



**Office of  
General Services**

**Procurement  
Services**

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**CONTRACT FOR**  
**SECURITY GUARD SERVICES (STATEWIDE) AND FIRE SAFETY AND**  
**EMERGENCY ACTION PLAN DIRECTORS (Region 1 – NYC Only)**

**BY AND BETWEEN**

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

**AND**

**SUMMIT SECURITY SERVICES, INC.**

**CONTRACT NUMBER PS68269**

**THIS CONTRACT** (hereinafter “Contract” or “Centralized Contract”) for the acquisition of Security Guard Services (Statewide) and Fire Safety and Emergency Action Plan Directors (Region 1 – NYC Only) is made between the People of the State of New York, acting by and through the Commissioner of the Office of General Services (hereinafter “State” or “OGS”) whose principal place of business is the 41st Floor, Corning Tower, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242, and Summit Security Services, Inc. (hereinafter “Contractor”), with offices at 390 RXR Plaza, Uniondale, NY 11556. The foregoing are collectively referred to as the “Parties.”

**Whereas**, OGS provided notification of availability of a non-competitive solicitation (“Solicitation”) for vendors that provide Security Guards Services (Statewide) and Fire Safety and Emergency Action Plan Directors (Region 1 – NYC Only) by placing a notice in the April 9, 2018 edition of the New York State Contract Reporter; and

**Whereas**, the Solicitation set forth the minimum administrative and technical requirements that a vendor must meet to be eligible for consideration to receive an award; and

**Whereas**, the Solicitation was structured with the counties of New York State divided into nine separate regions; and

**Whereas**, this Centralized Contract requires, for each transaction, that the Authorized User issue a competitive Request for Quote (RFQ) to be issued to eligible Contractors pursuant to a How to Use Process. Each Authorized User Agreement resulting from the competitive RFQ process will be governed first by the terms and conditions specified herein and second by terms and conditions added to the Authorized User Agreement by the Authorized User; and

**Whereas**, the State evaluated Contractor’s submission and determined that the Contractor met the minimum administrative and technical requirements for those Region(s) set forth in Appendix C; and

**Whereas**, in accordance with State Finance Law Article 11, the State has made a determination that the Contractor’s not-to-exceed pricing is reasonable; and

**Whereas**, Contractor agrees to the terms and conditions set forth in this Centralized Contract and the Contractor is willing to provide such services as set forth herein to Authorized Users.

**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:

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## SECTION 1 INTRODUCTION

### 1.1 Scope and Overview

The New York State Office of General Services (OGS) is responsible for establishing and managing centralized Contracts for New York State Authorized Users. The OGS Centralized Contracts are awarded regionally with multiple awards being made in each Region for use by Authorized Users of NYS OGS Centralized Contracts (see Section 2.38, *Non-State Agencies Participation in Centralized Contracts*).

The OGS Centralized Contracts have an established set of standardized terms and conditions, guidelines, processes and templates that apply to Contractors and their Subcontractors. When an Authorized User has a need for Security Guard Services and/or Fire Safety/EAP Director services, they will issue a competitive Request for Quote (RFQ) in accordance with the terms and conditions of the OGS Centralized Contract, including any additional requirements of the position(s) sought to be filled. The OGS Centralized Contracts for Security Guard Services is limited to unarmed guards. The RFQ will be distributed by the Authorized User to all Contractors for the applicable Region where the work is to be performed and it is in response to the RFQ where the Contractors shall submit the competitive proposed prices to be charged. The result of the RFQ process is an Authorized User Agreement and the Authorized User will either use their NYS Procurement Card (P-Card) or issue a Purchase Order to the selected Contractor to obtain Security Guard and/or Fire Safety/EAP Director services based on the RFQ responses. Procurement Instructions further describing the RFQ process and requirements for Authorized Users to purchase from the Centralized Contracts are found in Section 2.8, *Procurement Instructions*.

The Maximum Not-to-Exceed Hourly Bill Rates shall take into consideration the following for the Region being bid:

1. Prevailing Wage Rate
2. Supplemental Benefit Rate
3. Profit and overhead which may include the following costs:
  - a. Travel (including, but not limited to, mileage)
  - b. Meals
  - c. Lodging
  - d. Site Access (access to and from the site)
  - e. Workers Compensation
  - f. Disability Benefits
  - g. State Unemployment (SUTA)
  - h. Federal Insurance (FICA)
  - i. All other insurance, including, but not limited to:
    - i. Commercial General Liability
    - ii. Business Automobile Liability
    - iii. Crime Liability, etc.
  - j. For NYC (and any other area where required by any federal, state, local law, regulation, ordinance, etc.):
    - i. Paid family leave
    - ii. Paid sick leave
    - iii. Vacation
    - iv. Paid Holidays
    - v. NYC Fire Department fees related to Fire Safety/EAP Director requirements
  - k. All other overhead including, but not limited to:
    - i. Training
    - ii. Uniforms
    - iii. Standard Equipment items 1-4 as detailed in Section 2.14.10
    - iv. Use of MWBEs and SDVOBs
    - v. NYS Department of State fees
    - vi. Background checks
    - vii. Fingerprinting
  - l. Any back-office project management costs for Contractors and for their Subcontractors, including, but not limited to:
    - i. Management of Certified Payroll
    - ii. Management of Security Guard and/or Fire Safety/EAP Director Master Files
    - iii. Management of workforce for scheduling and call-in coverage
    - iv. Ensuring prevailing wage and other (e.g. NYC Sick Law) compliance through mentoring, monitoring, etc. Scheduling work and ensuring adequate staff.

- m. Ensuring Subcontractors proposed to be used by the contractor on an Authorized User’s site comply with various requirements (e.g. fingerprinting, etc.)

The actual Hourly Bill Rates proposed to be charged by Contractors for providing Security Guards and/or Fire Safety/EAP Directors will be set forth in a Contractor’s response to a competitive RFQ issued by the Authorized User, identifying their specific needs relative to the Security Guard services and/or Fire Safety/EAP Director requirements being requested **and based upon the PRC # obtained by each requesting Authorized User.** It is in response to an RFQ when Contractors will bid competitive Hourly Bill Rates.

**1.2 Regions**

The counties of New York State are divided into nine (9) separate Regions. Below, is a listing of the Regions and the applicable counties that are included in each of the Regions.

Region Designation for Solicitation								
1	2	3	4	5	6	7	8	9
Bronx	Nassau	Dutchess	Albany	Clinton	Herkimer	Broome	Chemung	Allegany
Kings	Suffolk	Orange	Columbia	Essex	Jefferson	Cayuga	Monroe	Cattaraugus
New York		Putnam	Fulton	Franklin	Lewis	Chenango	Ontario	Chautauqua
Queens		Rockland	Greene	Hamilton	Madison	Cortland	Schuyler	Erie
Richmond		Sullivan	Montgomery	Saratoga	Oneida	Delaware	Seneca	Genesee
		Ulster	Rensselaer	Warren	Oswego	Onondaga	Steuben	Livingston
		Westchester	Schenectady	Washington	St. Lawrence	Otsego	Wayne	Niagara
			Schoharie			Tioga	Yates	Orleans
						Tompkins		Wyoming

**1.3 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. This contract shall be for the quantities or dollar values ordered during the contract period. The individual value of the contract is indeterminate and will depend upon the number of contracts issued and the competitiveness of the pricing offered. Authorized Users will be encouraged to purchase from Contractors who offer the services and pricing that best meet their needs in the most practical and economical manner. See *Estimated/Specific Quantity Contracts* and *Participation in Centralized Contracts* in Appendix B, OGS General Specifications.

Numerous factors could cause the actual value of the Contract to vary substantially from the historical value. Such factors include, but are not limited to, the following:

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

Contractor acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the resulting Contracts could vary substantially from the estimates/historical values provided in the Solicitation.

**1.4 Glossary**

The terms used in this Contract shall be defined in accordance with Appendix B – *Definitions*. In addition, the following definitions shall apply.

**“Authorized User(s)”** As defined in Appendix B.

**“Authorized User Agreement”** means the Purchase Order and/or such other documents memorializing the Contractor’s obligations with respect to a given transaction resulting from an RFQ issued by an Authorized User

**“Best Value”** means the basis for awarding a contract for services to the Bidder which best optimizes quality, cost and efficiency among Responsive and Responsible Bidders. See State Finance Law § 163(1)(j). Best value may be equated to low price in response to an RFQ.

**“Bidder”** shall refer to any business entity who submits a response to this Solicitation. At the time that the Bidder executes a Contract with the State for their services a Bidder shall become a “Contractor.” See also “Contractor.”

**“Business Day”** means Monday through Friday, excluding Holidays.

**“Candidate”** shall refer to Level 1 and Level 2 Security Guards and Fire Safety/EAP Directors employed by a Contractor and/or Subcontractor to provide Security Guard and/or Fire Safety/EAP Director Services.

**“Contractor”** shall refer to a responsive and responsible Bidder who is working under an executed contract with New York State. Contractor is a general term.

**“Facility”** means any building, and the grounds, parking spaces/garages, walkways/pathways, enclosed areas, access points/gates, and all other physical areas connected to such building which form a contiguously-owned fixed real estate asset.

**“Hourly Bill Rate”** means the Hourly Bill Rate the Contractor is permitted to charge an Authorized User for one Candidate for one hour. This is inclusive of all costs incurred by Contractor to provide a Security Guard and/or Fire Safety/EAP Director under and Authorized User Agreement.

**“Master File”** means an electronic file maintained by Contractor for each Candidate. The Master File must include for each Candidate a resume, qualifications, certifications, licenses, and background checks.

**“Maximum Not-to-Exceed Daily Vehicle Bill Rate”** means the most (in dollars) a Contractor may ever quote in response to an Authorized User RFQ for a Contractor to provide a vehicle for daily use on this contract for a particular engagement as specified in Attachment 1 - *Pricing* .

**“Maximum Not-to-Exceed Hourly Bill Rates”** means the most (in dollars) a Contractor may ever quote in response to an Authorized User RFQ for an hour worked by a Candidate on this contract for a particular job title, county, region, time period (e.g. overtime), etc. as specified in Attachment 1 - *Pricing* and Section 1.1, *Scope and Overview*. The Maximum Not-to-Exceed Hourly Bill Rates for Level 2 Security Guards must exceed the rates bid for Level 1 Security Guard Maximum Not-to-Exceed Hourly Bill Rates in the same Region.

**“Maximum Not-to-Exceed Training Bill Rate”** means the most (in dollars) a Contractor may ever quote in response to an Authorized User RFQ for a Contractor to provide a training course (AED, CPR, HIPPA and OSHA) to a Candidate on this contract for a particular engagement as specified in Attachment 1 - *Pricing* .

**“May”** denotes the permissive in a contract clause or specification. “May” does not mean “required.” Also see “Shall” and “Must.”

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

**“n/a”** is a common abbreviation for *not applicable* or *not available*, used to indicate when information in a certain field on a table is not provided, either because it does not apply to a particular case in question or because it is not available.

**“New York State Department of Labor (NYS DOL)”** – means the Department of the New York State Executive Branch charged with determining the rates and classifications for Public Work and publishing the Prevailing Wages and Supplemental Benefits.

**“New York City Comptroller (NYC Comptroller)”** – Means the elected official in the City of New York charged with determining and publishing the rates and classification for NYC Building Services, including, but not limited to, Security Guard and Fire Safety/AED Director Services for New York City Agencies and NYC Local Authorities within the Five Counties (Boroughs) of Bronx, Kings, New York, Queens, and Richmond.

**“NYS Vendor ID”** is a ten-character identifier issued by New York State when a vendor is registered on the Vendor File.

**“Overtime Hourly Bill Rate”** means the hourly bill rate the Contractor is permitted to charge an Authorized Users for work above the Straight Time Hourly Bill Rate where the Security Guard and/or Fire Safety/EAP Director works more than eight hours a day or forty (40) hours a week upon the request of an Authorized User.

**“Prevailing Wage Rate”** means that part of the requirements of Article 9 (Sections 230-239) of the New York State Labor Law, which requires public work Contractors and Subcontractors to pay laborers, workers or mechanics employed in the performance of a public work contract not less than the prevailing rate of wage and to provide supplementals (fringe benefits) in accordance with prevailing practices in the locality where the work is performed.

**“Procurement Services”** means a division of the New York State Office of General Services which is authorized by law to issue centralized, statewide contracts for use by New York agencies, political subdivisions, schools, libraries and others authorized by law to participate in such contracts.

**“Purchasing Card (P-Card)”** is a method of procuring and settling the purchase of goods and services. Purchasing Card usage fees are not permitted to be charged by Contractors or Subcontractors.

**“Reclassification of Job Titles”** means a situation where the NYS DOL and/or NYC Comptroller issues an opinion, determination, judgment, classification, order, etc. which results in a job title being classified as public work or an adjustment to the required pay classification which was not part of the published prevailing wage rate schedule (and hence the awarded pricing) at the time of the bid.

**“Region”** means the grouping of counties by the State listed in Section 1.2, *Regions*.

**“Request for Quote (RFQ)”** refers to the document issued by the Authorized User and used to solicit pricing/technical proposals from Centralized Contractors at the time of purchase.

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

**“Straight Time Hourly Bill Rate”** means the hourly bill rate the Contractor is permitted to charge an Authorized User for one Candidate for one hour. This is inclusive of all costs incurred by the Centralized Contractor to provide a Security Guard and/or Fire Safety/EAP Director to an Authorized User. This rate must be equal to or less than the Maximum Hourly Bill Rate.

**“Supplemental Benefit”** see above definition of “Prevailing Wage Rates.”

**“Written / Written Communication”** makes use of the written word. Examples of written communications include e-mail, Internet websites, letters, proposals, and contracts.

**“0 (Zero)”** is both a number and the numerical digit used to represent that number in numerals. It is the integer immediately preceding 1 (one).

## 1.5 Appendix A

Appendix A, Standard Clauses For New York State Contracts, dated January 2014, attached hereto, is hereby expressly made a part of this Contract as if set forth at length herein.

## 1.6 Appendix B

Appendix B, Office of General Services General Specifications, dated April 2016, attached hereto, is hereby expressly made a part of this Contract as fully as if set forth at length herein and shall govern any situations not covered by this Bid Document or Appendix A.

## 1.7 Appendix C

Appendix C, Contractor Information, is hereby expressly made a part of this Contract as fully as if set forth at length herein.

## 1.8 Attachments

Attachments 1-5, attached hereto, are hereby expressly made a part of this Contract as fully as if set forth at length herein.

## 1.9 Conflict of Terms and Conditions

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

1. Appendix A (January 2014);
2. This document;
3. Appendix B (April 2016); and
4. All other appendices and attachments to the Contract.



## SECTION 2 TERMS AND CONDITIONS

### 2.1 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 shall be required at any time during the Term of the resulting Contract.

### 2.2 New York State Tax Law §5-a

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

A Contractor is required to file the completed and notarized Form ST-220-CA with the Bid to OGS certifying that the Contractor filed the ST-220-TD with DTF. Only the Form ST-220-CA is required to be filed with OGS. The ST-220-CA can be found at [https://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf). The ST-220-TD can be found at [https://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](https://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf). Contractor should complete and return the certification forms within five (5) business days of request (if the forms are not completed and returned with Bid submission). Failure to make either of these filings may render a Contractor non-responsive and non-responsible. Contractor shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law. The ST-220-TD only needs to be filed once with DTF, unless the information changes for the Contractor, its affiliates, or its Subcontractors.

Vendors may call DTF at 518-485-2889 with questions or visit the DTF web site at <https://www.tax.ny.gov/> for additional information.

### 2.3 New York State Reserved Rights

New York State reserves the right, in its sole discretion, to:

1. Reject any or all Bids received in response to the Solicitation;
2. Withdraw the Solicitation at any time at the sole discretion of the State;
3. Make an award under the Solicitation in whole or in part;
4. Disqualify any Bidder whose conduct and/or Bid fails to conform to the requirements of the Solicitation;
5. Seek clarifications and revisions of the Bid,
6. Amend the Solicitation prior to the Bid opening to correct errors or oversights, or to supply additional information as it becomes available;
7. Direct Bidders, prior to the Bid opening, to submit Bid modifications addressing subsequent Solicitation amendments;
8. Change any of the schedule dates with notification through the NYS Contract Reporter;
9. Eliminate any mandatory, non-material requirements that cannot be complied with by all prospective Bidders;
10. Waive any requirements that are not material;
11. Utilize any and all ideas submitted in the Bids received;
12. Adopt all or any part of a Bidder's Bid in selecting the optimum configuration;
13. Negotiate with a Bidder within the Solicitation requirements to serve the best interests of the State. This includes requesting clarifications of any or all Bids;
14. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Bidder's Bid and/or to determine a Bidder's compliance with the requirements of the Solicitation;
15. Select and award the Contract to other than the selected Bidder in the event of unsuccessful negotiations or in other specified circumstances as detailed in the Solicitation;
16. Accept and consider for Contract award Bids with non-material Bid Deviations or non-material Bid defects such as errors, technicalities, irregularities, or omissions;
17. Use any information which OGS obtains or receives from any source and determines relevant, in OGS's sole discretion, for the purposes of bid evaluation and Contractor selection;
18. Consider a proper alternative where an evidently incorrect reference/parameter/component/product/model/code number is stated by the State or the Bidder;
19. Reject an obviously unbalanced Bid as determined by the State;

20. Conduct Contract negotiations with the next responsible Bidder, should the Agency be unsuccessful in negotiating with the selected Bidder;
21. To, make an award within a Region where there are less than three responsive and responsible Bidders or where the Maximum Not-to-Exceed Bill Rates are too low to be sustained for the term of the Contract plus any renewals and extensions or too high as to be within the realm of possible price reasonableness as determined solely by OGS;
22. Make no award for any Service, Region, as applicable, for reasons including, but not limited to, unbalanced, unrealistic or excessive Bidder pricing, a change in Authorized User requirements and/or Services, or an error in the Solicitation (e.g., use of incorrect reference, description, etc.). In such case, evaluation and ranking of Bids may be made on the remaining Services, Regions;
23. Offer a Bidder the opportunity to provide supplemental information or clarify its Bid, including the opportunity to explain or justify the balance, realism, and/or reasonableness of its pricing;
24. Award Contracts on a rolling or staggered start basis, either in whole or in part. Contracts awarded in this method shall be coterminous with the first Contract awarded as a result of this Solicitation.

## 2.4 Authorized User Reserved Rights

The Authorized User shall have all the same reserved rights as the State, set forth in Section 2.3. In addition, to the above reserved rights, the Authorized User shall have the following additional reserved rights:

1. To request and select Security Guards and/or Fire Safety/EAP Directors based upon previous experience, skill levels, and/or qualifications. These must be defined within the Attachment 4 – *Request for Quote Form*;
2. To add requirements to the RFQ and resulting Authorized User Agreement that are more advantageous than the terms and conditions established within the Centralized Contract;
3. To disallow Subcontractors proposed to be used by the Contractor on an Authorized User's site and to approve any Subcontractors proposed to be used by the Contractor on an Authorized User's site.
4. To, in the event of an unanticipated or expedited need for services and the RFQ process provided for in the Contract will not allow the Authorized Users to meet such unanticipated or expedited need for services, to acquire such services without issuing an RFQ as required in Section 1.1, *Scope and Overview*, but by obtaining quotes and making an award in accordance with the individual Authorized User's procurement guidelines. The Authorized User shall document the nature of the unanticipated or expedited need for services and the process for obtaining quotes and making the award. The term of any award made without issuing an RFQ as required herein shall be limited to the minimum period of time necessary to meet the unanticipated or expedited need for services, until such time as the RFQ process can be completed;
5. To request the Contractor's insurance policy language for purposes of substantiating compliance with Attachment 2 - *Insurance Requirements*, or such other Insurance Requirements, as required by the Authorized User as part of an RFQ;
6. Conduct Contract negotiations with the next responsible Contractor responding to an RFQ, should the Authorized User be unsuccessful in negotiating with the selected Contractor, and
7. To, in the event of two or more tied quotes in response to an RFQ where Financial/Cost had a weight of 100%, ask each Contractor to submit a best and final quote by a specified date and time. The pricing submitted must be lower than the initial pricing. If Financial/Cost had a weight of less than 100%, the quote with the lowest pricing shall be basis for determining the award.
8. If, in the first six months from the RFQ due date, a Contractor is unable to fulfill the terms of the engagement, the Authorized User may go to the next highest scored Contractor(s) to offer them the engagement if they are willing to honor the prices quoted by the originally awarded contractor. If the Contractor(s) decline, a new RFQ must be issued to acquire services.
9. Additional terms and conditions may be allowed as part of Contractor's response to an Authorized User's RFQ and incorporated into the Authorized User Agreement provided that all of the following conditions are met:
  - a. The Contractor identifies such terms and conditions in Contractor's response to the Authorized User's RFQ; and
  - b. Such terms and conditions do not contradict or violate any of the terms and conditions of the Contract, and/or are more advantageous to the Authorized User and the State than those set forth in the Contract; and
  - c. Such terms place no additional liability or responsibility on the Authorized User or the State; and
  - b. The Authorized User acknowledges in writing that it accepts such additional terms and conditions.

10. To request a replacement Candidate if a previously selected/assigned Candidate is deficient in the performance of an assignment. The Authorized User has the right to approve all replacements and substitute Candidates.

## 2.5 Contract Period and Renewal

The Contract(s) awarded shall be in effect for a term of five years commencing on January 24, 2019. All Contract(s) will be coterminous on January 23, 2024. If mutually agreed between OGS and the Contractor, the Contract may be renewed under the same terms and conditions for up to four additional years.

## 2.6 Short Term Extension

This section shall apply in addition to any rights set forth in Appendix B, *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.

## 2.7 Periodic Recruitment

This Solicitation allows for periodic recruitment of additional Contractors during the term of the Contract. Recruitment periods are optional at the discretion of the State. Additional recruitment periods will be advertised in the NYS Contract Reporter. Bidder must register with the New York State Contract Reporter at <https://www.nyscr.ny.gov> in order to receive notifications regarding any periodic recruitments under this Solicitation. Bids shall be evaluated under substantially the same terms and conditions as the original Bids. Bidders shall also be required to submit necessary documentation for any additional applicable statutory requirements in effect at the time of the new Solicitation.

Once awarded a Contract, a Contractor may not resubmit a Bid for future consideration for Regions already awarded to the Contractor under this Solicitation. In addition, if a Bid is deemed non-responsive during the initial Solicitation or any subsequent recruitment period, a Bidder cannot reapply for a future Contract until the next recruitment period.

## 2.8 Procurement Instructions

Authorized Users must use the procedure detailed in Attachment 4 – *Request for Quote Form*, for selecting a Contractor. Request for Quotes will be sent to Contractors within the Region that the services detailed in this Solicitation are to be performed. A Request for Quote process must be performed for all transactions made under this Contract except as detailed in Section 2.4(4). An Authorized User shall issue an Authorized User Agreement (Purchase Order, P-Card transaction or other written order for work to the winning Contractor), which is effective and binding on the Contractor at time of order in accordance with Appendix B §45. The Authorized User Agreement shall contain the total exact or estimated cost, if an exact cost cannot be determined at that time. A Contractor shall not initiate services until the Authorized User Agreement is issued, and an Authorized User shall not request performance of services until the Authorized User Agreement has been issued. Authorized User Agreements may be issued for up to a five (5) year period so long as the Authorized User Agreement is issued within the term of the Centralized Contract. An Authorized User Agreement that goes beyond the end of a fiscal year for a state agency will require a purchase order change notice to be implemented in the Statewide Financial System to authorize payments after the end of the prior fiscal year. Change notices are also allowed for up to two (2) years, upon both parties' agreement. Blanket Purchase Orders may be used for either an exact, or estimated number of hours at a set rate for a certain time period, specific to a Region and title.

## 2.9 Rates

Contractor shall provide to the Authorized User, in response to an RFQ, personnel at the quoted hourly bill rates which shall not be less than the cost of the applicable prevailing wage rate including all supplemental benefits and other legal requirements. The Authorized User shall obtain and provide in the RFQ a PRC# for the applicable prevailing wage, which is based upon the date, job title and county within which the work is to be performed as identified at: <https://applications.labor.ny.gov/wpp/publicViewPWChangesArt9.do?method=showIt> If the straight time hourly bill rate proposed by a Contractor is less than the applicable prevailing wage plus all supplemental benefits required to be paid, the Authorized User shall advise the Contractor that it is ineligible to provide the requested services and cannot be awarded the services under the Authorized User's RFQ.

An Authorized User subject to a local law, such as the "living wage" requirement as found in Section 6-109 of

the New York City Administrative Code, is required to ensure the Contractor sought to be hired complies with such local law at the time of RFQ award. If the hourly bill rate(s) proposed by a Contractor for a job title(s) as set forth in Attachment 1 - *Pricing* or in response to an RFQ, are less than the local law then the Authorized User subject to such local law cannot use that Contractor for the requested services. Compliance with such local laws will not be monitored by OGS. Therefore, Authorized Users are responsible for ensuring compliance with any applicable local laws upon evaluation and during the award of the RFQ.

### **2.9.1 Prevailing Wage Rates - Public Works and Building Services Contracts**

This Contract is subject to the prevailing wage rate provisions of New York State Labor Law. See "Prevailing Wage Rates - Public Works and Building Services Contracts" in Appendix B, OGS General Specifications. Any federal or State determination of a violation of any public works law or regulation, or labor law or regulation, or any OSHA violation deemed "serious or willful" may be grounds for a determination of vendor non-responsibility, rejection of bid in response to an Authorized User RFQ, suspension or termination of Contract.

### **2.9.2 Overtime Pay and Bill Rates**

The overtime work assumes the Security Guard and/or Fire Safety/EAP Director has worked an eight (8) hour day or forty (40) hour week for the Authorized User. If a Security Guard and/or Fire Safety/EAP Director is performing work for more than one Authorized User, the Contractor shall inform each of the Authorized Users of the Security Guard and/or Fire Safety/EAP Director's schedule and actual hours worked so that all parties are aware of when the Security Guard or Fire Safety/EAP Director will reach eight (8) hours a day or forty (40) hours a week worked and at what point overtime rates would begin.

The Contractor is responsible for scheduling to ensure no Security Guard and/or Fire Safety/EAP Director is working shifts which would require the payment of overtime, unless an Authorized User either:

1. Requests a change to a previously agreed to purchase/work order with less than five (5) business day notice to the Contractor, or
2. Requests a non-engaged Contractor to provide new service with less than ten (10) business day notice; and
3. Such request results in a Security Guard and/or Fire Safety/EAP Director working more than the (8) hours a day or forty (40) hours a week. Then, the Contractor shall bill the Authorized User at (or below) the overtime hourly bill rate quoted and the Contractor shall pay the Security Guard and/or Fire Safety/EAP Director the overtime pay rate.

In addition, should an Authorized User require the Security Guard or Fire Safety/EAP Director to remain on site past regularly scheduled business hours to accommodate Authorized User's processing or handling of client, customer or employee needs, Authorized User shall be responsible for paying the Overtime Hourly Bill Rate for such request.

For all other situations, should the Contractor fail to properly schedule the Security Guards and/or Fire Safety/EAP Directors to avoid the occurrence of overtime, the Contractor will be responsible for paying the Security Guards and/or Fire Safety/EAP Directors the overtime pay rate, but the Contractor shall only be permitted to bill the Authorized User at the Straight Time Bill Rate.

### **2.9.3 Holiday Hourly Bill Rates**

The NYS DOL Prevailing Wage Rate schedule for Region 1 requires Contractors to pay Security Guards who have worked for the Contractor for at least a year for eight Holidays (Memorial Day, Fourth of July, Labor Day, New Year's Day, Thanksgiving, Christmas, Presidents Day and Martin Luther King Day), and pay Fire Safety/EAP Directors who have worked for the Contractor for at least a year for ten Holidays (Memorial Day, Fourth of July, Labor Day, New Year's Day, Thanksgiving, Christmas, Good Friday, Columbus Day, Day after Thanksgiving, and Presidents Day) but the Candidate is not required to perform work on those holidays. If a Candidate in Region 1 works on a day listed as a paid holiday, this remuneration is in addition to payment of the required prevailing rate for the work actually performed. Contractors may bill Authorized Users at the straight time hourly bill rate agreed to for Holiday

For all other regions, Authorized Users are not required to pay for Holidays not worked. If an Authorized User requires guard service on a NYS Legal Holiday, the Authorized User will include this as an additional requirement in the RFQ and request a Holiday Hourly Bill Rate.

## 2.10 Price Adjustments

The Maximum Not-to-Exceed Bill Rates, Maximum Not-to-Exceed Vehicle Bill Rates, and Maximum Not-to-Exceed Training Bill Rates bid shall be the established pricing structure and shall not be increased for the life of the Centralized Contract with the exception of changes to the Prevailing Wage and Supplemental Benefit rates. Whenever an updated Prevailing Wage Rate and Supplemental Benefit is published by NYS DOL or the NYC Comptroller and becomes effective, OGS shall update all Contractors' Maximum Not-to-Exceed Hourly Straight time and Overtime Bill Rates to reflect the total percentage change, increase or decrease, of the Prevailing Wage Rate plus the Supplemental Benefit rate. For Region 1, OGS will use the greatest increase or decrease in a Prevailing Wage Rate service category to calculate the adjustment. The pricing page on the OGS website will automatically compute the updated total hourly bill rate. Authorized Users will subsequently adjust the rates charged by Contractors for specific engagements by the same percentages approved by OGS.

For example, for Level 1 Security Guards, the current straight time Prevailing Wage Rate plus Supplemental Benefit Rate equals \$20.50. The new Prevailing Wage Rate plus Supplemental Benefit Rate equals \$21.25. The calculation for percent increase is  $\$21.25 - \$20.50 = \$0.75$  Then  $\$0.75/\$20.50 = .03658 \times 100 =$  a 3.7% increase. The Contractor's Maximum Not-to-Exceed Hourly Bill Rate for straight time and overtime would be increased by 3.7%. OGS would adjust their Straight Time Hourly Bill Rate to Authorized Users by 3.7%. Since there is no Prevailing Wage Rate schedule for Level 2 Security Guards, OGS shall increase the Level 2 Straight Time Hourly Bill Rate and the Overtime Hourly Bill Rate by the same percent adjustment that was done for Level 1 Security Guards.

## 2.11 Invoicing and Payments

Invoicing and payment shall be made in accordance with the terms set forth in Appendix B, *Contract Invoicing and Prevailing Wage Rates – Public Works and Building Services Contracts*. Invoices shall be submitted monthly.

Invoices must include, at a minimum, the following information:

1. Contractor Name
2. Contractor Billing Address
3. Contractor Federal ID Number
4. NYS Vendor ID Number
5. Account Number
6. NYS Contract Number
7. Name of Authorized User indicated on the Purchase Order
8. NYS Agency Unit ID (if applicable)
9. Authorized User's Purchase Order Number
10. Order Date
11. Invoice Date
12. Invoice Number
13. Invoice Amount
14. Service Description (Security Guard 1, Security Guard 2, Fire Safety/EAP Director, Daily Vehicle Use, Additional Training fee, etc.)
15. Names of all Candidates providing services. The name of each Candidate must match the name on their respective NYS Security Guard or Fire Safety/EAP Director license/certification.
16. Candidate Title
17. License ID Number
18. Date(s) worked
19. Hour(s) worked
20. Hire Date or Service Credit Date, whichever is earlier for each Guard and Fire Safety/EAP Director
21. Hourly Billing Rate
22. Service location

## 2.12 Certified Payroll Records

Contractor shall maintain a certified payroll record for each Candidate and submit the certified payroll to the Authorized User within three business days of the Authorized User's request. At a minimum, certified payrolls must contain all information as required in the sample provided by NYS Department of Labor (DOL) at: <https://www.labor.ny.gov/workerprotection/publicwork/PDFs/PW-12%20Contractor%20Payrolls%20Cert%20.pdf>

To substantiate the certified payroll and invoice, copies of paychecks, W-2s, and time sheets must be

submitted to the Authorized User and/or the State upon request. If Subcontractors are used by the Contractor on an Authorized User's site, the agreement between the Contractor and Subcontractor must be submitted upon request. Authorized User may request additional documentation to support a payment, including, but not limited to, documentation to substantiate the hire dates and/or service credit dates used, such as Personnel records, and documentation to substantiate legal names and current licenses/certifications.

## **2.13 Security Guard Level 1 and Level 2 Requirements and Responsibilities**

### **2.13.1 Level 1 Security Guard Mandatory Requirements**

The Contractor shall provide Security Guards that meet the following requirements:

1. High School Diploma or GED
2. Minimum six months' experience as a New York State Department of State (DOS) registered Security Guard
3. Minimum 18 years of age
4. Able to communicate with visitors and prepare incident reports in English
5. Able to speak, read and write in English
6. Physically capable of performing the essential duties of the position, with or without reasonable accommodation.
7. Have a valid and current DOS Security Guard registration
8. Have a copy of the current DOS Photo ID card and Certification of Compliance (Attachment 5) on file with Contractor
9. Completed all DOS registration and DCJS Security Guard training
10. Any additional site-specific requirements as determined by the Authorized User
11. Any additional specific training and certifications such as AED (Automated External Defibrillator) as determined by the Authorized User

### **2.13.2 Level 2 Security Guard Mandatory Requirements**

The Contractor shall provide Security Guards that meet the following requirements:

1. All mandatory requirements for Level 1 Security Guards
2. One or more of the following:
  - a. Two years of prior Military experience on active duty, and no type of military discharge that renders such Security Guard unsuitable for the position for which he or she is intended.
  - b. Two years of experience as a member of the National Guard or Military Reserves
  - c. Two years of full-time experience as a Police Officer, Probation Officer or Corrections Officer
  - d. Three years of full-time experience as a DOS registered New York State Security Guard
  - e. Two years of experience as a Security Guard Supervisor
  - f. An Associate's or Bachelor's degree in Criminal Justice
3. Any additional site-specific requirements as determined by the Authorized User
4. Any additional specific training and certifications such as AED (Automated External Defibrillator) as determined by the Authorized User.

### **2.13.3 Responsibilities for Level 1 and Level 2 Security Guards**

1. Visibly display the DOS Photo ID on the Security Guard's person at all times while on duty
2. Protect and/or prepare offices, buildings, grounds and occupants against potential incidents and evacuations which may include but is not limited to fire, disruptive activity, violent storm, vandalism, theft, loitering, trespass, burglaries, unlawful entry, bodily harm, building system malfunctions and deficiencies, etc.
3. Report any serious incidents promptly to the police, fire agency or appropriate emergency personnel for response. As necessary sound any mechanical or electronic alarms in order to alert responsible parties to potential danger.
4. Document any issues in logbook
5. Review logbook for issues that may have occurred on a previous shift and may require action. Action may include advising the appropriate Security Guard(s) of the reported potential risks and responsibilities.
6. Monitor and protect all entrances including, but not limited to, checking ID's, ensuring visitors sign-in and sign-out, issuing passes, observe and screen visitors, escort duties, etc.
7. Issue identification cards, and visitor passes; and maintain the integrity of such identification systems

8. Operate detection equipment to screen individuals and prevent passage of prohibited articles into restricted areas
9. Operate and monitor security devices such as video cameras, and related accessories; and report any malfunctions immediately to the proper supervisor
10. Confiscate contraband and or distribute receipts to persons for items such as weapons, tools, scissors and other prohibited items. Log all items and report incidents to Facility Management for appropriate action.
11. Perform routine internal and external walking tour of the building to assure that all entrances and grounds are secured and log any changes or issues
12. Inspection of all fire suppression equipment including, but not limited to, extinguishers, emergency lights, and fire hoses on a monthly basis to ensure good working order. If a deficiency is identified, the Security Guard must immediately inform the Authorized User.
13. Raise and lower flags
14. Ensure compliance of building rules including, but not limited to, restricting food or drinks in a Facility, cell phone restrictions, etc.
15. Attempt to diffuse situation with hostile persons or escort unruly or disruptive persons from premises. If the effort is unsuccessful, call the appropriate emergency contacts.
16. Report directly to Facility Management at Authorized User location
17. Must be able to communicate with law enforcement personnel, other State and city agencies as well as Facility management
18. Interface with third parties including, but not limited to, building security (i.e. New York State Troopers), emergency service personnel and building fire and safety personnel while functioning as a first and primary responder in all fire and safety issues
19. Answer questions and give directions to visitors to assist them in finding appropriate offices and services if necessary.

#### **2.13.4 Additional Responsibilities for Level 2 Security Guards**

1. Must possess demonstrated administrative capabilities to oversee a large security contingent at various locations and the ability to interface with Facility Management.
2. Overall responsibility for all Security Guards at each individual location
3. Ensure all Security Guards are present and on post during operating hours
4. Ensure all Security Guards are properly trained and familiarized with security procedures and operations
5. Ensure all Security Guards are equipped with appropriate equipment
6. Ensure all Security Guards maintain professional and courteous standards

### **2.14 Fire Safety/EAP Director (Region 1 only) Requirements and Responsibilities**

#### **2.14.1 Fire Safety/EAP Director (Region 1 only) Mandatory Requirements**

The Contractor shall provide staff that meets the following requirements:

1. Must comply with Title 3 of the Rules of the City of New York § 113-03 Fire Safety/EAP Director Certificates of Fitness.
2. May require all mandatory requirements for Level 1 Security Guards at certain Authorized User locations when a Fire Safety/EAP Director is also utilized as Level 1 Security Guards and/or Fire Safety/EAP Directors.
3. Must comply with all updates/changes/amendments to Title 3 of the Rules of the City of New York including compliance with the requirement Fire Safety/EAP Directors be trained and licensed as a Fire and Life Safety (FLS) Director, effective March 1, 2020, or such other time as required by New York City.

#### **2.14.2 Responsibilities for Fire Safety/EAP Directors (Region 1 only)**

1. Responsible for implementing the building's Fire Safety/EAP Plan
2. Report to, supervises and staffs the Fire Command Station
  - a. Liaisons and advises the FDNY during operations
  - b. Notifies building occupants of fire, FDNY operations and updates as needed
  - c. Directs evacuation during fire or emergency
3. Provides information to the FDNY
  - a. Location of fire or emergency
  - b. Evacuation of occupants from and to locations
  - c. Problems with building systems or occupants

4. Responsible for implementing the Fire Prevention Plan
5. Supervises and trains:
  - a. Fire Brigade
  - b. Floor Wardens
  - c. Deputy Floor Wardens
  - d. Building Evacuation Supervisors
  - e. Building occupants
6. Maintains records as required by law and/or regulation
7. Performs inspections as required by law and/or regulation
8. Conducts, supervises and evaluates fire drills
9. May have additional Security Guard responsibilities
10. The Contractor must have a backup Fire Safety/EAP Director that can:
  - a. Function as the Fire Safety/EAP Director during the absence of the assigned Fire Safety/EAP Director
  - b. Perform duties during fires and emergencies as directed by the Fire Safety/EAP Director
11. Complies with all other Title 3 of the Rules of the City of New York § 113 requirements, including compliance with the requirements that such Fire Safety/EAP Directors must be licensed as a Fire and Life Safety (FLS) Director, effective March 1, 2020, or such other time as required by New York City.

## 2.15 Service Requirements

### 2.15.1 Staffing

If requested by an Authorized User, a designated representative of the Authorized User has the right to interview each Candidate that is to be provided to the Authorized User for service and can approve or disapprove assignment. Authorized User must notify Contractor of acceptance or disapproval as soon as possible, but no later than twenty-four (24) hours after interview or the Candidate shall be deemed approved.

If requested by the Authorized User and identified on the Request for Quote Form, the Contractor must first consider hiring current Security Guards and/or Fire Safety/EAP Directors employed at the Facility. Contractor has the right to screen the current Security Guards and/or Fire Safety/EAP Directors to ensure they meet all requirements as outlined in this Solicitation. If the current Security Guards and/or Fire Safety/EAP Directors meet all requirements, Contractor must make employment offers. If the current Security Guards and/or Fire Safety/EAP/EAP Directors do not meet all requirements, Contractor is not obligated to make employment offers but must document the deficiencies to the Authorized User.

The Contractor may use Subcontractors to fulfill services on an Authorized User's site with the Authorized User's approval; however, OGS and Authorized Users will only contract with the successful Bidder known as the Primary Contractor.

No subcontract entered into by the Contractor shall relieve the Contractor of any liabilities or obligations in this Solicitation or the resulting Contract. The Contractor accepts full responsibility for the actions of any Candidate or Subcontractor's Candidate who performs requested Services on an Authorized User's site.

The Contractor shall be responsible for informing the Subcontractors of all terms, conditions and requirements of this Solicitation and an Authorized User's RFQ and shall coordinate and control the work of the Subcontractors on an Authorized Use's site.

If Subcontractors will be used on an Authorized User's site, Contractor must notify Authorized Users in writing prior to start date.

### 2.15.2 Drug Testing

All Contractor's and Subcontractor's Candidates providing Security Guard and/or Fire Safety/EAP Director services must be free of any illegal drugs. An Authorized User may request in writing that the Contractor provide a copy of satisfactory (negative) drug test for a Security Guard and/or Fire Safety/EAP Director. If so requested, the Contractor shall require a Candidate to complete a drug test prior to starting at an Authorized User location but no more than 10 days before their start date. The drug test can be based on either a urine sample or mouth swab (oral fluid) for, at a minimum, marijuana, cocaine, opiates, amphetamines and phencyclidine, meeting Substance Abuse and Mental Health Services Administration (SAMHSA) standardized cut-off levels. The drug test will be at the expense of the Contractor.



In addition to the initial drug test, during an engagement the Authorized User may request a random drug test for a current Candidate. These additional tests would be at the expense of the Contractor and limited to one additional test per Candidate per year. If an Authorized User requests further drug testing, Contractor shall have such tests performed at the Authorized User's expense. Contractor shall reimburse Authorized User for costs associated with each positive result for illegal drugs.

### 2.15.3 Background, Registration and Training

Contractor and all Security guards are required to complete and comply with all background checks, registration and training requirements as listed on the Department of State, Division of Licensing Services website: <http://www.dos.ny.gov/licensing/securityguard/sguard.html> and the New York State Division of Criminal Justice Services website: (<http://www.criminaljustice.ny.gov/ops/sgtraining/index.htm>) and Contractor and Fire Safety/EAP Directors must comply with Title 3 of the Rules of the City of New York § 113-03 Fire Safety/EAP Director Certificates of Fitness **prior** to the Candidate beginning services at a Facility.

An Authorized User may require in an RFQ additional training which may include but not be limited to:

1. AED (Automated External Defibrillator)
2. HIPAA (Health Insurance Portability and Accountability Act)
3. OSHA (Occupational Safety and Health Administration) 10-hour course

The cost of any additional training required by an Authorized User will be billed at the competitive rate submitted by Contractor in response to the Authorized User's RFQ.

An Authorized User will specify the Facility specific training (either on the job or in the classroom) to be completed within thirty days of assignment within the RFQ.

### 2.15.4 Candidate Reporting Documents

1. Upon first reporting to the Facility for assignment, the Security Guard must present to the Authorized User the following items:
  - a. DOS ID - A valid NYS Department of State (DOS) Photo ID Registration (must be visibly displayed on Security Guard at all times). The Contractor is responsible to pay the Department of State the fee associated with registration of each Security Guard with Contractor.
  - b. NOTARIZED CERTIFICATION OF COMPLIANCE - A current Certification of Compliance shall be signed and dated by Contractor and notarized. A copy must be maintained in the Contractor's office within the assigned Candidate' file and available for audit. The "Certification of Compliance" shall be reissued annually on the anniversary date for each such Candidate assigned and provided to the Facility manager with a copy filed in the Master file maintained by the Contractor for each Candidate. A copy of this certificate is included as Attachment 5 – *Certificate of Compliance*.
2. Upon first reporting to the Facility for assignment, the Fire Safety/EAP Director must present to the Authorized User the following items:
  - a. Must present a valid driver's license or state identification card
  - b. Must present copy of current NYC Fire Department Certificate of fitness as a Fire Safety/EAP Director.
  - c. NOTARIZED CERTIFICATION OF COMPLIANCE (Attachment 5) – as noted above
  - d. It is the obligation of the Contractor to maintain current and all prior copies of the Certification of Compliance forms in each Fire Safety/EAP Director's file for review by NYS and/or the Authorized User utilizing the Security Guard's services.

### 2.15.5 Security Procedures

At the request of the Authorized User, Contractor must comply with Authorized Users specific security policies. The Contractor will work with Authorized User to obtain necessary clearances prior to the Candidate's start date. Contractor may be required to provide information such as, but not limited to, the company name, the Candidate's name (as it appears on ID), valid driver license number, etc. to an Authorized User.

### **2.15.6 Coverage**

Security coverage as specified in the Authorized User RFQ must be maintained at each requested Facility. In the event of anticipated and/or unanticipated absenteeism and tardiness, it is the obligation of the Contractor to maintain sufficient staffing as required by the RFQ. The Contractor must have a procedure in place for Candidates to communicate both tardiness and absence in a fashion that allots enough time for a replacement Candidate of equal or better qualification(s) to be retained for the shift in question without any additional cost to Authorized User.

### **2.15.7 Workday/Hours**

A Candidate may work up to eight (8) hours in any one day and up to forty (40) in any one workweek for the appropriate prevailing wage rates. A Candidate who works more than eight (8) hours in any one day or more than forty (40) hours in any workweek shall be paid in accordance with Section 2.9.2, *Overtime Pay and Bill Rates*.

#### **Standard Work Day:**

A typical work day may be up to an eight and one half (8-1/2) work shift inclusive of one thirty minute meal period. The thirty-minute meal period will be unpaid.

#### **Meal Time:**

Defined as thirty minutes within the standard eight (8) hour workday when the Security Guard and/or Fire Safety/EAP Director may eat. The Security Guard and/or Fire Safety/EAP Director may be required to remain on premises and be available to respond to emergencies. If so, the Security Guard and/or Fire Safety/EAP Director will be paid for the thirty-minute meal period.

#### **Overtime:**

Authorized Users do not anticipate paying overtime rates under this contract except where the Authorized User requires Fire Safety/EAP Directors to work on weekends as per the Prevailing Wage requirements. The Contractor will be responsible for scheduling Candidates so that shifts do not exceed the parameters identified in the prevailing wage schedule for which overtime pay is required. In the event, that overtime is necessary to maintain coverage due to scheduling problems on the part of the Contractor, the Contractor shall pay the appropriate overtime rate to the Security Guard and/or Fire Safety/EAP Director at no additional cost to Authorized User. If an Authorized User requires Security Guards and/or Fire Safety/EAP Directors to remain on site at the end of their regularly scheduled shift due to Authorized User's clients/customers/employees remaining on site for continued services beyond the Authorized User's regularly scheduled closing time, the Authorized User shall be responsible to pay for the overtime payments for such Security Guards and/or Fire Safety/EAP Directors.

#### **Closed Sites on Scheduled Days/Scheduled Times:**

In the event an Authorized User determines to close a site on a particular Scheduled Day/Scheduled Time, and therefore does not require Candidates, and does not provide the Contractor with at least two (2) business day notice, excepting for a declared emergency, the Contractor shall be permitted to charge the Authorized User for the business day as if the Candidate(s) were working at an open Facility.

### **2.15.8 Late Arrival**

An Authorized User shall not pay for any scheduled time for the period the Candidate was late. More than three late arrivals in a one-month period by the same Candidate may result in that Candidate being disqualified from performing future services for the Authorized User under this Contract. Lateness shall be defined by the Authorized User.

### **2.15.9 Additional Security Guards/Special Events**

It is anticipated that during the term of this contract Contractors will be required by some Authorized Users to provide additional Security Guards for additional shifts and/or special events or holidays. Once the date of the special event or holiday to be worked is determined, the Authorized User will submit the request in writing to the Contractor with as much notice as possible.

### 2.15.10 Standard Equipment

The following equipment will be required for each Security Guard and Fire Safety/EAP Director and shall be provided by the Contractor at the Contractor's expense:

1. An operable flashlight
2. Pen or pencil and watch
3. Memo book
4. Whistle

If the Authorized User requires the following items, such items shall be provided by the Authorized User to the Candidate assigned and at no cost to Contractor. All items remain property of the Authorized User:

1. Building keys, where applicable;
2. Logbook;
3. Guard and/or Fire Safety/EAP Director Handbook;
4. General and special orders; and
5. Two-way radio/beeper (or other communication device).

### 2.15.11 Site Assignment and Removal

When requesting Candidates, the Authorized User shall allow sufficient processing time for a Contractor to screen, recruit and hire Security Guards and/or Fire Safety/EAP Directors. Once the Contractor receives confirmation from an Authorized User that Contractors Quote was selected, Contractor will have a minimum of ten (10) business days to fulfill order ensuring the Candidates meet the required specifications as outlined in the Contract and/or Request for Quote, unless there is an agreement between the Authorized User and Contractor to a different timeframe.

The first time a Candidate is sent to an Authorized User's site, the Contractor or approved Subcontractor must furnish the Authorized User with appropriate documentation as set forth in Section 2.15.4, *Candidate Reporting Requirements*.

The Authorized User representative, in its sole judgment, may require the removal of any Candidate failing to meet contract requirements or for nonperformance of any duty under either the Contract and/or Authorized User RFQ. Authorized User shall give Contractor as much prior notice as is reasonable for the requested removal and shall advise the Contractor in writing within twenty-four hours of such request.

A sufficient number of staff should be provided to accomplish the specified service in the frequencies requested as noted on the RFQ Document.

### 2.15.12 License

Contractor must have and shall maintain a valid Watch, Guard or Patrol agency license issued by the New York State Department of State for each bureau, agency, sub-agency, office and branch office to be owned, conducted, managed or maintained by Contractor to supply the security guards and/or Fire Safety/AED Directors. Contractor must submit to OGS evidence of current licenses every two years.

### 2.16 Vehicle Use Charges

Upon Authorized User request, requirements for Security Guard Services may include vehicles for patrolling facilities. Pricing for vehicles is all-inclusive and may include but is not limited to: daily vehicle expense, insurance, gas, repairs and maintenance, etc. The rates provided in response to this Solicitation are not-to-exceed rates. The Maximum Not-to-Exceed Daily Vehicle Bill Rate will be adjusted as per the provisions in Section 2.10, *Price Adjustments*. It is at the Request for Quote stage where Contractor should quote competitive prices.

### 2.17 On-Site Work

Services performed on-site by Contractor's Security Guards and/or Fire Safety/EAP Directors shall be rendered in accordance with these additional requirements as determined by the Authorized User:

1. Sign-In: Candidates shall sign in and out in accordance with the Authorized User's security procedures and guidelines. Failure to sign in or out, whether intentional or not, may be understood to mean that service was not performed. This includes signing in and out for lunch/dinner and any breaks that result in the Candidate being away from their designated work station.
2. A review of all Facility use rules for the subject location.
3. An introduction for each respective Agency organization, chain of command, etc.

Any other additional security or other requirements set forth by the Authorized User in the RFQ.

## 2.18 Ongoing Compliance

After award of contract, Contractors must continue to meet or exceed all the requirements outlined in this Contract and all Attachments throughout the term of the contract. OGS reserves the right to require documentation from any Contractor at any time throughout the term of the contract to verify ongoing compliance.

## 2.19 Disqualified Resources

Any Candidate that an Authorized User deems unfit to perform a position at the time of RFQ response or any time in the future shall be recorded by notifying the Contractor in writing, and may result in that Candidate being disqualified from performing future services for the Authorized User under this Contract.

## 2.20 Mandatory Restrictions

1. No smoking allowed by Security Guard and/or Fire Safety/EAP Director in Authorized User facilities other than in designated smoking areas.
2. No personal use by Security Guard and/or Fire Safety/EAP Director of Authorized User's telephones, computers or telecommunications equipment, without prior written permission of the Authorized User.
3. No Security Guard and/or Fire Safety/EAP Director may bring any weapon of any type into any Authorized User building, including, but not limited to, the following: firearms, knives, billy clubs, nightsticks, blackjacks, gas discharge guns, etc.
4. No Security Guard and/or Fire Safety/EAP Director may use during work hours or carry on patrol any radio, recorder, television, reading material, music maker, game or pictorial material unless approved in writing by the Authorized User.
5. No Security Guard and/or Fire Safety/EAP Director shall be under the influence or carry the odor of alcoholic beverages while on duty, nor shall any Security Guard and/or Fire Safety/EAP Director carry or consume any alcoholic beverage while on duty.
6. No Security Guard and/or Fire Safety/EAP Director shall be under the influence of, carry or ingest a controlled substance, except as prescribed by medical authorities and then only if the Security Guard and/or Fire Safety/EAP Director performance of duties shall not be impaired in any way.

## 2.21 Quality of Services

Contractor agrees that the services provided under this Contract will be provided in a professional manner in accordance with industry standards, and that all candidates proposed in response to an RFQ will have all required licenses, certifications or permits necessary or required by applicable law and/or regulations to perform the requested services.

## 2.22 Maintenance of a Master File

The Contractor shall maintain a Master File for each Security Guard and/or Fire Safety/EAP Director Candidate. Each Master File must be stored in electronic format (i.e., electronic or scanned documents). Master File should contain copies of Security Guard's NYS DOS license, I-9 Employment Eligibility Form, high school degree or General Equivalency Diploma (GED), driver's license, registration, training certifications, drug test results, military credentials, NYC Fire Department Certificate of Fitness, Certificate of Compliance and any other Security Guard or Fire Safety/EAP Director proof of qualification. Contractor must verify and document for the Master File the hire date or service credit date, whichever is earlier, that determines a Security Guard's and/or Fire Safety/EAP Director's Prevailing Wage and Supplemental Benefit pay rates. If a Subcontractor is approved for use to provide the requested services on an Authorized User's site, the Contractor shall require the Subcontractor to maintain the Master File and provide a complete copy of it to the Authorized User or NYS OGS upon request.

## 2.23 Reduce Work

The Authorized User has the right to reduce the length of the work assignment and the Contractor shall be provided a minimum of five business days' notice, except when reduction is due to a force majeure event, as defined in Clause 44 of Appendix B, or if the Security Guard and/or Fire Safety/EAP Director presents a risk to the safety and well-being of his/herself or others. Contractors shall not assess any fees or penalties for reductions in work assignments.

## 2.24 Generic E-Mailbox

Contractor shall maintain a generic e-mail mailbox for use by Authorized Users when issuing Request for Quotes. The e-mailbox must be monitored consistently throughout each business day in order to provide timely responses to Authorized Users' requests. Any changes to the generic e-mailbox must be provided within one (1) business day to the Contract Manager listed on the Contract Award Notification page.

## 2.25 Toll-free number

A Contractor shall provide and maintain a toll-free telephone number or messaging service for the Authorized User usage. Contractor must staff this toll-free number at a minimum from 9:00am to 5:00pm Monday through Friday Eastern Standard Time.

## 2.26 Reclassification of Job Titles

In the event NYS DOL/NYC Comptroller classify the Level 2 Security Guards as "Public Work" and publish Prevailing Wage Rates and Supplemental Benefits, OGS shall review each Contractor's Maximum Not-to-Exceed Bill Rates for Level 2 Security Guards to determine if a price adjustment is necessary.

## 2.27 New York State Financial System (SFS)

### 2.27.1 NYS Statewide Financial System

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://nyspro.ogs.ny.gov/content/nys-emarketplace-1>. There are no fees required for a Contractor's participation in the catalog site development or management. Upon completion and activation of an on-line catalog, State Agencies will process their orders through the SFS functionality and other Authorized Users can access the catalog site to fulfill orders directly. The State is also implementing the PeopleSoft Inventory module in the near future to track inventory items within the item master table. Further information regarding business processes, interfaces, and file layouts may be found at: <http://www.sfs.ny.gov> and <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

### 2.27.2 NYS SFS Procurement Module

NYS anticipates during the term of this contract that a potential SFS Procurement Module may be launched and all contract spend by state agencies (and potentially all other Authorized Users) may be required to be in this module. Contractor agrees that if required by OGS, all RFQs, purchase orders, and invoicing will be performed using this module for either:

1. State Agencies, Only,
2. All Authorized Users, or
3. For State Agencies and certain other categories of Authorized Users as required by OGS.

## 2.28 Contract Administrator

Contractor must maintain a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Contractor must notify OGS within five (5) Business Days if its Contract Administrator changes, and provide either the new administrator's name and contact information, or an interim contact person until the position is filled. Changes to Contractor contact information, including the designation of a new Contract Administrator, shall be submitted electronically via e-mail to the OGS Contract Management Specialist in charge of administration of the Award and subsequent contract(s).

## 2.29 Insurance Requirements

The Contractor shall, at its sole cost and expense, maintain in full force at all times during the term of the Contract, all policies of insurance pursuant to the requirements outlined in Attachment 2 - *Insurance Requirements*.

## 2.30 Report of Contract Usage

The Contractor shall furnish semi-annual reports, using the format specified in Attachment 3 - *Report of Contract Usage*, containing total sales for both State Agency and Authorized Non-State Agency Contract invoicing as follows:

1. For the period of January 1 through June 30, semi-annual reports must be provided by COB July 30 immediately following,
2. For the period of July 1 through December 31, semi-annual reports must be provided by COB January

- 30 immediately following, and
3. In the event award of contract takes place after either January 1<sup>st</sup> or July 1<sup>st</sup> for the semi-annual reporting period, Contractor shall report all invoicing up to either June 30<sup>th</sup> or December 31<sup>st</sup> from the award date, utilizing i the timeframes listed in items 1 and 2 for all subsequent reporting period.

Reports of Contract Usage are to be submitted to OGS NYS Procurement, to the attention of the Contract Administrator, as shown on the front page of the Contract Award Notification document posted on the OGS website. Attachment 3 - *Report of Contract Usage* template must be used, the report must be completed in its entirety and submitted in MS Excel format only (incomplete, altered, locked, pdf. or hard copy submissions will not be accepted). OGS Procurement reserves the right to request additional information if needed. Additional related sales and/or detailed Authorized User purchase information may be required by OGS and must be supplied within 30 calendar days, upon request.

OGS reserves the right to alter, amend, or revise this section at any time during the life of the contract.

## **2.31 Company and Contact Information**

Changes regarding Contractor's company and/or contact information should be submitted no later than five (5) business days of the change to the OGS Contract Administrator.

## **2.32 Contractor Requirement and Procedures for Participation by New York State Certified Minority- and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women**

### **2.32.1 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.

### **2.32.2 General Provisions**

1. 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 and for this Solicitation, MWBE goals are set at the Centralized Contract level, not in each individual quote in response to an RFQ.
2. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for 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.
3. Failure to comply with all the requirements herein may result in a finding of non-responsiveness, non-responsibility, breach of contract, withholding of funds, liquidated damages pursuant to Section 2.32.9., *Breach of Contract and Liquidated Damages*, and/or enforcement proceedings as allowed by the Contract and applicable law.

### **2.32.3 Equal Employment Opportunity (EEO)**

1. 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.
  - a. 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.
- b. 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.
2. Form EEO 100 - Staffing Plan.
    - a. 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.
  3. Form EEO 101 - Workforce Utilization Reporting Form (Commodities and Services) ("Form EEO-101-Commodities and Services")
    - a. 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. 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.
    - b. Separate forms shall be completed by Contractor and any Subcontractor.
    - c. 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.
  4. 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.

### 2.32.4 Contract Goals

1. OGS hereby establishes an overall goal of **30%** for MWBE participation, **15%** for Minority-Owned Business Enterprises ("MBE") participation and **15%** for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs) at the OGS Centralized Contract Level, based upon the value of all State Agency and Authority (as defined in 5 NYCRR § 140.1) Authorized User Agreements. The total OGS Contract goal can be obtained by utilizing any combination of MBE and /or WBE participation for subcontracting and supplies acquired under the Contract for all Authorized Users.
2. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract goals established above, 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 Business 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.
3. Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as Subcontractors or suppliers in the performance of the OGS Contract (see clause 2.32.7. below).

### 2.32.5 MWBE Utilization Plan

1. In accordance with 5 NYCRR § 142.4, Bidders are required to submit a completed Utilization Plan on Form MWBE 100 with their bid.
2. The Utilization Plan shall list the MWBEs the Bidder intends to use to perform the State Agency and Authority Authorized User Agreements in the Regions being bid, a description of the Contract scope of work the Bidder intends the MWBE to perform to meet the goals on the OGS Contract, the estimated or, if known, actual dollar amounts to be paid to the MWBEs. 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 NYS 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.
3. OGS will review the submitted MWBE Utilization Plan and advise the Bidder of OGS acceptance or issue a notice of deficiency within twenty (20) days of receipt. OGS recognizes that Bidders may not know all the MWBEs that Bidder will use during the course of the OGS Contract, therefore, Bidders should contact the OGS MWBE office for assistance and guidance in completing the initial MWBE Utilization Plan and updates to that plan throughout the term of the OGS Contract.
4. 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.
5. OGS may disqualify a Bidder's bid/proposal as being non-responsive under the following circumstances:
  - a. If a Bidder fails to submit a 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.
6. 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 Section 2.32.4, *Contract Goals* of this Section.
7. 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.

### 2.32.6 Request for Waiver

1. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts of the OGS Office of Minority- and Women-Owned Business Enterprises for guidance.
2. 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 2.32.7. 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 2.32.5(3), (4) & (5) 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) days of receipt.
3. 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.
4. 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.

### 2.32.7 Required Good Faith Efforts

1. 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:
  - a. A list of the general circulation, trade and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as Subcontractors/suppliers and copies of such solicitations and any responses thereto.
  - b. A list of the certified MWBEs appearing in the Empire State Development MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
  - c. 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.
  - d. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
  - e. 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.
  - f. Other information deemed relevant to the request.

### 2.32.8 Monthly MWBE Contractor Compliance Report

1. 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 requires Contractors to 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/>. **Contractors must advise the OGS Office of Minority- and Women-Owned Business Enterprises throughout the term of the OGS Contract of all State Agency and Authority Authorized User Agreements it is awarded so that information may be entered into the NYSCS.**
2. When a Contractor receives a payment from a State agency or Authorized User following a purchase from an OGS Procurement Services contract, 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. Audit notices may also come from a State Agency or Authority Authorized User. 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.
3. 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 for Vendors" 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>
4. 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.

5. 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, 29<sup>th</sup> floor Corning Tower, Empire State Plaza, Albany, NY 12242. Phone: 518-486-9284; Fax: 518-486-9285.
6. 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 and a requesting Authorize User, may jeopardize future payments pursuant to the MWBE liquidated damages clause in clause 2.32.9. below.

### **2.32.9 Breach of Contract and Liquidated Damages**

1. In accordance with Executive Law Section 316-a and 5 NYCRR § 142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to OGS for liquidated or other appropriate damages, as set forth herein.
2. Such liquidated damages shall be calculated as an amount equaling the difference between:
  - a. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
  - b. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
3. If, after Contractor has been afforded due process to respond to the allegation that it willfully or intentionally failed to comply with the MWBE participation goals, OGS determines that Contractor is liable for liquidated damages and such identified sums have not been withheld by the OGS, Contractor shall pay such liquidated damages to the OGS within sixty (60) days after such determination unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Women’s Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law, in which event the liquidated damages shall be payable if the Director renders a decision in favor of the OGS.

### **2.32.10 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://www.ogs.ny.gov/MWBE/Forms.asp>**

### **2.33 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 (“SDVOB”), 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, Bidders are 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.

#### **2.33.1 Contract Goals**

1. OGS hereby establishes an overall goal of 6% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: <https://ogs.ny.gov/Veterans/default.asp>. Questions regarding compliance with SDVOB participation goals should be directed to the Designated Contacts within the OGS Division of Service-Disabled Veterans’ Business Development (the “Division”). Additionally, following

Contract execution, Contractor is encouraged to contact the Division at 518-474-2015 to discuss additional methods of maximizing participation by SDVOBs on the Contract.

2. Contractor must document "good faith efforts" to provide meaningful participation by SDVOBs as Subcontractors or suppliers in the performance of the Contract (see clause 2.33.4. below).

### 2.33.2 SDVOB Utilization Plan

1. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form SDVOB 100 with their bid.
2. The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the State Agency and Authority Authorized User Agreements in the Regions being bid, a description of the Contract scope of work the Bidder intends the SDVOB to perform to meet the goals on the OGS Contract, the estimated or, if known, actual dollar amounts to be paid to the SDVOBs, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the SDVOB Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows 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 SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to OGS.
3. OGS will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of OGS acceptance or issue a notice of deficiency within 20 days of receipt.
4. If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven 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/Contractor and direct the Bidder/Contractor to submit, within five business days of notification by OGS, a request for a partial or total waiver of SDVOB participation goals on SDVOB 200. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
5. OGS may disqualify a Bidder's bid or proposal as being non-responsive under the following circumstances:
  - a. If a Bidder fails to submit an SDVOB 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.
6. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.
7. Contractor further agrees that a failure to use SDVOBs as agreed in the 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-responsibility.

### 2.33.3 Request for Waiver

**Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts in the Division for guidance.**

1. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause 2.33.4. below, may submit a request for a partial or total waiver on Form SDVOB 200, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by OGS at that time, the provisions of clauses 2.33.2 (3), (4) & (5) 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 20 days of receipt.
2. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB 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.
3. If OGS, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report

(SDVOB 101) 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 business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

#### **2.33.4 Required Good Faith Efforts**

1. In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:
2. Copies of solicitations to SDVOBs and any responses thereto.
3. Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.
4. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by OGS with certified SDVOBs whom OGS determined were capable of fulfilling the SDVOB goals set in the Contract.
5. Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
6. Other information deemed relevant to the waiver request.

#### **2.33.5 Monthly SDVOB Contractor Compliance Report**

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Monthly SDVOB Contractor Compliance to OGS during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form SDVOB 101 available on the OGS website and should be completed by the Contractor and submitted to OGS, by the 10th day of each month during the term of the Contract, for the preceding month's activity to the OGS Contract Management Specialist.

#### **2.33.6 Breach of Contract and Damages**

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

**ALL FORMS ARE AVAILABLE AT:**

<https://ogs.ny.gov/Veterans/default.asp>

### **2.34 New York State 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.

### **2.35 Drug and Alcohol Use Prohibited**

For reasons of safety and public policy, in any Contract resulting from this Solicitation, the use of alcoholic beverages or illegal drugs by Candidates shall not be permitted in performance of the Contract.

### **2.36 Traffic Infractions**

Neither the State nor Authorized Users will be liable for any expense incurred by Candidates for any parking fees or as a consequence of any traffic infraction or parking violation attributable to Candidates of the Contractor in performance of the Contract.

### **2.37 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, *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 (<http://www.ogs.state.ny.us/purchase/snt/othersuse.asp>). Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to NYS Procurement Services Customer Services at 518-474-6717.

### **2.38 Extension of Use**

Any Contract resulting from this bid Solicitation may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York State (the lead contracting State) and the Contractor. Political subdivisions and other authorized entities within each participating State or governmental jurisdiction may also participate in any resultant Contract if such State normally allows participation by such entities. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions. Please contact NYS Procurement Services Customer Services for more information via email at: [OGS.sm.customer.services@ogs.ny.gov](mailto:OGS.sm.customer.services@ogs.ny.gov).

### **2.39 Federal Funding**

For an Authorized User using Federal funds, Contractor shall cooperate in adding to the Authorized User's Agreement any Federal funding contract clauses necessary for the Authorized User's Project. An Authorized User shall identify to Contractor, as a condition of using this Contract and during the RFQ process, whether Federal funds will be utilized for the Project.

### **2.40 Americans with Disabilities Act (ADA)**

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

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

### **2.41 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.

### **2.42 Severability**

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

### **2.43 Counterparts**

This Agreement 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 Agreement. Any signature page of any such counterpart may be attached or appended to any counterpart to complete a fully executed counterpart of this Agreement shall bind such party.

### **2.44 Notices**

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this Contract shall be in writing and shall be validly given when mailed by registered or certified mail, or hand delivered, (i) if to the State, addressed to the State at the following address: 23106 Contract Administrator Office of General Services New York State Procurement 38th Floor Corning Tower Empire State Plaza Albany, NY 12242 and (ii) if to Contractor, addressed to the individual identified as the "Centralized Contract Contact," and at the specified address identified on Page 2 of this Agreement. The Parties may from time to time, specify any address in the United States as its address for purpose of notices under this Agreement by giving fifteen (15) Business Days written notice to the other party. The Parties agree to mutually designate individuals as their respective representatives for purposes of this Agreement. All notices sent shall be effective upon actual receipt by the receiving party. The Contractor will be required to forward a copy of the official notice to an Authorized User that is associated with the subject of the notice. Written notice of any alleged breach by one party to the other shall provide specific facts, circumstances and grounds upon which the breach is being declared.

### **2.45 Entire Agreement**

This Contract and the referenced Appendices and Attachments constitute the entire agreement between the parties thereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and the Contract shall not be changed, modified or altered in any manner except by an instrument in writing executed by the State and the Contractor, with all necessary approvals. Authorized Users shall not have the authority to modify the terms of the Contract, except as to better terms and pricing for a particular procurement than those set forth herein. In accordance with the terms set forth in Appendix B §26 Modification of Contract Terms, and §30 Purchase Orders, no preprinted terms or conditions on a Purchase Order issued by an Authorized User which seek to vary the terms of this Contract or impose new duties or obligations on the Contractor shall have any force and effect.

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, 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 OGS procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

CONTRACTOR

Signature:

*Robert Auletta*

Printed Name:

Robert Auletta

Title:

co-president

Company Name:

Summit security services, inc.

Federal ID:

13-2896421

NYS Vendor ID:

1000012808

THE PEOPLE OF THE STATE OF NEW YORK

Signature:

*Terri Allen*

Printed Name:

Terri Allen

Title:

Assistant Director

Procurement Services

Date:

11/30/18

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

STATE OF New York }  
 }  
COUNTY OF NASSAU } SS.:

On the 29<sup>TH</sup> day of NOVEMBER in the year 2018, before me personally appeared ROBERT AULETTA, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that he maintains an office at UNIONDALE NY, and further that:

[Check One]

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

Pamela J. Wolfe  
Notary Public  
Registration No. 01W06094221

PAMELA J. WOULFE  
Notary Public, State of New York  
Registration No. 01W06094221  
Qualified In Nassau County  
Commission Expires June 16, 2019



APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.

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## **STANDARD CLAUSES FOR NYS CONTRACTS**

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

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

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

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

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

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

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

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

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

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

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

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is

available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.**

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

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

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.**

In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed

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

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

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

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

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

exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

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

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and

provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**24. PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law

Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

a contract and appears on the Prohibited Entities list after contract award.

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

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

**26. IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the “Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”) posted at:

<http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

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

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

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

**APPENDIX B**  
**GENERAL SPECIFICATIONS**



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**GENERAL**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**gg. STATE** State of New York.

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

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

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

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

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

**BID SUBMISSION**

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

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

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

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

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

**6. CONFIDENTIAL/TRADE SECRET MATERIALS**

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

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

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

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

**a. PREVAILING WAGE RATE APPLICABLE TO BIDS** A copy of the applicable prevailing wage rate schedule is incorporated into the Solicitation and may also be obtained by visiting [www.labor.ny.gov](http://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](http://www.osc.state.ny.us), by e-mail at [HelpDesk@sfs.ny.gov](mailto:HelpDesk@sfs.ny.gov), or by telephone at (518) 457-7737 or toll free (877) 737-4185. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract that are payable by the State Comptroller if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

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

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

#### **46. DEFAULT – AUTHORIZED USER**

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

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

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

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

#### **47. PROMPT PAYMENTS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**54. WARRANTIES**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **57. INDEMNIFICATION RELATING TO INFRINGEMENT**

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

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

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

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

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

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

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

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

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

#### **59. DISPUTE RESOLUTION PROCEDURES**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

**63. NO HARDSTOP OR PASSIVE LICENSE MONITORING**

Unless otherwise expressly agreed to by the Licensee, the Product and all upgrades shall not contain any computer code that would disable the Product or upgrades or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as "time bombs," "time locks," or "drop dead" devices) or that would permit Contractor to access the Product to cause such disablement or impairment (sometimes referred to as a "trap door" device). Any Contractor access to the Product agreed to by Licensee as provided above shall be in accordance with Licensee's security or other requirements. Contractor agrees that in the event of a breach of this provision that Licensee shall not have an adequate remedy at law, including monetary damages, and that Licensee shall consequently be entitled to seek a temporary restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any and all remedies to which Licensee shall be entitled.

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

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

**a. Definitions**

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

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

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

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

**(i) Existing Products:**

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

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

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

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

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

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

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

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

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

**66. CHANGES TO PRODUCT OR SERVICE OFFERINGS**

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

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

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

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

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

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## APPENDIX C - CONTRACTOR INFORMATION

**TITLE:** Security Guard Services (Statewide) and Fire Safety/Emergency Action Plan Directors (Region 1 - NYC Only)

**AWARD:** 23106                      **CONTRACT PERIOD:** January 24, 2019 – January 23, 2024

AWARDED REGION(S) AND COUNTIES WITHIN REGION	OGS CONTRACT NUMBER	CONTRACTOR INFORMATION
<p><b>Region 1:</b> Bronx, Kings, New York, Queens, and Richmond</p> <p><b>Region 2:</b> Nassau and Suffolk</p> <p><b>Region 3:</b> Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, and Westchester</p> <p><b>Region 4:</b> Albany, Columbia, Fulton, Greene, Montgomery, Rensselaer, Schenectady, and Schoharie</p> <p><b>Region 5:</b> Clinton, Essex, Franklin, Hamilton, Saratoga, Warren, and Washington</p> <p><b>Region 6:</b> Herkimer, Jefferson, Lewis, Madison, Oneida, Oswego, and St. Lawrence</p> <p><b>Region 7:</b> Broome, Cayuga, Chenango, Cortland, Delaware, Onondaga, Otsego, Tioga, and Tompkins</p> <p><b>Region 8:</b> Chemung, Monroe, Ontario, Schuyler, Seneca, Steuben, Wayne, and Yates</p> <p><b>Region 9:</b> Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Livingston, Niagara, Orleans, and Wyoming</p>	<p><b>PS68269</b></p>	<p><b>Summit Security Services, Inc.</b>            390 RXR Plaza            Uniondale, NY 11556</p> <p><b>Fed ID #:</b> 13-2896421  <b>NYS Vendor ID #:</b> 1000012808</p>