar	25	Driver front side	Location of damage to the Authorized User Vehicle; character length may vary	Yes
Supplemental Damages	Varchar	25	Mirror	Part(s) damaged (e.g., mirror, bumper, fender, door, whole side); character length may vary	Yes
Estimate	Explicit Number (pad right blanks)	9	453.00	Estimated dollar value of the cost of Vehicle repair	Yes
Third Party First Name	Varchar	25	John	First name of the third party involved in the accident; character length may vary	Yes
Third Party Last Name	Varchar	25	Example	Last name of the third party involved in the accident; character length may vary	Yes
Third Party Owner	Varchar	25	John Example	Individual or company name of the owner of the third party Vehicle involved in the accident; character length may vary	Yes
Third Party Year	Varchar	4	2011	Model year of the third party Vehicle involved in the accident	Yes
Third Party Make	Varchar	25	Chevrolet	Make of the third party Vehicle involved in the accident; character length may vary	Yes
Third Party Model	Varchar	25	Silverado	Model name of the third party Vehicle involved in the accident; character length may vary	Yes
Third Party Insurance	Varchar	30	XYZ Insurance Company	Insurance company name of third party involved in the accident; character length may vary	Yes
Third Party Policy Number	Varchar	20	67849ABC65749	Insurance policy number of third party involved in the accident; character length may vary	Yes
Third Party Vehicle Plate	Varchar	10	ABC789	Licence plate number of third party Vehicle involved in the accident; character length may vary	Yes
Third Party Vehicle State	Varchar	2	PA	State where the third party Vehicle is registered	Yes
Event ID	Varchar	20	N/A	Contractor-specified; identification code that links to the purchase order for Vehicle repairs that result from the accident; character length may vary. <i>Note: This may link to more than one purchase order.</i>	Yes
Odometer	Explicit Number (pad right blanks)	10	150000	The number indicated on the odometer of the Authorized User Vehicle, rounded to the nearest mile, at the time of the accident	Yes
File Trailer					
Record Type	Varchar	1	N/A	Contractor-specified; code that indicates end of file	Yes
Total Detail Records	Varchar	5	100	Total number of purchase order detail records included in the file	Yes
Total Amount	Explicit Number (pad right blanks)	9	5000.70	Total actual dollar amount cost for all purchase order detail records included in the file.	Yes

VMRS Codes
The VMRS codes listed below are currently used by OGS to update Vehicle records with the date and service type for all preventive maintenance and inspection related transactions.
1. Service related codes:
1E001006 Lube,Oil, Filter

Section A: Authorized User Transaction File

Data for all Authorized Users of the Contract Shall be exported to OGS, as directed by OGS Fleet Management. See Contract Section 3.7 *Data Import and Export*, Paragraph D. At the Written request of OGS or an Authorized User, the Contractor Shall export Authorized User data as described in Contract Section 3.6 *Reporting*, Paragraph B, *Authorized User Data Export*. At a minimum, the Contractor Shall have the ability to provide the data inputs identified below as "Mandatory." OGS reserves the right to require data collected from Authorized User-owned Automotive Repair Shops, if Internal Shop Management is provided under the contract (see Contract Section 3.11 *Additional Fleet Maintenance Services*, Paragraph G *Internal Shop Management System*). Data fields exported to OGS, and a timeframe for implementation Shall be mutually agreed upon by OGS and the Contractor upon an Authorized User's utilization of the Internal Shop Management System. **Note: The Contractor Shall not be held responsible for providing data that the Authorized User, or third party, if applicable, has not made available to the Contractor. Character lengths listed are considered minimum unless "character length may vary" is stated in the "Description/Comments" column.**

Field Name	Field Type	Character Length	Example Data	Description / Comments	Mandatory
1E001002	Oil,Engine				
1E001007	Oil Disposal Fee				
1E001003	Grease,Chassis				
1E001012	PM check (no oil and filter change)				
1E001001	Additive,Engine Oil				
1E001005	Kit, Oil Analysis				
1E001015	Filter Disposal Fee				
1E010001	Wheel Chair lift preventive maintenance				
2. Inspection related codes:					
1G001009	State inspection				
1G001001	DOT				
90001016	IN-SERVICE INSPECTION				
1G001024	INSPECTION, AIR SUPPLY TO RAIL CAR-FRA REGULATED				
1E001008	"A" INSPECTION				
1E001009	"B" INSPECTION				
1E001010	"C" INSPECTION				
1E001011	"D" INSPECTION				

Section B: State Agency AMS File

Data for all State Authorized Users of the Contract Shall be exported to OGS, as directed by OGS. See Contract Section 3.7 *Data Import and Export*, Paragraph D. At a minimum, the Contractor Shall have the ability to provide the data inputs identified below as "Mandatory." OGS reserves the right to require data collected from State Agency Authorized User-owned Automotive Repair Shops, if Internal Shop Management is provided under the contract (see Contract Section 3.11 *Additional Fleet Maintenance Services*, Paragraph G *Internal Shop Management System*). Data fields exported to OGS, and a timeframe for implementation Shall be mutually agreed upon by OGS and the Contractor upon a State Agency Authorized User's utilization of the Internal Shop Management System. **Note: The Contractor Shall not be held responsible for providing data that the State Agency Authorized User, or third party, if applicable, has not made available to the Contractor. Character lengths listed are considered minimum unless "character length may vary" is stated in the "Description/Comments" column.**

Field Name	Field Type	Character Length	Example Data	Description / Comments	Mandatory
Start File Indicator					
Record Type	Varchar	1	N/A	Contractor-specified; code that indicates start of file	Yes
File Date	Varchar	8	03302015	File run date (date file created); MMDDYYYY format	Yes
Inventory Header					
Acct Num	Varchar	4	N/A	Contractor-specified; account number for Authorized User (Agency); character length may vary	Yes
Department ID	Varchar	6	734001	Authorized User-specified department ID	Yes
Vehicle Number	Varchar	6	074107	Authorized User-specified Vehicle identification code	Yes
PO Header					
PO Number	Varchar	10	N/A	Contractor-specified; purchase order number for the transaction; character length may vary	Yes
PO Total	Explicit Number (pad right blanks)	9	243.50	Total dollar amount cost of transaction that appears on purchase order	Yes
Invoice Date	Varchar	8	03022015	Date that the invoice was issued; MMDDYYYY format	Yes
Vendor Invoice	Varchar	5	12963	Contractor-specified; invoice number for the transaction; character length may vary	Yes
VENDOR_ID	Varchar	10	N/A	Contractor-specified Automotive Repair Shop identification code; character length may vary	Yes
Event ID	Varchar	20	AB12345	Identification code used to link a maintenance record to a related accident record; character length may vary	Yes
Odometer	Explicit Number (pad right blanks)	10	20500	The number indicated on the odometer of a Vehicle, rounded to the nearest mile, at the start of service by an Automotive Repair Shop; character length may vary.	Yes
Latest Odometer Read Date	Varchar	8	03022015	Date that the Odometer was read; MMDDYYYY format	Yes
PO Detail					
PO Number	Varchar	10	N/A	Contractor-specified; purchase order number for the transaction; character length may vary	Yes
Purchase Type	Varchar	5	Part	Type of purchase (e.g., Part or Labor)	Yes
Maintenance Type	Varchar	20	Maintenance Repair	Type of service provided to the Authorized User (e.g., Maintenance Repair, Preventive Maintenance); character length may vary	Yes
Charge Code	Varchar	6	N/A	Contractor-specified; code for each charge that appears on the purchase order; character length may vary	Yes
Charge Code Description	Varchar	100	N/A	Contractor-specified; description of the charge code; character length may vary	Yes
Repair Code	Varchar	10	13002012	Standard ATA or VMRS code used by Automotive Repair Shop for the maintenance or repair performed on the Vehicle (see below for a list of VMRS codes currently used by the State).	Yes
Repair Code Description	Varchar	100	Rear Brake, Shoe & Lining Assembly	ATA-specified description of the VMRS code	Yes
Charge Amount	Explicit Number (pad right blanks)	9	286.50	Total dollar amount cost of the line item detailed	Yes
Unit Price	Explicit Number (pad right blanks)	9	143.25	Unit price of the part or service purchased	Yes
Quantity Purchased	Explicit Number (pad right blanks)	9	2	Quantity of the part or service purchased	Yes
Miscellaneous	Explicit Number (pad right blanks)	9	43.80	Total dollar amount cost of the line item detailed	Yes
Repair Date	Varchar	8	03032015	Date that maintenance or repair service was completed; MMDDYYYY format	Yes

Section B: State Agency AMS File

Data for all State Authorized Users of the Contract Shall be exported to OGS, as directed by OGS. See Contract Section 3.7 *Data Import and Export*, Paragraph D. At a minimum, the Contractor Shall have the ability to provide the data inputs identified below as "Mandatory." OGS reserves the right to require data collected from State Agency Authorized User-owned Automotive Repair Shops, if Internal Shop Management is provided under the contract (see Contract Section 3.11 *Additional Fleet Maintenance Services*, Paragraph G *Internal Shop Management System*). Data fields exported to OGS, and a timeframe for implementation Shall be mutually agreed upon by OGS and the Contractor upon a State Agency Authorized User's utilization of the Internal Shop Management System. **Note: The Contractor Shall not be held responsible for providing data that the State Agency Authorized User, or third party, if applicable, has not made available to the Contractor. Character lengths listed are considered minimum unless "character length may vary" is stated in the "Description/Comments" column.**

Field Name	Field Type	Character Length	Example Data	Description / Comments	Mandatory
Correction	Varchar	25	Replace	Correction to record, if applicable (e.g., Replace, Repair, Inspect, Preventative Maint., Diagnose, Towing, Adjust); character length may vary	Yes
Cause	Varchar	30	Maintenance	Cause of issue (e.g., Does not operate properly, maintenance, worn, road service); character length may vary	Yes
File Trailer					
Record Type	Varchar	1	N/A	Contractor-specified; code that indicates end of file	Yes
Total Detail Records	Varchar	5	100	Total number of purchase order detail records included in the file	Yes

Attachment 5 – *STAFFING PLAN FOR CONTRACT*



December 2, 2019

Stacey Savage
Contract Management Specialist I
The State of New York
Office of General Services
Group 72002 Fleet Maintenance Services, RFP 23168
Corning Tower, Empire State Plaza
Albany, NY 12242

Heidi Langley
Contract Management Specialist III

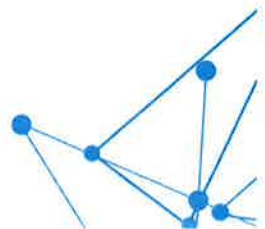
Dear Stacey, Heidi, and entire State of New York team,

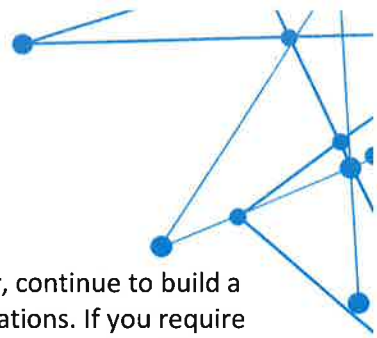
On behalf of the ARI team, thank you for the opportunity to respond to the State's RFP for Fleet Maintenance Services – RFP 23168. We welcome this opportunity to continue our long-standing partnership with the State and its agencies. Please let this statement serve as verification of the enclosed information in regards to ARI's staffing plan for the State.

Enclosed please find job descriptions and minimum qualifications for each of the below positions:

- District Sales Manager (23 individuals currently hold this position)
- Account Executive (99 individuals currently hold this position)
- Client Administrator (116 individuals currently hold this position)
- Truck Account Administrator (39 individuals currently hold this position)
- ASE Certified Technicians (163 individuals, including 27 World Class Technicians, currently hold this position)
- Project Leader – Implementation (10 individuals currently hold this position)

All of the individuals currently employed in the above positions meet or exceed the minimum qualifications for each job. Additionally, each of the ASE-certified technicians in our Technical Resource Centers has a minimum of three years of experience in the area of repair and/or maintenance of cars, trucks, diesel tractors, trailers or other heavy-duty equipment.





We look forward to continuing our partnership with the State of New York and together, continue to build a strong fleet management partnership that will help support the State's day-to-day operations. If you require additional information in regards to ARI or have any questions, please do not hesitate to contact me. We appreciate your consideration and look forward to taking the next steps together.

Sincerely,

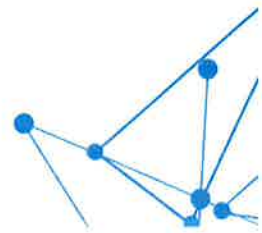
Jan Balfour

Jan Balfour, SHRM
 Human Resources Manager & Business Partner
 ARI US Operations
 4001 Leadenhall Road
 Mount Laurel, NJ 08054
 (856) 727-7070
jbalfour@holmanenterprises.com

Sworn to before me this 2nd
 day of December 2019.
 Notary Public: Celena Haug
 Registration No. 2044310
 State: New Jersey

Celena Haug

CELENA HAUG
 Commission # 2044310
 Notary Public, State of New Jersey
 My Commission Expires
 May 05, 2023



Position Title: District Sales Manager

Department: Sales

Reports to: Director of Sales

Principal Purpose of Position:

- Call on existing list of prospective clients to set up meetings and move those accounts through the sales cycle
- Identify new prospective clients through territory management
- Network with manufacturers' representatives, local business groups, and other fleet management suppliers.
- Relationship manager for an existing portfolio of ARI clients, maintaining relationships at multiple levels within the client's organization, interacting with internal ARI departments to promote client retention while identifying and promoting additional ARI programs.
- Effectively communicate ARI programs, capabilities, and differentiators. Must use proper business acumen to communicate this message.
- Provide new business opportunity and existing business growth reporting to assist Sr. Leadership with budgeting and forecasting
- Expense Management
- Perform all other duties and special projects as assigned.

Education and/or Training:

- Bachelor's degree in Business Administration or equivalent experience required.
- A working knowledge of Microsoft Windows, Word, Excel and PowerPoint is required.
- Learn and utilize ARI sales techniques
- Salesforce.com – Must effectively utilize this tool to properly manage the sales territory.
- Must be able to grasp fleet management to question, discuss and identify opportunities for ARI solutions that generate savings or efficiencies for the client.

Relevant Work Experience:

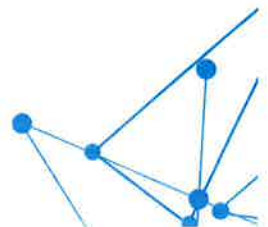
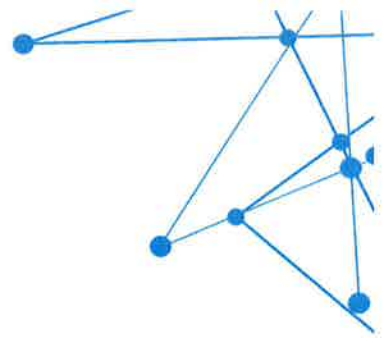
- Sales Experience Preferred
- Industry knowledge preferred

Planning/Organizing/Managerial Knowledge:

- Time Management - Manage all aspects of the job effectively: prospecting, client retention, and territory management.
- Market Intelligence to help establish pricing
- Provides input to forecasting
- Ability to organize and prioritize tasks and make appropriate decisions

Communicating & Influencing Skills:

- Excellent listening skills
- Strong verbal and written communication skills both verbal and in writing, to all levels of management, staff, customers and prospects
- Ability to interact and work with employees at all levels in the organization
- Excellent interpersonal skills
- Strong presentation skills



Position Title: Account Executive

Department: Account Management

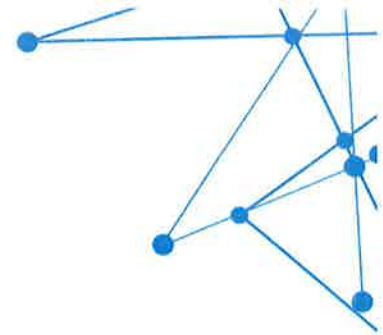
Reports to: Supervisor – Account Management

Principal Purpose of Position:

- Build and manage relationships with our clients and act as an advocate on their behalf while working together with other teams within the ARI organization.
- Collaborate and communicate in a dynamic and fast-paced environment while providing exceptional customer service.
- Deliver business updates and innovative improvement recommendations to help ensure perpetual retention of our clients.
- Effective management to support our partners in achieving their fleet and business-related objectives.

Education and/or Training:

- Bachelor's degree or equivalent work experience.
 - Superior customer service skills with experience in building productive relationships.
 - Strong organizational skills, ability to prioritize, and focus on details.
 - Willingness to work cooperatively with others and treat fellow employees with respect
 - Professional presence and ability to liaise with all levels of management both internal and external, including executive leadership.
 - Initiative to work independently and multi-task while managing varying client/departmental priorities.
 - Excellent verbal and written communication skills, including telephone communication and active listening.
 - Action-oriented with the drive to take initiative and accountability for decision-making.
 - High comfort level with presenting in front of an audience.
 - Proficiency with Microsoft Word, Excel and PowerPoint applications.
 - Interest in a position centered in an office environment; minimal travel is required.
-



Position Title: Administrator – Client

Department: Client Administration

Reports to: Supervisor – Client Administration

Principal Purpose of Position:

- Qualified candidate will receive inquiries from customers (internal and external) / drivers and coordinates with ARI departments to resolve in a timely manner
- Investigate and provide closed loop resolution to customer problems, logs all inquiries in ARI systems
- Process fleet database changes, duplicate material requests, and activation / deactivation of fuel card PINs per client parameters
- Update and audit client profiles while managing all third-party vendor communications
- Receive inquiries from customers (internal and external) and coordinator resolution efforts with ARI departments.
- Investigate and provide resolution to client issues, log all inquiries and summaries of issue and resolution.
- Provide regular status updates on open items with clients. • Perform all other duties and special projects as assigned.

Education and/or Training:

- Bachelor's degree required or equivalent work experience.

Relevant Work Experience:

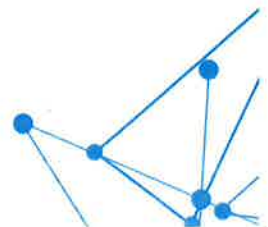
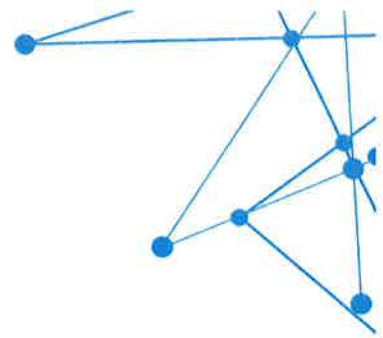
- 1-3 years of customer service, account management or retail experience preferred
- Advanced Microsoft Office skills

Planning/Organizing/Managerial Knowledge:

- Proficient in Microsoft Word, Excel, and PowerPoint applications.
- Strong organizational skills and attention to detail.
- Capable of managing multiple priorities effectively.
- Initiative to work independently and multi-task varying client/departmental priorities.
- Demonstrates ownership for decisions and situations.
- Works cooperatively with others and treat fellow employees with respect.

Communicating & Influencing Skills:

- Superior customer service skills required including focus on customer needs and customer relationship management.
- Excellent verbal and written communication skills, including telephone communication and active listening.



Position Title: Truck Account Administrator

Department: Fleet Management Support

Reports to: Supervisor – Truck Account Administrator

Principal Purpose of Position:

- Proactively monitors trends in vehicle maintenance for specific accounts and geographic markets
- Builds and analyzes both standard and ad-hoc reports
- Analyzes data and makes recommendations to customers and ARI management to implement cost-saving initiatives Coordinates with fleet managers, vendors and manufacturers to ascertain the most effective resolution to truck malfunctions
- As the technical expert, acts as a consultant to fleet managers and service technicians when complex solutions are needed
- Reviews and issues non-standard purchase orders to ensure that the customer's best interests are protected
- Support the technical resource center by assisting customers and vendors as needed
- Other duties as assigned

Education and/or Training:

- Four-year college degree or demonstrated equivalent experience as determined by department management.
- ASE or other industry certification preferred

Relevant Work Experience:

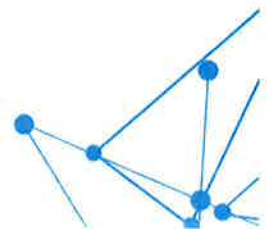
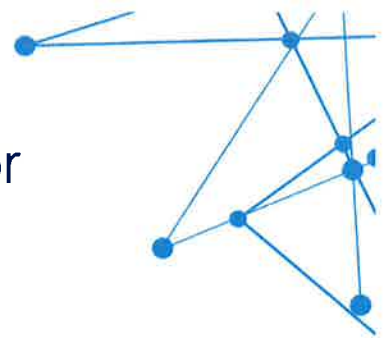
- Five to ten years of experience in the automotive or transportation industry, with advanced technical knowledge
- Knowledge of ARI's fleet management programs preferred

Planning/Organizing/Managerial Knowledge:

- Has breadth and depth of technical or functional expertise in own area of responsibility or department; may be acquiring knowledge of other related areas of departments.
- Advanced analytic abilities to make independent decisions and justify the financial outcomes.
- Intermediate skill level in Microsoft Office applications, with emphasis on Excel
- Influences or provides input to forecasting and planning resources; may manage allocated budget
- Ability to organize and prioritize tasks and make appropriate decisions
- Problem solving skills
- Analytical skills

Communicating & Influencing Skills:

- Customer service oriented and attention to detail
- Strong relations building skills
- Ability to interact and work with employees at all levels of an organization (internal or external) including business units and executive management
- Strong verbal and written communication skills
- Ability to explain complex concepts to non-specialists
- Ability to negotiate
- Presentation experience required



Position Title: ASE Certified Call Center Technician

Department: Fleet Management

Reports to: Supervisor - Technical Resource Center

Principal Purpose of Position:

- Assist drivers with emergency roadside assistance.
- Assists drivers in locating suitable repair locations.
- Provides accurate documentation on all maintenance and repair events.
- Verifies that all repair and maintenance work is necessary and done at a fair price.
- Reviews and authorizes all repairs for fleet vehicles as necessary.
- Documents all instances where a cost savings is realized.
- Ensures appropriate preventative maintenance schedule is followed.
- Maintains all monthly metrics at or above the established goal.
- Offers assistance willingly and makes a positive contribution to morale.
- Shows sensitivity to and consideration for other's feelings.
- Punctual, regular and consistent attendance.
- Responds positively to change, offers suggestions for improvements, remains calm and professional under pressure and accepts constructive criticism positively.
- Can be counted on to carry out assignments carefully and with appropriate follow-up. Overcomes obstacles to meet goals. Accepts personal accountability for his/her actions.
- Keeps manager and/or coworkers informed of work progress and other necessary information.
- Maintains a positive relationship with management and other workers, listens effectively.
- Must be able to complete transactions with accuracy while providing a high level of quality service

Education and/or Training:

- High School Diploma or Equivalent
- Vocational or Technical education recommended

General Skills:

- Basic Knowledge of Microsoft Office
- Typing – 20-25 WPM

Relevant Work Experience:

- Minimum of three years of experience in repair and maintenance of cars, trucks, diesel tractors, trailers, hydraulics, or other heavy duty equipment
- ASE accomplishments

Planning/Organizing/Managerial Knowledge:

- Can be counted on to carry out assignments carefully and with appropriate follow-up. Overcomes obstacles to meet goals. Accepts personal accountability for his/her actions.
- Shows sensitivity to and consideration for other's feelings.
- Responds positively to change, offers suggestions for improvements, remains calm and professional under pressure and accepts constructive criticism positively.

Communicating & Influencing Skills:

- Keeps manager and/or coworkers informed of work progress and other necessary information.
- Maintains a positive relationship with management and other workers, listens effectively.
- Must have solid verbal and written communication skills, and be able to communicate effectively with customers and vendors. _____



Position Title: Project Leader I – Implementation

Department: Implementation

Reports to: Supervisor – Implementation

Principal Purpose of Position:

- Initiates contact with new client and coordinates the entire startup process.
- Works in conjunction with Sales and client support team to ensure a successful and timely start up.
- Manages Implementation Project Plan to ensure all parties meet target deadlines.
- Retrieves, decodes, formats, tests and loads client's database into ARI's system.
- Identifies and documents best practices and recommendations made during the startup process.
- Coordinates the setup of the fee matrix, fuel account and client parameters into ARI's system.
- Details all information into the Implementation Profile and routes the document to the client and appropriate ARI personnel.
- Coordinates the generation of maintenance and fuel account support with the Materials Support group.
- Acts as main point of contact for external and internal clients during the first 90 days of the start up
- Provides exemplary customer service at all times.
- Perform all other duties and special projects as assigned.

Education and/or Training:

- Must have 2+ years of experience in ARI client facing role

Relevant Work Experience:

- Extensive customer service experience and a thorough understanding of the fleet management industry, ARI departments, processes and programs is required.

Planning/Organizing/Managerial Knowledge:

- Must have a complete understanding of ARI systems
- Must have intermediate understanding of Microsoft Word and advance understanding of Excel.
- Must be detail oriented with strong logic and organization skills. Must have presentation skills and the ability to effectively organize and facilitate meetings.
- Travel to client locations to facilitate and manage start up is required.
- Must be able to work independently and effectively in a team environment.
- Ability to think critically and understand strategic goals.
- Ability to meet deadlines and adjust to changing priorities

Communicating & Influencing Skills:

- Must possess strong presentation skills
- Most Strong problem solving skills
- Must be able to communicate effectively, both verbally and in writing, to all levels of employees and customers.
- Ability to identify and direct clients to the most effective solutions for their fleet

