

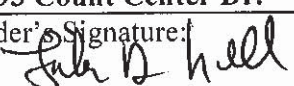


STATE OF NEW YORK  
EXECUTIVE DEPARTMENT  
OFFICE OF GENERAL SERVICES  
NEW YORK STATE PROCUREMENT  
PIGGYBACK CONTRACT

AGREEMENT NUMBER <b>PGB-22797</b>	TITLE: GROUP 10200 INFLUENZA VACCINES (MMCAP) (STATEWIDE) FFF ENTERPRISES, INC.
RETURN BY:  June 25 2014	Purchase Request No. <b>22797</b> SPECIFICATION REFERENCE: As Incorporated Herein
<b>CONTRACT PERIOD:</b> Upon approval through December 31, 2015 with the option to extend for three additional one-year terms as mutually agreed upon and achieved through a fully executed amendment	
<b>DESIGNATED CONTACTS</b>	
Primary Contact: Shrilata Nath Telephone No. (518) 474-4680 E-mail address: <a href="mailto:shrilata.nath@ogs.ny.gov">shrilata.nath@ogs.ny.gov</a>	Secondary Contact: John Normile Telephone No. (518) 408-2557 E-mail address: <a href="mailto:john.normile@ogs.ny.gov">john.normile@ogs.ny.gov</a>

The contract 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 PIGGYBACK AGREEMENT, Appendix A (Standard Clauses For New York State Contracts), Appendix B (OGS General Specifications), and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, bidder affirms that it understands and agrees to comply with the OGS procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b). Information may be accessed at:

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

<b>Bidder's Federal Tax Identification Number:</b> (Do Not Use Social Security Number) <b>330309114</b>		<b>NYS Vendor Identification Number:</b> (See "New York State Vendor File Registration" clause) <b>100005818</b>		
Legal Business Name of Company Bidding: <b>FFF Enterprises, Inc.</b>				
D/B/A - Doing Business As (if applicable):				
Street <b>41093 Count Center Dr.</b>	City <b>Temecula</b>	State <b>CA</b>	Zip <b>92591</b>	County <b>Riverside</b>
Bidder's Signature: 		Printed or Typed Name: <b>Luke Noll</b>		
Title: Director Vaccine Product Sales and Corporate Accounts		Date: <b>7-17-2014</b>		
Phone : (951 ) 514 - 5410 ext ( )		Toll Free Phone : (800) 437 -7477 ext. (1128)		
Fax : (800) 418 - 4333 ext ( )		Toll Free Fax : (800) 418 - 4333 ext ( )		
E-mail Address: <a href="mailto:lnoll@fffenterprises.com">lnoll@fffenterprises.com</a>		Company Web Site: <a href="http://www.fffenterprises.com">www.fffenterprises.com</a> ; <a href="http://www.myfluvaccine.com">www.myfluvaccine.com</a>		

**THIS CONTRACT** for establishment of a "piggyback" contract is made between the People of the State of New York, acting by and through the Commissioner of the Office of General Services (hereinafter "State" or "OGS") whose principal place of business is the 41st Floor, Corning Tower, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242, pursuant to authority granted under New York State Finance Law §163(10)(e), and FFF Enterprises, Inc. (hereinafter "Contractor" or "Vendor" or "Offerer"), with its principal place of business at 41093 County Center Dr., Temecula, CA 92591. OGS and Contractor are hereby individually referred to as a "Party" and collectively referred to as "Parties".

Whereas, in accordance with New York State Finance Law §163(10)(e), the Commissioner of OGS (hereinafter "Commissioner") may authorize purchases required by New York State agencies or other authorized purchasers by approving the use of a contract let by any department, agency or instrumentality of the United States government and/or any department, agency, office, political subdivision or instrumentality of any state or states (hereinafter "Issuing Agency");

Whereas, OGS New York State Procurement (hereinafter "NYSPro"), on behalf of the Commissioner, finds it necessary and desirable to enter into such a contract (hereinafter "Piggyback Contract" or "Contract"), with Contractor for the purchase of specified products or services under the terms and conditions established pursuant to MMCAP Contract MMS14003 (hereinafter "Master Contract"); and

Whereas, OGS provided notification of its intention to enter into a single source contract with Contractor by placing a notice in the June 18, 2014 edition of the New York State Contract Reporter.

Therefore, by completing and signing this Piggyback Contract, Contractor is willing and able to enter into a contract and authorizes OGS to process the Piggyback Contract and provide notification regarding the availability of this Piggyback Contract.

## **1. PIGGYBACK CONTRACT SCOPE**

This document sets forth the terms and conditions governing acquisitions under this Piggyback Contract for use by Authorized Users. All the terms, conditions, covenants and representations contained herein and in the Master Contract, except as modified by this Piggyback Contract, are hereby incorporated by reference and deemed to be a part of this Piggyback Contract as if fully set forth at length herein. The terms and conditions of the Master Contract shall supersede any conflicting terms and conditions set forth in this agreement.

The Master Contract is expressly amended as noted in Section 4, *Merger of Appendices/Conflict of Clauses*, below.

## **2. TERM**

The term of this Piggyback Contract shall be the last date of execution by the Parties through December 31, 2015, with the option to extend for three additional one-year terms as mutually agreed upon and achieved through a fully executed amendment.

## **3. CONTRACT MODIFICATIONS AND RENEWALS**

Any modifications to this Piggyback Contract must be made by an instrument in writing executed by the Parties hereto. Contractor shall submit copies of any modifications to or renewals of the Master Contract, including new products, terms, or price changes, to NYSPro for review prior to enactment. NYSPro may accept a modification to or renewal of the Master Contract in full. If a modification is not fully acceptable to NYSPro, either the Contractor or OGS may terminate the Piggyback Contract in accordance with its terms or amend the Piggyback Contract to accept the modification to the Master Contract in part.

However, in accordance with Appendix B, Section 28, *Modification of Contract Terms*, an Authorized User shall have the authority to accept an offer from Contractor for more advantageous terms and pricing than those under this Piggyback Contract. An Authorized User shall not have the authority to accept any other requests for modifications to the Piggyback Contract, which must be handled as outlined herein.



#### **4. MERGER OF APPENDICES/CONFLICT OF CLAUSES**

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

- I. Appendix A, *Standard Clauses for NYS Contracts*
- II. Master Contract, MMAP Contract MMS14003
- III. Piggyback Contract (This Document)
- IV. Appendix B, *OGS General Specifications*

#### **5. APPLICABLE LAW**

This Piggyback Contract shall be governed by and construed in accordance with the laws of the State of New York. Any claims or actions brought by Contractor against the State for monetary damages shall be brought in the New York State Court of Claims. See Section 14, *Governing Law*, in Appendix A.

#### **6. AUTHORIZED USERS**

"Authorized User" shall have the meaning set forth in the State Finance Law section 163(1)(k). This Piggyback Contract is for use by Authorized Users, which 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.

Upon request, all eligible non-State agencies must furnish the Contractor with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. Questions regarding an organization's eligibility to purchase from New York State contracts may also be directed to OGS NYSPRO Customer Services at 518-474-6717 or at [customer.services@ogs.ny.gov](mailto:customer.services@ogs.ny.gov).

#### **7. NOTICES**

All notices, demands, designations, certifications, requests, reports, offers, consents, approvals and other instruments given pursuant to this Piggyback Contract shall be in writing and shall be validly given when mailed by registered, certified or overnight mail, or hand delivered and, (i) if to the State, addressed to the State at its address identified as indicated below, or (ii) if to the Contractor, addressed to the Contractor at its address identified as indicated below. A Party may, from time to time, specify any address in the United States as its address for purposes of notices under this Piggyback Contract by giving fifteen (15) days written notice to the other Party. The Parties mutually agree to designate individuals in their respective organizations for purposes of receiving notice pursuant to this Piggyback Contract. The representatives for the State and the Contractor will be identified, and updated, on the Contract Award Notification page associated with this Piggyback Contract

#### **8. PROCESSING CONTRACT PAYMENTS**

The Contractor acknowledges that a contract payment cannot be processed by an Authorized User until the contract Products have been delivered and accepted.

#### **9. CONTRACT BILLINGS AND PAYMENTS**

Appendix B, Section 62, Contract Billings, is hereby deleted and replaced with Section 49, Contract Invoicing



- I. 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 Piggyback Contract and the State Comptroller or other appropriate fiscal officer. Submission of an invoice and payment thereof shall not preclude the Commissioner from requesting reimbursement or demanding a price adjustment in any case where the Product delivered is found to deviate from the terms and conditions of this Piggyback Contract or where the billing was inaccurate.

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

- II. 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) or 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. Inquiries relating to OSC's Electronic Payments program should be directed to:
- III. Payment of Piggyback 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 Piggyback 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.

## 10. PAYMENTS OF INTEREST

Appendix B, Section 64, *Interest on Late Payments*, is hereby deleted and replaced with the following Section 51, Prompt Payments:

- a. **State Agencies** Upon acceptance of product or as otherwise provided by this Piggyback Contract, Contractor may invoice for payment. The required payment date shall be thirty (30) calendar days, excluding legal holidays, from the receipt of a proper invoice, as determined in accordance with State Finance Law §179-f(2) and 2 NYCRR Part 18. The payment of interest on certain payments due and owed by Agency may be made in accordance with State Finance Law §§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 this Piggyback Contract, Contractor may invoice for payment. The required payment date shall be thirty (30) calendar days, excluding legal holidays, or as mandated by the appropriate governing law from the receipt of a proper invoice. The terms of State Finance Law Article 11-A apply only to procurements by and the consequent payment obligations of Agencies. Neither expressly nor by any implication is the statute applicable to Non-



State Authorized Users. Neither OGS nor the State Comptroller is responsible for payments on any purchases made by a Non-State Agency Authorized User.

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

The Federal Prompt Payment Law (or any other law governing payment terms incorporated in the Master Contract) does not apply to the Contract regardless of customer.

## 11. REPORT OF CONTRACT PURCHASES

Contractor agrees it shall furnish a report of purchases made from this Piggyback Contract by the fifteenth of the month following the end of each six-month period. The State reserves the right to seek alternate data and reporting elements and will work with Contractor if necessary to change. The report shall contain the following information:

Invoice number	Invoice date	Facility name	Address	City	State	Manufacturer name	NDC (National Drug Code)	Label name	Unit type (container)	Price (\$) per unit	Quantity shipped	Extended price \$ (unit price X quantity shipped)	Total Invoice price \$ (state agency)	Total Invoice price \$ (non state agency)
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The report is to be submitted to OGS in accordance with the notice provisions of the Piggyback Contract and shall reference the Group Number, New York State Contract Number, sales period, and Contractor's name. Purchases by Non-state agencies, political subdivisions and others authorized by law shall be reported in the same report and be indicated as required. All fields of information shall be accurate and complete. The report is to be submitted electronically via electronic mail utilizing the template provided in Microsoft Excel 2003, or newer (or as otherwise directed by OGS), to the attention of the individual shown on the front page of the Contract Award Notification and shall reference the New York State Contract Number, Sales Period, and Contractor's (or other authorized agent) Name, and all other fields required. OGS reserves the right to amend the report template during the Piggyback Contract term.

**12. PRICE AND DISCOUNT**

The following is a price list of vaccines covered under this contract.

Manufacturer/Description	NYS price	NYS Price w/FET
<b>NOVARTIS</b>		
Fluvirin Influenza 5mL 10 DS VL, 4 years and older	\$71.72	\$79.22
Fluvirin Influenza 0.5mL PFS, Box of 10, 4 years and older	\$78.74	\$86.24
Flucelvax Influenza 0.5mL PFS, Box of 10, 18 years and older	\$95.21	\$102.71
Novartis Returnability Up to 30%, per presentation type, of doses are eligible for return		
Prices listed above reflect an Early Bird Discount for orders placed by June 1, 2014		
Fluvirin 5mL MDV - if placed after June 1, 2014 \$111.80		\$119.30
Fluvirin 0.5mL PFS - if placed after June 1, 2014 \$127.20		\$135.30
Flucelvax 0.5mL PFS - if placed after June 1, 2014 \$176.38		\$183.88
<b>SANOFI</b>		
Fluzone Influenza 5mL 10 DS VL, 6 months and older	\$83.16	\$90.66
Fluzone Influenza 0.5mL PFS, Box of 10, 3 years and older	\$93.95	\$101.45
Fluzone Quadrivalent 5mL, multi-dose vial, 6 months and older	\$142.83	\$150.33
Fluzone Quadrivalent 0.25mL PFS Ped, Box of 10, 6 to 35 months	\$187.21	\$194.71
Fluzone Quadrivalent 0.5mL PFS, Box of 10, 3 years and older	\$149.79	\$157.29
Fluzone Quadrivalent 0.5mL SDV, Box of 10, 3 years and older	\$157.31	\$164.81
Fluzone Influenza HD 0.5mL PFS, Box of 10, 65 years and older	\$274.63	\$282.13
Fluzone Intradermal Vaccine 0.1mL PFS, Box of 10, 18 to 64 years	\$138.60	\$146.10
Sanofi Returnability Up to 30%, per presentation type, of doses are eligible for return		
<b>CSL</b>		
Afluria Influenza 5mL 10 DS VL, 5 yrs and older (ACIP 9 yrs and older)	\$80.00	\$87.50
Afluria Influenza 0.5mL PFS, Box of 10, 5 yrs and above (ACIP 9 yrs and older)	\$90.00	\$97.50
CSL Returnability Up to 30%, per presentation type, of doses are eligible for return		
<b>GSK</b>		
FluLaval Influenza 5mL MDV, 3 years and older	\$66.90	\$74.40
FluLaval Quadrivalent 5mL 10 DS VL, 3 years and older	\$137.30	\$144.80
FluLaval Quadrivalent 0.5mL PFS, Box of 10, 3 years and older	\$147.00	\$154.50
Fluarix Quadrivalent 0.5mL PFS, Box of 10, 3 years and older	\$147.00	\$154.50
GSK Returnability Up to 30%, per presentation type of doses are eligible for return		
<b>MEDIMMUNE</b>		
Flumist Quadrivalent Influenza 0.2mL nasal, Box of 10, 2 to 49 yrs	\$173.40	\$180.90
No Returns, eligible for Flumist Exchange Program		
<b>PROTEIN SCIENCES</b>		
Flublok Influenza 0.5mL SDV, Box of 10, 18 to 49 years	\$320.00	\$327.50
Returnability Up to 30%, per presentation type of doses are eligible for return		



## MINIMUM ORDER

If the Master Contract contains minimum order quantities or values, Contractor may elect to honor orders for less than the minimum order. For all orders less than the minimum order, at the Contractor's option, shipping costs from the shipping point may be added to invoice with a copy of the freight bill. Shipping costs are to be prepaid by Contractor and such orders are to be shipped on an F.O.B. destination basis. All such orders must be shipped by the most economical method for the proper delivery of the product unless special instructions are stated on the order by the Authorized User.

### I. PRICE AND DISCOUNTS

Price shall include all customs duties and charges and be net, F.O.B. destination any point in New York State as designated by the Authorized User. Any prompt payment terms (cash discounts) or quantity (volume) discounts which are included in the Master Contract will also be included in this Piggyback Contract.

### II. "OGS OR LESS" GUIDELINES APPLY TO THIS CONTRACT

Purchases of the commodities included in the Piggyback Contract are subject to the "OGS or Less" provisions of State Finance Law §163(3)(a)(v). This means that State agencies can purchase commodities from sources other than the Contractor provided that such commodities are substantially similar in form, function or utility to the commodities herein and are:

- A. lower in price  
-and/or-
- B. available under terms that are more economically efficient to the State agency (e.g. delivery terms, warranty terms, etc.).

State agencies are reminded that the Contractor must be provided an opportunity to match the non-contract savings at least two business days prior to purchase. In addition, purchases made under "OGS or Less" flexibility must meet all requirements of law including, but not limited to, advertising in the New York State Contract Reporter, prior approval of the Comptroller's Office and competitive bidding of requirements exceeding the discretionary bid limit.

## 13. CONTRACTOR'S INSURANCE REQUIREMENTS

The Contractor shall procure at its sole cost and expense, prior to this Piggyback Contract taking effect, and shall maintain in force at all times during the term of this Piggyback Contract, policies of insurance as herein below set forth, written by companies licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York with an A.M. Best Company rating of "A-" Class "VII" or better. If during the term of the policy, a carrier's rating falls below "A-" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to OGS and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.

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

- I. **General Conditions Applicable to Insurance.** All policies of insurance required by this Piggyback Contract must meet the following requirements:

- A. **Coverage Types and Policy Limits.** The types of coverage and policy limits required from the Contractor are specified in Paragraph II Insurance Requirements below.
- B. **Policy Forms.** Except as may be otherwise specifically provided herein or agreed to in writing by OGS, policies must be written on an occurrence basis.
- C. **Certificates of Insurance/Notices.** Contractor shall provide a Certificate or Certificates of Insurance and all required endorsements, in a form satisfactory to OGS, prior to this Piggyback Contract taking effect, and within three (3) business days of request to OGS.
1. Certificates shall reference the New York State Contract Number.
  2. **ALL OF THE REFERENCED FORMS, EXCEPT CE-200, SI-12 & DB-155 MUST NAME: The New York State Office of General Services, New York State Procurement (NYSPPro), 38th floor, Corning Tower, Albany NY 12242** as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder).
  3. Certificates shall be submitted to:  
The New York State Office of General Services  
New York State Procurement (NYSPPro)  
Corning Tower- 38th Floor  
Empire State Plaza  
Albany, NY 12242
  4. Unless otherwise agreed, policies shall be written so as to include a provision that the policy will not be canceled, materially changed, or not renewed without at least thirty (30) days prior written notice except for non-payment, in which case, notice shall be provided as required by law to OGS, Attention: NYSPPro, Corning Tower – 38<sup>th</sup> Floor, Empire State Plaza, Albany, New York 12242. The Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect. Not less than thirty (30) days prior to the expiration date or renewal date, the Contractor shall supply OGS updated replacement Certificates of Insurance, and amendatory endorsements.
  5. Certificates of Insurance shall:
    - a. Be in the form approved by OGS;
    - b. Disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by this Piggyback Contract;
    - c. Specify the Additional Insureds and Named Insured as required herein;
    - d. Refer to this Piggyback Contract by its New York State Contract Number and any other attachments on the face of the certificate; and,
    - e. Be signed by an authorized representative of the insurance carrier or producer.
  6. Only original documents or electronic forms that can be directly traced back to the insurance carrier, agent or broker via e-mail distribution (Certificates of Insurance and other attachments) will be accepted.
- D. **Primary Coverage.** All insurance policies shall provide that the required coverage shall apply on a primary and not on an excess or contributing basis as to any other insurance that may be available to OGS or any Authorized User for any claim arising from the Contractor's work under this Piggyback Contract, or as a result of the Contractor's activities. Any other insurance maintained by OGS or any Authorized User shall be excess of and shall not contribute with the Contractor's insurance.
- E. **Policy Renewal/Expiration.** At least thirty (30) days prior to the expiration of any policy required by this Piggyback Contract, evidence of renewal or replacement policies of insurance with terms no less



favorable to the State than the expiring policies shall be delivered to OGS in the manner required for service of notice in Paragraph I.C. Certificates of Insurance/Notices, above. If, at any time during the term of this Piggyback Contract, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this Piggyback Contract, or proof thereof is not provided to OGS, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by OGS. Should the Contractor fail to provide or maintain any insurance required by this Piggyback Contract, or proof thereof is not provided, OGS or Authorized Users may withhold further payments due under this Piggyback Contract or treat such failure as a breach or default of this Piggyback Contract. In the event of such a breach, the Contractor shall be subject to liability for damages, indemnification and all other legal remedies available to OGS. The Contractor's failure to obtain and/or keep in effect any and all required insurance shall also provide the basis for OGS' immediate termination of this Piggyback Contract, subject only to a five (5) business day cure period. Any termination by OGS or any delay, time lost or additional cost incurred as a result of the Contractor not having insurance required by this Piggyback Contract or not providing proof of same in a form acceptable to OGS, shall in no event constitute or be deemed a breach of this Piggyback Contract and no liability shall be incurred or arise against OGS or any Authorized User, its agents and employees therefrom for lost profits or any other damages.

- F. **Self-Insured Retention/Deductibles.** Certificates of Insurance must indicate the applicable deductible/self-insured retention on each policy. Deductibles or self-insured retentions above \$100,000 are subject to approval from OGS. The Contractor shall be solely responsible for all claim expenses and loss payments within the deductible or self-insured retention.
- G. **Subcontractors.** Should the Contractor engage a Subcontractor, the Contractor shall require all Subcontractors, prior to commencement of an agreement between Contractor and the Subcontractor, to secure and keep in force during the term of this Piggyback Contract the insurance requirements of this document on the Subcontractor, as applicable. Proof thereof shall be supplied to OGS.

All insurance required by this Piggyback Contract shall name The People of the State of New York, its officers, agents, and employees as additional insureds hereunder. The General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number CG 20 26 11 85 or the equivalent. Such coverage shall be extended to afford Additional Insured status to those entities during the Products/Completed Operations term. Additional Insured Endorsements shall be provided prior to this Piggyback Contract taking effect and within three (3) business days of request to OGS, NYSPRO, Corning Tower – 38<sup>th</sup> Floor, Empire State Plaza, Albany, New York 12242. The additional insured requirement does not apply to Workers' Compensation and Disability Benefits coverage.

- II. **Insurance Requirements.** The Contractor, throughout the term of this Piggyback Contract, or as otherwise required by this Piggyback Contract, shall obtain and maintain in full force and effect, the following insurance with limits not less than those described below and as required by the terms of this Piggyback Contract, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

- A. Commercial General Liability Insurance (CGL) covering the liability of the Contractor for bodily injury, property damage and personal/advertising injury from all work and operation under this Piggyback Contract. The limits under such policy shall not be less than the following:
  - 1. Each Occurrence limit - \$2,000,000.00
  - 2. General Aggregate - \$2,000,000.00
  - 3. Products/Completed Operations Aggregate - \$2,000,000.00
  - 4. Personal/Advertising Injury - \$1,000,000.00
  - 5. Damage to Rented Premises - \$50,000.00
  - 6. Medical Expenses - \$5,000.00



7. Coverage shall include, but not be limited to, the following:
  - a. premises liability;
  - b. independent contractors;
  - c. blanket contractual liability, including tort liability of another assumed in a contract;
  - d. defense and/or indemnification obligations, including obligations assumed under this Piggyback Contract;
  - e. cross liability for additional insureds;
  - f. products/completed operations for a term of no less than three (3) years, commencing upon acceptance of the work, as required by this Piggyback Contract;
  - g. explosion, collapse, and underground hazards; and,
  - h. contractor means and methods.
8. The following ISO forms must be endorsed to the policy:
  - a. CG 00 01 01 96 or an equivalent – Commercial General Liability Coverage Form
  - b. CG 20 10 11 85 or an equivalent – Additional Insured-Owner, Lessees or Contractors (Form B)
  - c. Waiver of Subrogation

B. Comprehensive Business Automobile Liability Insurance covering liability arising out of any automobile in connection with the work required under this Piggyback Contract, including owned, leased, hired and non-owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Laws of the State of New York to bear, license plates. Such policy shall have a combined single limit for Bodily Injury and Property Damage of at least \$2,000,000.00 each accident and shall name the People of the State of New York, its officers, agents, and employees and the New York State Office of General Services as additional insureds. The limits may be provided through a combination of primary and umbrella liability policies.

Waiver of Subrogation. For the coverages required above, the Contractor shall cause to be included in each of its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against The People of the State of New York, its officers, agents and employees, the New York State Office of General Services and any Authorized User of this Piggyback Contract. Waiver of Subrogation Endorsements shall be provided prior to this Piggyback Contract taking effect and within three (3) business days of request to OGS, NYSPRO, Corning Tower- 38th Floor, Empire State Plaza, Albany, NY 12242.

### III. **Workers' Compensation Insurance and Disability Benefits Requirements**

New York State Workers' Compensation Law (WCL) §57 & §220 requires the heads of all municipal and state entities to ensure that businesses applying for permits, licenses or contracts document that they have appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals, whether the governmental agency is having the work done or is simply issuing the permit, license or contract. Failure to provide proof of such coverage or a legal exemption will result in Offerer/Contractor not being considered for this Piggyback Contract or renewal of same.

#### **A. Proof of Compliance with Workers' Compensation Coverage Requirements: An ACORD form is NOT acceptable proof of workers' compensation coverage.**

1. In order to provide proof of compliance with the requirements of the New York State Workers' Compensation Law pertaining to workers' compensation coverage, a contractor shall:
  - a. Be legally exempt from obtaining Workers' Compensation insurance coverage; or
  - b. Obtain such coverage from an insurance carrier; or



- c. Be a Workers' Compensation Board-approved self-insured employer or participate in an authorized self-insurance plan.
2. A Contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to the Office of General Services before this Piggyback Contract can be executed by the Commissioner.
  - a. Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers' Compensation Board's website ([www.wcb.ny.gov](http://www.wcb.ny.gov)).
  - b. Certificate of Workers' Compensation Insurance:
    - i. Form C-105.2 (9/07) if coverage is provided by the contractor's insurance carrier, contractor must request its carrier to send this form to the New York State Office of General Services, or
    - ii. Form U-26.3 if coverage is provided by the State Insurance Fund, contractor must request that the State Insurance Fund send this form to the New York State Office of General Services.
  - c. Form SI-12, Certificate of Workers' Compensation Self-Insurance available from the New York State Workers' Compensation Board's Self-Insurance Office.
  - d. Form GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance available from the contractor's Group Self-Insurance Administrator.

**B. Proof of Compliance with Disability Benefits Coverage Requirements:**

1. In order to provide proof of compliance with the requirements of the New York State Workers' Compensation Law pertaining to disability benefits, a contractor shall:
  - a. Be legally exempt from obtaining disability benefits coverage; or
  - b. Obtain such coverage from an insurance carrier; or
  - c. Be a Board-approved self-insured employer.
2. A Contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to the Office of General Services **before this Piggyback Contract can be executed by the Commissioner.**
  - a. Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers' Compensation Board's website ([www.wcb.ny.gov](http://www.wcb.ny.gov)).
  - b. Form DB-120.1, Certificate of Disability Benefits Insurance. Contractor must request its business insurance carrier to send this form to the New York State Office of General Services; or
  - c. Form DB-155, Certificate of Disability Benefits Self-Insurance. The Contractor must call the Board's Self-Insurance Office at 518-402-0247 to obtain this form.

#### **14. PURCHASE ORDERS**

Purchase Orders shall be effective and binding upon Contractor when placed in the mail or electronically transmitted during this Piggyback Contract period addressed to the Contractor at the address for receipt of orders designated in the Master Contract or Contract Award Notification. Any discrepancies between the terms stated on the Contractor's order form, confirmation or acknowledgment, and the Piggyback Contract terms shall be resolved in favor of the terms most favorable to the Authorized User. If an Authorized User of the Piggyback Contract adds written terms and conditions to the Purchase Order that conflict with the terms and conditions of the Piggyback Contract, the Contractor may reject the Purchase Order within five (5) business days of its receipt or fulfill the Purchase Order. Prior to rejection of any additional terms and conditions to the Purchase Order, the Contractor has an obligation to attempt to negotiate the additional written terms and conditions in good faith with the Authorized User. For more details on these provisions, See Appendix B, Section 32, *Purchase Orders*.

#### **15. ESTIMATED / SPECIFIC QUANTITIES**

Appendix B, Section 30, *Estimated/Specific Quantity Contracts*, is hereby deleted and replaced with the following:

- a. 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 Piggyback Contract term. No guarantee of any quantity(s) is implied or given.
- b. With respect to any specific quantity stated in the Piggyback Contract or Participation Agreement, 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 Piggyback Contract or Participation Agreement. Notwithstanding the foregoing, the Commissioner may purchase greater or lesser percentages of Piggyback Contract or Participation Agreement quantities should the Commissioner and Contractor so agree. Such agreement may include an equitable price adjustment.

#### **16. INDEFINITE DELIVERY, INDEFINITE QUANTITY CONTRACT**

This Piggyback Contract will be an Indefinite Delivery, Indefinite Quantity (IDIQ) Contract. All quantities or dollar values listed within the Piggyback Contract or applicable Participation Agreement are estimates. Estimates are used for evaluation purposes only.

Numerous factors could cause the actual volume of product purchased under the Piggyback Contract to vary substantially from the estimates in the Piggyback Contract or applicable Participation Agreement. Such factors include, but are not limited to, the following:

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

In NYSPRO's experience, depending on the price of a particular item, the actual volume of purchases for that item could be substantially in excess of, or substantially below, estimated volumes. Specifically, if actual contract pricing is lower than anticipated or historical pricing, actual quantities purchased could be substantially greater than the estimates; conversely, if actual contract pricing is higher than anticipated or historical pricing, actual quantities purchased could be substantially lower than the estimates. By execution of this Piggyback Contract, Contractor acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the resulting Piggyback Contracts could vary substantially from the estimates provided in this Piggyback Contract or applicable Participation Agreement.



## **17. CATALOGS AND PRICE SHEETS**

Catalogs and price lists shall be provided in accordance with the terms of the Master Contract. Upon request, Contractor shall also assist Authorized Users in the use of such documents.

## **18. DISPUTE RESOLUTION POLICY**

It is the policy of NYSPRO to provide the Contractor with an opportunity to administratively resolve disputes, complaints or inquiries related to the Piggyback Contract. NYSPRO encourages the Contractor to seek resolution of disputes through consultation with NYSPRO staff. All such matters will be accorded impartial and timely consideration. A copy of NYSPRO Dispute Resolution Procedures for Vendors may be obtained by contacting OGS or through the OGS website at <http://www.ogs.ny.gov/BU/PC/Docs/VendorDisputePolicy.pdf>.

## **19. SUMMARY OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING**

Pursuant to State Finance Law §§139-j and 139-k, this Piggyback Contract includes and imposes certain restrictions on communications between OGS and an offerer/bidder during the procurement process. An offerer/bidder is restricted from making contacts from the earliest written notice, advertisement or solicitation of a request for proposal, invitation for bids or solicitation of proposals or any other method of soliciting a response from offerers intending to result in a procurement contract with a governmental entity and ending with the final contract award and approval of the procurement contract by OGS and, if applicable, the Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, are identified on the first page of this Piggyback Contract. OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four-year period, the offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the OGS website: [http://www.ogs.ny.gov/aboutOgs/regulations/defaultSFL\\_139j-k.asp](http://www.ogs.ny.gov/aboutOgs/regulations/defaultSFL_139j-k.asp).

## **20. NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR PROFIT BUSINESS ENTITY**

- I. OGS conducts a review of prospective contractors ("offerers") to provide reasonable assurances that an offerer is responsive and responsible. A For-Profit Business Entity Questionnaire (hereinafter "Questionnaire") is used for non-construction contracts and is designed to provide information to assess an offerer's responsibility to conduct business in New York based upon financial and organizational capacity, legal authority, business integrity, and past performance history. If interested in contracting with New York State, an offerer must agree and hereby agrees to fully and accurately complete the Questionnaire. The offerer acknowledges that the State's execution of a contract will be contingent upon the State's determination that the offerer is responsible and that the State will be relying upon the offerer's responses to the Questionnaire when making its responsibility determination.

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

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



In order to assist the State in determining the responsibility of the offerer prior to contract award, the offerer must complete and certify (or recertify) the Questionnaire no more than six (6) months prior to OGS' transmittal to you of this Piggyback Contract. An offerer's Questionnaire cannot be viewed by OGS until the offerer has certified the Questionnaire. It is recommended that all offerers become familiar with all of the requirements of the Questionnaire and complete as soon as possible to allow sufficient time for OGS review prior to Piggyback Contract execution.

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

The Commissioner of OGS or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Piggyback 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. Activity under the Piggyback Contract may resume at such time as the Commissioner of OGS or her designee issues a written notice authorizing a resumption of performance under the Piggyback Contract.

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

In no case shall such termination of the Piggyback 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.

## **21. NEW YORK STATE TAX LAW SECTION 5-A**

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

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

Website links to the contractor certification forms and instructions are provided below. Form ST-220-TD must be filed with and returned directly to DTF and can be found at [http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf) Unless the information upon which the ST-220-TD is



based changes, this form only needs to be filed once with DTF. If the information changes for the contractor, its affiliate(s), or its subcontractor(s), a new Form ST-220-TD must be filed with DTF.

Form ST-220-CA must be submitted to OGS. This form provides the required certification that the contractor filed the ST-220-TD with DTF. This form can be found at [http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)

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

## **22. NEW YORK STATE VENDOR FILE REGISTRATION**

Prior to being awarded a contract, the contractor and any designated authorized reseller(s) who accept payment directly from the State must be registered in the New York State Vendor File (Vendor File) administered by the OSC. This is a central registry for all vendors who do business with New York State Agencies and the registration must be initiated by a State Agency. Following the initial registration, a unique New York State ten-digit vendor identification number (Vendor ID) will be assigned to your company and Vendor IDs will be assigned to each of your authorized resellers (if any) for usage on all future transactions with New York State. Additionally, the Vendor File enables vendors to use the Vendor Self-Service application to manage certain vendor information in one central location for all transactions related to the State of New York.

If the contractor is already registered in the Vendor File, the contractor must enter its ten-digit Vendor ID on this Piggyback Contract.

If the contractor is not currently registered in the Vendor File, it must request assignment of a Vendor ID number from OGS. Complete the OSC Substitute W-9 Form ([http://www.osc.state.ny.us/vendors/forms/ac3237\\_fe.pdf](http://www.osc.state.ny.us/vendors/forms/ac3237_fe.pdf)) and submit the form to OGS. Please send this document to a Designated Contact for this Contract. In addition, if an authorized reseller(s) is to be used that does not have a Vendor ID, an OSC Substitute W-9 form ([http://www.osc.state.ny.us/vendors/forms/ac3237\\_fe.pdf](http://www.osc.state.ny.us/vendors/forms/ac3237_fe.pdf)) should be completed by each designated authorized reseller and submitted to OGS. The OGS will initiate the vendor registration process for all companies and their authorized resellers. Once the process is initiated, registrants will receive an e-mail identifying their unique ten-digit Vendor ID and instructions on how to enroll in the online Vendor Self-Service application. For more information on the Vendor File please visit the following website: [http://www.osc.state.ny.us/vendor\\_management/](http://www.osc.state.ny.us/vendor_management/).

## **23. ENVIRONMENTAL ATTRIBUTES AND NYS EXECUTIVE ORDER NO. 4**

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

## **24. USE OF RECYCLED OR REMANUFACTURED MATERIALS**

New York State supports and encourages contractors to use recycled, remanufactured or recovered materials in the manufacture of products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the product or packaging unless such use is precluded due to health or safety requirements or product specifications contained herein. Refurbished or remanufactured components or products are required to be restored to original performance and regulatory standards and functions and are required to meet all other requirements of this Piggyback Contract. Warranties on refurbished or remanufactured components



or products must be identical to the manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment. See Appendix B, Section 15, *Remanufactured, Recycled, Recyclable or Recovered Materials*.

## **25. TAKE-BACK/RECYCLING**

- I. A State agency is reminded of its obligation to comply with the New York State Finance Law §§167 and 168 regarding surplus property redistribution before utilizing take-back, recycling, or other options for disposition of equipment that is still in operable condition.
- II. If an Authorized User avails itself of a contractor's take back/recycling program, then the contractor shall provide certification of data destruction from any hard drives surrendered with the machines. Contractor shall not require an Authorized User to surrender the hard drive, as an Authorized User may wish to retain the hard drive for security purposes. Contractor shall advise the Authorized User in advance if the retention of the hard drive results in additional fees or reduction in trade-in value.
- III. If an Authorized User avails itself of a contractor's take back/recycling program, then the contractor shall provide a record of disposition to the Authorized User for units transferred for disposition. Contractor shall provide documentation that the units were disposed of in an environmentally sound manner in compliance with applicable local, state and federal laws.

## **26. BULK DELIVERY AND ALTERNATE PACKAGING**

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

## **27. ELECTRONIC EQUIPMENT RECYCLING AND REUSE ACT**

Contractor is aware of the NYS Department of Environmental Conservation (DEC) Electronic Equipment Recycling and Reuse Act which was signed into law in May 2010 and requires manufacturers to establish a convenient system for the collection, handling, and recycling or reuse of electronic waste. If Contractor is a manufacturer of covered electronic equipment, it must agree to comply with these requirements. More information regarding the Electronic Equipment Recycling and Reuse Act can be found on the DEC website at: <http://www.dec.ny.gov/chemical/65583.html>

## **28. PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES**

### **I. General Provisions**

- A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for New York State Certified minority and women-owned



business enterprises ("MWBEs"). Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, state or local laws.

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

## **II. Contract Goals**

For purposes of this procurement, OGS conducted a comprehensive search and determined that this contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers and suppliers to Contractor. Contractor is however encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. To locate MWBEs, the Directory of Certified Businesses can be viewed at: <http://www.esd.ny.gov/MWBE/directorySearch.html>

## **III. Equal Employment Opportunity (EEO)**

- A. Contractor agrees to be bound by the provisions of New York State Executive Law Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the "Division"). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B. Contractor shall comply with the following provisions of Article 15-A:
1. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
  2. The Contractor shall:
    - a. Submit an EEO policy statement to OGS with the bid, or
    - b. If Contractor does not have an existing EEO policy statement, the Contractor shall sign and submit Appendix C, Minority and Women-Owned Business Enterprises and Equal Employment Opportunity Policy Statement annexed hereto; or
    - c. Contractor shall certify and affirm 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.
  3. The Contractor's EEO policy statement shall include the following language:
    - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
    - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the 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.

- c. 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.
  - d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 3 and Paragraph "E" of this Section II, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.
- C. To ensure compliance with this Section, the Contractor shall submit Form EEO 100- Staffing Plan (<http://www.ogs.ny.gov/MWBE/Forms.asp>) 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. Contractor shall complete the Staffing plan form and submit it as part of their contract.

D. Form EEO 102 - Workforce Employment Utilization Report ("Workforce Report")

Contractor and OGS agree that Contractor is unable to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce

- E. 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.

## **29. MERCURY-ADDED CONSUMER PRODUCTS**

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

## **30. DIESEL EMISSION REDUCTION ACT OF 2006**

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

The Law may be applicable to vehicles used by contract vendors "on behalf of" State agencies and public authorities and require certain reports from contract vendors. All heavy duty diesel vehicles must have BART by December 31, 2014. The Law also provides a list of exempted vehicles. Regulations set forth in 6 NYCRR Parts 248 and 249 provide further guidance. The Bidder hereby certifies and warrants that all heavy duty vehicles, as defined in NYECL §19-0323, to be used under this contract, will comply with the specifications and provisions of NYECL §19-0323, and 6 NYCRR Parts 248 and 249.



### **31. ENTIRE AGREEMENT**

This Piggyback Contract and the referenced appendices constitute the entire agreement between the Parties hereto 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 Piggyback Contract shall not be changed, modified or altered in any manner except as provided in Section 3 of this Piggyback Contract.

### **32. CAPTIONS**

**THE CAPTIONS CONTAINED IN THIS PIGGYBACK CONTRACT ARE INTENDED FOR CONVENIENCE AND REFERENCE PURPOSES ONLY AND SHALL IN NO WAY BE DEEMED TO DEFINE OR LIMIT ANY PROVISION THEREOF.**

### **33. SEVERABILITY**

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

**IN WITNESS WHEREOF**, the Parties therefore hereby execute their mutual agreement to the terms of this Piggyback Contract. This Piggyback Contract shall be a binding agreement between the Parties when executed and created as set forth in clause 26 of Appendix B. The State further warrants that, where Contractor is asked to execute multiple original copies of this signature page along with a complete original copy of the Contract, the approved signature page(s) will be affixed by the State to additional copies of this Contract which conform exactly to the complete original copy as submitted by Contractor and executed simultaneously therewith.

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 Piggyback Contract, Appendix A (Standard Clauses For New York State Contracts), Appendix B (OGS General Specifications), and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, 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: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

Federal Tax ID: \_\_\_\_\_

NYS Vendor ID \_\_\_\_\_

**THE PEOPLE OF THE STATE OF NEW YORK**

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

NYS Office of General Services



**INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT**

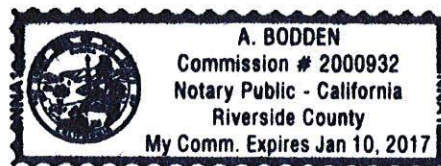
State of California

County of Riverside ) ss.:

On the 25 day of July in the year 2014 before me, the undersigned, personally appeared Luke D. Noll, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity(ies), that by his/her signature on the instrument, the individual(s), or the person(s) upon behalf of which the individual(s) acted, executed the instrument, and that such individual(s) made such appearance before the undersigned in the State of California.

A. Bodden Public Notary

Signature and office of individual  
taking acknowledgment.



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 Director of Vaccine Sales of FFF Enterprises, 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.

**VENDOR QUESTIONS AND NYS REQUIRED CERTIFICATIONS**

Please respond to the following questions, complete the NYS required certifications and submit to the NYSPRO contact person. Failure to answer all questions will delay the contracting process.

Vendor Firm Name: FFF Enterprises  
Name: Luke D. Noll  
Title: Director Vaccine Sales Date: 7-17-2014

\*\*\*\*\*

**I. VENDOR QUESTIONS**

**A. General Questions**

1. Has Vendor completed and filed the New York State Vendor Responsibility Questionnaire?	<input checked="" type="checkbox"/> YES, filed online (preferred) <input type="checkbox"/> YES, filed in hard copy <input type="checkbox"/> NO
If Vendor filed the Questionnaire, has Vendor certified or recertified the Vendor Responsibility Questionnaire no more than six (6) months prior to OGS' notice to Vendor of the instant Piggyback Agreement opportunity?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
2. Does Vendor offer Electronic Access Ordering (EDI)?	<input checked="" type="checkbox"/> YES <input checked="" type="checkbox"/> NO <i>online But not EDI</i>
3. Is the Vendor catalog available on the Internet?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
If YES, is Vendor willing and able to make NYS Pricing available along with the catalog online?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
4. If awarded a contract, will Vendor accept the New York State Procurement Card for orders not to exceed \$15,000?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
5. If Vendor limits the maximum acceptable card amount to less than \$15,000, please indicate the maximum amount:	\$ _____
6. Does Vendor offer an additional discount for purchases made with the NYS Procurement Card?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
If YES, please list the additional discount (attach additional sheets with further information on discounts if there are multiple conditions tied to discounts for purchases made with the NYS Procurement Card and/or if there are multiple types of discounts for purchases made with the NYS Procurement Card):	_____ %



<p>7. Does Vendor offer a prompt payment discount for payments made in less than thirty (30) days after receipt of a proper invoice (ARO)?</p> <p>If YES, please detail the additional discount by providing the percentage of discount and the specific number of days ARO within which payment must be made for the discount to apply:</p> <p>7. (Continued):</p> <p>If YES and Vendor offers multiple discounts, please provide additional detail for all discounts, including the percentage of discount and the specific number of days ARO within which payment must be made for the discount to apply (for example: 2% / 15 days ARO ; 1% / 20 days ARO):</p>	<p><input checked="" type="checkbox"/> YES      <input type="checkbox"/> NO</p> <p><u>0.25</u> %      <u>20</u> Days ARO</p> <p>____ %      ____ Days ARO</p> <p>____ %      ____ Days ARO</p>
<p>8. If awarded a contract, will Vendor honor orders for less than the minimum order specified in the Master Contract?</p> <p>If YES, will shipping costs be added in accordance with the "Minimum Order" clause, section 13(I) of the Piggyback Agreement?</p> <p>OR</p> <p>If YES, will Vendor ship at no additional cost?</p>	<p><input checked="" type="checkbox"/> YES      <input type="checkbox"/> NO</p> <p>____ YES      <input checked="" type="checkbox"/> NO</p> <p><input checked="" type="checkbox"/> YES      <input type="checkbox"/> NO</p>
<p>9. Does Vendor wish to designate NYS dealers to handle receipt of orders and/or receipt of payments? (If YES, please provide a complete list including addresses, contact person, appropriate telephone, fax, or e-mail address and function they will perform. Attach additional sheets if necessary.)</p>	<p>____ YES      <input checked="" type="checkbox"/> NO</p>
<p>10. Are any products offered manufactured from recycled materials?</p>	<p>____ YES      <input checked="" type="checkbox"/> NO</p>
<p>11. Are any products offered remanufactured (restored to its original performance standards and function)?</p>	<p>____ YES      <input checked="" type="checkbox"/> NO</p>
<p>12. Are any products offered Energy Star Compliant?</p>	<p>____ YES      <input checked="" type="checkbox"/> NO</p>
<p>13. Person or persons to contact for general New York State Contract administration questions:</p>	<p>Name: <u>Luke D. Noll</u></p> <p>Title: <u>Director of Contract Accounts</u></p> <p>Telephone Number: <u>(951) 296-2500</u></p> <p>Toll Free Phone Number: <u>(800) 843-7477</u></p> <p>Fax Number: <u>(800) 418-4333</u></p> <p>Toll Free Fax Number: <u>(800) 418-4333</u></p> <p>E-Mail Address: <u>lnolle@fffenterprises.com</u></p>
<p>14. Person or persons to contact for expediting New York State Contract orders:</p>	<p>Name: <u>Luke D. Noll</u></p> <p>Title: <u>Director of Contract Accounts</u></p> <p>Telephone Number: <u>(800) 843-7477</u></p> <p>Toll Free Phone Number: <u>(800) 843-7477</u></p>

15. Person or persons to contact in the event of an emergency occurring after business hours or on weekend/holidays:

State normal business hours (Specify M-F, Sat-Sun):

16. Is Vendor registered with the New York State Contract Reporter?

If NO, in order to receive information on potential bidding opportunities across New York State, please register for the New York State Contract Reporter at <https://www.nyscr.ny.gov>.

**B. Minority/Women-Owned Business Enterprise Questions**

17. Are Minority/Women-Owned Business Enterprise (MWBE) goals incorporated in the terms and conditions of the Master Contract?

If YES, please attach specifics.

18. Is Vendor listed in the Empire State Development's Directory of Certified Minority and Women-Owned Business Enterprises? (This information can be accessed at: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>)

NOTE: Vendors certified **and** listed in the Empire State Development's Directory of Certified Minority and Women-Owned Business Enterprises\* will be identified by OGS as MBEs and/or WBEs in the OGS Contract Award Notification upon award of the contract.

\*For further information and/or application, please contact New York State Department of Economic Development, Division of Minority and Women-Owned Business Enterprise at 518-292-5250 (Albany) or 212-803-2414 (New York City)

"Minority or Women-Owned Business Enterprise" shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is:

- (a) at least fifty-one percent owned and controlled by the minority members and/or women;
- (b) an enterprise in which such minority and/or women

Fax Number: (800) 418-4333  
Toll Free Fax Number: (800) 418-4333  
E-Mail Address: lnallefffenterprises.com  
Name: FFF on Call Person  
Title: Various  
Telephone Number: (800) 843-7477  
Toll Free Phone Number: (800) 843-7477  
Fax Number: (800) 418-4333  
Toll Free Fax Number: (800) 418-4333  
E-Mail Address: lnallefffenterprises.com  
M-F 9am to 5pm PST

☒ YES ☐ NO

☐ YES ☒ NO

☐ YES ☒ NO



ownership interest is real, substantial and continuing;	
(c) an enterprise in which such minority and/or women ownership has and exercises the authority to independently control the day-to-day business decisions; and,	
(d) an enterprise independently owned, operated and authorized to do business in New York State.	
Total number of people employed by Vendor in New York State?	<u>1</u> ____ YES      ____ NO
19. Place of manufacture of product(s) (Indicate YES or NO for either "a", "b" or "c"):	<u>b</u>
(a) All NYS Manufacture: <u>No</u>	
(b) All Manufactured outside NYS: <u>Yes</u>	
(c) Manufactured in NYS and Outside NYS: <u>No</u>	
20. (If YES to "c" above, list location (State) where more than half the value is added to the product(s):	
21. Vendor's principal place of business**:	
***"Principal Place of Business" is the location of the primary control, direction and management of the enterprise.	
<input checked="" type="checkbox"/> YES      ____ NO	
____ YES      ____ NO	
____ YES      ____ NO	
State of <u>California</u>	
State of _____	

**A. Encouraging Use of New York State Businesses in Contract Performance**

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, offerers for this contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Offerers need to be aware that all authorized users of this contract will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Furthermore, offerers are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its New York State business partners. New York State businesses will promote the contractor's optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its contractors. The State therefore expects offerers to provide maximum assistance to New York businesses in their use of the contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.

Offerers can demonstrate their commitment to the use of New York State businesses by responding to the question below:

Will New York State Businesses be used in the performance of this contract?

\_\_\_\_\_ YES      ☒ NO

If YES, identify New York State Business(es) that will be used and attach identifying information.

;

## II. NEW YORK STATE REQUIRED CERTIFICATIONS

### A. NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND MACBRIDE FAIR EMPLOYMENT PRINCIPLES

In accordance with New York State Finance Law §165, the Contractor certifies that it or any individual or legal entity in which the Contractor holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership interest in the Contractor, either (answer YES or NO to one or both of the following, as applicable),

(1) have business operations in Northern Ireland, \_\_\_\_\_ YES      ☒ NO, and, if YES:

(2) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of compliance with such principles.

\_\_\_\_\_ YES      \_\_\_\_\_ NO

### B. DIESEL EMISSION REDUCTION ACT

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

The Law may be applicable to vehicles used by contract vendors "on behalf of" State agencies and public authorities and require certain reports from contract vendors. All heavy duty diesel vehicles must have BART by December 31, 2014. The Law also provides a list of exempted vehicles. Regulations set forth in 6 NYCRR Parts 248 and 249 provide further guidance. The Vendor hereby certifies and warrants that all heavy duty vehicles, as defined in NYECL §19-0323, to be used under this contract, will comply with the specifications and provisions of NYECL §19-0323, and 6 NYCRR Parts 248 and 249.



Group 10200-PGB 22797 Influenza Vaccines (MMCAP) ( Statewide) FFF Enterprises, Inc.

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 PIGGYBACK AGREEMENT, Appendix A (Standard Clauses For New York State Contracts), Appendix B (OGS General Specifications), and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, bidder affirms that it understands and agrees to comply with the OGS procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

CONTRACTOR

By:

*Luke D. Noll*

Name:

*Luke D. Noll*

Title:

*Director Vaccine Sales & Corporate Accounts*

Company:

*FFF Enterprises*

Principal Place of Business Address:

*F. 41093 County Center Drive  
Toneuca, CA 92591*

Federal Tax Identification #:

*33 0309 114*

Vendor Identification #:

*100005818*

Date:

*7-17-14*

**APPENDIX A**

**STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

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



**TABLE OF CONTENTS**

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

## 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, licensor, 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: [mwbccertification@esd.ny.gov](mailto:mwbccertification@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

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

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

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

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

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

**21. RECIPROCITY AND SANCTIONS PROVISIONS.**

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

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

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

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

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

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

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

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

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

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

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

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



## **APPENDIX B**

# **GENERAL SPECIFICATIONS**

## TABLE OF CONTENTS

<u>GENERAL</u>	<u>PAGE</u>	<u>TERMS &amp; CONDITIONS (CONT.)</u>	<u>PAGE</u>
1. Ethics Compliance	1	36. Title and Risk of Loss	8
2. Definitions	1	37. Re-Weighing Product	9
<b><u>BID SUBMISSION</u></b>		38. Product Substitution	9
3. International Bidding	2	39. Rejected Product	9
4. Bid Opening	2	40. Installation	9
5. Bid Submission	2	41. Repaired or Replaced Product/ Components	9
6. Late Bids Rejected	3	42. Employees/Subcontractors/Agents	9
7. Bid Contents	3	43. Assignment	9
8. Extraneous Terms	3	44. Subcontractors and Suppliers	9
9. Confidential/Trade Secret Materials	3	45. Performance/Bid Bond	9
10. Prevailing Wage Rates - Public Works and Building Services Contracts	4	46. Suspension of Work	10
11. Taxes	4	47. Termination	10
12. Expenses Prior to Contract Execution	4	48. Savings/Force Majeure	10
13. Advertising Results	4	49. Contract Invoicing	11
14. Product References	5	50. Default - Authorized User	11
15. Remanufactured, Recycled, Recyclable Or Recovered Materials	5	51. Prompt Payments	11
16. Products Manufactured in Public Institutions	5	52. Remedies for Breach	12
17. Pricing	5	53. Assignment of Claim	12
18. Drawings	5	54. Toxic Substances	12
19. Site Inspection	6	55. Independent Contractor	12
20. Procurement Card	6	56. Security	12
21. Samples	6	57. Cooperation with Third Parties	12
<b><u>BID EVALUATION</u></b>		58. Contract Term - Renewal	12
22. Bid Evaluation	6	59. Warranties	12
23. Tie Bids	7	60. Legal Compliance	14
24. Quantity Changes Prior To Award	7	61. Indemnification	14
25. Timeframe for Offers	7	62. Indemnification Relating to Third Party Rights	14
<b><u>TERMS &amp; CONDITIONS</u></b>		63. Limitation of Liability	14
26. Contract Creation/Execution	7	64. Disputes	15
27. Participation in Centralized Contracts	7	<b><u>THE FOLLOWING CLAUSES PERTAIN TO TECHNOLOGY &amp; NEGOTIATED CONTRACTS</u></b>	
28. Modification of Contract Terms	7	65. Software License Grant	16
29. Scope Changes	7	66. Product Acceptance	17
30. Estimated/Specific Quantity Contracts	8	67. Audit of Licensed Product Usage	18
31. Emergency Contracts	8	68. Ownership/Title to Project Deliverables	18
32. Purchase Orders	8	69. Proof of License	19
33. Product Delivery	8	70. Product Version	19
34. Weekend and Holiday Deliveries	8	71. Changes to Product or Service Offerings	19
35. Shipping/Receipt of Product	8	72. No Hardstop/Passive License Monitoring	19
		73. Source Code Escrow for Licensed Product	19



**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. **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.

b. **AUTHORIZED USER(S)** Authorized User shall have the meaning set forth in New York 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.

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

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

1. **Agency Specific Contracts** Contracts where the specifications for a Product or a particular scope of work are described and defined to meet the needs of one or more Authorized User(s).
2. **Centralized Contracts** Single or multiple award Contracts where the specifications for a Product or general scope of work are described and defined by the Office of General Services to meet the needs of Authorized Users. Centralized Contracts may be awarded through multiple awards or through adoption of another jurisdiction's contract or on a sole source, single source, emergency or competitive basis. Once established, procurements may be made from the selected Contractor(s) without further competition or Mini-Bid unless otherwise required by the Bid Specifications or Contract Award Notification.
3. **Back-Drop Contracts** Multiple award Centralized Contracts where the Office of General Services defines the specifications for a Product or general scope of work to meet the needs of Authorized Users. Bids may be submitted either at a date and time certain or may be accepted on a continuous or periodic recruitment basis, as set forth in the Bid Specifications. Selection of a Contractor(s) from among Back-Drop contract holders for an actual Product, project or particular scope of work may subsequently be made on a single or sole source basis, or on the basis of a Mini-Bid

among qualified Back-Drop contract holders, or such other method as set forth in the Bid Document.

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 state(s) which is adopted and extended for use by the OGS Commissioner in accordance with the requirements of the State Finance Law.

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

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

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

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

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

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

j. **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.

k. **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.

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

m. **INVITATION FOR BIDS (IFB)** A type of Bid Document which 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(s).

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

o. **LICENSEE(S)** One or more Authorized Users who acquire Product from Contractor by issuing a Purchase Order in accordance with the terms and conditions of the Contract; provided that, for

purposes of compliance with an individual license, the term "Licensee(s)" shall be deemed to refer separately to the individual Authorized User(s) who took receipt of and who is executing the Product, and who shall be solely responsible for performance and liabilities incurred. In the case of acquisitions by State Agencies, the Licensee shall be the State of New York.

**p. 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.

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

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

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

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

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

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

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

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

**y. 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.

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

**aa. 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.

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

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

**dd. 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.

**ee. STATE** State of New York.

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

**gg. 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.

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

### **BID SUBMISSION**

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

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

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

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

**"BID ENCLOSED (bold print, all capitals)**

- Group Number



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

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

Bidder assumes all risk of late delivery associated with the Bid not being identified, packaged or labeled in accordance with the foregoing requirements.

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

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

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

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

**8. EXTRANEOUS TERMS** Bids must conform to the terms set forth in the Bid Documents, as extraneous terms or material deviations (including additional, inconsistent, conflicting or alternative terms) may render the Bid non-responsive and may result in rejection of the Bid.

Extraneous term(s) submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, license

agreements, contracts or other documents) that are attached or referenced with submissions shall not be considered part of the Bid or resulting Contract, but shall be deemed included for informational or promotional purposes only.

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

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

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

#### **9. CONFIDENTIAL/TRADE SECRET MATERIALS**

**a. CONTRACTOR** Confidential, trade secret or proprietary materials as defined by the laws of the State of New York must be clearly marked and identified as such upon submission by the Bidder. Marking the Bid as "confidential" or "proprietary" on its face or in the document header or footer shall not be considered by the Commissioner or Authorized User to be sufficient without specific justification as to why disclosure of particular information in the Bid would cause substantial injury to the competitive position of the Bidder. Bidders/Contractors intending to seek an exemption from disclosure of these materials under the Freedom of Information Law must request the exemption in writing, setting forth the reasons for the claimed exemption. The State'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 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 as to its agents, Subcontractors, officers, distributors, resellers or employees regarding the obligations arising under this clause to insure such confidentiality.

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

**a. PREVAILING WAGE RATE APPLICABLE TO BID SUBMISSIONS** A copy of the applicable prevailing wage rates to be paid or provided are annexed to the Bid Documents. Bidders must submit Bids which are based upon the prevailing hourly wages, and supplements in cash or equivalent benefits (i.e., fringe benefits and any cash or non-cash compensation which are not wages, as defined by law) that equal or exceed the applicable prevailing wage rate(s) for the location where the work is to be performed. Bidders may not submit Bids based upon hourly wage rates and supplements below the applicable prevailing wage rates as established by the New York State Department of Labor. Bids that fail to comply with this requirement will be disqualified.

**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 as required by 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 New York State, such records must be kept at the work site. For building services contracts, such records must be kept at the work site while work is being performed.

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

**iv. 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.

#### **11. TAXES**

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

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

**c.** 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.

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

**13. ADVERTISING RESULTS** The prior written approval of the Commissioner is required in order for results of the Bid to be used by the Contractor as part of any commercial advertising. The Contractor

shall also obtain the prior written approval of the Commissioner relative to the Bid or Contract for press or other media releases.

#### 14. PRODUCT REFERENCES

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

b. **Discrepancies in References** In the event of a discrepancy between the model number referenced in the Bid Specifications and the written description of the Products which cannot be reconciled, with respect to such discrepancy, then the written description shall prevail.

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

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

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

#### 17. PRICING

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

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

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

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

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

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

g. **Specific price decreases:**

(i) **GSA Changes:** Where NYS Net Prices are 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 NYS Net Prices are 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 to its customers generally or to similarly situated government customers during the Contract term; or

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

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

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

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

#### 18. DRAWINGS

a. **Drawings Submitted With Bid** When the Bid Specifications require the Bidder to furnish drawings and/or plans, such drawings



and/or plans shall conform to the mandates of the Bid Documents and shall, when approved by the Commissioner, be considered a part of the Bid and of any resulting Contract. All symbols and other representations appearing on the drawings shall be considered a part of the drawing.

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

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

**19. SITE INSPECTION** Where a site inspection is required by the Bid Specifications or Project Definition, Bidder shall be required to inspect the site, including environmental or other conditions for pre-existing deficiencies that may affect the installed Product, equipment, or environment or services to be provided and, which may affect Bidder's ability to properly deliver, install or otherwise provide the required Product. All inquiries regarding such conditions shall be made in writing. Bidder shall be deemed to have knowledge of any deficiencies or conditions which such inspection or inquiry might have disclosed. Bidder must provide a detailed explanation with its Bid if additional work is required under this clause in order to properly complete the delivery and installation of the required Product or provide the requested service.

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

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

## **21. SAMPLES**

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

**b. Bidder Supplied Samples** The Commissioner reserves the right to request from the Bidder/Contractor a representative sample(s) of the

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

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

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

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

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

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

## **BID EVALUATION**

**22. 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/her sole discretion, may accept or reject illegible, incomplete or vague Bids and his/her decision shall be final. A conditional or revocable Bid which clearly communicates the terms or limitations of acceptance may be considered, and Contract award may be made in compliance with the Bidder's conditional or revocable terms in the Bid.

**23. 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.

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

**25. TIMEFRAME FOR OFFERS** The Commissioner reserves the right to make awards within sixty days after the date of the Bid opening or such other period of time as set forth in the Bid Documents, during which period, Bids must remain firm and cannot be withdrawn. Where an award is not made within the sixty day period or other time specified as set forth in the Bid Documents, the Bids shall remain firm until such later time as either a Contract is awarded or the Bidder delivers to the Commissioner written notice of the withdrawal of its Bid.

### **TERMS & CONDITIONS**

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

### **27. PARTICIPATION IN CENTRALIZED CONTRACTS**

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

**b. Non-State Agency Authorized Users** Authorized Users other than State Agencies are permitted to make purchases through 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 Bid Specifications shall be honored by the Contractor at its discretion and only with the approval of the OGS Commissioner and any other approvals required by law. Contractors are encouraged to voluntarily extend service Contracts to those additional entities authorized to utilize commodity Contracts under Section 163(3)(a)(iv) of the State Finance 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 save 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 or services shall be permitted to migrate to that Centralized Contract effective with its commencement date. Such migration shall not operate to diminish, alter or eliminate any right that the Authorized User otherwise had under the terms and conditions of their individual Contract.

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

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

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

**29. SCOPE CHANGES** The Commissioner reserves the right to require, by written order, changes to the scope of the Contract, by altering, adding to or deducting from the Bid Specifications, such changes to be within 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 thirty 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 proposal. Failure to agree to any adjustment shall be a dispute under the Disputes clause, provided, however, that nothing in this clause shall excuse the Contractor from proceeding with the Contract as changed.

**30. 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.

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

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

All Purchase Orders issued pursuant to Contracts let by the Commissioner must bear the appropriate Contract number and, if necessary, required State approvals. As deemed necessary, the Authorized User may confirm pricing and other Product information with the Contractor prior to placement of the Purchase Order. The State reserves the right to require any other information from the Contractor which the State deems necessary in order to complete any Purchase Order placed under the Contract. Unless otherwise specified, all Purchase Orders against Centralized Contracts will be placed by Authorized Users directly with the Contractor and any discrepancy between the terms stated on the 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, JUNE 2014

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.

**33. 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 thirty 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. Failure to meet such delivery time schedule may be grounds for cancellation of the order or, in the Commissioner's discretion, the Contract.

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

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

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

**36. TITLE AND RISK OF LOSS** Notwithstanding the form of shipment, title or other property interest, risk of loss shall not pass from the Contractor to the Authorized User until the Products have been received, inspected and accepted by the receiving entity. Acceptance shall occur within a reasonable time or in accordance with such other defined acceptance period as may be specified in the Bid Specifications or Purchase Order. Mere acknowledgment by



Authorized User personnel of the delivery or receipt of goods (e.g., signed bill of lading) shall not be deemed or construed as acceptance of the Products received. Any delivery of Product that is substandard or does not comply with the Bid Specifications or Contract terms and conditions, may be rejected or accepted on an adjusted price basis, as determined by the Commissioner.

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

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

**39. 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.

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

**41. REPAIRED OR REPLACED PARTS / COMPONENTS** Where the Contractor is required to repair, replace or substitute Product or parts or components of the Product under the Contract, the repaired, replaced or substituted Products shall be subject to all terms and conditions for new parts and components set forth in the Contract including Warranties, as set forth in the 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.

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

**43. ASSIGNMENT** The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the contract or its right, title or interest therein, or its power to execute such contract to any other person, company, firm or corporation in performance of the contract without the prior written consent of the Commissioner or Authorized User (as applicable); provided, however, notwithstanding anything in Section 138 of the State Finance Law to the contrary, any approval required thereunder shall not be unreasonably withheld, conditioned, delayed or denied. Notwithstanding the foregoing, the State shall not hinder, prevent or affect assignment of money by a Contractor for the benefit of its creditors. Prior to a consent to assignment of monies becoming effective, the Contractor shall file a written notice of such monies assignment(s) with the Comptroller. Prior to a consent to assignment of a Contract, or portion thereof, becoming effective, the Contractor shall submit the request for assignment to the Commissioner and seek written agreement from the Commissioner which will be filed with the 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.

**44. 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.

**45. PERFORMANCE / BID BOND** The Commissioner reserves the right to require a Bidder or Contractor to furnish, without additional cost, a performance, payment or Bid bond, negotiable

irrevocable letter of credit, or other form of security for the faithful performance of the Contract. Where required, such bond or other security shall be in the form prescribed by the Commissioner.

**46. SUSPENSION OF WORK** The Commissioner, in his/her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, in the best interests of the Authorized User. In the event of such suspension, the Contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a budget freeze or reduction 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.

**47. TERMINATION**

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

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

**c. For Violation of 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/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/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 or his or her designee at the Contractor's expense where the Contractor is determined by the Commissioner or his or her designee to be non-responsible. In such event, the Commissioner or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

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

**f. For refusal to testify, sign a waiver of immunity or answer questions**

The Commissioner reserves the right in accordance with State Finance Law §139-a, to terminate the contract in the event it is found that a member, partner, director or officer of Contractor refused, when called before a grand jury, head of a state department, temporary state commission or other state agency, or the organized crime task force in the department of law, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation, concerning any transaction or contract had with the state, any political subdivision thereof, a public authority or with any public department, agency or official of the state or of any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract. Upon such finding, the Commissioner may exercise his/her termination right by providing written notification to the Contractor.

**48. 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 thirty (30) days, the Parties shall jointly decide on an appropriate course of action that will permit fulfillment of the Parties' objectives hereunder.

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/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. Failure of the Contractor to agree to any adjustment shall be a dispute under the Disputes clause; provided however, that nothing in this clause shall excuse the Contractor from performing in accordance with the Contract as changed.

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

Contractor shall provide, upon request of the Commissioner, any and all information necessary to verify the accuracy of the billings. Such information shall be provided in 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.

#### **50. 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 thirty 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 shipments of Product or provision of services to such entity until such time as reasonable arrangements have been made and assurances given by such entity for current and future Contract payments.

c. **Notice of Breach.** Notwithstanding the foregoing, the Contractor shall, at least ten 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 service an Authorized User may constitute a breach of the Contract, and the Authorized User may thereafter seek any remedy available at law or equity.

#### **51. PROMPT PAYMENTS**

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



may be made in accordance with State Finance Law §§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 thirty 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 Agencies. Neither expressly nor by any implication is the statute applicable to Non-State Authorized Users. Neither OGS nor the State Comptroller is responsible for payments on any purchases made by a Non-State Agency Authorized User.

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

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

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

Such purchases may be deducted from the Contract quantity without penalty or liability to the State. The Commissioner agrees that Authorized Users shall accept allocated performance or deliveries during a period where Contractor is making good faith efforts to cure a material breach.

**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 Commissioner. Should Contractor and the Commissioner fail to agree upon the question of "materiality" in an instance of non-performance, such failure to agree shall be a dispute under the Disputes clause.

**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 its 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 services, and/or replacement Product. Should the cost of cover be less than the Contract price, the Contractor shall have no claim to the difference. The Contractor covenants and agrees that in the event suit is successfully prosecuted for any default on the part of the Contractor, all costs and expenses, including reasonable attorney's fees awarded by a court of competent jurisdiction, 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 substitute 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.

**53. 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.

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

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

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

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

**57. 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.

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

#### **59. WARRANTIES**

**a. Product Performance** Where Contractor, Product manufacturer or service provider generally offers additional or more advantageous warranties than set forth below, Contractor shall offer or pass through any such warranties to Authorized Users.

In addition, Contractor hereby warrants and represents that the Products acquired by the Authorized User under the terms and conditions of this Contract conform to the manufacturer's specifications, performance standards and documentation, and the

documentation fully describes the proper procedure for using the Products.

Contractor further warrants and represents that Products, components or deliverables specified and furnished by or through Contractor shall individually, and where specified and furnished as a system, be free from defects in material and workmanship and will conform with all requirements of the Contract for the warranty period, or for a minimum of one (1) year from the date of acceptance, whichever is longer ("Project warranty period").

Unless recycled 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 attachment or part has been substituted or applied contrary to the manufacturer's recommendations and standard practice.

**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) awarded by a court of competent jurisdiction arising from any breach of Contractor's warranties as set forth herein.

**c. Product Warranty for Deliverables** During the Project warranty period, defects in the materials or workmanship of components or deliverables specified and furnished by or through Contractor shall be repaired or replaced by Contractor at no cost or expense to the Authorized User. Contractor shall extend the Project warranty period for individual component(s), or for the system as a whole, as applicable, by the cumulative period(s) of time, after notification, during which an individual component or the system requires servicing or replacement (down time) or is in the possession of the Contractor, its agents, officers, Subcontractors, distributors, resellers or employees ("extended warranty").

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

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

The Commissioner agrees that Contractor is not responsible for any modification of the Products made by an Authorized User without Contractor's approval.

**d. Replacement Parts Warranty** If during the regular or extended warranty periods, parts or components break or fail to perform as intended, the Contractor shall promptly repair or, upon demand, replace the defective unit or component part affected. All costs for labor and material and transportation incurred to repair or replace defective Product during the warranty period(s) shall be borne solely by the Contractor, and the State or Authorized User shall in no event be liable or responsible therefor.

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

**e. Virus Warranty** The Contractor represents and warrants that any Licensed Software acquired by the Authorized User does not contain any known viruses. Contractor is not responsible for viruses introduced at Licensee's site.

**f. 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.

This Date/Time Warranty shall survive beyond termination or expiration of this contract as long as the Product is used by the governmental entity, or its successor, for whom the Product was originally purchased." Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under this Contract for breach of warranty.

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

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

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.

**60. 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 renewals thereof, Contractor must establish to the satisfaction of the Commissioner that it meets or exceeds all requirements of the Bid and Contract and any applicable laws, including but not limited to, permits, licensing, and shall provide such proof as required by the Commissioner. Failure to comply or failure to provide proof may constitute grounds for the Commissioner to 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.

**61. INDEMNIFICATION** Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully defend, indemnify and hold harmless the Authorized Users from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by any intentional act or negligence of Contractor, its agents, employees, partners or Subcontractors, which shall arise from or result directly or indirectly from this Contract, without limitation; provided, however, that the Contractor shall not indemnify to the extent any claim, loss or damage arising hereunder solely due to the negligent act, failure to act, gross negligence or willful misconduct of the Authorized Users.

The Commissioner shall give Contractor: (i) prompt written notice of any action, claim or threat of suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action, claim or suit at the expense of Contractor.

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 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 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.

**62. INDEMNIFICATION RELATING TO THIRD PARTY RIGHTS** The Contractor will also defend, indemnify and hold the Authorized Users harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, JUNE 2014

liabilities and costs in any action for infringement of a patent, copyright, trademark, trade secret or other proprietary right provided: a) such claim arises solely out of the Products as supplied by the Contractor, and not out of any modification to the Products made by Authorized User or by someone other than Contractor at the direction of the Authorized User without Contractor's approval, or by reason of an off-the-shelf component; and b) Authorized User gives Contractor prompt written notice of any such action, claim suit or threat of suit alleging infringement.

At Authorized User's option, Contractor may be given the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and to provide assistance in the defense of any such action, claim or suit at the expense of Contractor.

Such indemnity shall only be applicable in the event of claims, judgments, liabilities and/or costs that may be finally assessed against Authorized User in any action for infringement of a patent, or of any copyright, trademark, trade secret or other third party proprietary right except to the extent such claims, judgments, liabilities and/or costs arise solely from the Authorized Users negligent act, failure to act, gross negligence or willful misconduct.

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 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 in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, Contractor shall immediately notify the Authorized User and the Office of the Attorney General in writing and shall specify to what extent Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract 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 seek to secure a continuance to permit the Authorized User to appear and defend their interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the Authorized User may have. This constitutes the Authorized User's sole and exclusive remedy for patent infringement, or for infringement of any other third party proprietary right.

**63. LIMITATION OF LIABILITY** Except as otherwise set forth in the Indemnification clause and the Indemnification Relating to Third Party Rights 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 and services, or parts thereof forming the basis of the Authorized User's claim (said amount



not to exceed a total of twelve (12) months charges payable under the applicable Purchase Order) or (ii) 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.

#### 64. DISPUTES

##### a. Informal Dispute Resolution Process

1. It is the policy of OGS to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to OGS bid solicitations, contract awards or contract administration. If the Parties are not able to resolve their dispute between themselves as set forth below, OGS encourages vendors to seek resolution of disputes through consultation with OGS staff. Such consultation is voluntary. All such matters will be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of the Dispute Resolution Procedures for Vendors may be obtained by contacting the person identified in the Contract as a designated contact or through the OGS website ([www.ogs.ny.gov](http://www.ogs.ny.gov)).

2. In the event there is a dispute or controversy under this Centralized Contract, the Contractor, OGS and Authorized User agree to exercise their best efforts to resolve the dispute as soon as possible. The Contractor, OGS and Authorized User shall, without delay, continue to perform their respective obligations under this Centralized Contract which are not affected by the dispute. Primary responsibility for resolving any dispute arising under this Centralized Contract shall rest with the Authorized User's Contractor Coordinators and the Contractor's Account Executive and the State & Local Government Regional General Manager.

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

4. If negotiation between such persons fails to resolve any such dispute to the satisfaction of the parties within fourteen (14) business days or as otherwise agreed to by the Contractor and Authorized User, of such notice, then the matter shall be submitted to the State's Contract Administrator and the Contractor's senior officer of the rank of Vice President or higher as its representative. Such representatives shall meet in person and shall attempt in good faith to resolve the dispute within the next fourteen (14) business days or as otherwise agreed to by the parties. This meeting must be held before either party may seek any other method of dispute resolution, including judicial or governmental resolutions. Notwithstanding the foregoing, this section

JUNE 2014

shall not be construed to prevent either party from seeking and obtaining temporary equitable remedies, including injunctive relief.

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

##### b. Formal Disputes

###### 1. Definitions

a. Filed means the complete receipt of any document by OGS before its close of business.

b. Dispute means a written objection by Contractor to any of the following:

i. A solicitation or other request by OGS for offers for a contract for the procurement of commodities or services.

ii. The cancellation of the solicitation or other request by OGS.

iii. An award or proposed award of the Contract by OGS.

iv. A termination or cancellation of an award of the Contract by OGS.

v. Changes in the Scope of the Centralized Contract by the Commissioner.

vi. Determination of "materiality" in an instance of nonperformance or contractual breach.

vii. An equitable adjustment in the Centralized Contract terms and/or pricing made by the Commissioner during a Force Majeure event.

###### 2. Submission of Disputes

a. A formal dispute by Contractor must be filed in writing to OGS by mail, email or facsimile.

###### 3. The dispute must include:

a. Name, address, e-mail address, fax and telephone numbers of the filer.

b. Solicitation or Contract number.

c. Detailed statement of the legal and factual grounds for the dispute, including a description of resulting prejudice to the filer.

d. Copies of relevant documents.

e. Request for a ruling by the agency.

f. Statement as to the form of relief requested.

g. All information establishing that the filer is an interested party for the purpose of filing a dispute.

h. All information establishing the timeliness of the dispute.

Disputes must be filed with the Director of OGS New York State Procurement (NYSPRO) at the following address:

##### New York State Office of General Services

Director, NYSPRO

38th Floor, Corning Tower

Empire State Plaza

Albany, NY 12242

Facsimile: (518) 486-6099

Disputes concerning the administration of the Contract after award must be filed within twenty (20) business days by Contractor after the Authorized User and Contractor fails to reach resolution through the Informal Dispute Resolution Process.

##### 4. Agency Response

1. OGS will consider all information relevant to the dispute, and may, at its discretion, suspend, modify, or cancel the disputed

procurement/Contract action prior to issuance of a formal dispute decision.

2. OGS reserves the right to require the Contractor to meet or participate in a conference call with OGS to discuss the dispute when, in its sole judgment, circumstances so warrant.

3. OGS reserves the right to waive or extend the time requirements for decisions and final determination on appeals herein prescribed when, in its sole judgment, circumstances so warrant.

4. OGS reserves the right to consider or reject the merits of any dispute.

5. Notice of Decision: A copy of the decision, stating the reason(s) upon which it is based and informing the filer of the right to appeal an unfavorable decision to the Chief Procurement Officer shall be sent to the filer or its agent by regular mail within thirty (30) business days of receipt of the dispute.

#### 5. Appeals

a. Should the filer be dissatisfied with the dispute determination, a written appeal may be directed to:

**Chief Procurement Officer**  
**New York State Office of General Services**  
**NYSPRO**  
 38th Floor, Corning Tower  
 Empire State Plaza  
 Albany, NY 12242  
 Facsimile: (518) 486-9166

b. Written notice of appeal of a determination must be received at the above address no more than ten (10) business days after the date the decision is received by the filer. The decision of the Director of NYSPRO shall be a final and conclusive agency determination unless appealed to the Chief Procurement Officer within such time period.

c. The Chief Procurement Officer shall hear and make a final determination on all appeals or may designate a person or persons to act on his/her behalf. The final determination on the appeal shall be issued within twenty (20) business days of receipt of the appeal.

d. An appeal of the decision of the Director of NYSPRO shall not include new facts and information unless requested in writing by the Chief Procurement Officer.

e. The decision of the Chief Procurement Officer shall be a final and conclusive agency determination.

6. **Legal Appeals** Nothing contained in these provisions is intended to limit or impair the rights of Contractor to seek and pursue remedies of law through the judicial process.

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

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

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

JUNE 2014

interest in any trademark, trade name, or service mark is granted hereunder.

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

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

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

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

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

d. **Product Technical Support & Maintenance** Licensee shall have the option of electing the Product technical support and maintenance ("maintenance") set forth in the Contract by giving written notice to Contractor any time during the Centralized Contract term. Maintenance term(s) and any renewal(s) thereof are independent of the expiration of the Centralized Contract term and will not automatically renew.

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

Authorized User shall not be required to purchase maintenance for use of Product, and may discontinue maintenance at the end of any current maintenance term upon notice to Contractor. In the event that Authorized User does not initially acquire or discontinues maintenance of licensed Product, it may, at any time thereafter, reinstate maintenance for Product without any additional penalties or other charges, by paying Contractor the amount which would have been due under the Contract for the period of time that such maintenance had lapsed, at then current NYS net maintenance rates.

e. **Permitted License Transfers** As Licensee's business operations may be altered, expanded or diminished, licenses granted hereunder may be transferred or combined for use at an alternative or consolidated site not originally specified in the license, including transfers between Agencies ("permitted license transfers"). Licensee(s) do not have to obtain the approval of Contractor for permitted license transfers, but must give thirty (30) days prior written notice to Contractor of such move(s) and certify in writing that the Product is not in use at the prior site. There shall be no additional

license or other transfer fees due Contractor, provided that: i) the maximum capacity of the consolidated machine is equal to the combined individual license capacity of all licenses running at the consolidated or transferred site (e.g., named users, seats, or MIPS); or ii) if the maximum capacity of the consolidated machine is greater than the individual license capacity being transferred, a logical or physical partition or other means of restricting access will be maintained within the computer system so as to restrict use and access to the Product to that unit of licensed capacity solely dedicated to beneficial use for Licensee. In the event that the maximum capacity of the consolidated machine is greater than the combined individual license capacity of all licenses running at the consolidated or transferred site, and a logical or physical partition or other means of restricting use is not available, the fees due Contractor shall not exceed the fees otherwise payable for a single license for the upgrade capacity.

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

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

**g. Archival Back-Up and Disaster Recovery** Licensee may use and copy the Product and related Documentation in connection with: i) reproducing a reasonable number of copies of the Product for archival backup and disaster recovery procedures in the event of destruction or corruption of the Product or disasters or emergencies which require Licensee to restore backup(s) or to initiate disaster recovery procedures for its platform or operating systems; ii) reproducing a reasonable number of copies of the Product and related Documentation for cold site storage. "Cold Site" storage shall be defined as a restorable back-up copy of the Product not to be installed until and after the declaration by the Licensee of a disaster; iii) reproducing a back-up copy of the Product to run for a reasonable period of time in conjunction with a documented consolidation or transfer otherwise allowed herein. "Disaster Recovery" shall be defined as the installation and storage of Product in ready-to-execute, back-up computer systems prior to disaster or breakdown which is not used for active production or development.

**h. Confidentiality Restrictions** The Product is a trade secret, copyrighted and proprietary product. Licensee and its employees will keep the Product strictly confidential, and Licensee will not disclose or otherwise distribute or reproduce any Product to anyone other than as

authorized under the terms of Contract. Licensee will not remove or destroy any proprietary markings of Contractor.

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

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

**66. PRODUCT ACCEPTANCE** Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, Authorized User(s) shall have thirty (30) days from the date of delivery to accept hardware Products and sixty (60) days from the date of delivery to accept all other Product. Where the Contractor is responsible for installation, acceptance shall be from completion of installation. 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(s) as of the expiration of that period. The License Term shall be extended by the time periods allowed for trial use, testing and acceptance unless the Commissioner or Authorized User agrees to accept the Product at completion of trial use.

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

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

If the Authorized User elects to provide a deficiency statement specifying how the Product fails to meet the specifications within the testing period, Contractor shall have thirty (30) days to correct the deficiency, and the Authorized User shall have an additional sixty (60) days to evaluate the Product as provided herein. If the Product does not meet the specifications at the end of the extended testing period, Authorized User, upon prior written notice to Contractor, may then reject the Product and return all defective Product to Contractor, and Contractor shall refund any monies paid by the Authorized User to Contractor therefor. Costs and liabilities associated with a failure of the Product to perform in accordance with the functionality tests or product specifications during the acceptance period shall be borne fully by Contractor to the extent that said costs or liabilities shall not have been caused by negligent or willful acts or omissions of the Authorized User's agents or employees. Said costs shall be limited to the amounts set forth in the Limitation of Liability Clause for any liability for costs incurred at the direction or recommendation of Contractor. 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.

**67. AUDIT OF LICENSED PRODUCT USAGE** Contractor shall have the right to periodically audit, no more than annually, at Contractor's expense, use of licensed Product at any site where a copy of the Product resides provided that: (i) Contractor gives Licensee(s) at least thirty (30) days advance written notice, (ii) such audit is conducted during such party's normal business hours, (iii) the audit is conducted by an independent auditor chosen on mutual agreement of the parties. Contractor shall recommend a minimum of three (3) auditing/accounting firms from which the Licensee will select one (1). In no case shall the Business Software Alliance (BSA), Software Publishers Association (SPA), Software and Industry Information Association (SIIA) or Federation Against Software Theft (FAST) be used directly or indirectly to conduct audits, or be recommended by Contractor; (iv) Contractor and Licensee are each entitled to designate a representative who shall be entitled to participate, and who shall mutually agree on audit format, and simultaneously review all information obtained by the audit. Such representatives also shall be entitled to copies of all reports, data or information obtained from the audit; and (v) if the audit shows that such party is not in compliance, Licensee shall be required to purchase additional licenses or capacities necessary to bring it into compliance and shall pay for the unlicensed capacity at the NYS Net Price in effect at time of audit, or if none, then at the Contractor's U.S. Commercial list price. Once such additional licenses or capacities are purchased, Licensee shall be deemed to have been in compliance retroactively, and Licensee shall have no further liability of any kind for the unauthorized use of the software.

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

**a. Definitions**

(i) For purposes of this clause, "Products." 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 diskette, CD, DVD or other electronic media c) third party software, d) modifications, customizations, custom programs, program listings, programming tools, data, modules, components, and e) any properties embodied therein, whether in tangible or intangible form (including but not limited to utilities, interfaces, templates, subroutines, algorithms, formulas, source code, object code).

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

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

**b. Title to Project Deliverables** Contractor acknowledges that it is commissioned by the Authorized User to perform the services detailed in the Purchase Order. Unless otherwise specified in writing in the

Bid or Purchase Order, the Authorized User shall have ownership and license rights as follows:

**(i) Existing Products:**

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

**2. Software** - Title and ownership to Existing Software Product(s) delivered by Contractor under the Contract that is normally commercially distributed on a license basis by the Contractor or other independent software vendor proprietary owner ("Existing Licensed Product"), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall remain with Contractor or the proprietary owner of other independent software vendor(s) (ISV). Effective upon acceptance, such Product shall be licensed to Authorized User in accordance with the Contractor or ISV owner's standard license agreement, provided, however, that such standard license, must, at a minimum: (a) grant Authorized User a non-exclusive, perpetual license to use, execute, reproduce, display, perform, adapt (unless Contractor advises Authorized User as part of Contractor's proposal that adaptation will violate existing agreements or statutes and Contractor demonstrates such to the Authorized User's satisfaction) and distribute Existing Licensed Product to the Authorized User up to the license capacity stated in the Purchase Order or work order with all license rights necessary to fully effect the general business purpose(s) stated in the Bid or Authorized User's Purchase Order or work order, including the financing assignment rights set forth in paragraph (c) below; and (b) recognize the State of New York as the licensee where the Authorized User is a state agency, department, board, commission, office or institution. Where these rights are not otherwise covered by the ISV's owner's standard license agreement, the Contractor shall be responsible for obtaining these rights at its sole cost and expense. The Authorized User shall reproduce all copyright notices and any other legend of ownership on any copies authorized under this 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 Product(s), whether preliminary, final or otherwise, including all trademark and copyrights. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction and marketing by or through Contractor, its agents, employees, or Subcontractors. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under a Purchase Order, project definition or work order in the course of Contractor's business. Authorized User may, by providing written notice thereof to the Contractor, elect in the alternative to take a non-exclusive perpetual license to Custom Products in lieu of Authorized User taking exclusive ownership and title to such Products. In such case, Licensee on behalf of all Authorized Users shall be granted a non-exclusive perpetual license to use, execute, reproduce, display, perform, adapt and distribute Custom Product as necessary to fully effect the general business purpose(s) as stated in paragraph (b)(i)(2), above.

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

by the terms of the financing agreement. Trustee's sole rights with respect to transferability or use of Licensed Products shall be to exclusively sublicense to Authorized User all of its Licensee's rights under the terms and conditions of the License Agreement; provided, further, however, in the event of any termination or expiration of such sublicense by reason of payment in full, all of Trustee's rights in such Licensed Product shall terminate immediately and Authorized User's prior rights to such Existing Licensed Product shall be revived.

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

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

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

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

#### **71. CHANGES TO PRODUCT OR SERVICE OFFERINGS**

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

In the event that the Contractor is not the Product Manufacturer, Contractor shall be required to: (i) provide the notice required under JUNE 2014

the paragraph above, to the entities described within five (5) business days of Contractor receiving notice from the Product Manufacturer, and (ii) include in such notice the period of time from the date of notice that the Product Manufacturer will continue to provide Product or withdraw support.

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

**b. Product or Service Re-Bundling** In the event that Contractor is the Product manufacturer and publicly announces to all U.S. customers ("date of notice") that a Product or maintenance or technical support offering is being re-bundled in a different manner from the structure or licensing model of the prior U.S. commercial offering, Contractor shall be required to: (i) notify the State and each Authorized User in writing of the intended change; (ii) continue to provide Product or withdrawn support upon the same terms and conditions as previously offered on the then-current NYS Contract for the greater of: a) the best terms offered by Contractor to any other customer, or b) not less than twelve (12) months from the date of notice; and (iii) shall submit the proposed rebundling change to the Commissioner for approval prior to its becoming effective for the remainder of the Contract term. The provisions of this section do not apply if the Contractor is not the Product manufacturer.

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

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

updating of escrow shall be certified to the State in writing. Contractor shall identify the escrow agent upon commencement of the Contract term and shall certify annually that the escrow remains in effect in compliance with the terms of this clause.

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



# INDEX

	<u>Clause</u>		<u>Clause</u>
<u>A</u>	<u>No.</u>	<u>P</u>	<u>No.</u>
Advertising Results	13	Participation in Centralized Contracts	27
Assignment	43	Performance/Bid Bond	45
Assignment of Claim	53	Prevailing Wage Rates - Public Works and Building Services Contracts	10
Audit of Licensed Product Usage	67	Pricing	17
<u>B</u>		Procurement Card	20
Bid Contents	7	Product Acceptance	66
Bid Evaluation	22	Product Delivery	33
Bid Opening	4	Product References	14
Bid Submission	5	Product Substitution	38
<u>C</u>		Product Version	70
Changes to Product or Service Offerings	71	Products Manufactured in Public Institutions	16
Confidential/Trade Secret Materials	9	Prompt Payments	51
Contract Invoicing	49	Proof of License	69
Contract Creation/Execution	26	Purchase Orders	32
Contract Term - Renewal	58	<u>Q</u>	
Cooperation with Third Parties	57	Quantity Changes Prior to Award	24
<u>D</u>		<u>R</u>	
Default - Authorized User	50	Rejected Product	39
Definitions	2	Re-Weighing Product	37
Disputes	64	Remanufactured, Recycled, Recyclable or Recovered Materials	15
Drawings	18	Remedies for Breach	52
<u>E</u>		Repaired or Replaced Product/Components	41
Emergency Contracts	31	<u>S</u>	
Employees/Subcontractors/Agents	42	Samples	21
Estimated/Specific Quantity Contracts	30	Savings/Force Majeure	48
Ethics Compliance	1	Scope Changes	29
Expenses Prior to Contract Execution	12	Security	56
Extraneous Terms	8	Site Inspection	19
<u>I</u>		Shipping/Receipt of Product	35
Indemnification	61	Software License Grant	65
Indemnification Relating to Third Party Rights	62	Source Code Escrow for Licensed Product	73
Independent Contractor	55	Subcontractors and Suppliers	44
Installation	40	Suspension of Work	46
International Bidding	3	<u>T</u>	
<u>L</u>		Taxes	11
Late Bids Rejected	6	Termination	47
Legal Compliance	60	Tie Bids	23
Limitation of Liability	63	Timeframe for Offers	25
<u>M</u>		Title and Risk of Loss	36
Modification of Contract Terms	28	Toxic Substances	54
<u>N</u>		<u>W</u>	
No Hardstop/Passive License Monitoring	72	Warranties	59
<u>O</u>		Weekend and Holiday Deliveries	34
Ownership/Title to Project Deliverables	68		

**STATE OF NEW YORK  
OFFICE OF GENERAL SERVICES  
CONTRACT EXTENSION AGREEMENT  
WITH  
FFF Enterprises, Inc.  
Award PGB-22797 Contract No. PC66476**

**THIS AGREEMENT**, (hereinafter referred to as the "Agreement" or the "Contract Extension Agreement" made this 17 day of June, 2015 by and between the People of the State of New York, acting by and through the Office of General Services' Procurement Services (formerly known as New York State Procurement ("NYSPPro")), located at the 38<sup>th</sup> Floor, Corning Tower, Empire State Plaza, Albany, NY 12242 (hereinafter referred to as "OGS"), and FFF Enterprises, Inc., (hereinafter referred to as the "Contractor"), with an office at 41093 County Center Drive, Temecula, CA 92591, (the foregoing are hereinafter individually referred to as a "Party" and collectively referred to as the "Parties").

**W I T N E S S E T H:**

**WHEREAS**, the Contractor entered into a contract (hereinafter referred to as the "Master Contract") with the State of Minnesota, acting through its Commissioner of Administration, on behalf of Minnesota Multistate Contracting Alliance for Pharmacy (hereinafter referred to as "MMCAP"), which was effective from January 23, 2014 or the date MMCAP obtained all required signatures under Minnesota Statutes Section 16C.05, subdivision 2, whichever was later until December 31, 2015; and

**WHEREAS**, the Master Contract contains the option for an extension of three (3) additional one (1) year periods and pursuant to that option, the term of the Master Contract was extended through December 31, 2016, and

**WHEREAS**, OGS and the Contractor entered into annual piggyback agreements (hereinafter referred to as the "Piggyback Agreement(s)") which allowed for use of the Master Contract by State agencies and other entities allowed to use New York State Centralized Contracts (hereinafter collectively referred to as "Authorized User(s)"); and

**WHEREAS**, the Parties desire to enter into an extension of the Piggyback Agreement in order to allow Authorized Users to continue to use the Master Contract until December 31, 2016 or until a new contract is entered into by the Parties;

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

**1. TERM**

This Contract Extension Agreement shall commence once it has been signed by the Parties and will be in effect until December 31, 2016 or until a new contract is entered into by the Parties. The foregoing is hereinafter referred to as the "Contract Extension Term."

## **2. APPENDIX A**

Appendix A, Standard Clauses for New York State Contracts, included in the original Contract, is hereby replaced with the Appendix A, dated January 2014, attached hereto, and is expressly made a part of this Contract Extension Agreement as fully as if set forth at length herein.

## **3. APPENDIX B**

Appendix B, General Specifications, included in the original Contract, is hereby replaced with the Appendix B, dated May 2015, attached hereto, and is expressly made a part of this Contract Extension Agreement as fully as if set forth at length herein.

## **4. CONTRACT PRICING**

The Contractor shall provide the Influenza Vaccine products and pricing specified in Appendix C for the 2015-2016 influenza season. Pricing shall remain constant in accordance with the pricing set forth in Appendix C throughout the 2015-2016 influenza season. Products and pricing for the 2016-2017 influenza season will be managed by amendment to the Master Contract.

## **5. CONTRACTOR RESPONSIBILITY**

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

The Commissioner of OGS or her designee, 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 or her designee issues a written notice authorizing a resumption of performance under the Contract.

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

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

## **6. PROCUREMENT LOBBYING LAW:**

- A. By signing this Contract Extension Agreement, the Contractor certifies that: a Government Entity has not made a finding of Non-Responsibility regarding the Contractor in the previous four years; a Government Entity has not terminated or withheld a Procurement Contract with the Contractor due to the intentional provision of false or incomplete information; and all information provided regarding State Finance Law §139-k is complete, true and accurate.



- B. By signing this Contract Extension Agreement, the Contractor further affirms that it understands and agrees to comply with the procedures of OGS relative to permissible Contacts as required by State Finance Law § 139-j (3) and (6) (b).
- C. Summary of Policy and Prohibitions on Procurement Lobbying

Pursuant to State Finance Law §§139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between OGS and an Offerer/bidder during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit offers/bids through final award and approval of the Procurement Contract by OGS and, if applicable, the Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j (3) (a). Designated staff, as of the date hereof, were identified in the Contact Extension Agreement Cover letter. OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes.

Certain findings of Non-Responsibility can result in rejection for contract award and in the event of two findings within a four-year period; the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the OGS website:

[http://www.ogs.ny.gov/aboutOgs/regulations/defaultSFL\\_139j-k.asp](http://www.ogs.ny.gov/aboutOgs/regulations/defaultSFL_139j-k.asp)

## **7. SEVERABILITY**

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

## **8. CONTRACTOR REQUIREMENTS AND PROCEDURES FOR EQUAL EMPLOYMENT AND BUSINESS PARTICIPATION OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND NEW YORK STATE CERTIFIED MINORITY-AND WOMEN-OWNED BUSINESS ENTERPRISES**

### **I. General Provisions**

A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.

B. The Contractor agrees, in addition to any other nondiscrimination provision of this Agreement and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for New York State certified minority- and women-owned business enterprises ("MWBEs"). The Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, State or local laws.

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

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

## II. Contract Goals

A. For purposes of this Agreement, OGS conducted a comprehensive search and determined that this Agreement does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers and suppliers to the Contractor. The Contractor is however encouraged to make every good faith effort to promote and assist the participation of MWBEs who perform commercially useful functions on this Agreement for the provision of services and materials. To locate MWBEs, the Directory of Certified Businesses can be viewed at:

<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>.

Additionally, the 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 this Agreement.

### B. Commercially Useful Function

Pursuant to 5 NYCRR § 140.1(f), a MWBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, a MWBE must, where applicable and in accordance with any State Agency specifications, also be responsible, with respect to materials and supplies used on the contract, for ordering and negotiating price, determining quality and quantity and installing. A MWBE does not perform a commercially useful function if its role adds no substantive value and is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of participation. OGS will assess whether a MWBE is performing a commercially useful function by considering the following:

- (1) the amount of work subcontracted;
- (2) industry practices;
- (3) whether the amount the MWBE is to be paid under the contract is commensurate with the work it is to perform;
- (4) the credit claimed towards MWBE utilization goals for the performance of the work by the MWBE; and
- (5) any other relevant factors.

### C. Good Faith Efforts

Pursuant to 5 NYCRR § 142.8, evidence of good faith efforts shall include the following:

(1) A list of the general circulation, trade and MWBE-oriented publications and dates of publications soliciting for certified MWBE participation as a subcontractor/supplier and copies of such solicitation.

(2) A list of the certified MWBEs appearing in the Empire State Development MWBE directory that were solicited for this Agreement. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.

(3) Descriptions of this Agreement's documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with or obtaining supplies from certified MWBEs.

(4) A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Agreement.

(5) Dates of any pre-bid, pre-award or other meetings attended by the Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in this Agreement.

(6) Other information deemed relevant to the request.

### III. Equal Employment Opportunity (EEO)

A. The Contractor shall comply with the following provisions of Article 15-A:

1. The 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.

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

#### B. Form EEO 100 – Staffing Plan

To ensure compliance with this section, the Contractor shall submit Form EEO 100- Staffing Plan to document the composition of the proposed workforce to be utilized in the performance of this Agreement by the specified categories listed, including ethnic background, gender, and federal occupational categories. The Contractor shall complete the Staffing plan form and submit it as part of this Agreement.

#### C. Form EEO 101 - Workforce Employment Utilization Report ("Workforce Report")

The Contractor and OGS agree that the Contractor is unable to separate out the workforce utilized in the performance of this Agreement from the Contractor's and/or the subcontractor's total workforce and that the information provided on the previously submitted Staffing Plan is the Contractor's total workforce during the subject time frame, not limited to work specifically under this Agreement.

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

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



CONTRACT NO. PC66476

IN WITNESS WHEREOF, the Parties hereto have executed this Contract Extension Agreement as of the day and year written below. 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 Contract Extension Agreement, Appendix A (Standard Clauses For New York State Contracts) dated January 2014, and Appendix B, General Specifications dated May 2015.

FFF ENTERPRISES, INC.

Signature: Luke D. Noll

Printed Name: Luke D. Noll

Title: Director of Vaccine Sales - Corporate Accounts

Federal Tax I.D.: 33-0309114

NYS Vendor I.D.: 10000 55818

Date: 6-17-2015

THE PEOPLE OF THE STATE OF NEW YORK

Signature: Jill McCabe

Printed Name: Jill McCabe

Title: Asst. Director

Date: 8/4/15

**NOTICE: This Extension becomes effective upon OGS signature/approval. OGS will then post a notification to its website in the form of a Purchasing Memorandum.**

**INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ }

: SS.:

COUNTY OF \_\_\_\_\_ }

On the 26 day of June in the year 2015 before me personally appeared Luke Noll, 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 41093 County Center Drive, Town of Temecula, County of Riverside, State of California; 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 Director of Corporate Accounts of FFF Enterprises, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

(☐ If a partnership): he is the \_\_\_\_\_ of \_\_\_\_\_, the partnership described in said instrument; that, by the terms of said partnership, he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

(☐ If a limited liability company): he is a duly authorized member of \_\_\_\_\_, LLC, the limited liability company described in said instrument; that he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Notary Public

See attached

Registration No. \_\_\_\_\_

State of: \_\_\_\_\_

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

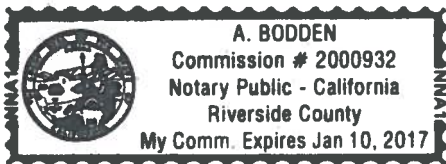
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
 County of Riverside )  
 On June 26, 2015 before me, A. Bodden, Notary,  
 Date Here Insert Name and Title of the Officer  
 personally appeared Luke D. Noll  
 Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Signature]  
 Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: Contract Extension Agmt Document Date: June 17, 2015  
 Number of Pages: 7 Signer(s) Other Than Named Above: —

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: Luke D. Noll  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_  
 Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_  
 Signer Is Representing: \_\_\_\_\_

**STATE OF NEW YORK  
OFFICE OF GENERAL SERVICES  
CONTRACT EXTENSION AGREEMENT**

**WITH**

**FFF Enterprises, Inc.**

**Award PGB-22797    Contract No. PC66476**

**THIS AGREEMENT**, (hereinafter referred to as the "Agreement" or the "Contract Extension Agreement") effective on the date of OGS signature, by and between the People of the State of New York, acting by and through the Office of General Services' Procurement Services (formerly known as New York State Procurement ("NYSPRO")), located at the 38<sup>th</sup> Floor, Corning Tower, Empire State Plaza, Albany, NY 12242 (hereinafter referred to as "OGS"), and FFF Enterprises, Inc., (hereinafter referred to as the "Contractor"), with an office at 44000 Winchester Road, Temecula, CA 92590. The foregoing are hereinafter individually referred to as a "Party" and collectively referred to as the "Parties."

**WITNESSETH:**

**WHEREAS**, the Contractor entered into a contract (hereinafter referred to as the "Master Contract") with the State of Minnesota, acting through its Commissioner of Administration, on behalf of Minnesota Multistate Contracting Alliance for Pharmacy (hereinafter referred to as "MMCAP") which was effective from January 23, 2014 or the date MMCAP obtained all required signatures under Minnesota Statutes Section 16C.05, subdivision 2, whichever was later until December 31, 2015; and

**WHEREAS**, the Master Contract contains the option to extend for three additional one-year terms as mutually agreed upon and achieved through a fully executed amendment; and

**WHEREAS**, the Contractor and MMCAP entered into Amendment No. 6, which extended the term of the Master Contract until December 31, 2016; and

**WHEREAS**, the Contractor and MMCAP entered into Amendment Nine, which extended the term of the Master Contract until December 31, 2017 and have now entered into Amendment Fourteen, which extends the terms of the of Master Contract until December 31, 2018; and

**WHEREAS**, Article XI, Section 163 of the New York State Finance Law, allows the Commissioner of OGS to authorize purchases required by New York State agencies or other authorized purchasers by approving the use of a contract let by any department, agency or instrumentality of the United States government and/or any department, agency, office, political subdivision or instrumentality of any state or states; and

**WHEREAS**, pursuant to the authority granted to it by Article XI, Section 163 of the New York State Finance Law, OGS and the Contractor entered into contract (hereinafter referred to as the "Piggyback Agreement" or "Contract No. PC66476") for the purchase of influenza vaccines under the terms and conditions established by the Master Contract; and

**WHEREAS**, the term of Contract No. PC66476 runs from August 13, 2014 to December 31, 2015, and Contract No. PC66476 allows OGS the option to extend the term for three additional one-year terms as mutually agreed upon and achieved through a fully executed amendment; and

**WHEREAS**, the Parties extended the term of Contract No. PC66476 until December 31, 2016 or until a new contract is entered into by the Parties through a contract extension agreement (hereinafter referred to as "Contract Extension Agreement 1"); and



**WHEREAS**, the Parties extended the term of Contract No. PC66476 until December 31, 2017 or until a new contract is entered into by the Parties through a contract extension agreement (hereinafter referred to as "Contract Extension Agreement 2"); and

**WHEREAS**, in accordance with the terms of Contract No. PC66476, the Parties wish to extend the term of Contract No. PC66476 until December 31, 2018 or until a new contract is awarded, whichever occurs first and make certain amendments that are set forth below.

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

**1. TERM**

In accordance with the terms of Contract No. PC66476, this Contract Extension Agreement shall commence upon signing by OGS and will be in effect until December 31, 2018, or until a new contract is awarded, whichever occurs first.

**2. APPENDIX A**

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

**3. APPENDIX B**

Appendix B, dated June 2014, General Specifications, is attached hereto, and is expressly made a part of this Contract Extension Agreement as fully as if set forth at length herein.

**4. OFFICIAL USE ONLY/NO PERSONAL USE**

The following section referred to as "Official Use Only/No Personal Use" is added to this Contract Extension Agreement:

**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.

**5. CONTRACT PRICING**

The Contractor shall provide the Influenza Vaccine products and pricing specified in the Master Contract for the 2017-2018 influenza season. Pricing shall remain constant in accordance with the pricing set forth in the Master Contract throughout the 2017-2018 influenza season. Products and pricing for the 2018-2019 influenza season will be managed by amendment to the Master Contract.

**6. SEVERABILITY**

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

**7. CONTRACTOR REQUIREMENTS AND PROCEDURES FOR EQUAL EMPLOYMENT AND BUSINESS PARTICIPATION OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND NEW YORK STATE CERTIFIED MINORITY-AND WOMEN-OWNED BUSINESS ENTERPRISES**

Section 7 of Contract Extension Agreement 2 is hereby deleted and replaced with the following:

**CONTRACTOR REQUIREMENTS 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****I. New York State Law**

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

**II. General Provisions**

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

**III. Equal Employment Opportunity (EEO)**

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

**B. Form EEO 100 – Staffing Plan**

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

**C. Form EEO - 101 - Workforce Utilization Reporting Form (Commodities and Services) ("Form EEO-101-Commodities and Services")**

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

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

**IV. Contract Goals**

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

**B. Good Faith Efforts**

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

1. A list of the general circulation, trade, and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers, copies of such solicitations, and any responses thereto.
2. A list of the certified MWBEs appearing in the Empire State Development ("ESD") MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.

3. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with, or obtaining supplies from, certified MWBEs.
4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
5. Dates of any pre-bid, pre-award, or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
6. Other information deemed relevant to the request.

#### **V. 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:** <http://www.ogs.ny.gov/MWBE/Forms.asp>

#### **8. PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESSES**

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"), thereby further integrating such businesses into New York State's economy. OGS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OGS contracts. In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders/Contractors are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles. For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Bidder/Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: [http://ogs.ny.gov/Core/docs/CertifiedNYS\\_SDVOB.pdf](http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf). Bidder/Contractor is encouraged to contact the Division of Service-Disabled Veteran's Business Development at 518-474-2015 to discuss methods of maximizing participation by SDVOBs on the Contract.

**ALL FORMS ARE AVAILABLE AT:** [http://ogs.ny.gov/Core/SDVOBA.asp?sm\\_au=iVVjF227tLtF4JJH](http://ogs.ny.gov/Core/SDVOBA.asp?sm_au=iVVjF227tLtF4JJH)

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**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
 County of Riverside )  
 On 11-9-17 before me, Jessica Stiles, Notary Public  
 Date Here Insert Name and Title of the Officer  
 personally appeared Luke D. Noll  
 Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Jessica Stiles  
 Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: State of NY office of General Services Contract Ext Agr.  
 Document Date: 11-9-17 Number of Pages: 36  
 Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_  
 Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Individual ☐ Attorney in Fact  
☐ Trustee ☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_  
 Signer Is Representing: \_\_\_\_\_

**CONTRACT NO. PC66476**

IN WITNESS WHEREOF, the Parties hereto have executed this Contract Extension Agreement as of the day and year written below. 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 CONTRACT EXTENSION AGREEMENT.

FFF Enterprises, Inc.

Signature: Luke D. NollPrinted Name: Luke D. NollTitle: Director of Vaccine SalesFederal ID: 33-0309114NYS Vendor ID 1000055818Date: 11-09-2017

NYS Office of General Services

Signature: Jennifer KuhnPrinted Name: Jennifer KuhnTitle: CRS3Date: 12/7/2017

**NOTICE: This Extension becomes effective once OGS approves and an authorized signatory executes. OGS will then post a notification to its website in the form of a Purchasing Memorandum.**

*See Attached Certificate*

State of California

\_\_\_\_\_) ss.:

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2017 before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument, and that such individual made such appearance before the undersigned in the State of California.

\_\_\_\_\_  
Signature and office of individual  
taking acknowledgment.

**STATE OF NEW YORK  
OFFICE OF GENERAL SERVICES  
CONTRACT EXTENSION AGREEMENT  
WITH  
FFF Enterprises, Inc.**

**Award PGB-22797    Contract No. PC66476**

**THIS AGREEMENT**, (hereinafter referred to as the "Agreement" or the "Contract Extension Agreement") effective on the date of OGS signature, by and between the People of the State of New York, acting by and through the Office of General Services' Procurement Services (formerly known as New York State Procurement ("NYSPPro")), located at the 38<sup>th</sup> Floor, Corning Tower, Empire State Plaza, Albany, NY 12242 (hereinafter referred to as "OGS"), and FFF Enterprises, Inc., (hereinafter referred to as the "Contractor"), with an office at 41093 County Center Dr., Temecula, CA 92591. The foregoing are hereinafter individually referred to as a "Party" and collectively referred to as the "Parties."

**WITNESSETH:**

**WHEREAS**, the Contractor entered into a contract (hereinafter referred to as the "Master Contract") with the State of Minnesota, acting through its Commissioner of Administration, on behalf of Minnesota Multistate contracting Alliance for Pharmacy (hereinafter referred to as "MMCAP") which was effective from January 23, 2014 or the date MMCAP obtained all required signatures under Minnesota Statutes Section 16C.05, subdivision 2, whichever was later until December 31, 2015; and

**WHEREAS**, the Master Contract contains the option to extend for three additional one-year terms as mutually agreed upon and achieved through a fully executed amendment; and

**WHEREAS**, the Contractor and MMCAP entered into Amendment No. 6, which extended the term of the Master Contract until December 31, 2016 and have now entered into Amendment Nine, which extends the terms of the of Master Contract until December 31, 2017; and

**WHEREAS**, Article XI, Section 163 of the New York State Finance Law, allows the Commissioner of OGS to authorize purchases required by New York State agencies or other authorized purchasers by approving the use of a contract let by any department, agency or instrumentality of the United States government and/or any department, agency, office, political subdivision or instrumentality of any state or states; and

**WHEREAS**, pursuant to the authority granted to it by Article XI, Section 163 of the New York State Finance Law, OGS and the Contractor entered into contract (hereinafter referred to as the "Piggyback Agreement" or "Contract No. PC66476") for the purchase of influenza vaccines under the terms and conditions established by the Master Contract; and

**WHEREAS**, the term of Contract No. PC66476 runs from August 13, 2014 to December 31, 2015, and Contract No. PC66476 allows OGS the option to extend the term for three additional one-year terms as mutually agreed upon and achieved through a fully executed amendment; and

**WHEREAS**, the Parties extended the term of Contract No. PC66476 until December 31, 2016 or until a new contract is entered into by the Parties through a contract extension agreement (hereinafter referred to as "Contract Extension Agreement 1"); and

**WHEREAS**, in accordance with the terms of Contract No. PC66476, the Parties wish to extend the term of Contract No. PC66476 until December 31, 2017 or until a new contract is awarded, whichever occurs first and make certain amendments that are set forth below.

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

**1. TERM**

In accordance with the terms of Contract No. PC66476, this Contract Extension Agreement shall commence upon signing by OGS and will be in effect until December 31, 2017, or until a new contract is awarded, whichever occurs first.

**2. APPENDIX A**

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

**3. APPENDIX B**

Appendix B, dated June 2014, General Specifications, is attached hereto, and is expressly made a part of this Contract Extension Agreement as fully as if set forth at length herein.

**4. OFFICIAL USE ONLY/NO PERSONAL USE**

The following section referred to as "Official Use Only/No Personal Use" is added to this Contract Extension Agreement:

**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.

**5. CONTRACT PRICING**

The Contractor shall provide the Influenza Vaccine products and pricing specified in the Master Contract for the 2016-2017 influenza season. Pricing shall remain constant in accordance with the pricing set forth in the Master Contract throughout the 2016-2017 influenza season. Products and pricing for the 2017-2018 influenza season will be managed by amendment to the Master Contract.

**6. SEVERABILITY**

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

**7. CONTRACTOR REQUIREMENTS AND PROCEDURES FOR EQUAL EMPLOYMENT AND BUSINESS PARTICIPATION OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND NEW YORK STATE CERTIFIED MINORITY-AND WOMEN-OWNED BUSINESS ENTERPRISES**

Section 8 of Contract Extension Agreement 1 is hereby deleted and replaced with the following:

**CONTRACTOR REQUIREMENTS AND PROCEDURES FOR EQUAL EMPLOYMENT AND BUSINESS PARTICIPATION OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND NEW YORK STATE CERTIFIED MINORITY-AND WOMEN-OWNED BUSINESS ENTERPRISES**



**I. POLICY STATEMENT**

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

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

**II. GENERAL PROVISIONS**

- A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for New York State certified minority- and women-owned business enterprises ("MWBEs"). Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, State or local laws.
- C. The Contractor further agrees to be bound by the provisions of Article 15-A and the MWBE Regulations. If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- D. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility, breach of contract, withholding of funds, suspension or termination of the Contract and/or such other actions or enforcement proceedings as allowed by the Contract.

**III. EQUAL EMPLOYMENT OPPORTUNITY (EEO)**

- A. Contractor shall comply with the provisions of Article 15-A set forth below. These provisions apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000, for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting State agency (the "Work") except where the Work is for the beneficial use of the Contractor.
  - 1. Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion,

upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate or distinct from the Contract; or (ii) employment outside New York State.

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

**B. Form EEO 100 – Staffing Plan**

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

**C. Form EEO - 101 - Workforce Utilization Reporting Form (Commodities and Services) ("Form EEO-101-Commodities and Services")**

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

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

**IV. CONTRACT GOALS**

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

**B. Good Faith Efforts**

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

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

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

***The Remainder of the Page is Left Intentionally Blank***

**CONTRACT NO. PC66476**

IN WITNESS WHEREOF, the Parties hereto have executed this Contract Extension Agreement as of the day and year written below. 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 CONTRACT EXTENSION AGREEMENT.

FFF Enterprises, Inc.

Signature: \_\_\_\_\_

Printed Name: Luke D. NollTitle: Director, Vaccine Product Sales & Corp. Accts.Federal ID: 33-0309114NYS Vendor ID 1000055818Date: September 20, 2016

NYS Office of General Services

Signature: \_\_\_\_\_

Printed Name: Jennifer KuhnTitle: Contract Management Specialist 3Date: 11/21/2016

**NOTICE: This Extension becomes effective once OGS approves and an authorized signatory executes. OGS will then post a notification to its website in the form of a Purchasing Memorandum.**

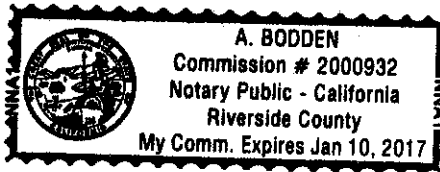
State of California

County of Riverside ) ss.:

On the 20th day of September in the year 2016 before me, the undersigned, personally appeared Luke D. Noll, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument, and that such individual made such appearance before the undersigned in the State of California.



Signature and office of individual  
taking acknowledgment.





**STATE OF NEW YORK  
OFFICE OF GENERAL SERVICES  
CONTRACT EXTENSION AGREEMENT  
WITH  
FFF Enterprises, Inc.  
Award PGB-22797 Contract No. PC66476**

**THIS AGREEMENT**, (hereinafter referred to as the "Agreement" or the "Contract Extension Agreement") effective on the date of OGS signature, by and between the People of the State of New York, acting by and through the Office of General Services' Procurement Services (formerly known as New York State Procurement ("NYSPPro")), located at the 38<sup>th</sup> Floor, Corning Tower, Empire State Plaza, Albany, NY 12242 (hereinafter referred to as "OGS"), and FFF Enterprises, Inc., (hereinafter referred to as the "Contractor"), with an office at 44000 Winchester Road, Temecula, CA 92590. The foregoing are hereinafter individually referred to as a "Party" and collectively referred to as the "Parties."

**W I T N E S S E T H:**

**WHEREAS**, the Contractor entered into a contract (hereinafter referred to as the "Master Contract") with the State of Minnesota, acting through its Commissioner of Administration, on behalf of Minnesota Multistate Contracting Alliance for Pharmacy (hereinafter referred to as "MMCAP") which was effective from January 23, 2014 or the date MMCAP obtained all required signatures under Minnesota Statutes Section 16C.05, subdivision 2, whichever was later until December 31, 2015; and

**WHEREAS**, the Master Contract contains the option to extend for three additional one-year terms as mutually agreed upon and achieved through a fully executed amendment; and

**WHEREAS**, the Contractor and MMCAP entered into Amendment No. 6, which extended the term of the Master Contract until December 31, 2016; and

**WHEREAS**, the Contractor and MMCAP entered into Amendment Nine, which extended the term of the Master Contract until December 31, 2017; and

**WHEREAS**, the Contractor and MMCAP entered into Amendment Fourteen, which extended the term of the of Master Contract until December 31, 2018 and have now entered into Amendment No. 19, which extends the terms of the of Master Contract until December 31, 2019; and

**WHEREAS**, Article XI, Section 163 of the New York State Finance Law, allows the Commissioner of OGS to authorize purchases required by New York State agencies or other authorized purchasers by approving the use of a contract let by any department, agency or instrumentality of the United States government and/or any department, agency, office, political subdivision or instrumentality of any state or states; and

**WHEREAS**, pursuant to the authority granted to it by Article XI, Section 163 of the New York State Finance Law, OGS and the Contractor entered into contract (hereinafter referred to as the "Piggyback Agreement" or "Contract No. PC66476") for the purchase of influenza vaccines under the terms and conditions established by the Master Contract; and

**WHEREAS**, the term of Contract No. PC66476 runs from August 13, 2014 to December 31, 2015, and Contract No. PC66476 allows OGS the option to extend the term for three additional one-year terms as mutually agreed upon and achieved through a fully executed amendment; and

**WHEREAS**, the Parties extended the term of Contract No. PC66476 until December 31, 2016 or until a new contract is entered into by the Parties through a contract extension agreement (hereinafter referred to as "Contract Extension Agreement 1"); and

**WHEREAS**, the Parties extended the term of Contract No. PC66476 until December 31, 2017 or until a new contract is entered into by the Parties through a contract extension agreement (hereinafter referred to as "Contract Extension Agreement 2"); and

**WHEREAS**, the Parties extended the term of Contract No. PC66476 until December 31, 2018 or until a new contract is entered into by the Parties through a contract extension agreement (hereinafter referred to as "Contract Extension Agreement 3"); and

**WHEREAS**, in accordance with the terms of Contract No. PC66476, the Parties wish to extend the term of Contract No. PC66476 until December 31, 2019 or until a new contract is awarded, whichever occurs first and make certain amendments that are set forth below.

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

#### **1. TERM**

In accordance with the terms of Contract No. PC66476, this Contract Extension Agreement shall commence upon signing by OGS and will be in effect until December 31, 2019, or until a new contract is awarded, whichever occurs first.

#### **2. APPENDIX A**

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

#### **3. APPENDIX B**

Appendix B, dated June 2014, General Specifications, is attached hereto, and is expressly made a part of this Contract Extension Agreement as fully as if set forth at length herein.

#### **4. 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.

#### **5. CONTRACT PRICING**

The Contractor shall provide the Influenza Vaccine products and pricing specified in the Master Contract for the 2018-2019 influenza season. Pricing shall remain constant in accordance with the pricing set forth in the Master Contract throughout the 2018-2019 influenza season. Products and pricing for the 2019-2020 influenza season will be managed by amendment to the Master Contract.

#### **6. SEVERABILITY**

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

**CONTRACT NO. PC66476**

IN WITNESS WHEREOF, the parties hereto have executed this Contract Extension Agreement as of the day and year written below. 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 CONTRACT EXTENSION AGREEMENT.

FFF Enterprises, Inc.

Signature: Luke D. NollPrinted Name: Luke D. NollTitle: Director of Vaccine SalesFederal ID: 33-0309114NYS Vendor ID 10000 55818Date: 11-6-18

NYS Office of General Services

Signature: Jennifer KuhnPrinted Name: Jennifer KuhnTitle: CMS3Date: 11/20/2018

**NOTICE: This Extension becomes effective once OGS approves and an authorized signatory executes. OGS will then post a notification to its website in the form of a Purchasing Memorandum.**

State of California

\_\_\_\_\_) ss.

Notary Certificate Attached

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2017 before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument, and that such individual made such appearance before the undersigned in the State of California.

\_\_\_\_\_  
Signature and office of individual  
taking acknowledgment.

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )

County of Riverside )

On 11-6-18 before me, Jessica Stiles, Notary Public,  
Date Here Insert Name and Title of the Officer

personally appeared Luke D. Noll  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Jessica Stiles  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: State of NY Office of General Services Contract Ext. Agr.

Document Date: 11-6-18 Number of Pages: 3

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

☐ Corporate Officer — Title(s): \_\_\_\_\_

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

☐ Corporate Officer — Title(s): \_\_\_\_\_

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_



**STATE OF MINNESOTA  
DEPARTMENT OF ADMINISTRATION  
MINNESOTA MULTISTATE CONTRACTING ALLIANCE FOR PHARMACY**

This contract is between the State of Minnesota, acting through its Commissioner of Administration, on behalf of Minnesota Multistate Contracting Alliance for Pharmacy ("MMCAP") and FFF Enterprises, Inc., 41093 County Center Drive, Temecula, CA 92591 ("Vendor").

MMCAP is a group purchasing organization as defined in 42 U.S.C. § 1320a-7b(b)(3)(c) and maintains that it is structured to comply with the requirements of the Safe Harbor regulations regarding payments to group purchasing organizations set forth in 42 C.F.R. § 1001.952(j). MMCAP Participating Facilities are located across the nation. Participation in MMCAP is available to facilities with authority to contract with the State of Minnesota. MMCAP Participating Facilities are state agencies and political subdivisions such as correctional facilities, veterinary clinics/hospitals, regional psychiatric treatment facilities, student health services, public health services, non-federal veterans' nursing homes, and public hospitals.

The Vendor wishes to contract with MMCAP to supply influenza vaccine to MMCAP Participating Facilities.

**Contract**

**1. Term of Contract**

**1.1 Effective date:** January 23, 2014, or the date the MMCAP obtains all required signatures under Minnesota Statutes Section 16C.05, subdivision 2, whichever is later.

**1.2 Expiration date:** December 31, 2015, with the option to extend for three additional one-year terms as mutually agreed upon and achieved through a fully executed amendment(s); or as cancelled pursuant to clause 22.

**1.3 Survival of Terms.** The following clauses survive the expiration or cancellation of this contract: 5. Liability; 6. State Audits; 7. Government Data Practices and Intellectual Property; 8. Publicity and Endorsement; 9. Governing Law, Jurisdiction, and Venue; and 15. Data Disclosure.

**2. Contracted Vaccine.** Vendor is a licensed wholesaler distributing influenza vaccine it procures directly from influenza vaccine manufacturers.

**2.1 Products.** Vaccines in Table 1 are split virion preparations as formulated by the United States Food and Drug Administration, Vaccines and Related Biological Product Advisory Committee for the influenza season. Vendor will supply products at the prices listed in Table 1 (Products), to MMCAP Participating Facilities. The products will not be adulterated or misbranded within the meaning of the United States Food, Drug, and Cosmetic Act or any regulation of the United States Food and Drug Administration.

Table 1

Mfr. Name	Product Name	Container Type	Pack Size	Price Per Container (Prices do not include FET)	WA Cost (Prices do not include FET)***	FL, CA, OK, SC Cost (Prices do not include FET)***	Georgia Cost (Prices do not include FET)***	Max. Quantity to MMCAP
GSK*†	Fluarix TIV	0.5ml prefilled syringes	Pack of 10	95.50	96.21	96.46	97.41	500,000 doses

<b>Mfr. Name</b>	<b>Product Name</b>	<b>Container Type</b>	<b>Pack Size</b>	<b>Price Per Container (Prices do not include FET)</b>	<b>WA Cost (Prices do not include FET)***</b>	<b>FL, CA, OK, SC Cost (Prices do not include FET)***</b>	<b>Georgia Cost (Prices do not include FET)***</b>	<b>Max. Quantity to MMCAP</b>
<b>GSK*</b>	<b>Fluarix Quadrivalent</b>	0.5ml prefilled syringes	Pack of 10	147.00	148.09	148.47	149.94	500,000 doses
<b>GSK*</b>	<b>FluLaval TIV</b>	5 ml MD vial	10 dose	66.90	67.40	67.57	68.24	1 million doses
<b>GSK*</b>	<b>FluLaval Quadrivalent</b>	5 ml MD vial	10 dose	137.30	138.32	138.67	140.05	1 million doses
<b>GSK*</b>	<b>FluLaval Quadrivalent</b>	0.5ml prefilled syringes	Pack of 10	147.00	148.09	148.47	149.94	1 million doses
<b>bioCSL</b>	<b>Afluria TIV</b>	0.5ml prefilled syringes	Pack of 10	90.00	90.67	90.90	91.80	1 million doses
<b>bioCSL</b>	<b>Afluria TIV</b>	5 ml MD vial	10 dose	80.00	80.59	80.80	81.60	1 million doses
<b>MedImmune</b>	<b>Flumist</b>	Nasal sprayer	Pack of 10	173.40	174.68	175.13	176.87	1 million doses
<b>Novartis Vaccines**</b>	<b>Flucelvax</b>	0.5 ml prefilled syringes	Pack of 10	95.21	95.92	96.16	97.11	1 million doses
<b>Novartis Vaccines**</b>	<b>Fluvirin TIV</b>	0.5 ml prefilled syringes	Pack of 10	78.74	79.32	79.53	80.32	2 million doses
<b>Novartis Vaccines**</b>	<b>Fluvirin TIV</b>	5 ml MD vial	10 dose	71.72	72.25	72.44	73.15	2 million doses
<b>Protein Sciences</b>	<b>Flublok</b>	0.5 ml prefilled syringes	Pack of 10	320.00	322.37	323.20	326.40	100,000 doses
<b>Sanofi Pasteur</b>	<b>Fluzone TIV</b>	5ml MD vial; 6 mnths of age and older	10 dose	83.16	83.78	83.99	84.82	1 million doses



<b>Mfr. Name</b>	<b>Product Name</b>	<b>Container Type</b>	<b>Pack Size</b>	<b>Price Per Container</b> (Prices do not include FET)	<b>WA Cost</b> (Prices do not include FET)***	<b>FL, CA, OK, SC Cost</b> (Prices do not include FET)***	<b>Georgia Cost</b> (Prices do not include FET)***	<b>Max. Quantity to MMCAP</b>
Sanofi Pasteur	Fluzone Quadrivalent	5ml MD vial; 6 mnths of age and older	10 dose	142.83	143.89	144.26	145.69	TBD
Sanofi Pasteur	Fluzone TIV No Preservative	0.5ml prefilled syringe; 36 months of age and older;	Pack of 10	93.95	94.65	94.89	95.83	1 million doses
Sanofi Pasteur	Fluzone Quadrivalent No Preservative	0.5ml prefilled syringe; 36 months of age and older;	Pack of 10	149.79	150.90	151.29	152.79	1 million doses
Sanofi Pasteur	Fluzone Quadrivalent No Preservative	0.5ml single dose vials; 36 months of age and older;	Pack of 10	157.31	158.47	158.88	160.46	200,000 doses
Sanofi Pasteur	Fluzone Quadrivalent No Preservative Pediatric Dose	0.25ml prefilled syringe; 6 months to 35 months of age	Pack of 10	187.21	188.60	189.08	190.95	400,000 doses
Sanofi Pasteur	Fluzone High-dose, No Preservative	0.5ml prefilled syringe; 65 years and older	Pack of 10	274.63	276.66	277.38	280.12	500,000 doses
Sanofi Pasteur	Fluzone Intradermal, No Preservative	Prefilled microinject; 18 years thru 64 years	Pack of 10	138.60	139.63	139.99	141.37	1 million doses

Table 1 definitions

\*Vendor will match contract award price of manufacturer (GSK) if manufacturer is awarded an MMCAP contract and if the contracted price is less expensive. Vendor cannot adhere to additional discounts offered by the manufacturer.

†Choosing an alternative is highly recommended. Manufacturer (GSK) cannot guarantee fulfilling product orders for TIV Fluarix PFS for the 2014-2015 season.

\*\*Vendor will match contract award of manufacturer (Novartis) if manufacturer is awarded an MMCAP contract and if the contracted price is less expensive.

\*\*\*Reference 2.11 State Specific Requirements

Newly FDA approved influenza vaccine products may be added to this Contract via mutual agreement of the parties and an amendment.

#### 2.1.1 Contract Year

Products and pricing listed in Table 1 are for Contract year one; otherwise defined as the 2014-2015 influenza season. Products in Table 1 will remain fixed for Contract year one. Price reductions may be submitted to MMCAP ([mmcap.contracts@state.mn.us](mailto:mmcap.contracts@state.mn.us)) at any time. Products and pricing for Contract year two is defined as the 2015-2016 influenza season, will be managed by amendment to this Contract.

**2.1.2 Substitutions**

Vendor must not substitute any Product contained in the contract without prior written consent of the MMCAP Office.

**2.2 Pre-booking.** MMCAP Participating Facilities may order influenza vaccine via the following three methods:

- through the <http://www.MyFluVaccine.com> website (no deposit required), and/or
- through FFF's Customer Care Team at 1-800-843-7477 and/or
- fax at 800-418-4333 using the MMCAP order form provided by the Vendor. Exhibit 1 attached.

Vendor will begin accepting orders immediately upon execution of this Contract.

MMCAP Participating Facilities will be allowed to cancel or modify a pre-book order at any time up until shipment with no penalty.

Vendor will notify MMCAP and the MMCAP Participating Facility immediately of any credit holds placed on pre-booking orders.

**2.2.1 Cancellation** MMCAP Participating Facilities will be allowed to cancel a pre-book order at any time up until shipment with no penalty.

**2.3 Delivery.** MMCAP Participating Facilities will receive a guaranteed delivery date and order confirmation at the time of order placement. All influenza vaccine will be shipped to MMCAP Facilities in a specially designed and validated refrigerated container and will be shipped at no charge, either overnight or second day delivery. In the event of a shortage or delay in production, or allocation situation, MMCAP facilities will be given highest priority. Shipment of orders to MMCAP Participating Facilities will be distributed concurrent with all other orders Vendor has to satisfy and will not be shipped later than retail, hospital, or other group purchasing organization's influenza vaccine shipments.

**2.3.1 Packing and Shipment.**

A. All vaccine will be packed in suitable containers for protection in shipment and storage, and in accordance with applicable manufacturer specifications. Each container of a multiple container shipment must be identified to: show the number of the container and the total number of containers in the shipment; and the number of the container in which the packing slip has been enclosed.

B. All shipments by the Vendor must include packing slip identifying: the MMCAP Participating Facilities Vendor account number; item number; quantity and unit of measure; part number and description of the goods shipped; and appropriate evidence of inspection, if required.

C. Shipments must be made as specified in this contract, as it may be amended, or otherwise directed in writing by the MMCAP Office.

D. Shipping containers must have appropriate identification of storage requirements on the outside of the container (e.g. refrigerate upon arrival).

E. All shipments must be delivered FOB Destination.

**2.3.2 Invoicing.** Vendor agrees that MMCAP Participating Facilities will be invoiced at the MMCAP Contract price for MMCAP Contract products throughout the term of this Agreement. Invoices are subject to 60 day Net Pay. Vendor will submit an invoice with each order. Invoices must be only for the amount of product delivered. At a minimum, the Vendor's invoice will contain the following fields:

Facility Name

Vendor-assigned account number for the MMCAP Participating Facility

Invoice number

MMCAP Participating Facility's purchase order number

Invoice date

Invoice due date

NDC (11 digit)

Product Name/Description



Packaging as associated with NDC number  
Unit price  
Quantity ordered  
Quantity shipped  
Extension (unit price multiplied by the quantity shipped)  
Total invoice price  
Bill to address  
Ship to address

**2.3.2.1** MMCAP Contract pricing will not be made available to non-MMCAP entities.

**2.3.2.2 Payment Terms.** Invoices will be eligible for an additional discount of 0.25% will apply to each invoice fully paid no later than 20 days, Net 60 days.

**2.4 Guaranteed Delivery Dates.** MMCAP Participating Facility will select their product delivery dates from a calendar at the time of order placement; with shipments beginning as soon as possible but no later than mid-August and continuing through October.

**2.4.1** Vendor will adhere to MMCAP Participating Facilities requested dates for delivery. In addition Vendor will have the following manufacturers' products delivered by the following dates:

- GSK = September 30
- Novartis = September 30
- Protein Sciences = October 10
- bioCSL = September 30
- Sanofi Pasteur = September 30
- Medimmune = September 30

**2.5 First DataBank, Inc.** All contracted Products must be included in the database of First DataBank, Inc., unless such designation is expressly waived by an MMCAP Authorized Representative.

**2.6 MMCAP Participating Facilities.** The Vendor must allow new MMCAP Participating Facilities joining MMCAP to be added to the MMCAP Membership List (password protected and published online at [www.mmcap.org](http://www.mmcap.org)) and to access contract prices throughout the term of this Contract. As new MMCAP Participating Facilities are added to MMCAP, the Vendor will be given 7 days from date of notification to implement contract pricing. MMCAP will provide Vendor with monthly e-mail notices announcing that a new MMCAP Membership List has been posted online. MMCAP reserves the right to add and delete MMCAP Participating Facilities during the term of this Contract.

**2.6.1 Direct Marketing, Advertising, and Offers with Member Facilities.** Any direct advertising, marketing, or direct offers with MMCAP Participating Facilities for on- or off-contact products must be approved by MMCAP. Violation of this Article may be cause for immediate cancellation of this Contract and/or MMCAP may reject any proposal submitted by the Vendor in any subsequent solicitations for pharmaceutical and related products.

**2.6.2 Purchase Orders and Payment**

**2.6.2.1 Purchase Orders.** As a condition for purchasing under this Contract, purchasers must be MMCAP Participating Facilities in good standing with MMCAP. Then, MMCAP Participating Facilities may purchase goods and services by submitting Purchase Orders. MMCAP Participating Facilities may use their own forms for Purchase Orders. To the extent that the terms of any form differ from the terms of this Contract, the terms of this Contract supersede such conflicting or contrary terms.

**2.6.2.2 Payment of Purchase Orders.** Each MMCAP Participating Facility will be responsible for payment of goods and services provided by Vendor within 60 days. An additional discount of 0.25% will apply to each invoice fully paid no later than 20 days, Net 60 days. The MMCAP Office will have no liability for an unpaid invoice of any MMCAP Participating Facility. Vendor agrees to invoice the MMCAP Participating Facility for all Products shipped. Vendor will accept Electronic Funds Transfer (EFT) for payment. At time of new account set up, the MMCAP Participating Facility may initiate this process with its bank. Vendor will not accept state purchasing credit cards as a method of payment.

MMCAP Participating Facilities have all warranties, rights, remedies, and benefits under this Contract.

**2.6.2.3 Verification of Authorized Purchasers.** Vendor must verify that it provides goods and services under this Contract only to MMCAP Participating Facilities.

**2.6.2.4 Funds available and authorized/non-appropriation.** Vendor will not be compensated for goods delivered or services performed under a Purchase Order by any entity other than the MMCAP Participating Facility that issued the Purchase Order. By submitting a Purchase Order the MMCAP Participating Facility represents it has sufficient funds then currently available and authorized for expenditure to finance the costs of the Purchase Order.

**2.6.2.5 Termination of Individual Purchase Orders.** MMCAP Participating Facilities may terminate individual Purchase Orders, in whole or in part, immediately upon notice to Vendor, or at such later date as the MMCAP Participating Facility may establish in such notice, upon the occurrence of any of the following events:

- (i) The MMCAP Participating Facility fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for the goods to be purchased under the Purchase Order;
- (ii) Federal or State laws, regulations or guidelines are modified or interpreted in such a way that either the purchase of goods under the Purchase Order is prohibited or the MMCAP Participating Facility is prohibited from paying for such goods from the planned funding source; or
- (iii) Vendor commits any material breach of this Contract or a Purchase Order.
- (iv) Upon receipt of written notice of termination, Vendor shall stop performance under the Purchase Order as directed by the MMCAP Participating Facility.
- (v) Termination of a Purchase Order does not extinguish or prejudice the MMCAP Participating Facility's right to enforce the Purchase Order with respect to Vendor's breach of any warranty or any defect in or default of Vendor's performance that has not been cured, including any right of the MMCAP Participating Facility to indemnification by Vendor or enforcement of a warranty. If a Purchase Order is terminated, the MMCAP Participating Facility must pay Vendor in accordance with the terms of this Contract for goods delivered and accepted by the MMCAP Participating Facility.

**2.6.2.6 Application of Public Records Law and Access to Records.** MMCAP Participating Facilities maintain the right to all data related to specific Purchase Orders placed with the Vendor; however, specific data related to pricing, contract information, and any other aspect of this Contract belong to MMCAP and may not be released by the MMCAP Participating Facility without the prior written consent of the MMCAP Office.

## **2.7 Reports.**

**2.7.1 Prebooking Reports.** Vendor must supply MMCAP with automatic monthly updates during prebooking and delivery. This report is expected on the 15<sup>th</sup> of each month and should be sent via email to [mmcap.contracts@state.mn.us](mailto:mmcap.contracts@state.mn.us). The monthly prebooking reports must include the following data and be sorted by state, city and customer name (in that order):

- Customer Name
- Customer Number
- Order Number
- Bill to Address
- Bill to City
- Bill to State
- NDC
- Product Name
- Pack Size
- Contract Price
- Quantity Ordered (in packs)
- Quantity Shipped



Extended Price (Quantity \* Price)

Ship Date

Tracking Number

**2.7.2 Sales Report.** Vendor must submit to MMCAP sales reports to Mn.MMCAP@state.mn.us. Vendor must send accurate monthly sales data on or before the 10th day of the subsequent month (e.g., June's data will be due July 10). This data MUST include the following for every transaction between the Vendor and the MMCAP Participating Facility:

Required Data Field Full Name
MMCAP-assigned facility ID
MMCAP Facility Name
Vendor Distribution Center Code (May be left blank)
Vendor-assigned Account number for the MMCAP Facility
Invoice Number
Invoice Line Number
Purchase Order Number
Invoice date (mmddccyy)
Buyer name or equivalent of buyer ID for person submitting the invoices
Vendor's (distributor) SKU item number
NDC of purchased product in 5-4-2 format as stored in First DataBank, Inc.
Label Name
Unit Dose
Pack Size
Unit
Case Size
Dose
Strength
Route
Unit Price (99999.9999)
Quantity ordered (not Vendor repackaged or re-bundled quantity)(999999.9999)
Quantity shipped (not Vendor repackaged or re-bundled quantity) (999999.9999)
Extension (unit price multiplied by the quantity shipped) EXTENDED PRICE (99999999.999)
Type of transaction (MMCAP contract purchase, other contract purchase (340B,PHS), not on contract purchase) 1=contract item, 2=other contract, 3=not on contract
Bill to Address 1
Bill to City
Bill to State (2 alpha postal code)
Bill to Zip (standard 5-4 format, no dash necessary)
Ship to Address 1
Ship to City
Ship to State (2 alpha postal code)
Ship to Zip (standard 5-4 format, no dash necessary)

MMCAP Contract No.: MMS14003

<b>Required Data Field Full Name</b>
Service Fee (9999.9999)
MMCAP Contract Number (MMSxxxxx)
Admin fee (9999.9999)
Credit Indicator (C for credit)
MMCAP Assigned Wholesaler Code
Manufacture Name (MFG Name)
Class of Trade ( <b>May be left blank</b> )
340B Purchase (1=True, 0=False)



## Monthly Usage Report - Fixed Length Fields

Required Data Field Full Name	Field Name	Data Type	Format (note decimals are to be included)	Size	Nulls	Begin Column	End Column
MMCAP-assigned facility ID	MMCAP_Id	Alpha Numeric		7	1	1	7
MMCAP Facility Name	MMCAP_Name	Alpha Numeric		30	1	8	37
Vendor Distribution Center Code (May be left blank)	DistributionCenter	Alpha Numeric		3	1	38	40
Vendor-assigned Account number for the MMCAP Facility	VendAccountNo	Alpha Numeric		10	1	41	50
Invoice Number	InvoiceNumber	Alpha Numeric		15	1	51	65
Invoice Line Number	InvoiceLineNo	Alpha Numeric		4	1	66	69
Purchase Order Number	poNumber	Alpha Numeric		15	1	70	84
Invoice date (mmddccyy)	InvoiceDate	numeric	mmddccyy	8	1	85	92
Buyer name or equivalent of buyer ID for person submitting the invoices	BuyerName	Alpha Numeric		20	1	93	112
Vendor's (distributor) SKU Item number	SKU	Alpha Numeric		13	1	113	125
NDC of purchased product in 5-4-2 format as stored in First DataBank, Inc.	NDC	Alpha Numeric	999999999	11	1	126	136
Label Name	LabelName	Alpha Numeric		40	1	137	176
Unit Dose	UD	numeric	9	1	1	177	177
Pack Size	Pack_Size	numeric	99999.999	9	1	178	186
Unit	Unit	Alpha Numeric		2	1	187	188
Case Size	Case_Size	numeric	9999	4	1	189	192
Dose	D	Alpha Numeric		10	1	193	202
Strength	STR	Alpha Numeric		10	1	203	212
Route	RT	Alpha Numeric		10	1	213	222
Unit Price (99999.9999)	UnitPrice	numeric	99999.9999	10	1	223	232
Quantity ordered (not Vendor repackaged or re-bundled quantity) (999999.9999)	QuantityOrdered	numeric	999999.9999	11	1	233	243
Quantity shipped (not Vendor repackaged or re-bundled quantity) (999999.9999)	QuantityShipped	numeric	999999.9999	11	1	244	254
Extension (unit price multiplied by the quantity shipped) EXTENDED PRICE (99999999.999)	ExtendedPrice	numeric	99999999.999	13	1	255	267
Type of transaction (MMCAP contract purchase, other contract purchase (340B, PHS), not on contract purchase) 1=contract item, 2=other contract, 3=not on contract	SaleType	Alpha Numeric		1	1	268	268
Bill to Address 1	billtoaddress1	Alpha Numeric		30	1	269	298
Bill to City	billtocty	Alpha Numeric		20	1	299	318
Bill to State (2 alpha postal code)	billtostate	Alpha Numeric		2	1	319	320
Bill to Zip (standard 5-4 format, no dash necessary)	billtozip	Alpha Numeric		9	1	321	329
Ship to Address 1	shiptoaddress1	Alpha Numeric		30	1	330	359
Ship to City	shiptocty	Alpha Numeric		20	1	360	378
Ship to State (2 alpha postal code)	shiptostate	Alpha Numeric		2	1	380	381
Ship to Zip (standard 5-4 format, no dash necessary)	shiptozip	Alpha Numeric		9	1	382	390
Service Fee (9999.9999)	ServiceFee	numeric	9999.9999	9	1	391	399
MMCAP Contract Number (MMSxxxx)	contractnumber	Alpha Numeric		10	1	400	409
Admin fee for not-on-contract items (9999.9999) (May be left blank)	AdminFee	numeric	9999.9999	9	1	410	418
Credit Indicator (C for credit)	CreditIndicator	Alpha Numeric		1	1	419	419
MMCAP Assigned Wholesaler Code				4	0	420	423
Manufacturer Name (MFG Name)	MfgName	Alpha Numeric		40	1	424	463
Class of Trade (May be left blank)		Alpha Numeric		4	1	464	467
340B Purchase (1=True, 0=False)		Alpha Numeric		1	1	468	468

**2.7.3 Administrative Fee.** In consideration for the reports and services provided by MMCAP, the Vendor will pay an administrative fee on all contract purchases (minus any credits). The Vendor will submit a check payable to "State of Minnesota, MMCAP Program" for an amount equal to three percent (3%) of MMCAP Participating Facilities' purchases for all Products except GSK. GSK products will be paid equal to one half percent (0.5%). Payments are due on 15<sup>th</sup> day of the month following each calendar quarter. (January, February, March is due April 15<sup>th</sup>, April, May, June, is due July 15<sup>th</sup>, July, August, September is due October 15<sup>th</sup> and, October, November, December is due January 15<sup>th</sup>) If this amount does not cover all purchases, additional payments must be made monthly until all amounts due are fully paid. The check will be remitted to the following address:

MMCAP-State of Minnesota  
Attn: Administrative Fee Coordinator  
50 Sherburne Ave, Suite 112  
St. Paul, MN 55155

With payment, Vendor must submit an Administrative Fee Data Report. A detailed data file in Microsoft Excel format will be provided upon contract execution. All required Administrative Fee Data Reports must be sent to: [Mn.MMCAP@state.mn.us](mailto:Mn.MMCAP@state.mn.us) Failure to comply with this provision may constitute breach of this Contract.

**2.8 DEA Number and HIN Numbers.** The Vendor may not require that an MMCAP Participating Facility have a DEA number assigned to it in order to be eligible for contract pricing. If an MMCAP Participating Facility does not have a DEA number, MMCAP will have a HIN assigned.

**2.9 Own Use.** All items acquired by MMCAP Participating Facilities under this contract are purchased for consumption in traditional governmental functions and not for the purpose of competing against private enterprise.

**2.10 Returned Goods/Credits.** MMCAP Participating Facilities may return contracted purchased product to FFF Enterprises, Inc. via the following guidelines for credit. Contact Vendor's Customer Care Team at 1-800-843-7477.

GSK= Up to 30% of doses are eligible for return

Novartis= Up to 30% of doses are eligible for return

Protein Sciences= Up to 30% of doses are eligible for return

bioCSL= Up to 30% of doses are eligible for return

Sanofi Pasteur= Up to 30% of doses are eligible for return

Medimmune= Not eligible for returns but is eligible for replacement program. Product that expires on or before January 31 is eligible for replacement for current season product only. Contact the customer care team for further information.

Vendor will supply a copy of its returned goods/credit policy to MMCAP Participating Facilities upon request.

**2.10.1 Federal Excise Tax** is refundable on all expired or returned vaccine MMCAP Participating Facilities must contact customer service for assistance.

**2.11 State Specific Requirements.** See Attachment A, which is attached and incorporated.

**2.12 Product Dating.** All Products supplied to MMCAP Participating Facilities must have an expiration date of at least six months later than the delivery date unless the unique stability characteristics of the product require a shorter dating period. However, all Products supplied must still be usable on the date received by the MMCAP Participating Facility.

**2.13 Customer Service.**

**2.13.1 Primary Account Representative.** Vendor will assign a Primary Account Representative to MMCAP for this Contract and must provide a minimum of 72 hours advanced notice to MMCAP if that person is reassigned. The Primary Account Representative will be responsible for:

- Proper maintenance and management of the MMCAP Contract, including timely execution of all amendments
- Timely response to all MMCAP inquiries
- Performance of the business review as described in 2.13.3



In the event that the Primary Account Representative is unresponsive and does not meet MMCAP's needs, the Vendor will assign another Primary Account Representative upon MMCAP's request.

**2.13.2 Vendor Customer Service Representatives/Group**

Website: [www.myfluvaccine.com/ContactUs](http://www.myfluvaccine.com/ContactUs)

Customer Care Team at 1-800-843-7477

Fax at 1-800-418-4333

**2.13.3. Business Reviews.** Vendor will perform at least one business review with MMCAP staff per contract year. The review will be at a time that is mutually agreeable to Vendor and MMCAP and at a minimum address the following: a review of sales to MMCAP Participating Facilities, pricing and contract terms, administrative fees, FDA and DEA issues, supply issues, pipeline update, outstanding contract issues, customer issues, and any other necessary information.

**2.14 Dispute Resolution.** Vendor and MMCAP will handle dispute resolution for unresolved contract eligibility issues using the following procedure:

**2.14.1 Notification.** The parties must promptly notify each other of any known dispute and work in good faith to resolve such dispute within a reasonable period of time. And if necessary, MMCAP and the Vendor will jointly develop a short briefing document that describes the issue(s), relevant impact, and positions of both parties.

**2.14.2 Escalation.** If parties are unable to resolve the issue in a timely manner, as specified above, either MMCAP or Vendor may escalate the resolution of the issue to a higher level of management. A meeting will be scheduled with MMCAP and the Vendor's MMCAP Primary Account Representative to review the briefing document and develop a proposed resolution and plan of action. The Vendor will have 30 calendar days to cure the issue.

**2.14.3 Performance while Dispute is Pending.** Notwithstanding the existence of a dispute, the Vendor must continue without delay to carry out all of its responsibilities under the Contract that are not affected by the dispute. If the Vendor fails to continue without delay to perform its responsibilities under the contract, in the accomplishment of all undisputed work, any additional costs incurred by MMCAP and/or MMCAP Participating Facility as a result of such failure to proceed will be borne by the Vendor.

**2.14.4 MMCAP Rights.** In the event MMCAP cannot resolve a dispute with the Vendor, MMCAP may cancel this Contract upon 60 days' written notice to the other party.

**3. Authorized Representatives.** MMCAP's Authorized Representative is the MMCAP Managing Director, Department of Administration, 50 Sherburne Avenue, St. Paul, MN 55155 (MMCAP Manager). The Vendor's Authorized Representative is Luke Noll, Director Corporate Accounts.

**4. Assignment, Amendments, Waiver, and Contract Complete**

**4.1 Assignment.** Neither the Vendor nor MMCAP may assign or transfer any rights or obligations under this contract without the prior consent of the parties and a fully executed assignment agreement.

**4.2 Amendments.** Any amendment to this contract must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original contract, or their successors in office. As required by State of Minnesota policy, amendments will be drafted by MMCAP.

**4.3 Waiver.** If MMCAP fails to enforce any provision of this contract, that failure does not waive the provision or its right to enforce it.

**4.4 Contract Complete.** This contract contains all negotiations and agreements between MMCAP and the Vendor. No other understanding regarding this contract, whether written or oral, may be used to bind either party.

**5. Liability.** The Vendor must indemnify, save, and hold MMCAP, MMCAP Participating Facilities, and the State of Minnesota, its agents, and employees harmless from any claims or causes of action, including attorneys' fees incurred by MMCAP, arising out of the performance of this contract by the Vendor or the Vendor's agents or employees; or injury or death to person(s) or property, alleged to have been caused by



some defect in products under this contract, when the product has been supplied by and dispensed strictly in accordance with federal, state, and local regulations and the applicable provisions of the package insert. This clause will not be construed to bar any legal remedies the Vendor may have for MMCAP's failure to fulfill its obligations under this contract.

Pursuant to the Minnesota Constitution Article XI § 1, MMCAP is not permitted to indemnify the Vendor.

**6. State Audits.** Minnesota Statutes Section 16C.05, subdivision 5, requires that the books, records, documents, and accounting procedures and practices of the vendor relevant to this contract are subject to examination by MMCAP and either the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this contract.

## **7. Government Data Practices and Intellectual Property**

**7.1. Government Data Practices.** The Vendor and MMCAP must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by MMCAP under this contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Vendor under this contract. The civil remedies of Minnesota Statutes Section 13.08 apply to the release of the data referred to in this clause by either the Vendor or MMCAP. If the Vendor receives a request to release the data referred to in this clause, the Vendor must immediately notify MMCAP. MMCAP will give the Vendor instructions concerning the release of the data to the requesting party before the data is released.

**7.2. Intellectual Property Indemnification.** The Vendor warrants that any materials or products provided or produced by the Vendor or utilized in the performance of this contract will not infringe or violate any patent, copyright, trade secret, or any other proprietary right of any third party. In the event of any such claim by any third party against MMCAP, MMCAP will promptly notify the Vendor. If such a claim of infringement has occurred, or in the Vendor's opinion is likely to occur, the Vendor must either procure for MMCAP the right to continue using the material or product or replace or modify materials or products. If an option satisfactory to MMCAP is not reasonably available, MMCAP will return the materials or products to the Vendor, upon written request of the Vendor, and at the Vendor's expense.

## **8. Publicity and Endorsement**

**8.1 Publicity.** Any publicity regarding the subject matter of this contract must not be released without prior written approval from the Authorized Representatives. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Vendor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this contract.

**8.2 Endorsement.** The Vendor must not claim that MMCAP endorses its products or services.

**9. Governing Law, Jurisdiction, and Venue.** Minnesota law, without regard to its choice-of-law provisions, governs this contract. Venue for all legal proceedings out of this contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota. Except to the extent that the provisions of this Agreement are clearly inconsistent therewith, this contract will be governed by the Uniform Commercial Code (UCC) as adopted by the State of Minnesota. To the extent this contract entails delivery or performance of services, such services shall be deemed "goods" within the meaning of the UCC except when to do so is unreasonable.

**10. Antitrust.** The Vendor hereby assigns to the State of Minnesota any and all claims for overcharges as to goods and/or services provided in connection with this agreement resulting from antitrust violations that arise under the antitrust laws of the United States and the antitrust laws of the State of Minnesota.



**11. Force Majeure.** Neither party to this contract will be held responsible for delay or default caused by product release by the United States Food and Drug Administration, fire, riot, acts of God and/or war, or raw material shortage that are beyond that party's reasonable control.

**12. Severability.** If any provision of the resulting Contract, including items incorporated by reference, is found to be illegal, unenforceable or void, then both MMCAP and the Vendor will be relieved of all obligations arising under such provisions; if the remainder of the resulting contract is capable of performance it will not be affected by such declaration or finding and must be fully performed.

**13. Default and Remedies.** Either of the following constitutes cause to declare the contract or any order under this contract in default:

- a) Nonperformance of contractual requirements; or
- b) A material breach of any term or condition of this contract.

Written notice of default, and a reasonable opportunity to cure, must be issued by the party claiming default. Time allowed for cure will not diminish or eliminate any liability for liquidated or other damages.

If the default remains after the opportunity for cure, the nondefaulting party may:

- a) Exercise any remedy provided by law or equity;
- b) Terminate the contract or any portion thereof, including any orders issued against the contract;
- or
- c) Impose liquidated damages, as specified in the solicitation or contract.

**14. Certification.** Vendor certifies that it is in compliance with the Food and Drug Administration's current "Good Manufacturing Practices" (cGMP) (as codified in 21 C.F.R. § 201-211) and the current United States Food, Drug, and Cosmetic Act.

**15. Data Disclosure.** In the event MMCAP obtains the Vendor's Federal Tax Identification Number, the Vendor consents to disclosure of its federal employer tax identification number to federal and State of Minnesota agencies and personnel involved in the payment of State of Minnesota obligations. These identification numbers may be used in the enforcement of federal and State of Minnesota laws that could result in action requiring the Vendor to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.

**16. Insurance Requirements.**

**16.1** Vendor must maintain the following insurance (or a comparable program of self-insurance) in force and effect throughout the term of the Contract.

**16.2** Vendor is required to maintain and furnish satisfactory evidence of the following insurance policies (or of their program of self-insurance):

**Commercial General Liability Insurance:** Vendor will maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by the Vendor or by a subcontractor or by anyone directly or indirectly employed by the Vendor under the Contract.

Insurance minimum limits are as follows:

- \$5,000,000 – per occurrence
- \$5,000,000 – annual aggregate
- \$5,000,000 – annual aggregate – Products/Completed Operations

The following coverages must be included:

Premises and Operations Bodily Injury and Property Damage  
Personal and Advertising Injury  
Blanket Contractual Liability  
Products and Completed Operations Liability  
MMCAP named as an Additional Insured

**16.3 Additional Insurance Conditions:**

- Vendor's policy(ies) must be primary insurance to any other valid and collectible insurance available to MMCAP with respect to any claim arising out of Vendor's performance under this Contract;
- If Vendor receives a cancellation notice from an insurance carrier affording coverage herein, Vendor will notify MMCAP within 5 business days with a copy of the cancellation notice, unless Vendor's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least 30 days' advance written notice to MMCAP;
- Vendor is responsible for payment of Contract related insurance premiums and deductibles;
- If Vendor is self-insured, a Certificate of Self-Insurance must be attached;
- Vendor's policy(ies) will include legal defense fees in addition to its liability policy limits;
- Vendor will obtain insurance policy(ies) from insurance company(ies) having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the State of Minnesota; and
- An Umbrella or Excess Liability insurance policy may be used to supplement the Vendor's policy limits to satisfy the full policy limits required by the Contract.

**16.4** MMCAP reserves the right to immediately terminate the Contract if the Vendor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the Vendor. All insurance policies must be open to inspection by MMCAP, and copies of policies must be submitted to MMCAP's authorized representative upon written request.

**17. Minnesota Statutes Section 181.59.** The vendor will comply with the provisions of Minn. Stat. § 181.59 which requires:

Every contract for or on behalf of the state of Minnesota, or any county, city, town, township, school, school district, or any other district in the state, for materials, supplies, or construction shall contain provisions by which the contractor agrees: (1) That, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or vendor, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates; (2) That no contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color; (3) That a violation of this section is a misdemeanor; and (4) That this contract may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract.

**18. Affirmative Action.** Requirements for Contracts in Excess of \$100,000 and if the Contractor has More than 40 Full-time Employees in Minnesota or its Principal Place of Business  
The State intends to carry out its responsibility for requiring affirmative action by its Contractors.

**18.1 Covered Contracts and Contractors.** If the Contract exceeds \$100,000 and the contractor employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principle place of business, then the Contractor must comply with the requirements of Minnesota Statutes Section 363A.36 and Minnesota Rules Parts 5000.3400-5000.3600.



A contractor covered by Minnesota Statutes Section 363A.36 because it employed more than 40 full-time employees in another state and does not have a certificate of compliance, must certify that it is in compliance with federal affirmative action requirements.

**18.2 Minnesota Statutes Section 363A.36.** Minnesota Statutes Section 363A.36 requires the Contractor to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the Minnesota Commissioner of Human Rights ("Commissioner") as indicated by a certificate of compliance. The law addresses suspension or revocation of a certificate of compliance and contract consequences in that event. A contract awarded without a certificate of compliance may be voided.

**18.3 Minnesota Rules 5000.3400-5000.3600.**

**18.3.1 General.** Minnesota Rules 5000.3400-5000.3600 implement Minnesota Statutes Section 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a contractor's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minnesota Rules 5000.3400-5000.3600 including, but not limited to, parts 5000.3420-5000.3500 and 5000.3552-5000.3559.

**18.3.2 Disabled Workers.** The Contractor must comply with the following affirmative action requirements for disabled workers.

The Contractor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

The Contractor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minnesota Statutes Section 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices must state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.

The Contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Minnesota Statutes Section 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.

**18.3.3 Consequences.** The consequences for the Contractor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this contract by the Commissioner or the State.

**18.3.4 Certification.** The Contractor hereby certifies that it is in compliance with the requirements of Minnesota Statutes Section 363A.36 and Minnesota Rules 5000.3400-5000.3600 and is aware of the consequences for noncompliance.

**19. Deleted in its entirety.**

**20. E-Verify Certification**

As required by Minnesota Statutes Section 16C.075, for services valued in excess of \$50,000, Vendor certifies that as of the date of services performed on behalf of the State of Minnesota and MMCAP, Vendor and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify program for all newly hired employees in the United States who will perform work on behalf of the State. Vendor is responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available at <http://www.mmd.admin.state.mn.us/doc/EVerifySubCertForm.doc>. All subcontractor certifications must be kept on file with Vendor and made available to the State of Minnesota or MMCAP upon request.

**21. Representation and Warranty.** Vendor represents and warrants that neither it nor any of its affiliates are excluded from participation in any federal health care program, as defined under 42 U.S.C. 1320a-7b(f), for the provision of items or services for which payment may be made under such federal health care programs and has not arranged or contracted with any employee, contractor, vendor, distributor, or agent such that it or its affiliates knows or should know are excluded from participation in any federal health care program, to provide items or services hereunder. Vendor represents and warrants that no final adverse action, as such term is defined under 42 U.S.C. 1320a-7e(g), has occurred or is pending against Vendor or its affiliates or to their knowledge against any employee, contractor, vendor, distributor, or agent engaged to provide items or services under this Contract. If, at any time during the term of this Agreement, Vendor or any employee, contractor, vendor, distributor, or agent is excluded from participation in any federal health care program, Vendor must immediately notify MMCAP of the exclusion, and MMCAP will have the option of immediately terminating this Agreement, in whole or in part as necessary and applicable in the MMCAP's sole discretion.

**22. Cancellation.** MMCAP or the Vendor may cancel this contract at any time, with or without cause, upon 60 days' written notice to the other party. In the event of such a cancellation, the Vendor will be entitled to payment, determined in a pro rata basis, for work or services satisfactorily performed or products supplied through the contract cancellation date.

**1. FFF ENTERPRISES, INC.**

The Vendor certifies that the appropriate person(s) have executed this Agreement on behalf of the Vendor as required by applicable articles, bylaws, resolutions, or ordinances.

By: John A. Hall  
 Title: Director of Corporate Accounts  
 Date: 1-24-2014

**2. STATE OF MINNESOTA FOR MMCAP**

In accordance with Minn. Stat. § 16C.03, subd. 3

By: John VanderPlaat, CPA  
 Title: SPA-P  
 Date: 1-24-2014

**3. COMMISSIONER OF ADMINISTRATION**

In accordance with Minn. Stat. § 16C.05, subd. 2

By: Heather Christ  
 Date: Jan. 24, 2014



**ATTACHMENT A TO  
MMCAP Standard Contract Terms and Conditions**

**2.11.1 STATE OF NEW YORK**

The State of New York "piggybacks" off of the MMCAP contract. This means that the State of New York requires a separately negotiated contract for the sale of influenza vaccine in its state. For further information or for a copy of the agreement, contact:

Todd Kayser, Purchasing Officer  
New York State Office of General Services  
Division of Purchasing  
Esp Corning Tower Bldg 38th Floor  
Albany, NY 12242  
Phone: 518.474.4501  
Fax: 518-474-5052  
Email: [todd.kayser@ogs.state.ny.us](mailto:todd.kayser@ogs.state.ny.us)

**2.11.2 STATE OF FLORIDA**

The following applies only purchases made by entities designed by the State of Florida.

**1. Vendor Registration**

Each vendor doing business with the State for the sale of commodities or contractual services as defined in Section 287.012, F.S., shall register in the MyFloridaMarketPlace system, unless exempted under subsection 60A-1.030(3), F.A.C. Also, an agency shall not enter into an agreement for the sale of commodities or contractual services as defined in Section 287.012 F.S. with any vendor not registered in the MyFloridaMarketplace system, unless exempted by rule.

A vendor not currently registered in the MyFloridaMarketPlace system shall do so within 5 days after posting of intent to award. Information about the registration is available, and registration may be completed, at the MyFloridaMarketPlace website (link under Business on the State portal at <http://www.myflorida.com>). Those lacking internet access may request assistance from the MyFloridaMarketPlace Customer Service at 866-352-3776 or from State Purchasing, 4050 Esplanade Drive, Suite 300, Tallahassee, Florida 32399.

For vendors located outside of the United States, please contact Vendor Registration Customer Service at 866-352-3776 (8 a.m. - 5:30 p.m. Eastern Time) to register.

**2. Transaction Fee**

The State of Florida has instituted MyFloridaMarketPlace, a statewide eProcurement System ("System"). Pursuant to section 287.057(23), Florida Statutes (2002), all payments shall be assessed a Transaction Fee of one percent (1.0%), which the Contractor shall pay to the State, unless exempt pursuant to 60A-1.032, F.A.C.

For payments within the State accounting system (FLAIR or its successor), the Transaction Fee shall, when possible, be automatically deducted from payments to the Contractor. If automatic deduction is not possible, the Contractor shall pay the Transaction Fee pursuant to Rule 60A-1.031(2), F.A.C. By submission of these reports and corresponding payments, Contractor certifies their correctness. All such reports and payments shall be subject to audit by the State or its designee.

Contractor shall receive a credit for any Transaction Fee paid by the Contractor for the purchase of any item(s) if such item(s) are returned to the Contractor through no fault, act, or omission of the Contractor. Notwithstanding the foregoing, a Transaction Fee is non-refundable when an

item is rejected or returned, or declined, due to the Contractor's failure to perform or comply with specifications or requirements of the agreement.

Failure to comply with these requirements shall constitute grounds for declaring the Contractor in default and recovering procurement costs from the Contractor in addition to all outstanding fees. CONTRACTORS DELINQUENT IN PAYING TRANSACTION FEES SHALL BE EXCLUDED FROM CONDUCTING FUTURE BUSINESS WITH THE STATE.

### 2.11.3 STATE OF CALIFORNIA

The following applies only purchases made by entities designed by the State of California:

#### 1.0 INTRODUCTION

This language is required pursuant to the Agreement of Understanding and Joint Powers Agreement, California Agreement No. 1-08-65-54 between the State of California and MMCAP. This Amendment confirms the mutual understanding of the State of California, Department of General Services (DGS), acting on behalf of the State of California; Vendor and the State of Minnesota, Department of Administration, MMCAP, located at 50 Sherburne Avenue, Room 112, St. Paul, MN 55155.

It is the intent of this language to incorporate the laws and requirements of the State of California into MMCAP Influenza Vaccine Contract.

The terms of this language are established pursuant to the State of California Government Code Sections 14977.1, 14978, and Public Contract Code Section 10298. It is the intent of this Amendment that Purchasers will receive a discount on all purchases of Contractor's Covered Product(s). The DGS procures drugs and administers contracts for entities participating in the Statewide Pharmaceutical Program established by Government Code Sections 14977 through 14982.

#### 2.0 DEFINITIONS

The following terms shall be given the meaning shown, unless context requires otherwise or a unique meaning is otherwise specified.

Term	Definition
Calendar Quarters	The quarters to be used for calculating the Calendar Quarters of this Agreement will be those ending on March 31, June 30, September 30, and December 31 of each calendar year during the term of this Amendment.
California Contract Administrator	The California State's authorized contracting official designated to manage this contract or agreement. California's Contract Administrator shall be synonymous with "Buyer."
California DGS Administrative Fee	An amount equal to one percent (0.01) of the sales for the quarterly period assessed on all purchases by California State and Local Governmental Agencies included as an adjustment to Vendor contract pricing and not invoiced or charged separately to the purchasing entity.
Covered Product(s) or Product(s)	The items described in MMCAP Contract section 2.1 "Products and Pricing"



Eligible Entities	California State and Local Governmental Agencies completing the MMCAP California Facility Membership Application and Facility Membership Agreement, Attachment A of the Agreement of Understanding and Joint Powers Agreement, California Agreement No. 1-08-65-54 and approved by the DGS.
California Local Governmental Agency	A California city, county, city and county, district, or other local governmental body or corporation, including the California State Universities (CSU) and University of California (UC) systems, K-12 schools and community colleges, empowered to expend public funds (California Public Contract Code 10298).
Original Contract	MMCAP Influenza Vaccine Contract.
MMCAP Participating Facility	The definition of MMCAP Participating Facility in this Contract, section 2.7 is augmented with the following: Any California State or California Local Governmental Agency which completes the MMCAP California Facility Membership Application, Attachment A to the Agreement of Understanding and Joint Powers Agreement, between the State of California and MMCAP and approved by the DGS and MMCAP.
California State Agency	The California State Departments of Corrections and Rehabilitations (CDCR), Mental Health (DMH), and Developmental Services (DDS) and other State Agencies under the California DGS authority.

### 3.0 TERMS AND CONDITIONS

#### 3.1 CONTRACT TERMS & CONDITIONS

3.1.1 This Amendment is non-mandatory for California State Agencies and California Local Governmental Agencies.

3.1.2 The California DGS may contract on behalf of California Participating Facilities for Influenza Vaccines available through the Original Agreement.

3.1.3 The California General Provisions section 4.0 of this Amendment shall prevail if there is a conflict between this Amendment and the terms and conditions of the Original Agreement.

3.1.4 The California DGS may terminate this Amendment at any time upon 60 days' prior written notice. Upon termination or other expiration of the Original Agreement, each party will assist the other party in orderly termination of the contract and transfer of all assets, tangible and intangible, as may facilitate the orderly, nondisrupted business continuation of each party. This provision shall not relieve the Vendor of the obligation to perform under any purchase order or other similar ordering document executed prior to the termination becoming effective.

#### 3.2 CONTRACT ADMINISTRATION

Any notice required to be given pursuant to the terms and provision of this Agreement will be in writing and will be sent by certified mail, return receipt requested to:

**Vendor**  
**Vendor Contact Name**  
**Title**

**Address**  
**Phone**  
**E-Mail**

**State of California**  
Vimbai Kajese, MPH  
Contract Administrator  
Department of General Services  
707 3rd Street, 2nd Floor, Cube 02-233A  
West Sacramento, CA 95605-2811  
(916) 375-4926  
vimbai.kajese@dgs.ca.gov

**State of Minnesota, MMCAP Program**  
Jennifer VanderPlaats, CPhT  
MMCAP Contracting & Business Operations  
50 Sherburne Avenue, Suite 112  
St. Paul, MN 55155  
(651) 201-2414  
Jennifer.VanderPlaats@state.mn.us

**3.3 PURCHASE DOCUMENTS**

This section augments the ordering instructions from the Original Agreement section 2.2 Pre-Booking.

3.3.1 California State Agencies must use the Purchasing Authority Purchase Order (Std. 65). An electronic version of the Std. 65 is available at the Office of State Publishing web site: <http://www.dgs.ca.gov/osp> (select Standard Forms). All Purchasing Authority Purchase Orders (Std. 65) must contain the following:

- Agency Order Number (Purchase Order Number)
- Ordering Agency Name
- Agency Billing Code
- Purchasing Authority Number
- Leveraged Procurement Number (Contract Number)
- Supplier Information (Contact Name, Address, Phone Number, Fax Number, E-mail)
- Line Item number
- Quantity
- Unit of Measure
- Commodity Code Number/NDC
- Product Description
- Unit Price
- Extension Price

3.3.2 California Local Governmental Agencies may use their own purchase document. The purchase documents must include the same data elements as listed above (Exception: Purchasing Authority Number is used by State departments only). The Vendor will not accept purchase documents from local agencies without a State issued billing code.



### 3.4 PARTICIPATING FACILITIES MEMBERSHIP PROCESS

The California DGS will notify the MMCAP Office of facilities wishing to participate in the Original Agreement by providing them with a DGS executed MMCAP California Facility Membership Application. Upon MMCAP Office approval of these applications, the MMCAP Office will provide a Participating Facility ID Number to the DGS and advise Vendor. The DGS and MMCAP will maintain and reconcile a list of participating facilities. Vendor shall refer any contacts for California facilities not approved by the California DGS to the California Contract Administrator.

### 3.5 PROBLEM RESOLUTION

California MMCAP Participating Facilities shall inform the California Contract Administrator of any technical or contractual difficulties encountered during contract performance in a timely manner. This includes and is not limited to informal disputes, supplier performance, outstanding deliveries, etc.

### 3.6 CALIFORNIA DGS ADMINISTRATIVE FEES AND REPORTS

#### California DGS Administrative Fees Reporting

In addition to the requirements of the Original Agreement, Vendor shall submit a report to the California Contract Administrator and MMCAP for all purchases by California State and Local Governmental Agencies providing the following information:

- Agency Name
- Purchase Order Number
- Purchase Order Date
- Total Purchase Order Amount
- The DGS Administrative Fee Dollar Amount
- Agency Contact Name
- Agency Address
- Agency Telephone Number
- Total Dollars for the quarter

In addition to the requirements of the Original Agreement, Vendor shall submit a check, in addition to the report, payable to the State of California for the calculated California DGS Administrative Fee for an amount equal to one percent (0.01) of the sales for the quarterly period. The DGS Administrative Fee is not due prior to product actually being invoiced and shipped, but is due at the end of the quarter in which the product has been shipped and invoiced. This California DGS Administrative Fee shall be included as an adjustment to Vendor contract pricing and not invoiced or charged separately to the purchasing entity.

Vendor shall receive a credit for any California DGS Administrative Fee paid by the Vendor for purchase of any item(s) if such item(s) are returned to the Vendor through no fault, act, or omission of the Vendor. However, the California DGS Administrative Fee is non-refundable when an item is rejected or returned, or declined, due to the Vendor's failure to perform or comply with specifications or requirements of this agreement.

A report is due even when there is no activity. Any report that does not follow the required format or that excludes information will be deemed incomplete. Failure to submit reports and fees on a timely basis shall constitute grounds for suspension of this agreement. Reports and California DGS Administrative Fee delivery will be in accordance with the following schedule.

Calendar Quarter 1 (JAN 1 to MAR 31) **Due APR 30**  
Calendar Quarter 2 (APR 1 to JUN 30) **Due JUL 31**  
Calendar Quarter 3 (JUL 1 to SEP 30) **Due OCT 31**  
Calendar Quarter 4 (OCT 1 to DEC 31) **Due JAN 31**

Payment of the California DGS Administrative Fee by the Vendor shall be made to the DGS irrespective of payments on orders by each Participating Entity to the Vendor.

The California DGS Administrative Fee check and report shall be submitted to the California Contract Administrator.

#### CONTRACT USAGE REPORTING

The Vendor shall provide an electronic contract usage report to the State of California DGS Contract Administrator on a weekly basis during pre-booking and delivery of covered products. The State of California DGS Contract Administrator will provide Vendor with a Usage Report Template. The contract usage report shall detail all invoiced purchases against the contract during the specified reporting period and must contain at a minimum, but not limited to, the following data elements:

##### **Pre-Booking Report**

1. Reporting Week
2. Ordering Agency Name - This is the State Agency or Local Government Name that best represents the purchasing entity.
3. Agency Billing Code - A five-digit or six-digit code issued by the DGS for billing purposes. The Agency Billing Code will be on the Purchase Order.
4. Purchase Order Number - Identifies the ordering department's unique purchase order number.
5. Purchase Order Date - The date the agency placed the order.
6. Item Description - Informational text about the commodity being purchased. Description should be descriptive enough to show the item is consistent with the specifications (high-level).
7. Unit of Measure - Descriptor of the packaging unit (i.e. each, box, dozen, case, lbs., pallet etc.).
8. Quantity in Unit of Measure - This field will carry the number of base units in the packaging of the products.
9. Order Quantity - The Quantity ordered for each line item for each participating facility (separate orders for a unique line item by an individual Participating Entity should be on separate line items).
10. Contract Unit Price - This is the contractual price for a given line item based on the price that was bid, as relative to the contract unit of measure.
11. Leveraged Procurement Number (Contract Number) - Specific Contract Number with MMCAP or State of California item purchased through.

##### **Delivery Report**

1. Reporting Week
2. Ordering Agency Name - This is the California State or Local Governmental Agency name that best represents the purchasing entity.



3. Agency Billing Code - A five-digit or six-digit code issued by the California DGS for billing purposes. The Agency Billing Code will be on the Purchase Order.
4. Purchase Order Number - Identifies the ordering department's unique purchase order number.
5. Purchase Order Date - The date the agency placed the order.
6. Item Description - Informational text about the commodity being purchased. Description should be descriptive enough to show the item is consistent with the specifications (high-level).
7. Unit of Measure - Descriptor of the packaging unit (i.e. each, box, dozen, case, lbs., pallet etc.).
8. Quantity in Unit of Measure - This field will carry the number of base units in the packaging of the products.
9. Order Quantity - The Total Quantity ordered for each line item for each Participating Facility.
10. Contract Unit Price - This is the contractual price for a given line item based on the price that was bid, as relative to the contract unit of measure.
11. Leveraged Procurement Number (Contract Number) - Specific Contract Number with MMCAP or State of California item purchased through.
12. Quantity Delivered - The actual number of units of product delivered
13. Date Delivered- The date product is shipped.
14. Percentage of Order Fulfilled - The percentage of the total order shipped.
15. Quantity on Back Order - The Total Quantity of back order for participating facility.
16. Last Shipment Date - The anticipated date for last shipment of product.

The Contract Usage Report shall be provided to the State Contract Administrator in Excel 3.0 format via email. Reports shall be due weekly during pre-booking and delivery periods with due date negotiated subject to agreement by both parties.

### 3.8 EFFECTIVE DATES

This language shall be effective upon approval and will continue until the Termination Date of the MMCAP Influenza Vaccine Contract unless terminated early in accordance with the terms and conditions of the Original Agreement or this Amendment. The Vendor may not commence performance until such approval has been obtained.

### 4.0 STATE OF CALIFORNIA CONTRACT REQUIREMENTS – General Provisions

The following State of California Standard Terms and Conditions (Articles 4-57) are hereby included into the Amendment and are applicable only to products and services provided to the State of California:

**1. DEFINITIONS:** The following terms for Articles 4-57 of this Amendment shall be given the meaning shown, unless context requires otherwise or a unique meaning is otherwise specified.

- a) **“Business entity”** means any individual, business, partnership, joint venture, corporation, S-corporation, limited liability corporation, limited liability partnership, sole proprietorship, joint stock company, consortium, or other private legal entity recognized by statute.
- b) **“Buyer”** means the State’s authorized contracting official.

- c) **"Contract"** means this Contract or agreement (including any purchase order), by whatever name known or in whatever format used.
- d) **"Contractor"** means the Business Entity with whom the State enters into this contract. Contractor shall be synonymous with "supplier", "vendor" or other similar term.
- e) **"Goods"** (commodities) means all types of tangible personal property, including but not limited to materials, supplies, and equipment (including computer equipment and telecommunications).
- f) **"State"** means the government of the State of California, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the State of California.

**2. CONTRACT FORMATION: General Provision No. 2 is hereby deleted.**

**3. COMPLETE INTEGRATION: General Provisions No. 3 augments Section 4.4 "Contract Complete," of the MMCAP Agreement.** This contract, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of the contract.

**4. SEVERABILITY: General Provision No. 4 augments Section 12, "Severability," of MMCAP Agreement.** The contractor and the State agree that if any provision of this contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.

**5. INDEPENDENT CONTRACTOR: General provision No. 5 is hereby deleted.**

**6. APPLICABLE LAW: General provision No. 6 is hereby deleted.**

**7. COMPLIANCE WITH STATUTES AND REGULATIONS:**

- a) Contractor warrants and certifies that in the performance of this contract, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California and agrees to indemnify the State against any loss, cost, damage or liability by reason of contractor's violation of this provision.
- b) If this contract is in excess of \$500,000, it is subject to the requirements of the World Trade Organization (WTO) Government Procurement Agreement (GPA).

**8. CONTRACTOR'S POWER AND AUTHORITY:** The contractor warrants that it has full power and authority to grant the rights herein granted and will hold the State harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of the State under this contract.

The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate



in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

**9. ASSIGNMENT:** General Provision No. 9 is hereby deleted. Refer to Section 4.1, "Assignment," of MMCAP Agreement.

**10. WAIVER OF RIGHTS:** General Provision No. 10 augments Section 4.3, "Waiver" of MMCAP Agreement. Any action or inaction by the State or the failure of the State on any occasion, to enforce any right or provision of the contract, shall not be construed to be a waiver by the State of its rights hereunder and shall not prevent the State from enforcing such provision or right on any future occasion. The rights and remedies of the State herein are cumulative and are in addition to any other rights or remedies that the State may have at law or in equity.

**11. ORDER OF PRECEDENCE:** In the event of any inconsistency between the articles, attachments, specifications or provisions which constitute this Contract, the following order of precedence shall apply:

- a) MMCAP Agreement, unless terms of this language are in conflict,
- b) these General Provisions – Non-IT Commodities;
- c) contract form, i.e., Purchase Order STD 65, etc., and any amendments thereto;
- d) statement of work, including any specifications incorporated by reference herein;
- e) special terms and conditions; and
- f) all other attachments incorporated in the contract by reference.

**12. PACKING AND SHIPMENT:** General Provision No.12 is hereby deleted. Refer to Section 2.3 "Delivery" of MMCAP Agreement.

**13. TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES:** General Provision No. 13 is hereby deleted. Refer to Section 2.2, "Prebooking" of MMCAP Agreement.

**14. TIME IS OF THE ESSENCE:** Time is of the essence in this contract.

**15. DELIVERY:** General provision No. 15 is hereby deleted. Refer to Section 2.3, "Delivery" of MMCAP Agreement.

**16. SUBSTITUTIONS:** Substitution of goods may not be tendered without advance written consent of the buyer. Contractor shall not use any specification in lieu of those contained in the contract without written consent of the buyer.

**17. INSPECTION, ACCEPTANCE AND REJECTION:**

- a) Contractor and its subcontractors will provide and maintain a quality assurance system acceptable to the State covering goods and services under this contract and will tender to the State only those goods that have been inspected and found to conform to this contract's requirements. Contractor will keep records evidencing inspections and their result, and will make these records available to the State during contract performance and for three years after final payment. Contractor shall permit the State to review

procedures, practices, processes and related documents to determine the acceptability of Contractor's quality assurance system or other business practices related to performance of the contract.

- b) All goods may be subject to inspection and test by the State or its authorized representatives.
- c) Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the State. Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.
- d) All goods to be delivered hereunder may be subject to final inspection, test and acceptance by the State at destination, notwithstanding any payment or inspection at source.
- e) The State shall give written notice of rejection of goods within a reasonable time after receipt of such goods. Such notice of rejection will state the respects in which the goods do not substantially conform to their specifications. If the State does not provide such notice of rejection within thirty (30) days, unless otherwise specified in the Statement of Work, of delivery, such goods and services will be deemed to have been accepted. Acceptance by the State will be final and irreversible, except as it relates to latent defects, fraud, and gross mistakes amounting to fraud. Acceptance shall not be construed to waive any warranty rights that the State might have at law or by express reservation in this Contract with respect to any nonconformity.

**18. SAMPLES: General Provision No.18 is hereby deleted.**

**19. WARRANTY: General Provision 19 is hereby deleted. Refer to Sections 5 "Liability" of MMCAP Agreement.**

**20. SAFETY AND ACCIDENT PREVENTION:**

In performing work under this contract on State premises, contractor shall conform to any specific safety requirements contained in the contract or as required by law or regulation. Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this contract in accordance with the default provisions hereof.

**21. INSURANCE: General Provision No. 21 is hereby deleted. Refer to Section 16 "Insurance Requirements" of MMCAP Agreement.**

**22. TERMINATION FOR NON-APPROPRIATION OF FUNDS:**

- (a) If the term of this contract extends into fiscal years subsequent to that in which it is approved, such continuation of the contract is contingent on the appropriation of funds for such purpose by the Legislature. If funds to effect such continued payment are not appropriated, contractor agrees to take back any affected goods furnished under this contract, terminate any services supplied to the State under this contract, and relieve the State of any further obligation therefore.
- b) STATE AGREES THAT IF PARAGRAPH (a) ABOVE IS INVOKED, GOODS SHALL BE RETURNED TO THE CONTRACTOR IN SUBSTANTIALLY THE SAME CONDITION IN WHICH DELIVERED TO THE STATE, SUBJECT TO NORMAL WEAR AND TEAR. STATE FURTHER AGREES TO PAY FOR PACKING, CRATING, TRANSPORTATION TO CONTRACTOR'S NEAREST



FACILITY AND FOR REIMBURSEMENT TO THE CONTRACTOR FOR EXPENSES INCURRED FOR THEIR ASSISTANCE IN SUCH PACKING AND CRATING.

**23. TERMINATION FOR THE CONVENIENCE OF THE STATE:**

- a) The State may terminate performance of work under this contract for its convenience in whole or, from time to time, in part, if the Department of General Services, Deputy Director, Procurement Division, or designee, determines that a termination is in the State's interest. The Department of General Services, Deputy Director, Procurement Division, or designee, shall terminate by delivering to the contractor a Notice of Termination specifying the extent of termination and the effective date thereof. The parties agree that, as to the terminated portion of the contract, the contract shall be deemed to remain in effect until such time as the termination settlement, if any, is concluded and the contract shall not be void.
- b) After receipt of a Notice of Termination, and except as directed by the State, the contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The Contractor shall:
- i) Stop work as specified in the Notice of Termination.
  - ii) Place no further subcontracts for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
  - iii) Terminate all subcontracts to the extent they relate to the work terminated.
  - iv) Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification of which will be final for purposes of this clause.

**24. TERMINATION FOR DEFAULT: General Provision 24 augments Section 13 "Default and Remedies" of MMCAP Agreement.**

- a) The State may, subject to the Force Majeure paragraph contained herein, by written notice of default to the contractor, terminate this contract in whole or in part if the contractor fails to:
- i) Deliver the goods or to perform the services within the time specified in the contract or any amendment thereto;
  - ii) Make progress, so as to endanger performance of this contract (but see subparagraph (b) below); or
  - iii) Perform any of the other provisions of this contract (but see subparagraph (b), below).
- b) The State's right to terminate this contract under subparagraphs (a)(ii) and (a)(iii) above, may be exercised if the contractor does not cure such failure within the time frame stated in the cure notice issued by the buyer.
- c) If the State terminates this contract in whole or in part, it may acquire, under the terms and in the manner the buyer considers appropriate, goods or services similar to those terminated, and the contractor will be liable to the State for any excess costs for those goods or services. However, the contractor shall continue the work not terminated.
- d) If the contract is terminated for default, the State may require the contractor to transfer title and deliver to the State, as directed by the buyer, any:
- i) Completed goods, and
  - ii) Partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the buyer, the contractor shall also protect and preserve property in its possession in which the State has an interest.
- e) The State shall pay contract price for completed goods delivered and accepted. The contractor and buyer shall agree on the amount of payment for manufacturing materials delivered and accepted for the protection and preservation of the property. Failure to agree



will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the buyer determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

f) If, after termination, it is determined that the contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the State.

g) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this contract.

**25. FORCE MAJEURE:** General Provision No. 25 is hereby deleted, Refer to, Section 11, "Force Majeure" of MMCAP Agreement.

**26. RIGHTS AND REMEDIES OF STATE FOR DEFAULT:** General Provision No. 26 is hereby deleted. Refer to Section 13, "Default and Remedies" of MMCAP Agreement.

**27. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:**

a) The contractor shall be liable for damages arising out of injury to the person and/or damage to the property of the State, employees of the State, persons designated by the State for training, or any other person(s) other than agents or employees of the contractor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the goods either at the contractor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the contractor.

b) Contractor shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by the contractor, or for damage to alterations or attachments that may result from the normal operation and maintenance of the goods provided by the contractor during the contract.

**28. INDEMNIFICATION:** General Provision No. 28 augments by Section 5, "Liability" of MMCAP Agreement.

Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers and any other person, firm, or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation which may be injured or damaged by contractor in the performance of this contract.

**29. INVOICES:** Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in triplicate and shall include the contract number; release order number (if applicable); item number; unit price, extended item price and invoice total amount. State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.

**30. REQUIRED PAYMENT DATE:** General Provision No. 30 augments Section 2.2 "Prebooking" of MMCAP Agreement. Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et. seq. Unless expressly exempted by statute, the Act requires state agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of goods or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.

**31. TAXES:** Unless otherwise required by law, the State of California is exempt from Federal excise taxes. The State will only pay for any State or local sales or use taxes on the services rendered or goods supplied to the State pursuant to this contract.

**32. NEWLY MANUFACTURED GOODS:** General Provision No. 32 is hereby deleted.

**33. CONTRACT MODIFICATION:** General Provision No. 33 augments Section 4.2, "Amendments" of MMCAP Agreement. No amendment or variation of the terms of this contract shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the contract is binding on any of the parties.

**34. CONFIDENTIALITY OF DATA:** All financial, statistical, personal, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to the contractor in order to carry out this contract, or which become available to the contractor in carrying out this contract, shall be protected by the contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the contractor. If the methods and procedures employed by the contractor for the protection of the contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the contractor's possession, is independently developed by the contractor outside the scope of this contract, or is rightfully obtained from third parties.

The State grants to MMCAP the right to obtain all sales data related to sales of product to MMCAP Participating Facilities within the State.

**35. NEWS RELEASES:** General Provision No. 35 augments by Section 8.1, "Publicity" of MMCAP Agreement. Unless otherwise exempted, news releases pertaining to this contract shall not be made without prior written approval of the Department of General Services.

**36. PATENT, COPYRIGHT and TRADE SECRET INDEMNITY:** General Provision No. 36 augments by Section 7.2, "Intellectual Property Indemnification" of MMCAP Agreement.

- a) Contractor shall hold the State of California, its officers, agents and employees, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or un-copyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in connection with the contract.
- b) Contractor may be required to furnish a bond to the State against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.
- c) Contractor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the goods or software supplied by the contractor or the operation of such goods pursuant to a current version of contractor supplied operating software infringes a United States patent or copyright or violates a trade secret. The



contractor shall pay those costs and damages finally awarded against the State in any such action. Such defense and payment shall be conditioned on the following:

- i) That the contractor shall be notified within a reasonable time in writing by the State of any notice of such claim; and,
- ii) That the contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise provided, however, that when principles of government or public law are involved, the State shall have the option to participate in such action at its own expense.
- d) Should the goods or software, or the operation thereof, become, or in the contractor's opinion are likely to become, the subject of a claim of infringement of a United States patent or copyright or a trade secret, the State shall permit the contractor at its option and expense either to procure for the State the right to continue using the goods or software, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such goods or software by the State shall be prevented by injunction, the contractor agrees to take back such goods or software and make every reasonable effort to assist the State in procuring substitute goods or software. If, in the sole opinion of the State, the return of such infringing goods or software makes the retention of other goods or software acquired from the contractor under this contract impractical, the State shall then have the option of terminating such contracts, or applicable portions thereof, without penalty or termination charge. The contractor agrees to take back such goods or software and refund any sums the State has paid contractor less any reasonable amount for use or damage.
- e) The contractor shall have no liability to the State under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:
  - i) The combination or utilization of goods furnished hereunder with equipment or devices not made or furnished by the contractor; or,
  - ii) The operation of equipment furnished by the contractor under the control of any operating software other than, or in addition to, the current version of contractor-supplied operating software; or
  - iii) The modification by the State of the equipment furnished hereunder or of the software; or
  - iv) The combination or utilization of software furnished hereunder with non-contractor supplied software.
- f) Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.
- g) The foregoing states the entire liability of the contractor to the State with respect to infringement of patents, copyrights or trade secrets.

**37. EXAMINATION AND AUDIT: General Provision No. 37 augments Section 6, "State Audits" of MMCAP Agreement.** Contractor agrees that the State, or its designated representative shall have the right to review and copy any records and supporting documentation pertaining to performance of this contract. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this contract.

**38. DISPUTES:**



- a) The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, contractor shall submit to the Department Director or designee a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to or involving this contract, unless the State, on its own initiative, has already rendered such a final decision. Contractor's written demand shall be fully supported by factual information, and if such demand involves a cost adjustment to the contract, contractor shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the contract adjustment for which contractor believes the State is liable. If the contractor is not satisfied with the decision of the Department Director or designee, the contractor may appeal the decision to the Department of General Services, Deputy Director, and Procurement Division. In the event that this contract is for information technology goods and/or services, the decision may be appealed to an Executive Committee of State and contractor personnel.
- b) Pending the final resolution of any dispute arising under, related to or involving this contract, contractor agrees to diligently proceed with the performance of this contract, including the delivery of goods or providing of services in accordance with the State's instructions. Contractor's failure to diligently proceed in accordance with the State's instructions shall be considered a material breach of this contract.
- c) Any final decision of the State shall be expressly identified as such, shall be in writing, and shall be signed by the Department Director or designee or Deputy Director, Procurement Division if an appeal was made. If the State fails to render a final decision within 90 days after receipt of contractor's demand, it shall be deemed a final decision adverse to contractor's contentions. The State's final decision shall be conclusive and binding regarding the dispute unless contractor commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.

**39. STOP WORK:** General Provision 39 is hereby deleted.

**40. PRIORITY HIRING CONSIDERATIONS:** If this contract includes services in excess of \$200,000, the contractor shall give priority consideration in filling vacancies in positions funded by the contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with PCC Section 10353.

**41. COVENANT AGAINST GRATUITIES:** The contractor warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the contractor, or any agent or representative of the contractor, to any officer or employee of the State with a view toward securing the contract or securing favorable treatment with respect to any determinations concerning the performance of the contract. For breach or violation of this warranty, the State shall have the right to terminate the contract, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any items which contractor agreed to supply shall be borne and paid for by the contractor. The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.

**42. NONDISCRIMINATION CLAUSE:**

- a) During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status,



and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

b) The contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

**43. NATIONAL LABOR RELATIONS BOARD CERTIFICATION:** Contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the contractor within the immediately preceding two-year period because of the contractor's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, PCC Section 10296.

**44. ASSIGNMENT OF ANTITRUST ACTIONS:** In conjunction with the Attorney General of the State of Minnesota, Pursuant to Government Code Sections 4552, 4553, and 4554, the following provisions are incorporated herein:

a) the supplier offers and agrees it will assign to the State all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, material, or services by the supplier for sale to the State pursuant to the solicitation. Such assignment shall be made and become effective at the time the State tenders final payment to the supplier.

b) If the State receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the State any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the State as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

c) Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and

- i) the assignee has not been injured thereby, or
- ii) the assignee declines to file a court action for the cause of action.

**45. DRUG-FREE WORKPLACE CERTIFICATION:** The contractor certifies under penalty of perjury under the laws of the State of California that the contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).

- b) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
- i) the dangers of drug abuse in the workplace;
  - ii) the person's or organization's policy of maintaining a drug-free workplace;
  - iii) any available counseling, rehabilitation and employee assistance programs; and,
  - iv) penalties that may be imposed upon employees for drug abuse violations.
- c) Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting contract:
- i) will receive a copy of the company's drug-free policy statement; and,
  - ii) will agree to abide by the terms of the company's statement as a condition of employment on the contract.

**46. FOUR-DIGIT DATE COMPLIANCE:** Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date Compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.

**47. SWEATFREE CODE OF CONDUCT:**

- a) Contractor declares under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the State pursuant to the contract have been produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at [www.dir.ca.gov](http://www.dir.ca.gov), and Public Contract Code Section 6108.
- b) Contractor agrees to cooperate fully in providing reasonable access to its records, documents, agents or employees, or premises if reasonably required by authorized officials of the State, the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under paragraph (a).

**48. RECYCLING:** General Provision No. 48 is hereby deleted.

**49. CHILD SUPPORT COMPLIANCE ACT:** For any contract in excess of \$100,000, the contractor acknowledges in accordance with PCC Section 7110, that:

- a) The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
- b) The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

**50. AMERICANS WITH DISABILITIES ACT:** Contractor assures the State that Contractor complies with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq).



**51. ELECTRONIC WASTE RECYCLING ACT OF 2003: General Provision No. 51 is hereby deleted.**

**52. USE TAX COLLECTION:** In accordance with PCC Section 10295.1, Contractor certifies that it complies with the requirements of Section 7101 of the Revenue and Taxation Code. Contractor further certifies that it will immediately advise State of any change in its retailer's seller's permit or certification of registration or applicable affiliate's seller's permit or certificate of registration as described in subdivision (a) of PCC Section 10295.1.

**53. EXPATRIATE CORPORATIONS:** Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC Section 10286 and 10286.1, and is eligible to contract with the State.

**54. DOMESTIC PARTNERS:** For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that the contractor is in compliance with Public Contract Code section 10295.3.

**2.11.4 STATES OF GEORGIA, OKLAHOMA, SOUTH CAROLINA AND WASHINGTON**

The following applies only purchases made by entities designed by the States of Georgia, Oklahoma, South Carolina and Washington and are authorized by laws in each respective state.

Vendor will add the following state procurement fees to its contract prices with MMCAP. These will be considered "pass through" fees paid by the affected MMCAP Participating Facilities in the applicable state in addition to the cost of the Vendor's goods or services.

State Procurement Fees	
State	Administrative Fee Percentage
Georgia	2%
Oklahoma	1%
South Carolina	1%
Washington	0.74%

Upon distribution of all vaccine pursuant to this contract, but no later than April 1, 2015, Vendor will pay to the corresponding state recipient listed below the total amount collected during the term of this contract for net sales applicable to that state.

Sales reports must be in Excel spreadsheet format and must contain the following fields: Vendor, Part Number/SKU, Item Description, Customer Name, NIGP Code, Unit of Measure (Packaging), Volume Quantity, Order Date, Date Delivered, List Price, Contract Price, Total Contract Spend, Total State Procurement Fee Owed Off Contract Price.

**Georgia payments and reports must be sent to:**

Department of Administrative Services  
Finance & Administration Division  
Finance and Administration Division Director  
Sloppy Floyd Building  
200 Piedmont Avenue, S.E.

Suite 1820, West Tower  
Atlanta, Georgia 30334-9010

**Oklahoma payments and reports must be sent to:**

(U.S. POSTAL SERVICE)  
Oklahoma Department of Central Services,  
Central Purchasing Division  
P.O. Box 528803  
Oklahoma City, OK 73152

(COMMON CARRIER)  
Oklahoma Department of Central Services,  
Central Purchasing Division  
2401 N. Lincoln, Suite 116  
Oklahoma City, OK 73105

**South Carolina payments and reports must be sent to:**

Materials Management Office  
Attn: Contract Admin. Fee  
1201 Main Street, Suite 600  
Columbia, S.C. 29201.  
Payments must be made to the order of the Materials Management Office.

Auditing and Contract Close Out. In addition to the Audit clause of Article 6 of this contract, all sales reports and Fee payments will be subject to audit by the applicable State requesting the procurement fee.

Late Payment Fee. All amounts that become payable by the Vendor under this contract must bear simple interest from the date due until paid unless paid within 30 calendar days of becoming due. The interest rate will be the highest prime rate (as published in The Wall Street Journal) plus 2% per annum (unless a higher rate is provided by law, but in no event be greater than the maximum interest rate permitted by law), will be variable, and will be adjusted effective at the close of business on the day of any change in the prime rate.

In the event the Vendor fails to make any payment when due, Vendor will be liable to the applicable state for all expenses, court costs, and attorneys' fees (including inside counsel) incurred in enforcing the terms and conditions of this contract.

**Washington payments and reports must be sent to:**

Fees are applicable only to facilities governed by the State of Washington (e.g., cities and counties would not be subject to this fee).

State of Washington, Department of Enterprise Services  
Finance Department  
1500 Jefferson Street  
Mail Stop 41460  
Olympia, WA 98501

DES reserves the right to audit, or have a designated third party audit, applicable records to ensure that the DES has been properly invoiced and all Fees have been paid. Failure to accurately report Total Net Sales, to submit a timely Sales Report, or remit timely payment of the Fee, may be cause for contract termination, the charging of interest or penalties, or the exercise of other remedies provided by law.

Procurement Fee payment must reference the Contract number, Work Request Number (if applicable) and the year and quarter for which the Fee is being remitted.

**2.11.5 ALL OTHER STATES**

In the event any other MMCAP Participating Facility requires additional contract terms or conditions or collects a service or transaction fee or other type of administrative fee from the Vendor, those terms and conditions or fees must be amended into the MMCAP contract. For example, if a Member state requires a one percent (1%) service fee to be paid by the MMCAP-contracted Vendor, the MMCAP Participating Facility must present the information to MMCAP and an amendment to the contract will be issued that will change the cost of the products to that state to include the fee.

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**2014-2015**  
**MMCAP Influenza Vaccine**  
**ORDER FORM** (MMS 14003)

Date
GPO Affiliation

Telephone	Fax	Purchase Order Number
FFF Account Number		State License Number
Order Placed By		Email Address
Customer's Special Instructions		

<b>Ship To</b>	<b>Bill To</b>
Attn:	Attn:

**PREFERRED DELIVERY DATE:** \_\_\_\_\_ If your preferred delivery date is not available, an FFF representative will call you to confirm an alternate date.

☐ I accept delivery as availability permits (ANY TIME BEFORE requested delivery date).

☐ I only accept delivery within one (1) week of requested delivery date.

Item No.	Description	Dose	U/M	Price**	Qty. In Boxes or Vials
<b>Novartis</b>					
FLU111710	Fluvirin® Influenza Virus Vaccine 5mL 10-dose vial 4 years of age and older (no latex)	\$7.172**	Vial	\$71.72**	
FLU111702	Fluvirin® Luer Lock Influenza Virus Vaccine 0.5mL prefilled syringes, needleless, 10 per box 4 years of age and older	\$7.874**	Box of 10	\$78.74**	
FLU061301	Flucelvax® Influenza Virus Vaccine 0.5mL prefilled syringes, needleless, 10 per box 18 years of age and older (no preservatives or antibiotics)	\$9.521**	Box of 10	\$95.21**	

\*\*Exclusive of Federal Excise Tax of \$0.75 per dose.

**Novartis Returnability**  
Up to 30%, per presentation type, of doses are eligible for return.  
*Supersedes all previous returnable programs.*

<b>Sanofi Pasteur</b>					
FLU139315	Fluzone® Influenza Virus Vaccine 5mL 10-dose vial 6 months of age and older (no latex)	\$8.316**	Vial	\$83.16**	
FLU101450	Fluzone® Influenza Virus Vaccine 0.5mL prefilled syringes, needleless, 10 per box 36 months of age and older (no preservatives or latex)	\$9.395**	Box of 10	\$93.95**	
FLU041415	Fluzone® Quadrivalent Influenza Virus Vaccine 5mL 10-dose vial 6 months of age and older	\$14.283**	Vial	\$142.83**	
FLU051425	Fluzone® Quadrivalent Influenza Virus Vaccine 0.25mL prefilled syringes, needleless, 10 per box 6-35 months of age (no preservatives or latex)	\$18.721**	Box of 10	\$187.21**	
FLU041450	Fluzone® Quadrivalent Influenza Virus Vaccine 0.5mL prefilled syringes, needleless, 10 per box 36 months of age and older (no preservatives or latex)	\$14.979**	Box of 10	\$149.79**	
FLU041410	Fluzone® Quadrivalent Influenza Virus Vaccine 0.5mL single-dose vials, 10 per box 36 months of age and older (no preservatives or latex)	\$15.731**	Box of 10	\$157.31**	
FLU139465	Fluzone® High-Dose Influenza Virus Vaccine 0.5mL prefilled syringes, needleless 65 years of age and older (no preservatives or latex)	\$27.463**	Box of 10	\$274.63**	
FLU070855	Fluzone® Intradermal Influenza Virus Vaccine 0.1mL prefilled microinjection system, 10 per box 18 through 64 years of age (no preservatives or latex)	\$13.86**	Box of 10	\$138.60**	

\*\*Exclusive of Federal Excise Tax of \$0.75 per dose.

**Sanofi Pasteur Returnability**  
Up to 30%, per presentation type, of doses are eligible for return.  
*Supersedes all previous returnable programs.*

<b>CSL</b>					
FLU200410	Afluria® Influenza Virus Vaccine 5mL 10-dose vial 5 years of age and older (no latex) (ACIP recommends 9 years of age and older)	\$8.00**	Vial	\$80.00**	
FLU200401	Afluria® Influenza Virus Vaccine 0.5mL prefilled syringes, needleless, 10 per box 5 years of age and older (no preservatives or latex) (ACIP recommends 9 years of age and older)	\$9.00**	Box of 10	\$90.00**	

\*\*Exclusive of Federal Excise Tax of \$0.75 per dose.

**CSL Returnability**  
Up to 30%, per presentation type, of doses are eligible for return.  
*Supersedes all previous returnable programs.*



Item No.	Description	Dose	U/M	Price**	Qty. in Boxes or Vials
<b>[ GlaxoSmithKline ]</b>					
FLU090007	FluLaval® Influenza Virus Vaccine 5mL 10-dose vial 3 years of age and older (no latex)	\$6.69**	Vial	\$66.90**	
FLU090511	FluLaval® Quadrivalent Influenza Virus Vaccine 5mL 10-dose vial 3 years of age and older (no latex)	\$13.73**	Vial	\$137.30**	
FLU090550	FluLaval® Quadrivalent Influenza Virus Vaccine 0.5mL prefilled syringes, needleless, 10 per box 36 months of age and older (no preservatives or latex)	\$14.70**	Box of 10	\$147.00**	
FLU089052	Fluarix® Influenza Virus Vaccine 0.5mL prefilled syringes, needleless, 10 per box 3 years of age and older (no preservatives)	\$9.55**	Box of 10	\$95.50**	Wallisted by GSK†
FLU010052	Fluarix® Quadrivalent Influenza Virus Vaccine 0.5mL prefilled syringes, needleless, 10 per box 3 years of age and older (no preservatives)	\$14.70**	Box of 10	\$147.00**	

\*\*Exclusive of Federal Excise Tax of \$0.75 per dose.

GlaxoSmithKline Returnability

Up to 30%, per presentation type, of doses are eligible for return.

Supersedes all previous returnable programs.

†Choosing an alternative is highly recommended.

GSK cannot guarantee fulfilling orders.

**[ MedImmune ]**

FLU011210	FluMist® Quadrivalent Influenza Vaccine Live, Intranasal 0.2mL prefilled, single-use intranasal spray 2 years to 49 years of age (no preservatives or latex)	\$17.34**	Box of 10	\$173.40**	
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\*\*Exclusive of Federal Excise Tax of \$0.75 per dose.

**[ Protein Sciences ]**

FLU001410	FluBlok Influenza Vaccine 0.5mL single-dose vials, 10 per box 18 through 49 years of age (no eggs, influenza virus, preservatives, antibiotics or latex)	\$32.00**	Vial	\$320.00**	
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\*\*Exclusive of Federal Excise Tax of \$0.75 per dose.

Returnability - 30% of doses are eligible for return.

**Total Order Quantity**

Customer represents warrants and agrees that Customer is purchasing products from FFF for its own use and use by its affiliated healthcare providers in delivering services to patients and not for resale. Customer acknowledges that FFF is relying on this representation in making its decision to sell products to Customer.

Note: Several state purchasing agencies require fees added to the contract price -- 1% MyFloridaMarketPlace system transaction fee, 1% California DGS procurement fee (not applicable to sales within the City of Los Angeles), 2% Georgia procurement fee, 1% South Carolina procurement fee, 1% Oklahoma procurement fee and 0.74% for the state of Washington.

FFF will also pass taxes and fees through to customers in states that impose healthcare taxes and fees for sales of pharmaceuticals to customers in their states.

Please refer to each manufacturer's specific terms regarding discounts, rebates and return policies.

Please complete and fax this form to FFF Enterprises: (800) 418-4333.  
If you have questions, call (800) 843-7477 or visit MyFluVaccine.com.

I have ordered the quantities listed above and agree to the terms that apply:

Authorized Signature:

Date:

Thank you for supporting FFF's  
Guaranteed Channel Integrity!



MMS14003

Exhibit 1

Rev 01232014

## AMENDMENT ONE TO MMCAP CONTRACT NO. MMS14003

**THIS AMENDMENT** is by and between the State of Minnesota, acting through its commissioner of Administration ("State") on behalf of the Minnesota Multistate Contracting Alliance for Pharmacy ("MMCAP") and **FFF Enterprises, Inc.** ("Vendor" or "FFF") 41093 County Center Drive, Temecula, CA 92591.

MMCAP has a contract with the Vendor identified as Contract No. MMS14003 (Original Contract). MMCAP and the Vendor are willing to amend the Original Contract as stated below.

## Contract Amendment

Effective February 24, 2014

Table 1 of Article 2.1 *Products of the Original Contract* is amended to remove the following product for the 2014-2015 season.

Table 1

Mfr. Name	Product Name	Container Type	Pack Size	Price Per Container (Prices do not include FET)	WA Cost (Prices do not include FET)***	FL, CA, OK, SC Cost (Prices do not include FET)***	Georgia Cost (Prices do not include FET)***	Max. Quantity to MMCAP
GSK*†	Fluarix TIV	0.5ml prefilled syringes	Pack of 10	95.50	96.21	96.46	97.41	500,000 doses

\*Vendor will match contract award price of manufacturer (GSK) if manufacturer is awarded an MMCAP contract and if the contracted price is less expensive. Vendor cannot adhere to additional discounts offered by the manufacturer.

†Choosing an alternative is highly recommended. Manufacturer (GSK) cannot guarantee fulfilling product orders for TIV Fluarix PFS for the 2014-2015 season.

**Except as herein amended**, the provisions of the Original Contract between the parties hereto are expressly reaffirmed and remain in full force and effect.

## 1. FFF Enterprises, Inc.

The Vendor certifies that the appropriate person(s) have executed this Agreement on behalf of the Vendor as required by applicable articles, bylaws, resolutions or ordinances.

By:

Title:

Date:

Julie B. Hall  
Director of Corporate Accounts  
2-27-14

## 2. STATE OF MINNESOTA FOR MMCAP

In accordance with Minn. Stat. § 16C.03, subd. 3

By:

Title:

Date:

Sandra Christensen  
Pharmacy Analyst  
03-19-14

## 3. COMMISSIONER OF ADMINISTRATION

In accordance with Minn. Stat. § 16C.05, subd. 2

By:

Date:

Quang Pham, MBA  
March 19, 2014



FFF Enterprises Inc.  
Contract MMS14003

Amendments 2 - 5  
are not posted for  
viewing

## AMENDMENT 6 TO MMCAP CONTRACT NO. MMS14003

**THIS AMENDMENT** is by and between the State of Minnesota, acting through its commissioner of Administration ("State") on behalf of the Minnesota Multistate Contracting Alliance for Pharmacy ("MMCAP") and FFF Enterprises, Inc. ("Vendor" or "FFF") 41093 County Center Drive, Temecula, CA 92591.

MMCAP has a contract with the Vendor identified as Contract No. MMS14003 (Original Contract). MMCAP and the Vendor are willing to amend the Original Contract as stated below.

### Contract Amendment

Effective January 12, 2015

**Revision 1: Article 1.2 Expiration date:** December 31, 2016, with the option to extend for two additional one-year terms as mutually agreed upon and achieved through a fully executed amendment(s); or as cancelled pursuant to clause 22.

**Revision 2: Table 1 of Article 2.1 of the Original Contract is amended to add the following products for the 2015-2016 season.**

Table 1

Mfr. Name	Product Name	Container Type	Pack Size	Price Per Container (Prices do not include FET)	FL, OK, SC Cost (Prices do not include FET)***	Georgia Cost (Prices do not include FET)***	Max. Quantity to MMCAP
GSK*	Fluarix Quadrivalent	0.5ml prefilled syringes	Pack of 10	148.40	149.88	151.37	500,000 doses
GSK*	FluLaval Quadrivalent	5 ml MD vial	10 dose	138.70	140.09	141.47	1 million doses
bioCSL	Afluria TIV	0.5ml prefilled syringes	Pack of 10	100.00	101.00	102.00	1 million doses
bioCSL	Afluria TIV	5 ml MD vial	10 dose	85.00	85.85	86.70	1 million doses
MedImmune	Flumist	Nasal sprayer	Pack of 10	181.30	183.11	184.93	1 million doses
Novartis Vaccines**	Flucelvax	0.5ml prefilled syringes	Pack of 10	79.98	80.78	81.58	1 million doses
Novartis Vaccines**	Fluvirin TIV	0.5ml prefilled syringes	Pack of 10	79.98	80.78	81.58	2 million doses
Novartis Vaccines**	Fluvirin TIV	5 ml MD vial	10 dose	71.44	72.15	72.87	2 million doses
Protein Sciences	Flublok	0.5ml prefilled syringes	Pack of 10	320.00	323.20	326.40	100,000 doses

Mfr. Name	Product Name	Container Type	Pack Size	Price Per Container (Prices do not include FET)	FL, OK, SC Cost (Prices do not include FET)***	Georgia Cost (Prices do not include FET)***	Max. Quantity to MMCAP
Sanofi Pasteur	Fluzone TIV	5ml MD vial; 6 mnths of age and older	10 dose	83.97	84.81	85.65	1 million doses
Sanofi Pasteur	Fluzone Quadrivalent	5ml MD vial; 6 mnths of age and older	10 dose	142.83	144.26	145.69	1 million doses
Sanofi Pasteur	Fluzone Quadrivalent No Preservative	0.5ml prefilled syringe; 36 months of age and older;	Pack of 10	151.31	152.82	154.34	1 million doses
Sanofi Pasteur	Fluzone Quadrivalent No Preservative	0.5ml single dose vials; 36 months of age and older;	Pack of 10	158.87	160.46	162.05	200,000 doses
Sanofi Pasteur	Fluzone Quadrivalent No Preservative Pediatric Dose	0.25ml prefilled syringe; 6 months to 35 months of age	Pack of 10	194.77	196.72	198.67	400,000 doses
Sanofi Pasteur	Fluzone High-dose, No Preservative	0.5ml prefilled syringe; 65 years and older	Pack of 10	302.32	305.34	308.37	500,000 doses
Sanofi Pasteur	Fluzone Quadrivalent Intradermal, No Preservative	Prefilled microinject; 18 years thru 64 years	Pack of 10	174.92	176.67	178.42	1 million doses

\*Vendor will match contract award price of manufacturer (GSK) if manufacturer is awarded an MMCAP contract and if the contracted price is less expensive. Vendor cannot adhere to additional discounts offered by the manufacturer.

\*\*Vendor will match contract award of manufacturer (Novartis) if manufacturer is awarded an MMCAP contract and if the contracted price is less expensive. Pre-book orders must be placed by June 1 to achieve this pricing.

\*\*\*Reference 2.11 State Specific Requirements

Except as herein amended, the provisions of the Original Contract between the parties hereto are expressly reaffirmed and remain in full force and effect.

**1. FFF Enterprises, Inc.**

The Vendor certifies that the appropriate person(s) have executed this Agreement on behalf of the Vendor as required by applicable articles, bylaws, resolutions, or ordinances.

By:

Paul R. Hill

Title:

Director Vaccine Sales

Date:

1-23-15

**2. STATE OF MINNESOTA FOR MMCAP**

In accordance with Minn. Stat. § 16C.03, subd. 3

By:

Samaha Christensen

Title:

Pharmacy Analyst

Date:

1-26-2015

**3. COMMISSIONER OF ADMINISTRATION**

In accordance with Minn. Stat. § 16C.05, subd. 2

By:

Shirley Christoff

Date:

Jan. 26, 2015



FFF Enterprises  
Contract MMS14003

Amendment 7  
is not posted for viewing

## AMENDMENT NO. 8 TO MMCAP CONTRACT NO. MMS14003

THIS AMENDMENT is by and between the State of Minnesota acting through its commissioner of Administration ("State") on behalf of the Minnesota Multistate Contracting Alliance for Pharmacy ("MMCAP") and FFF Enterprises, 41093 County Center Drive, Temecula, CA 92591 ("Vendor").

MMCAP has a contract with the Vendor identified as Contract No. MMS14003 (Original Contract). MMCAP and the Vendor are willing to amend the Original Contract as stated below.

### Contract Amendment (JV)

Effective when signed Section 6 of Original Contract is deleted and replaced with the following:

**6. State Audits.** Under Minn. Stat. § 16C.05, subd. 5, the books, records, documents, and accounting procedures and practices relevant to this Contract are subject to examination by the State, MMCAP, and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six (6) years for the end of this Contract. This clause extends to MMCAP Member Facilities as it relates to business conducted with and sales to that Member Facility.

Except as herein amended, the provisions of the Original Contract between the parties hereto are expressly reaffirmed and remain in full force and effect.

#### 1. FFF ENTERPRISES

The Vendor certifies that the appropriate person(s) have executed this Agreement on behalf of the Vendor as required by applicable articles, bylaws, resolutions, or ordinances.

By: [Signature]  
Title: C.O.O.  
Date: 10/29/15

#### 2. STATE OF MINNESOTA FOR MMCAP

In accordance with Minn. Stat. § 16C.03, subd. 3

By: [Signature]  
Title: SPA P  
Date: 11/2/2015

#### 3. COMMISSIONER OF ADMINISTRATION

In accordance with Minn. Stat. § 16C.05, subd. 2

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

By: [Signature]  
Title: \_\_\_\_\_  
Date: Nov. 2, 2015

## AMENDMENT NINE TO MMCAP CONTRACT NO. MMS14003

**THIS AMENDMENT** is by and between the State of Minnesota, acting through its commissioner of Administration ("State") on behalf of the Minnesota Multistate Contracting Alliance for Pharmacy ("MMCAP") and **FFF Enterprises, Inc.** ("Vendor" or "FFF") 41093 County Center Drive, Temecula, CA 92591.

MMCAP has a contract with the Vendor identified as Contract No. MMS14003 (Original Contract). MMCAP and the Vendor are willing to amend the Original Contract as stated below.

### Contract Amendment

(JV)

**Effective January 8, 2016**

**Revision 1: Article 1.2 Expiration date:** December 31, 2017, with the option to extend for one additional one-year term as mutually agreed upon and achieved through a fully executed amendment(s); or as cancelled pursuant to clause 22.

**Revision 2: Table 1 of Article 2.1 of the Original Contract is amended to add the following products for the 2016-2017 season.**

Table 1

Mfr. Name	Product Name	Container Type, Product Age Indication	Pack Size	Price Per Container (Prices do not include FET)	FL, OK, SC Cost (Prices do not include FET)***	Georgia Cost (Prices do not include FET)***	Max. Quantity to MMCAP
GSK*	Fluarix Quadrivalent	0.5ml prefilled syringes, 3 years & older	Pack of 10	155.88	157.44	159.00	500,000 doses
GSK*	FluLaval Quadrivalent	5 ml MD vial, 3 years & older	10 dose	145.69	147.15	148.60	1 million doses
Seqirus	Afluria TIV	0.5ml prefilled syringes, 5 years & older	Pack of 10	100.97	101.98	102.99	1 million doses
Seqirus	Afluria TIV	5 ml MD vial, 5 years & older	10 dose	86.13	86.99	87.85	1 million doses
MedImmune	Flumist	Nasal sprayer, 2-49 years	Pack of 10	181.30	183.11	184.93	1 million doses
Seqirus	Fluad	0.5ml prefilled syringes, 65 years & older	Pack of 10	288.25	291.13	294.02	500,000 doses
Seqirus	Flucelvax Quadrivalent**	0.5ml prefilled syringes 18 years & older	Pack of 10	141.72	143.14	144.55	1 million doses
Seqirus	Fluvirin TIV	0.5ml prefilled syringes	Pack of 10	100.97	101.98	102.99	2 million doses
Seqirus	Fluvirin TIV	5 ml MD vial	10 dose	86.13	86.99	87.85	2 million doses
Protein Sciences	Flublok	0.5ml prefilled syringes	Pack of 10	350.00	353.50	357.00	100,000 doses



Mfr. Name	Product Name	Container Type, Product Age Indication	Pack Size	Price Per Container (Prices do not include FET)	FL, OK, SC Cost (Prices do not include FET)***	Georgia Cost (Prices do not include FET)***	Max. Quantity to MMCAP
Sanofi Pasteur	Fluzone Quadrivalent	5ml MD vial; 6 mnths of age & older	10 dose	147.17	148.64	150.11	200,000 doses
Sanofi Pasteur	Fluzone Quadrivalent No Preservative	0.5ml prefilled syringe; 36 months of age & older;	Pack of 10	158.83	160.42	162.01	400,000 doses
Sanofi Pasteur	Fluzone Quadrivalent No Preservative	0.5ml single dose vials; 36 months of age & older;	Pack of 10	163.60	165.24	166.87	200,000 doses
Sanofi Pasteur	Fluzone Quadrivalent No Preservative Pediatric Dose	0.25ml prefilled syringe; 6 months to 35 months of age	Pack of 10	208.40	210.48	212.57	200,000 doses
Sanofi Pasteur	Fluzone High-dose, No Preservative	0.5ml prefilled syringe; 65 years & older	Pack of 10	356.74	360.31	363.87	200,000 doses
Sanofi Pasteur	Fluzone Quadrivalent Intradermal, No Preservative	Prefilled microinject; 18 years thru 64 years	Pack of 10	158.83	160.42	162.01	400,000 doses

All prices listed are not inclusive of Federal Excise Tax of \$0.75/dose.

\*Vendor will match contract award price of manufacturer (GSK) if manufacturer is awarded an MMCAP contract and if the contracted price is less expensive. Vendor cannot adhere to additional discounts offered by the manufacturer.

\*\*Flucelvax Quadrivalent 0.5ml PFS is pending FDA approval, expected approximately February 2016. Inquire with Vendor customer service when placing orders.

\*\*\*Reference 2.11 State Specific Requirements

Revision 3: Article 2.10 Return Goods/Credits: Is amended to add Seqirus= Up to 30% of doses are eligible for return.

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**Except as herein amended**, the provisions of the Original Contract between the parties hereto are expressly reaffirmed and remain in full force and effect.

**1. FFF Enterprises, Inc.**

The Vendor certifies that the appropriate person(s) have executed this Agreement on behalf of the Vendor as required by applicable articles, bylaws, resolutions, or ordinances.

By: Sue D. Hill  
Title: Director of Vaccine Sales  
Date: 1-12-16

**2. STATE OF MINNESOTA FOR MMCAP**

In accordance with Minn. Stat. § 16C.03, subd. 7

By: Sup. Vondra Keady, CHIT  
Title: SPA P  
Date: 1/13/2016

**3. COMMISSIONER OF ADMINISTRATION**

In accordance with Minn. Stat. § 16C.05, subd. 2

By: Sara Turbow, PharmD, BCPS  
Date: 1-13-16

# FFF Enterprises Contract MMS14003

Amendments 10 - 12  
are not posted for  
viewing



## AMENDMENT THIRTEEN TO MMCAP CONTRACT NO. MMS14003

**THIS AMENDMENT** is by and between the State of Minnesota, acting through its commissioner of Administration ("State") on behalf of the Minnesota Multistate Contracting Alliance for Pharmacy ("MMCAP") and **FFF Enterprises, Inc.** ("Vendor" or "FFF") 41093 County Center Drive, Temecula, CA 92591.

MMCAP has a contract with the Vendor identified as Contract No.MMS14003 (Original Contract). MMCAP and the Vendor are willing to amend the Original Contract as stated below.

### Contract Amendment

**Effective: January 18, 2017**

**Revision 1: Table 1 of Article 2.1 of the Original Contract is amended to add the following products for the 2017-2018 season.**

Table 1

Mfr. Name	Product Name	Container Type, Product Age Indication	Pack Size	Price Per Container (Prices do not include FET)	FL, OK, SC Cost (Prices do not include FET)**	Alaska Cost(Prices do not include FET)**	Georgia Cost (Prices do not include FET)**	Max. Quantity to MMCAP
GSK*	Fluarix Quadrivalent	0.5ml prefilled syringes, 3 years & older	Pack of 10	155.88	157.44	158.22	159.00	500,000 doses
GSK*	FluLaval Quadrivalent	5 ml MD vial; 6 mo. & older	10 dose	145.69	147.15	147.88	148.60	1 million doses
Seqirus	Afluria TIV	0.5ml prefilled syringes; 5 years & older	Pack of 10	108.18	109.26	109.80	110.34	50,000 doses
Seqirus	Afluria TIV	5 ml MD vial; 5 years & older	10 dose	99.07	100.06	100.56	101.05	7,000 doses
Seqirus	Afluria Quadrivalent	0.5ml prefilled syringes; 18 years & older	Pack of 10	136.23	137.59	138.27	138.95	1 million doses
Seqirus	Afluria Quadrivalent	5 ml MD vial; 18 years & older	10 dose	126.92	128.19	128.82	129.46	1 million doses
MedImmune	Flumist	Nasal sprayer; 2-49 years	Pack of 10	190.49	192.40	193.35	194.30	1 million doses
Seqirus	Fluad	0.5ml prefilled syringes; 65 years & older	Pack of 10	390.09	393.99	395.94	397.89	500,000 doses
Seqirus	Flucelvax Quadrivalent	0.5ml prefilled syringes; 4 years & older	Pack of 10	156.64	158.21	158.99	159.77	1 million doses
Seqirus	Flucelvax Quadrivalent	5 ml MD vial; 4 years & older	10 dose	143.61	145.05	145.76	146.48	500,000 doses

Mfr. Name	Product Name	Container Type, Product Age Indication	Pack Size	Price Per Container (Prices do not include FET)	FL, OK, SC Cost (Prices do not include FET)**	Alaska Cost (Prices do not include FET)**	Georgia Cost (Prices do not include FET)**	Max. Quantity to MMCAP
Seqirus	Fluvirin TIV	0.5ml prefilled syringes; 4 years & older	Pack of 10	108.18	109.26	109.80	110.34	17,000 doses
Seqirus	Fluvirin TIV	5 ml MD vial; 4 years & older	10 dose	99.07	100.06	100.56	101.05	50,000 doses
Protein Sciences	Flublok Quadrivalent	0.5ml prefilled syringes; 18 years & older	Pack of 10	400.00	404.00	406.00	408.00	100,000 doses
Sanofi Pasteur	Fluzone Quadrivalent	5ml MD vial; 6 mo. of age & older	10 dose	147.21	148.68	149.42	150.15	200,000 doses
Sanofi Pasteur	Fluzone Quadrivalent No Preservative	0.5ml prefilled syringe; 3 yrs & older;	Pack of 10	158.87	160.46	161.25	162.05	400,000 doses
Sanofi Pasteur	Fluzone Quadrivalent No Preservative	0.5ml single dose vials; 3 yrs & older;	Pack of 10	158.87	160.46	161.25	162.05	200,000 doses
Sanofi Pasteur	Fluzone Quadrivalent No Preservative Pediatric Dose	0.25ml prefilled syringe; 6 mo. to 35 months of age	Pack of 10	158.87	160.46	161.25	162.05	200,000 doses
Sanofi Pasteur	Fluzone High-dose, No Preservative	0.5ml prefilled syringe; 65 years & older	Pack of 10	402.85	406.88	408.89	410.97	200,000 doses
Sanofi Pasteur	Fluzone Quadrivalent Intradermal, No Preservative	Prefilled microinject; 18 years thru 64 years	Pack of 10	158.87	160.46	161.25	162.05	400,000 doses

All prices listed are not inclusive of Federal Excise Tax of \$0.75/dose.

\*Vendor will match contract award price of manufacturer (GSK) if manufacturer is awarded an MMCAP contract and if the contracted price is less expensive. Vendor cannot adhere to additional discounts offered by the manufacturer. GSK contract prices above require all customers to have a signed DEC form in the GSK system to receive MMCAP contract pricing. Contact MMCAP to obtain a GSK DEC form if one is not already been completed.

**\*\*Reference 2.11 State Specific Requirements**

**Revision 2: Article 2.10 Return Goods/Credits:** Is amended to include the following for the 2017-2018 season.

**2.10 Returned Goods/Credits.** MMCAP Participating Facilities may return contracted purchased product to FFF Enterprises, Inc. via the following guidelines for credit. Contact Vendor's Customer Care Team at 1-800-843-7477.

GSK= Up to 30% of doses are eligible for return

Novartis= Up to 30% of doses are eligible for return

Protein Sciences= Up to 30% of doses are eligible for return

Seqirus= Up to 30% of doses are eligible for return

Sanofi Pasteur= Up to 30% of doses are eligible for return

Medimmune= Up to 100% of doses are eligible for return for orders placed by June 30, 2017. Up to 50% of doses are eligible for return for orders placed after June 30, 2017.

Contact the customer care team for further information. Vendor will supply a copy of its returned goods/credit policy to MMCAP Participation Facilities upon request.

**Revision 3:** Effective when signed, **Article 2.7.3 Administrative Fee**, of the Original Contract, is amended to change the administrative fee remittance address to:

Financial Management & Reporting - MMCAP  
50 Sherburne Avenue, Suite 309  
St. Paul, MN 55155

**Except as herein amended**, the provisions of the Original Contract between the parties hereto are expressly reaffirmed and remain in full force and effect.

**1. FFF ENTERPRISES, INC.**

The Vendor certifies that the appropriate person(s) have executed this Agreement on behalf of the Vendor as required by applicable articles, bylaws, resolutions, or ordinances.

By: [Signature]  
Title: Director Vaccine Sales  
Date: 1-20-2017

**2. STATE OF MINNESOTA FOR MMCAP**

In accordance with Minn. Stat. § 16C.03, subd. 3

By: [Signature]  
Title: Contract Analyst  
Date: 1-23-17

**3. COMMISSIONER OF ADMINISTRATION**

In accordance with Minn. Stat. § 16C.05, subd. 2

By: [Signature]  
Date: 1/23/2017



## AMENDMENT FOURTEEN TO MMCAP CONTRACT NO. MMS14003

**THIS AMENDMENT** is by and between the State of Minnesota, acting through its commissioner of Administration ("State") on behalf of the Minnesota Multistate Contracting Alliance for Pharmacy ("MMCAP") and **FFF Enterprises, Inc.** ("Vendor" or "FFF") 41093 County Center Drive, Temecula, CA 92591.

MMCAP has a contract with the Vendor identified as Contract No. MMS14003 (Original Contract). MMCAP and the Vendor are willing to amend the Original Contract as stated below.

### Contract Amendment

**Effective:** March 30, 2017 or when fully executed whichever is later.

**Revision 1:** Article 1.2 Expiration date: December 31, 2018, or as cancelled pursuant to clause 22.

**Revision 2:** Table 1 of Article 2.1 of the Original Contract is amended to add the following product for the 2017-2018 season on an allocated basis, contact Vendor for availability.

Table 1

Mfr. Name	Product Name	Container Type, Product Age Indication	Pack Size	Price Per Container (Prices do not include FET)	FL, OK, SC Cost (Prices do not include FET)**	Alaska Cost (Prices do not include FET)**	Georgia Cost (Prices do not include FET)**	Max. Quantity to MMCAP
GSK*	FluLaval Quadrivalent	0.5ml prefilled syringes, 6 mo. & older	Pack of 10	\$155.88	\$157.44	\$158.22	\$159.00	Available upon approved allocation only.

All prices listed are not inclusive of Federal Excise Tax of \$0.75/dose.

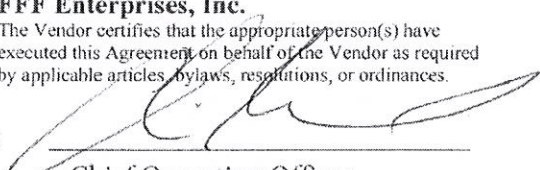
\*Vendor will match contract award price of manufacturer (GSK) if manufacturer is awarded an MMCAP contract and if the contracted price is less expensive. Vendor cannot adhere to additional discounts offered by the manufacturer. GSK contract prices above require all customers to have a signed DEC form in the GSK system to receive MMCAP contract pricing. Contact MMCAP to obtain a GSK DEC form if one is not already been completed.

\*\*Reference 2.11 State Specific Requirements

**Except as herein amended**, the provisions of the Original Contract between the parties hereto are expressly reaffirmed and remain in full force and effect.

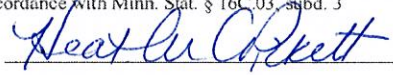
#### 1. FFF Enterprises, Inc.

The Vendor certifies that the appropriate person(s) have executed this Agreement on behalf of the Vendor as required by applicable articles, bylaws, resolutions, or ordinances.

By:   
Title: Chief Operating Officer  
Date: March 31, 2017

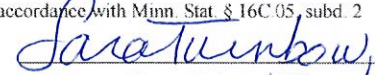
#### 2. STATE OF MINNESOTA FOR MMCAP

In accordance with Minn. Stat. § 16C.03, subd. 3

By:   
Title: \_\_\_\_\_  
Date: March 31, 2017

#### 3. COMMISSIONER OF ADMINISTRATION

In accordance with Minn. Stat. § 16C.05, subd. 2

By:  Pham D, BCPS  
Date: 3-31-17

## AMENDMENT NO. 15 TO MMCAP CONTRACT NO. MMS14003

**THIS AMENDMENT** is by and between the State of Minnesota acting through its commissioner of Administration ("State") on behalf of the Minnesota Multistate Contracting Alliance for Pharmacy ("MMCAP") and FFF Enterprises, Inc., 44000 Winchester Road, Temecula, CA 92590 ("Vendor").

MMCAP has a contract with the Vendor identified as Contract No. MMS14003 (Original Contract). MMCAP and the Vendor are willing to amend the Original Contract as stated below.

The State of Minnesota recently enacted legislation requiring Israel Anti-discrimination Language in all contracts valued over \$50,000. MMCAP and the Vendor are willing to amend the Original Contract as stated below

### Contract Amendment (MJ)

**Revision 1:** Effective when fully signed, the following new contract article will be added to the Original Contract:

**23 Certification of Nondiscrimination (In accordance with Minn. Stat. § 16C.053)**

Vendor certifies it does not engage in and has no present plans to engage in discrimination against Israel, or against persons or entities doing business in Israel, when making decisions related to the operation of the vendor's business. For purposes of this article, "discrimination" includes but is not limited to engaging in refusals to deal, terminating business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel, when such actions are taken in a manner that in any way discriminates on the basis of nationality or national origin and is not based on a valid business reason.

**Except as herein amended**, the provisions of the Original Contract between the parties hereto are expressly reaffirmed and remain in full force and effect.

**1. FFF ENTERPRISES, INC.**

The Vendor certifies that the appropriate person(s) have executed this Agreement on behalf of the Vendor as required by applicable articles, bylaws, resolutions or ordinances.

By: Sale N. Hill

Title: Director Vaccine Product Sales & Corporate Accounts

Date: December 8, 2017

**2. STATE OF MINNESOTA FOR MMCAP**

In accordance with Minn. Stat. § 16C.03, subd. 3

By: [Signature]

Title: SPA-C

Date: 12/11/2017

**3. COMMISSIONER OF ADMINISTRATION**

In accordance with Minn. Stat. § 16C.05, subd. 2

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

Title: \_\_\_\_\_

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

By: Sara Turnbow, PharmD, BCPS

Title: Pharmacist Sr.

Date: 12-11-17

## AMENDMENT SIXTEEN TO MMCAP CONTRACT NO. MMS14003

**THIS AMENDMENT** is by and between the State of Minnesota, acting through its commissioner of Administration ("State") on behalf of the Minnesota Multistate Contracting Alliance for Pharmacy ("MMCAP") and FFF Enterprises, Inc. ("Vendor" or "FFF") 41093 County Center Drive, Temecula, CA 92591.

MMCAP has a contract with the Vendor identified as Contract No. MMS14003 (Original Contract). MMCAP and the Vendor are willing to amend the Original Contract as stated below.

### Contract Amendment

**Effective:** January 16, 2018 or when all signatures are obtained.

**Revision 1:** Table 1 of Article 2.1 of the Original Contract is amended to add the following products for the 2018-2019 season.

Table 1

Mfr. Name	Product Name	Container Type, Product Age Indication	Pack Size	Price Per Container (Prices do not include FET)	FL, OK, SC Cost (Prices do not include FET)**	Alaska Cost (Prices do not include FET)**	Georgia Cost (Prices do not include FET)**	Max. Quantity to MMCAP
GSK*	Fluarix Quadrivalent	0.5ml prefilled syringes, 6 mo. & older	Pack of 10	155.88	157.44	158.22	159.00	500,000 doses
GSK*	FluLaval Quadrivalent	5 ml MD vial; 6 mo. & older	10 dose	145.69	147.15	147.88	148.60	1 million doses
GSK*	FluLaval Quadrivalent	0.5ml prefilled syringes, 6 mo. & older	Pack of 10	155.88	157.44	158.22	159.00	500,000 doses
Seqirus	Afluria Quadrivalent	0.5ml prefilled syringes; 5 years & older	Pack of 10	145.28	146.73	147.46	148.19	1 million doses
Seqirus	Afluria Quadrivalent	5 ml MD vial; 5 years & older	10 dose	135.33	136.68	137.36	138.04	1 million doses
Seqirus	Fluad	0.5ml prefilled syringes; 65 years & older	Pack of 10	411.75	415.87	417.93	419.99	500,000 doses
Seqirus	Flucelvax Quadrivalent	0.5ml prefilled syringes; 4 years & older	Pack of 10	145.28	146.73	147.46	148.19	1 million doses
Seqirus	Flucelvax Quadrivalent	5 ml MD vial; 4 years & older	10 dose	135.33	136.68	137.36	138.04	500,000 doses
Sanofi Pasteur	Flublok Quadrivalent	0.5ml prefilled syringes; 18 years & older	Pack of 10	448.04	452.52	454.76	457.00	100,000 doses



<b>Mfr. Name</b>	<b>Product Name</b>	<b>Container Type, Product Age Indication</b>	<b>Pack Size</b>	<b>Price Per Container (Prices do not include FET)</b>	<b>FL, OK, SC Cost (Prices do not include FET)**</b>	<b>Alaska Cost (Prices do not include FET)**</b>	<b>Georgia Cost (Prices do not include FET)**</b>	<b>Max. Quantity to MMCAP</b>
Sanofi Pasteur	Fluzone Quadrivalent	5ml MD vial; 6 mo. of age & older	10 dose	147.20	148.67	149.41	150.14	200,000 doses
Sanofi Pasteur	Fluzone Quadrivalent No Preservative	0.5ml prefilled syringe; 3 yrs & older;	Pack of 10	158.90	160.49	161.28	162.08	400,000 doses
Sanofi Pasteur	Fluzone Quadrivalent No Preservative	0.5ml single dose vials; 3 yrs & older;	Pack of 10	158.90	160.49	161.28	162.08	200,000 doses
Sanofi Pasteur	Fluzone Quadrivalent No Preservative Pediatric Dose	0.25ml prefilled syringe; 6 mo. to 35 months of age	Pack of 10	158.90	160.49	161.28	162.08	200,000 doses
Sanofi Pasteur	Fluzone High-dose, No Preservative	0.5ml prefilled syringe; 65 years & older	Pack of 10	448.04	452.52	454.76	457.00	200,000 doses

All prices listed are not inclusive of Federal Excise Tax of \$0.75/dose.

\*Vendor will match contract award price of manufacturer (GSK) if manufacturer is awarded an MMCAP contract and if the contracted price is less expensive. Vendor cannot adhere to additional discounts offered by the manufacturer. GSK contract prices above require all customers to have a signed DEC form in the GSK system to receive MMCAP contract pricing. Contact MMCAP to obtain a GSK DEC form if one is not already been completed, see Exhibit B.

**\*\*Reference 2.11 State Specific Requirements**

**Revision 2: Article 2.10 Return Goods/Credits:** Is amended to include the following for the 2018-2019 season.  
**2.10 Returned Goods/Credits.** MMCAP Participating Facilities may return contracted purchased product to FFF Enterprises, Inc. via the following guidelines for credit. Contact Vendor's Customer Care Team at 1-800-843-7477.  
 GSK= Up to 30% of doses are eligible for return  
 Seqirus= Up to 30% of doses are eligible for return  
 Sanofi Pasteur= Up to 30% of doses are eligible for return

Contact the customer care team for further information. Vendor will supply a copy of its returned goods/credit policy to MMCAP Participation Facilities upon request.

**Terms continue on next page.**

**Revision 3: 2018-2019 FFF Prebook order form added as Exhibit A.**

**Revision 4: GSK DEC FORM.** All MMCAP members prebooking GSK products must have a GSK DEC form on file. Fill out the DEC form and send it to the GSK email/fax listed on the form.

**Except as herein amended, the provisions of the Original Contract between the parties hereto are expressly reaffirmed and remain in full force and effect.**

**1. FFF Enterprises, Inc.**

The Vendor certifies that the appropriate person(s) have executed this Agreement on behalf of the Vendor as required by applicable articles, bylaws, resolutions, or ordinances.

By: S. L. N. Hall

Title: Director Vaccine Sales + Corp Accounts

Date: 1-19-2018

**2. STATE OF MINNESOTA FOR MMCAP**

In accordance with Minn. Stat. § 16C.03, subd. 3

By: L. J. Vandervoort

Title: SPA-C

Date: 1/19/2018

**3. COMMISSIONER OF ADMINISTRATION**

In accordance with Minn. Stat. § 16C.05, subd. 2

By: Sara Turnbull, PharmD, BCPS

Date: 1-19-18



2018-2019  
**MMCAP Influenza Vaccine**  
**ORDER FORM** (MMS 14003)

Exhibit A

Date
Contract Affiliation

Telephone	Fax	Purchase Order Number
FFF Account Number		State License Number
Order Placed By		Email Address
Customer's Special Instructions		

<b>Ship To</b>	<b>Bill To</b>
Attn:	Attn:

**PREFERRED DELIVERY DATE:** \_\_\_\_\_

The Preferred Delivery Date you've entered above for your order may arrive on or before this date. If there are any extreme delays to your order, you will receive a communication or an FFF representative will call you to confirm an alternate date.

**Loyalty Program**

Select Loyalty Program to enroll for this inclusive opportunity, and receive priority access on flu vaccines for the 2019-2020 season when you book your flu vaccine orders for the 2018-2019 season.

Item No.	Description	Dose	U/M	Price**	Qty. in Boxes or Vials	Loyalty* Program
<b>Seqirus</b>						
<b>Trivalent</b>						
FLU001803	<b>Fluad™ Influenza Virus Vaccine</b> 0.5mL prefilled syringes, needleless, 10 per box 65 years of age and older (no preservatives or latex)	<b>\$41.175**</b>	Box of 10	<b>\$411.75**</b>		<input type="checkbox"/>
<b>Quadrivalent</b>						
FLU241810	<b>Afluria® Quadrivalent Influenza Virus Vaccine</b> 5mL 10-dose vial 5 years of age and older (no latex)	<b>\$13.533**</b>	Vial	<b>\$135.33**</b>		<input type="checkbox"/>
FLU031801	<b>Afluria® Quadrivalent Influenza Virus Vaccine</b> 0.5mL prefilled syringes, needleless, 10 per box 5 years of age and older (no preservatives or latex)	<b>\$14.528**</b>	Box of 10	<b>\$145.28**</b>		<input type="checkbox"/>
FLU141810	<b>Flucelvax® Quadrivalent Influenza Virus Vaccine</b> 5mL 10-dose vial 4 years of age and older (no antibiotics or latex)	<b>\$13.533**</b>	Vial	<b>\$135.33**</b>		<input type="checkbox"/>
FLU031803	<b>Flucelvax® Quadrivalent Influenza Virus Vaccine</b> 0.5mL prefilled syringes, needleless, 10 per box 4 years of age and older (no preservatives, antibiotics or latex)	<b>\$14.528**</b>	Box of 10	<b>\$145.28**</b>		<input type="checkbox"/>

\*\*Exclusive of Federal Excise Tax of \$0.75 per dose

**Seqirus Returnability**

Up to 30%, per presentation type, of doses are eligible for return. Returns must be full, unopened boxes of 10, or vials only. No partials accepted.  
*Supersedes all previous returnable programs.*

**Sanofi Pasteur**


FLU062915	<b>Fluzone® Quadrivalent Influenza Virus Vaccine</b> 5mL 10-dose vial 6 months of age and older (no latex)	<b>\$14.72**</b>	Vial	<b>\$147.20**</b>		<input type="checkbox"/>
FLU051825	<b>Fluzone® Quadrivalent Influenza Virus Vaccine</b> 0.25mL prefilled syringes, needleless, 10 per box 6-35 months of age (no preservatives or latex)	<b>\$15.89**</b>	Box of 10	<b>\$158.90**</b>		<input type="checkbox"/>
FLU041850	<b>Fluzone® Quadrivalent Influenza Virus Vaccine</b> 0.5mL prefilled syringes, needleless, 10 per box 3 years of age and older (no preservatives or latex)	<b>\$15.89**</b>	Box of 10	<b>\$158.90**</b>		<input type="checkbox"/>
FLU041810	<b>Fluzone® Quadrivalent Influenza Virus Vaccine</b> 0.5mL single-dose vials, 10 per box 3 years of age and older (no preservatives or latex)	<b>\$15.89**</b>	Box of 10	<b>\$158.90**</b>		<input type="checkbox"/>
FLU040365	<b>Fluzone® High-Dose Influenza Virus Vaccine</b> 0.5mL prefilled syringes, needleless, 10 per box 65 years of age and older (no preservatives or latex)	<b>\$44.804**</b>	Box of 10	<b>\$448.04**</b>		<input type="checkbox"/>
FLU071810	<b>Flublok® Quadrivalent Influenza Vaccine</b> 0.5mL prefilled syringes, 10 per box 18 years and older (no eggs, influenza virus, preservatives, antibiotics or latex)	<b>\$44.804**</b>	Box of 10	<b>\$448.04**</b>		<input type="checkbox"/>

\*\*Exclusive of Federal Excise Tax of \$0.75 per dose

**Sanofi Pasteur Returnability**

Up to 30%, per presentation type, of doses are eligible for return. Returns must be full, unopened boxes of 10, or vials only. No partials accepted.  
*Supersedes all previous returnable programs.*



Item No.	Description	Dose	U/M	Price**	Qty. in Boxes or Vials	Loyalty* Program
<b>GlaxoSmithKline</b>						
FLU090011	FluLaval® Quadrivalent Influenza Virus Vaccine 5mL 10-dose vial 6 months of age and older (no latex)	\$14.569**\$	Vial	\$145.69**\$		<input type="checkbox"/>
FLU090952	FluLaval® Quadrivalent Influenza Virus Vaccine 0.5mL prefilled syringes, needleless, 10 per box 6 months of age and older (no latex)	\$15.588** \$	Box of 10	\$155.88** \$		<input type="checkbox"/>
FLU089852	Fluarix® Quadrivalent Influenza Virus Vaccine 0.5mL prefilled syringes, needleless, 10 per box 6 months of age and older (no preservatives or latex)	\$15.588** \$	Box of 10	\$155.88** \$		<input type="checkbox"/>
**Exclusive of Federal Excise Tax of \$0.75 per dose <b>§ GSK contract pricing requires all MMCAP members to be decked in the GSK system to qualify for the MMCAP contract prices, as listed.</b> <b>GlaxoSmithKline Returnability</b> Up to 30%, per presentation type, of doses are eligible for return. <i>Supersedes all previous returnable programs.</i>						
<b>MedImmune</b>						
FLU030510	FluMist® Quadrivalent Influenza Vaccine Live, Intranasal* 0.2mL prefilled, single-use Intranasal spray 2 years to 49 years of age (no preservatives or latex) *See ACIP Recommendations <a href="http://www.fffenterprises.com/assets/downloads/FluMist-Quadrivalent-Communication-071616.pdf">http://www.fffenterprises.com/assets/downloads/FluMist-Quadrivalent-Communication-071616.pdf</a>	TBD**	Box of 10	TBD**		<input type="checkbox"/>
**Exclusive of Federal Excise Tax of \$0.75 per dose <b>MedImmune Returnability</b> Eligibility for return for orders is TBD.						
					<b>Total Order Quantity</b>	
Customer represents warrants and agrees that Customer is purchasing products from FFF for its own use and use by its affiliated healthcare providers in delivering services to patients and not for resale. Customer acknowledges that FFF is relying on this representation in making its decision to sell products to Customer.						
Note: Several state purchasing agencies require fees added to the contract price -- 1% MyFloridaMarketPlace system transaction fee, 2% Georgia procurement fee, 1% South Carolina procurement fee, 1% Oklahoma procurement fee and 1.5% Alaska State procurement fee. FFF will also pass taxes and fees through to customers in states that impose healthcare taxes and fees for sales of pharmaceuticals to customers in their states.						
<b>Orders can be cancelled or reduced on or before July 1, 2018.</b> <b>Please refer to each manufacturer's specific terms regarding discounts, rebates and return policies.</b>						
<b>Please complete and fax this form to FFF Enterprises: (800) 418-4333.</b> <b>If you have questions, call (800) 843-7477 or visit MyFluVaccine.com.</b>						
I have ordered the quantities listed above and agree to the terms that apply:				<b>Thank you for supporting FFF's</b> <b>Guaranteed Channel Integrity!</b>		
Authorized Signature:		Date:				



GlaxoSmithKline

## GROUP PURCHASING ORGANIZATION MEMBERSHIP DECLARATION w/ SURVEY

In order to take advantage of prices and/or rebates under a Group Purchasing Organization (GPO) or Alliance with GSK contracts, GSK requires an eligible facility to designate only **ONE** GPO whose contract(s) said facility will access to purchase GSK products. **The GPO designation listed below, if different from current files, will remove facility from their current GPO (or other segment) within 30 days of notification.**

Multiple GPO designations, even for different product groups, will not be honored. Designations may be changed, but will require thirty (30) days advance written notice to GSK. GSK reserves the right to refuse to extend a contract price to a facility that has failed to designate a GPO/Alliance, seeks to purchase under agreements with multiple alliances, or does not meet contract eligibility requirements. Facility will be added to the designated GPO's contract(s) within thirty (30) days, if GSK determines that all contract eligibility requirements are met. (Declaration forms must be submitted for each location. "Blanket" declaration forms are not accepted.)

**PLEASE COMPLETE ALL REQUESTED INFORMATION (PLEASE PRINT) INCOMPLETE FORMS WILL NOT BE PROCESSED**

FACILITY NAME \_\_\_\_\_

DEA # (must be current) \_\_\_\_\_ STATE LICENSE # \_\_\_\_\_ STATE LICENSE # EXPIRATION DATE \_\_\_\_\_

FACILITY STATE LICENSE NAME OR AUTHORIZED HCP STATE LICENSE NAME \_\_\_\_\_

PHYSICAL ADDRESS \_\_\_\_\_ SUITE # \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

TELEPHONE \_\_\_\_\_ FAX # \_\_\_\_\_

MUST DESIGNATE SOLE GROUP PURCHASING ORGANIZATION: MMCAP

PRIMARY WHOLESALE (NAME, CITY, STATE) \_\_\_\_\_

## TYPE OF BUSINESS:

- ☐ On-site inpatient hospital pharmacy  
☐ On-site outpatient hospital pharmacy  
☐ On-site hospital clinic  
☐ Off-site satellite clinic (affiliated with \_\_\_\_\_ (Hospital  
☐ State CCS funded health clinic  
☐ Oncology clinic / pharmacy  
☐ Student health center  
☐ Surgery Center  
☐ Nursing Home Provider/Long Term Care  
☐ Home health care/home infusion  
☐ HMO/Managed health care  
☐ Other (please describe: \_\_\_\_\_ )

Is this facility owned, leased, or managed by a hospital or hospital system? YES NO  
 If so, name and location of hospital or hospital system \_\_\_\_\_

Is a pharmacy or physician-dispensing unit physically located within this facility? YES NO

Is this pharmacy or physician dispensing unit a closed-door pharmacy?  
 (i.e. only serves patients and employees of the facility?) YES NO

Is this facility for profit? YES NO

**CERTIFICATION:** By signing below, Facility certifies, under penalty of perjury, that all of the above information is true and correct. Further, Facility certifies and agrees that (1) any GSK product purchased under any agreement shall be for its "Own Use," as defined by the United States Supreme Court in its opinions report at Abbott Laboratories et al. v. Portland Retail Druggist Association, Inc., 425 U.S. 1 (1976), and Jefferson County Pharmaceutical Association, Inc., v. Abbott Laboratories, et al., 103 S. Ct. 1011 (1983), and (2) GSK may, in its sole discretion, contact Facility's staff, and/or visit Facility's locations to verify that the above information is correct, and Facility agrees to provide such information to GSK as is reasonably necessary for GSK to make such a determination.

Printed Name (Required)

Title (Required)

Signature (Required)

Date (Required)

PLEASE FAX FORM BACK TO MEMBERSHIP SERVICES AT 215-933-3947

dana.x.latimer@gsk.com

## AMENDMENT NO. 17 TO MMCAP CONTRACT NO. MMS14003

**THIS AMENDMENT** is by and between the State of Minnesota acting through its commissioner of Administration ("State") on behalf of the Minnesota Multistate Contracting Alliance for Pharmacy ("MMCAP") and FFF Enterprises, 41093 County Center Drive, Temecula, CA 92591 ("Vendor").

MMCAP has a contract with the Vendor identified as Contract No. MMS14003 (Original Contract). MMCAP and the Vendor are willing to amend the Original Contract as stated below.

### Contract Amendment (1938JV)

**Effective: February 23, 2018 or when all signatures are obtained.**

**Revision 1: Table 1 of Article 2.1 of the Original Contract is amended to add the following product for the 2018-2019 season.**

Table 1

Mfr. Name	Product Name	Container Type, Product Age Indication	Pack Size	Price Per Container (Prices do not include FET)	FL, OK, SC Cost (Prices do not include FET)**	Alaska Cost (Prices do not include FET)**	Georgia Cost (Prices do not include FET)**
AstraZeneca/MedImmune	Flumist	Nasal Sprayer; 2 years & older	Pack of 10	\$190.49* through 5/31/2018; after \$194.30	\$192.40* through 5/31/2018; after \$196.40	\$193.35* through 5/31/2018; after \$197.22	\$194.30* through 5/31/2018; after \$198.19

Prices listed are not inclusive of Federal Excise Tax of \$0.75/dose.

\* Members prebooking through May 31, 2018, and will also apply to all re-orders of product June 1, 2018 to June 30, 2019.

\*\*Reference 2.11 State Specific Requirements

**Revision 2: Article 2.10 Return Goods/Credits:** Is amended to include Flumist returns information for the 2018-2019 season. MMCAP Participating Facilities may return contracted purchased product to FFF Enterprises, Inc. via the following guidelines for credit. Contact Vendor's Customer Care Team at 1-800-843-7477. AstraZeneca= Up to 100% of doses are eligible for return for orders placed by May 31, 2018. Up to 50% of doses are eligible for return for orders place after June 1, 2018

**Revision 3: 2018-2019 FFF Prebook order form is revised and added as Exhibit A.**



**AMENDMENT NO. 17 TO MMCAP CONTRACT NO. MMS14003**

Except as herein amended, the provisions of the Original Contract between the parties hereto are expressly reaffirmed and remain in full force and effect.

**1. FFF Enterprises, Inc.**

The Vendor certifies that the appropriate person(s) have executed this Agreement on behalf of the Vendor as required by applicable articles, bylaws, resolutions, or ordinances.

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

Title: \_\_\_\_\_

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

Shirley Nell  
Director of Vaccines  
2-23-18

**2. STATE OF MINNESOTA FOR MMCAP**

In accordance with Minn. Stat. § 16C.03, subd. 3

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

Title: \_\_\_\_\_

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

Inf. Vardhast  
GPA-C  
2/26/2018

**3. COMMISSIONER OF ADMINISTRATION**

In accordance with Minn. Stat. § 16C.05, subd. 2

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

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

Sara Tulenbaw, PharmD, BCPS  
2-26-18

Except as herein amended, the provisions of the Original Contract between the parties hereto are expressly reaffirmed and remain in full force and effect.

**1. FFF ENTERPRISES**

The Vendor certifies that the appropriate person(s) have executed this Agreement on behalf of the Vendor as required by applicable articles, bylaws, resolutions, or ordinances.

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

Title: \_\_\_\_\_

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

Shirley Nell  
Director of Vaccines  
2-23-18

**2. STATE OF MINNESOTA FOR MMCAP**

In accordance with Minn. Stat. § 16C.03, subd. 3

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

Title: \_\_\_\_\_

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

**3. COMMISSIONER OF ADMINISTRATION**

In accordance with Minn. Stat. § 16C.05, subd. 2

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

Title: \_\_\_\_\_

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

*at 2-26-18*



**2018-2019  
MMCAP Influenza Vaccine  
ORDER FORM (MMS 14003)**

Date
Contract Affiliation

Telephone	Fax	Purchase Order Number
FFF Account Number	State License Number	
Order Placed By	Email Address	
Customer's Special Instructions		

<b>Ship To</b>	<b>Bill To</b>
Attn:	Attn:

**PREFERRED DELIVERY DATE:** \_\_\_\_\_

The Preferred Delivery Date you've entered above for your order may arrive on or before this date. If there are any extreme delays to your order, you will receive a communication or an FFF representative will call you to confirm an alternate date.

**Loyalty Program**

Select Loyalty Program to enroll for this inclusive opportunity, and receive priority access on flu vaccines for the 2019-2020 season when you book your flu vaccine orders for the 2018-2019 season.

Item No.	Description	Dose	U/M	Price**	Qty. In Boxes or Vials	Loyalty* Program
<b>Seqirus</b>						
<b>Trivalent</b>						
FLU001803	Fluad™ Influenza Virus Vaccine 0.5mL prefilled syringes, needleless, 10 per box 65 years of age and older (no preservatives or latex)	\$41.175**	Box of 10	\$411.75**		<input type="checkbox"/>
<b>Quadrivalent</b>						
FLU241810	Afluria® Quadrivalent Influenza Virus Vaccine 5mL 10-dose vial 5 years of age and older (no latex)	\$13.533**	Vial	\$135.33**		<input type="checkbox"/>
FLU031801	Afluria® Quadrivalent Influenza Virus Vaccine 0.5mL prefilled syringes, needleless, 10 per box 5 years of age and older (no preservatives or latex)	\$14.528**	Box of 10	\$145.28**		<input type="checkbox"/>
FLU141810	Flucelvax® Quadrivalent Influenza Virus Vaccine 5mL 10-dose vial 4 years of age and older (no antibiotics or latex)	\$13.533**	Vial	\$135.33**		<input type="checkbox"/>
FLU031803	Flucelvax® Quadrivalent Influenza Virus Vaccine 0.5mL prefilled syringes, needleless, 10 per box 4 years of age and older (no preservatives, antibiotics or latex)	\$14.528**	Box of 10	\$145.28**		<input type="checkbox"/>

\*\*Exclusive of Federal Excise Tax of \$0.75 per dose

**Seqirus Returnability**

Up to 30%, per presentation type, of doses are eligible for return. Returns must be full, unopened boxes of 10, or vials only. No partials accepted.  
Supersedes all previous returnable programs.

**Sanofi Pasteur**


<b>Trivalent</b>						
FLU040365	Fluzone® High-Dose Influenza Virus Vaccine 0.5mL prefilled syringes, needleless, 10 per box 65 years of age and older (no preservatives or latex)	\$44.804**	Box of 10	\$448.04**		<input type="checkbox"/>
<b>Quadrivalent</b>						
FLU062915	Fluzone® Quadrivalent Influenza Virus Vaccine 5mL 10-dose vial 6 months of age and older (no latex)	\$14.72**	Vial	\$147.20**		<input type="checkbox"/>
FLU051825	Fluzone® Quadrivalent Influenza Virus Vaccine 0.25mL prefilled syringes, needleless, 10 per box 6-35 months of age (no preservatives or latex)	\$15.89**	Box of 10	\$158.90**		<input type="checkbox"/>
FLU041850	Fluzone® Quadrivalent Influenza Virus Vaccine 0.5mL prefilled syringes, needleless, 10 per box 3 years of age and older (no preservatives or latex)	\$15.89**	Box of 10	\$158.90**		<input type="checkbox"/>
FLU041810	Fluzone® Quadrivalent Influenza Virus Vaccine 0.5mL single-dose vials, 10 per box 3 years of age and older (no preservatives or latex)	\$15.89**	Box of 10	\$158.90**		<input type="checkbox"/>
FLU071810	Flublok® Quadrivalent Influenza Vaccine 0.5mL prefilled syringes, 10 per box 18 years and older (no eggs, influenza virus, preservatives, antibiotics or latex)	\$44.804**	Box of 10	\$448.04**		<input type="checkbox"/>

\*\*Exclusive of Federal Excise Tax of \$0.75 per dose

**Sanofi Pasteur Returnability**

Up to 30%, per presentation type, of doses are eligible for return.  
Supersedes all previous returnable programs.



Item No.	Description	Dose	U/M	Price**	Qty. in Boxes or Vials	Loyalty* Program
<b>GlaxoSmithKline</b>						
FLU090011	FluLaval® Quadrivalent Influenza Virus Vaccine 5mL 10-dose vial 6 months of age and older (no latex)	\$14.569**\$	Vial	\$145.69**\$		<input type="checkbox"/>
FLU090952	FluLaval® Quadrivalent Influenza Virus Vaccine 0.5mL prefilled syringes, needleless, 10 per box 6 months of age and older (no latex)	\$15.588** \$	Box of 10	\$155.88** \$		<input type="checkbox"/>
FLU089852	Fluarix® Quadrivalent Influenza Virus Vaccine 0.5mL prefilled syringes, needleless, 10 per box 6 months of age and older (no preservatives or latex)	\$15.588** \$	Box of 10	\$155.88** \$		<input type="checkbox"/>
<p>**Exclusive of Federal Excise Tax of \$0.75 per dose</p> <p><b>§ GSK contract pricing requires all MMCAP members to be decked in the GSK system to qualify for the MMCAP contract prices, as listed.</b></p> <p><b>GlaxoSmithKline Returnability</b> Up to 30%, per presentation type, of doses are eligible for return. <i>Supersedes all previous returnable programs.</i></p>						
<b>MedImmune</b>						
FLU030510	FluMist® Quadrivalent Influenza Vaccine Live, Intranasal® 0.2mL prefilled, single-use Intranasal spray 2 years to 49 years of age (no preservatives or latex)	\$19.049**	Box of 10	\$190.49**		<input type="checkbox"/>
<p>**Exclusive of Federal Excise Tax of \$0.75 per dose</p> <p>Price reflects an additional discount of 2% for orders placed by May 31, 2018, and will increase by 2% for orders placed after June 1, 2018.</p> <p><b>MedImmune Returnability</b> Up to 100% of doses are eligible for return for orders placed by May 31, 2018. Up to 50% of doses are eligible for return for orders placed after June 1, 2018.</p> <p><b>Reorders</b> Discounted pricing reflected above and 100% returnability will also apply to all reorders of product from June 1, 2018 to June 30, 2019.</p>						
<b>Total Order Quantity</b>						
Customer represents warrants and agrees that Customer is purchasing products from FFF for its own use and use by its affiliated healthcare providers in delivering services to patients and not for resale. Customer acknowledges that FFF is relying on this representation in making its decision to sell products to Customer.						
<p><b>Note:</b> Several state purchasing agencies require fees added to the contract price – 1% MyFloridaMarketPlace system transaction fee, 2% Georgia procurement fee, 1% South Carolina procurement fee, 1% Oklahoma procurement fee and 1.5% Alaska State procurement fee. FFF will also pass taxes and fees through to customers in states that impose healthcare taxes and fees for sales of pharmaceuticals to customers in their states.</p>						
<p style="text-align: center;"><b>Orders can be cancelled or reduced on or before July 1, 2018.</b></p> <p style="text-align: center;"><b>Please refer to each manufacturer's specific terms regarding discounts, rebates and return policies.</b></p>						
<p style="text-align: center;"><b>Please complete and fax this form to FFF Enterprises: (800) 418-4333.</b></p> <p style="text-align: center;"><b>If you have questions, call (800) 843-7477 or visit MyFluVaccine.com.</b></p>						
I have ordered the quantities listed above and agree to the terms that apply:		<p><b>Thank you for supporting FFF's</b></p> <p><b>Guaranteed Channel Integrity!</b></p> 				
Authorized Signature: _____		Date: _____				



## AMENDMENT NO. 18 TO MMCAP CONTRACT NO. MMS14003

**THIS AMENDMENT** is by and between the State of Minnesota acting through its commissioner of Administration ("State") on behalf of the Minnesota Multistate Contracting Alliance for Pharmacy ("MMCAP") and FFF Enterprises, 41093 County Center Drive, Temecula, CA 92591 ("Vendor").

MMCAP has a contract with the Vendor identified as Contract No. MMS14003 (Original Contract). MMCAP and the Vendor are willing to amend the Original Contract as stated below.

### Contract Amendment

(1942JV)

Effective: March 15, 2018 or when all signatures are obtained.

Revision 1: Table 1 of Article 2.1 of the Original Contract is amended to adjust the following product pricing for the 2018-2019 season. This pricing is inclusive of all previous and future prebook orders for the 2018-2019 season.

Table 1

Mfr. Name	Product Name	Container Type, Product Age Indication	Pack Size	Price Per Container (Prices do not include FET)	FL, OK, SC Cost (Prices do not include FET)**	Alaska Cost (Prices do not include FET)**	Georgia Cost (Prices do not include FET)**
AstraZeneca/MedImmune	Flumist	Nasal Sprayer; 2 years & older	Pack of 10	\$190.49* through 5/31/2018; after \$195.08	\$192.40* through 5/31/2018; after \$197.03	\$193.35* through 5/31/2018; after \$198.01	\$194.30* through 5/31/2018; after \$198.98
Seqirus	Afluria Quadrivalent	0.5ml prefilled syringes; 5 years & older	Pack of 10	\$144.70	\$146.15	\$146.87	\$147.59

Prices listed are not inclusive of Federal Excise Tax of \$0.75/dose.

\* Pricing for members prebooking through May 31, 2018, and will also apply to all re-orders of product June 1, 2018 to June 30, 2019.

\*\*Reference 2.11 State Specific Requirements

**Except as herein amended**, the provisions of the Original Contract between the parties hereto are expressly reaffirmed and remain in full force and effect.

#### 1. FFF ENTERPRISES

The Vendor certifies that the appropriate person(s) have executed this Agreement on behalf of the Vendor as required by applicable articles, bylaws, resolutions, or ordinances.

By: Sarah H. Heel

Title: Director of Vaccine Sales

Date: 3-16-18

#### 2. STATE OF MINNESOTA FOR MMCAP

In accordance with Minn. Stat. § 16C.03, subd. 3

By: L. L. Vand Aarts

Title: SPA;C

Date: 3/19/2018

#### 3. COMMISSIONER OF ADMINISTRATION

In accordance with Minn. Stat. § 16C.05, subd. 2

By: Lynn A. Klessexg

Title: AMS

Date: 3/19/2018



**2018-2019**  
**MMCAP Influenza Vaccine**  
**ORDER FORM** (MMS 14003)

Date
Contract Affiliation

Telephone	Fax	Purchase Order Number
FFF Account Number	State License Number	
Order Placed By	Email Address	
Customer's Special Instructions		

<b>Ship To</b>	<b>Bill To</b>
Attn:	Attn:

**PREFERRED DELIVERY DATE:** \_\_\_\_\_

The Preferred Delivery Date you've entered above for your order may arrive on or before this date. If there are any extreme delays to your order, you will receive a communication or an FFF representative will call you to confirm an alternate date.

**Loyalty Program**

Select Loyalty Program to enroll for this inclusive opportunity, and receive priority access on flu vaccines for the 2019-2020 season when you book your flu vaccine orders for the 2018-2019 season.

Item No.	Description	Dose	U/M	Price**	Qty. in Boxes or Vials	Loyalty* Program
<b>Seqirus</b>						
<b>Trivalent</b>						
FLU001803	Fluad™ Influenza Virus Vaccine 0.5mL prefilled syringes, needleless, 10 per box 65 years of age and older (no preservatives or latex)	\$41.175**	Box of 10	\$411.75**		<input type="checkbox"/>
<b>Quadrivalent</b>						
FLU241810	Afluria® Quadrivalent Influenza Virus Vaccine 5mL 10-dose vial 5 years of age and older (no latex)	\$13.533**	Vial	\$135.33**		<input type="checkbox"/>
FLU031801	Afluria® Quadrivalent Influenza Virus Vaccine 0.5mL prefilled syringes, needleless, 10 per box 5 years of age and older (no preservatives or latex)	\$14.47**	Box of 10	\$144.70**		<input type="checkbox"/>
FLU141810	Flucelvax® Quadrivalent Influenza Virus Vaccine 5mL 10-dose vial 4 years of age and older (no antibiotics or latex)	\$13.533**	Vial	\$135.33**		<input type="checkbox"/>
FLU031803	Flucelvax® Quadrivalent Influenza Virus Vaccine 0.5mL prefilled syringes, needleless, 10 per box 4 years of age and older (no preservatives, antibiotics or latex)	\$14.528**	Box of 10	\$145.28**		<input type="checkbox"/>

\*\*Exclusive of Federal Excise Tax of \$0.75 per dose

**Seqirus Returnability**

Up to 30%, per presentation type, of doses are eligible for return. Returns must be full, unopened boxes of 10, or vials only. No partials accepted.  
*Supersedes all previous returnable programs.*

**Sanofi Pasteur**

<b>Trivalent</b>						
FLU040365	Fluzone® High-Dose Influenza Virus Vaccine 0.5mL prefilled syringes, needleless, 10 per box 65 years of age and older (no preservatives or latex)	\$44.804**	Box of 10	\$448.04**		<input type="checkbox"/>
<b>Quadrivalent</b>						
FLU062915	Fluzone® Quadrivalent Influenza Virus Vaccine 5mL 10-dose vial 6 months of age and older (no latex)	\$14.72**	Vial	\$147.20**		<input type="checkbox"/>
FLU051825	Fluzone® Quadrivalent Influenza Virus Vaccine 0.25mL prefilled syringes, needleless, 10 per box 6-35 months of age (no preservatives or latex)	\$15.89**	Box of 10	\$158.90**		<input type="checkbox"/>
FLU041850	Fluzone® Quadrivalent Influenza Virus Vaccine 0.5mL prefilled syringes, needleless, 10 per box 3 years of age and older (no preservatives or latex)	\$15.89**	Box of 10	\$158.90**		<input type="checkbox"/>
FLU041810	Fluzone® Quadrivalent Influenza Virus Vaccine 0.5mL single-dose vials, 10 per box 3 years of age and older (no preservatives or latex)	\$15.89**	Box of 10	\$158.90**		<input type="checkbox"/>
FLU071810	Flublok® Quadrivalent Influenza Vaccine 0.5mL prefilled syringes, 10 per box 18 years and older (no eggs, influenza virus, preservatives, antibiotics or latex)	\$44.804**	Box of 10	\$448.04**		<input type="checkbox"/>

\*\*Exclusive of Federal Excise Tax of \$0.75 per dose

**Sanofi Pasteur Returnability**

Up to 30%, per presentation type, of doses are eligible for return.  
*Supersedes all previous returnable programs.*



Item No.	Description	Dose	U/M	Price**	Qty. in Boxes or Vials	Loyalty* Program
<b>GlaxoSmithKline</b>						
FLU090011	FluLaval® Quadrivalent Influenza Virus Vaccine 5mL 10-dose vial 6 months of age and older (no latex)	\$14.569**\$	Vial	\$145.69**\$		<input type="checkbox"/>
FLU090952	FluLaval® Quadrivalent Influenza Virus Vaccine 0.5mL prefilled syringes, needleless, 10 per box 6 months of age and older (no latex)	\$15.588** \$	Box of 10	\$155.88** \$		<input type="checkbox"/>
FLU089852	Fluarix® Quadrivalent Influenza Virus Vaccine 0.5mL prefilled syringes, needleless, 10 per box 6 months of age and older (no preservatives or latex)	\$15.588** \$	Box of 10	\$155.88** \$		<input type="checkbox"/>

\*\*Exclusive of Federal Excise Tax of \$0.75 per dose

§ GSK contract pricing requires all MMCAP members to be decked in the GSK system to qualify for the MMCAP contract prices, as listed.

**GlaxoSmithKline Returnability**

Up to 30%, per presentation type, of doses are eligible for return.

*Supersedes all previous returnable programs.*

**MedImmune**

FLU030510	FluMist® Quadrivalent Influenza Vaccine Live, Intranasal* 0.2mL prefilled, single-use Intranasal spray 2 years to 49 years of age (no preservatives or latex)	\$19.049**	Box of 10	\$190.49**		<input type="checkbox"/>
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\*\*Exclusive of Federal Excise Tax of \$0.75 per dose

Price reflects an additional discount of 2% for orders placed by May 31, 2018, and will increase by 2% for orders placed after June 1, 2018.

**MedImmune Returnability**

Up to 100% of doses are eligible for return for orders placed by May 31, 2018.

Up to 50% of doses are eligible for return for orders placed after June 1, 2018.

**Reorders**

Discounted pricing reflected above and 100% returnability will also apply to all reorders of product from June 1, 2018 to June 30, 2019.

**Total Order Quantity**

Customer represents warrants and agrees that Customer is purchasing products from FFF for its own use and use by its affiliated healthcare providers in delivering services to patients and not for resale. Customer acknowledges that FFF is relying on this representation in making its decision to sell products to Customer.

**Note:** Several state purchasing agencies require fees added to the contract price -- 1% MyFloridaMarketPlace system transaction fee, 2% Georgia procurement fee, 1% South Carolina procurement fee, 1% Oklahoma procurement fee and 1.5% Alaska State procurement fee. FFF will also pass taxes and fees through to customers in states that impose healthcare taxes and fees for sales of pharmaceuticals to customers in their states.

**Orders can be cancelled or reduced on or before July 1, 2018.**

**Please refer to each manufacturer's specific terms regarding discounts, rebates and return policies.**

**Please complete and fax this form to FFF Enterprises: (800) 418-4333.**

**If you have questions, call (800) 843-7477 or visit MyFluVaccine.com.**

I have ordered the quantities listed above and agree to the terms that apply:

Authorized Signature:

Date:

**Thank you for supporting FFF's  
Guaranteed Channel Integrity!**





## AMENDMENT NO. 19 TO MMCAP CONTRACT NO. MMS14003

THIS AMENDMENT is by and between the State of Minnesota, acting through its commissioner of Administration ("State") on behalf of the Minnesota Multistate Contracting Alliance for Pharmacy ("MMCAP") and FFF Enterprises, Inc. ("Vendor" or "FFF") 41093 County Center Drive, Temecula, CA 92591.

MMCAP has a contract with the Vendor identified as Contract No. MMS14003 (Original Contract). MMCAP and the Vendor are willing to amend the Original Contract as stated below.

### Contract Amendment (1976JV)

Effective: October 8, 2018 or when all signatures are obtained.

Article 1.2 Expiration date: December 31, 2019, or as cancelled pursuant to clause 22.

Except as herein amended, the provisions of the Original Contract between the parties hereto are expressly reaffirmed and remain in full force and effect.

#### 1. FFF ENTERPRISES

The Vendor certifies that the appropriate person(s) have executed this Agreement on behalf of the Vendor as required by applicable articles, bylaws, resolutions, or ordinances.

By: Schuch  
Title: Director of Vaccine sales  
Date: 10-10-2018

#### 2. STATE OF MINNESOTA FOR MMCAP

In accordance with Minn. Stat. § 16C.03, subd. 3

By: Sara Turnbow, PharmD, BCPS  
Title: Pharmacist Sr.  
Date: 10-11-18

#### 3. COMMISSIONER OF ADMINISTRATION

In accordance with Minn. Stat. § 16C.05, subd. 2

By: [Signature]  
Title: AMS Sr.  
Date: 10/11/18

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

**AMENDMENT TWENTY TO MMCAP CONTRACT NO. MMS14003**

**THIS AMENDMENT** is by and between the State of Minnesota, acting through its commissioner of Administration ("State") on behalf of the Minnesota Multistate Contracting Alliance for Pharmacy ("MMCAP") and FFF Enterprises, Inc. ("Vendor" or "FFF") 41093 County Center Drive, Temecula, CA 92591.

MMCAP has a contract with the Vendor identified as Contract No. MMS14003 (Original Contract). MMCAP and the Vendor are willing to amend the Original Contract as stated below.

**Contract Amendment**

**Effective: January 17, 2019 or when all signatures are obtained.**

**Revision 1: Table 1 of Article 2.1 of the Original Contract is amended to add the following products for the 2019-2020 season.**

Table 1

<b>Mfr. Name</b>	<b>Product Name</b>	<b>Container Type, Product Age Indication</b>	<b>Pack Size</b>	<b>MMCAP Price Per Container (Prices do not include FET)<sup>1</sup></b>	<b>Florida Cost (Prices do not include FET)<sup>1</sup></b>	<b>OK, SC Cost (Prices do not include FET)<sup>1</sup></b>	<b>Alaska Cost (Prices do not include FET)<sup>1</sup></b>	<b>Georgia Cost (Prices do not include FET)<sup>1</sup></b>
AstraZeneca	Flumist	0.2ml Nasal Sprayer; 2 to 49 years	Pack of 10	\$218.03	\$219.56	\$220.21	\$221.30	\$222.39
GSK <sup>2</sup>	Fluarix Quadrivalent	0.5ml prefilled syringes, 6mo & older	Pack of 10	\$155.88	\$156.97	\$157.44	\$158.22	\$159.00
GSK <sup>2</sup>	FluLaval Quadrivalent	5 ml MD vial; 6 mo. & older	10 dose	\$145.69	\$146.71	\$147.15	\$147.88	\$148.60
GSK <sup>2</sup>	FluLaval Quadrivalent	0.5ml prefilled syringes, 6 mo. & older	Pack of 10	\$155.88	\$156.97	\$157.44	\$158.22	\$159.00
Seqirus	Afluria Quadrivalent	0.5ml prefilled syringes; 3 years & older	Pack of 10	\$145.28	\$146.30	\$146.73	\$147.46	\$148.19
Seqirus	Afluria Quadrivalent	5 ml MD vial; 6 months & older	10 dose	\$135.33	\$136.28	\$136.68	\$137.36	\$138.04
Seqirus	Afluria Quadrivalent	0.25ml prefilled syringes; 6-35 months	Pack of 10	\$145.28	\$146.30	\$146.73	\$147.46	\$148.19

<sup>1</sup> Reference Contract Section 2.11 State Specific Requirements

<sup>2</sup> Vendor will match contract award price of manufacturer (GSK) if manufacturer is awarded an MMCAP contract and if the contracted price is less expensive. Vendor cannot adhere to additional discounts offered by the manufacturer. GSK contract prices above require all customers to have a signed DEC form in the GSK system to receive MMCAP contract pricing. Contact MMCAP to obtain a GSK DEC form if one is not already been completed, see Exhibit B.

Mfr. Name	Product Name	Container Type, Product Age Indication	Pack Size	MMCAP Price Per Container (Prices do not include FET)	Florida Cost (Prices do not include FET) <sup>1</sup>	OK, SC Cost (Prices do not include FET) <sup>1</sup>	Alaska Cost (Prices do not include FET) <sup>1</sup>	Georgia Cost (Prices do not include FET) <sup>1</sup>
Seqirus	Fluad	0.5ml prefilled syringes; 65 years & older	Pack of 10	\$418.78	\$421.71	\$422.97	\$425.06	\$427.16
Seqirus	Flucelvax Quadrivalent	0.5ml prefilled syringes; 4 years & older	Pack of 10	\$169.00	\$170.18	\$170.69	\$171.54	\$172.38
Seqirus	Flucelvax Quadrivalent	5 ml MD vial; 4 years & older	10 dose	\$157.42	\$158.52	\$158.99	\$159.78	\$160.57
Sanofi Pasteur	Flublok Quadrivalent	0.5ml prefilled syringes; 18 years & older	Pack of 10	\$459.90	\$463.12	\$464.50	\$466.80	\$469.10
Sanofi Pasteur	Fluzone Quadrivalent	5ml MD vial; 6 mo. of age & older	10 dose	\$150.14	\$151.19	\$151.64	\$152.39	\$153.14
Sanofi Pasteur	Fluzone Quadrivalent No Preservative	0.5ml prefilled syringe; 3 yrs & older;	Pack of 10	\$162.08	\$163.21	\$163.70	\$164.51	\$165.32
Sanofi Pasteur	Fluzone Quadrivalent No Preservative	0.5ml single dose vials; 3 yrs & older;	Pack of 10	\$162.08	\$163.21	\$163.70	\$164.51	\$165.32
Sanofi Pasteur	Fluzone Quadrivalent No Preservative Pediatric Dose	0.25ml prefilled syringe; 6 mo. to 35 months of age	Pack of 10	\$162.08	\$163.21	\$163.70	\$164.51	\$165.32
Sanofi Pasteur	Fluzone High-dose, No Preservative	0.5ml prefilled syringe; 65 years & older	Pack of 10	\$459.90	\$463.12	\$464.50	\$466.80	\$469.10

All prices listed are not inclusive of Federal Excise Tax of \$0.75/dose.

## Revision 2: Add Article 2.15 Additional Tiered Discounts

2.15.1 Flumist Additional savings are available for accounts that prebook  $\geq 400$  doses for the 2019-2020 season as set forth in Table 2. Additional savings for Flumist only, will be applied in the form of a rebate. 85% of the prebook volume must be delivered and accepted by December 31, 2019 to qualify for rebates. Rebates will be administered in the form of credit applied to FFF accounts by June 30, 2020.

Table 2

Tier	Doses Prebooked	On-Invoice Discount	Rebate to FFF Account	Total Discount	MMCAP Net Discounted Price
Base	10-399	5%	0%	5%	\$218.03



1	400-799	5%	2%	7%	\$213.44
2	800-1,199	5%	4%	9%	\$208.85
3	1,200-2,499	5%	6%	11%	\$204.26
4	2,500-4,999	5%	8%	13%	\$199.67
5	5,000 or greater	5%	10%	15%	\$195.08

All prices listed are not inclusive of Federal Excise Tax of \$0.75/dose.

**Revision 3: Article 2.10 Return Goods/Credits:** Is amended to include the following for the 2019-2020 season.

**2.10 Returned Goods/Credits.** MMCAP Participating Facilities may return contracted purchased full pack quantities of product to FFF Enterprises, Inc. via the following guidelines for credit. Contact Vendor's Customer Care Team at 1-800-843-7477 for complete returns instructions.

AstraZeneca= Up to 25% of doses are eligible for returns for prebook orders placed by March 31, 2019 and must accept 85% of prebooked volume by December 31, 2019.

GSK= Up to 30% of doses are eligible for return

Seqirus= Up to 20% of Afluria and Flucelvax doses are eligible for return.  
Up to 25% of Fludax doses are eligible for return.

Sanofi Pasteur= Up to 25% of doses are eligible for return

Contact the customer care team for further information. Vendor will supply a copy of its returned goods/credit policy to MMCAP Participation Facilities upon request.

**Revision 4: Section 2.11.2, 2. Transaction Fee paragraph 1 only is deleted and replaced with:**

The State of Florida has instituted MyFloridaMarketPlace, a statewide eProcurement system. Pursuant to section 287.057(22), Florida Statutes, all payments shall be assessed Transaction Fee of 0.7%, which the Contractor shall pay to the State, as prescribed by rule 60A-1.031, Florida Administrative Code.

**Revision 5: 2019-2020 FFF Prebook order form added as Exhibit A.**

**Revision 6:** Effective with this amendment, Vendors address is: 44000 Winchester Road, Temecula, CA 92590

Except as herein amended, the provisions of the Original Contract between the parties hereto are expressly reaffirmed and remain in full force and effect.

**1. FFF Enterprises, Inc.**

The Vendor certifies that the appropriate person(s) have executed this Agreement on behalf of the Vendor as required by applicable articles, bylaws, resolutions, or ordinances.

By: [Signature]  
Title: Director Vaccine Sales  
Date: 1-22-19

**2. STATE OF MINNESOTA FOR MMCAP**

In accordance with Minn. Stat. § 16C.03, subd. 3

By: [Signature]  
Title: SPA Coordinator  
Date: 1-23-2019

**3. COMMISSIONER OF ADMINISTRATION**

In accordance with Minn. Stat. § 16C.05, subd. 2

By: [Signature]  
Date: 1-24-19





**2019-2020**  
**MMCAP Influenza Vaccine**  
**ORDER FORM** (MMS 14003)

Date	
Contract Affiliation	

Telephone	Fax	Purchase Order Number
FFF Account Number		State License Number
Order Placed By		Email Address
Customer's Special Instructions		

<b>Ship To</b>	<b>Bill To</b>
Attn:	Attn:

Item No.	Description	Dose	U/M	Price**	Qty. in Boxes or Vials
<b>Seqirus</b>					
<b>Trivalent</b>					
FLU001903	<b>Fluad™ Influenza Virus Vaccine</b> 0.5mL prefilled syringes, needleless, 10 per box 65 years of age and older (no preservatives or latex)	<b>\$41.878**</b>	Box of 10	<b>\$418.78**</b>	
<b>Quadrivalent</b>					
FLU241910	<b>Afluria® Quadrivalent Influenza Virus Vaccine</b> 5mL 10-dose vial 6 months of age and older (no latex)	<b>\$13.533**</b>	Vial	<b>\$135.33**</b>	
FLU031901	<b>Afluria® Quadrivalent Influenza Virus Vaccine</b> 0.5mL prefilled syringes, needleless, 10 per box 3 years of age and older (no preservatives or latex)	<b>\$14.528**</b>	Box of 10	<b>\$145.28**</b>	
FLU021920	<b>Afluria® Quadrivalent Influenza Virus Vaccine</b> 0.25mL prefilled syringes, needleless, 10 per box 6-35 months of age (no preservatives or latex)	<b>\$14.528**</b>	Box of 10	<b>\$145.28**</b>	
FLU141910	<b>Flucelvax® Quadrivalent Influenza Virus Vaccine</b> 5mL 10-dose vial 4 years of age and older (no antibiotics or latex)	<b>\$15.742**</b>	Vial	<b>\$157.42**</b>	
FLU031903	<b>Flucelvax® Quadrivalent Influenza Virus Vaccine</b> 0.5mL prefilled syringes, needleless, 10 per box 4 years of age and older (no preservatives, antibiotics or latex)	<b>\$16.90**</b>	Box of 10	<b>\$169.00**</b>	

\*\*Exclusive of Federal Excise Tax of \$0.75 per dose

**Seqirus Returnability**

Up to 25% for Fluad, and 20% for all other Seqirus products, per presentation type, of doses are eligible for return.  
*Supersedes all previous returnable programs. Returns must be in full-pack quantities only.*

**Sanofi Pasteur**

<b>Trivalent</b>					
FLU040565	<b>Fluzone® High-Dose Influenza Virus Vaccine</b> 0.5mL prefilled syringes, needleless, 10 per box 65 years of age and older (no preservatives or latex)	<b>\$45.99**</b>	Box of 10	<b>\$459.90**</b>	
FLU063115	<b>Fluzone® Quadrivalent Influenza Virus Vaccine</b> 5mL 10-dose vial 6 months of age and older (no latex)	<b>\$15.014**</b>	Vial	<b>\$150.14**</b>	
FLU051925	<b>Fluzone® Quadrivalent Influenza Virus Vaccine</b> 0.25mL prefilled syringes, needleless, 10 per box 6-35 months of age (no preservatives or latex)	<b>\$16.208**</b>	Box of 10	<b>\$162.08**</b>	
FLU041950	<b>Fluzone® Quadrivalent Influenza Virus Vaccine</b> 0.5mL prefilled syringes, needleless, 10 per box 3 years of age and older (no preservatives or latex)	<b>\$16.208**</b>	Box of 10	<b>\$162.08**</b>	
FLU041910	<b>Fluzone® Quadrivalent Influenza Virus Vaccine</b> 0.5mL single-dose vials, 10 per box 3 years of age and older (no preservatives or latex)	<b>\$16.208**</b>	Box of 10	<b>\$162.08**</b>	
FLU071910	<b>Flublok® Quadrivalent Influenza Vaccine</b> 0.5mL prefilled syringes, 10 per box 18 years and older (no eggs, influenza virus, preservatives, antibiotics or latex)	<b>\$45.99**</b>	Box of 10	<b>\$459.90**</b>	

\*\*Exclusive of Federal Excise Tax of \$0.75 per dose

**Sanofi Pasteur Returnability**

Up to 25%, per presentation type, of doses are eligible for return.  
*Supersedes all previous returnable programs. Returns must be in full-pack quantities only.*



Item No.	Description	Dose	U/M	Price**	Qty. in Boxes or Vials
<b>GlaxoSmithKline</b>					
FLU089711	FluLaval® Quadrivalent Influenza Virus Vaccine 5mL 10-dose vial 6 months of age and older (no latex)	\$14.569**\$	Vial	\$145.69**\$	
FLU090652	FluLaval® Quadrivalent Influenza Virus Vaccine 0.5mL prefilled syringes, needleless, 10 per box 6 months of age and older (no preservatives or latex)	\$15.588**\$	Box of 10	\$155.88**\$	
FLU089652	Fluarix® Quadrivalent Influenza Virus Vaccine 0.5mL prefilled syringes, needleless, 10 per box 6 months of age and older (no preservatives or latex)	\$15.588**\$	Box of 10	\$155.88**\$	

\*\*Exclusive of Federal Excise Tax of \$0.75 per dose

§ GSK contract pricing requires all members to be decked in the GSK system to qualify for the contract prices, as listed.

**GlaxoSmithKline Returnability**

Up to 30%, per presentation type, of doses are eligible for return.

Supersedes all previous returnable programs. Returns must be in full-pack quantities only.

**AstraZeneca**

FLU030610	FluMist® Quadrivalent Influenza Vaccine Live, Intranasal* 0.2mL prefilled, single-use Intranasal spray 2 years to 49 years of age (no preservatives or latex)	\$21.803**	Box of 10	\$218.03**	
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\*\*Exclusive of Federal Excise Tax of \$0.75 per dose

**2019-2020 Prebook Program for Flumist Quadrivalent**

Prebook by March 31, 2019, to receive 5% off list price of \$229.50 on all doses, included in above price.

Additional savings are available for accounts that prebook ≥400 doses.

Additional savings will be applied in the form of a rebate. 85% of the prebook volume must be delivered and accepted by December 31, 2019 to qualify for rebates.

Rebates will be administered in the form of credit applied to accounts by June 30, 2020.

Tier	Doses Prebooked	On-Invoice Discount	Rebate	Total Discount % Off List Price	Net Discounted Price**
Base	10 – 399 doses	5%	0%	5%	\$218.03
1	400 – 799 doses	5%	2%	7%	\$213.44
2	800 – 1,199 doses	5%	4%	9%	\$208.85
3	1,200 – 2,499 doses	5%	6%	11%	\$204.26
4	2,500 – 4,999 doses	5%	8%	13%	\$199.67
5	5,000 doses or greater	5%	10%	15%	\$195.08

**AstraZeneca Returnability**

Customers may return up to 25% of product purchased as long as they prebooked by March 31, 2019 and have accepted 85% of the prebooked volume by December 31, 2019.

Supersedes all previous returnable programs. Returns must be in full-pack quantities only.

Total Order Quantity

Note: Several state purchasing agencies require fees added to the contract price – 0.7% MyFloridaMarketPlace system transaction fee, 2% Georgia procurement fee, 1% South Carolina procurement fee, 1% Oklahoma procurement fee and 1.5% Alaska State procurement fee. FFF will also pass taxes and fees through to customers in states that impose healthcare taxes and fees for sales of pharmaceuticals to customers in their states.

Orders can be cancelled or reduced on or before **July 1, 2019**. Cancellations may affect discounts, rebates and return policies. Please refer to each manufacturer's specific terms regarding discounts, rebates and return policies.

Complete and fax this form to FFF Enterprises: (800) 418-4333. Online orders are accepted through MyFluVaccine.com. If you have any questions, contact Wow! Customer Service at (800) 843-7477.

Payment terms: 0.25% 20 days, net 60 days.

A confirmation with final confirmed pricing will be sent out to all customers for review, prior to shipment.

Customer represents warrants and agrees that Customer is purchasing products from FFF for its own use and use by its affiliated healthcare providers in delivering services to patients and not for resale. Customer acknowledges that FFF is relying on this representation in making its decision to sell products to Customer.

I have ordered the quantities listed above and agree to the terms that apply:

Authorized Signature:

Date:

Thank you for supporting FFF's  
Guaranteed Channel Integrity!





**AMENDMENT NO. 21 TO MMCAP CONTRACT NO. MMS14003**

THIS AMENDMENT NO.21 ("Amendment") is entered into as of February 13, 2019 or the date MMCAP obtains all required signatures within this document, whichever is later ("Effective Date") by and between the State of Minnesota acting through its Commissioner of Administration ("Minnesota") on behalf of the Minnesota Multistate Contracting Alliance for Pharmacy ("MMCAP") and FFF Enterprises Inc., a corporation with an address of 41093 County Center Drive, Temecula, CA 92591 ("Vendor").

**RECITALS**

WHEREAS, MMCAP and Vendor entered into a Contract MMS14003 on January 24, 2014 ("Original Contract");

WHEREAS, MMCAP and Vendor amended certain terms and conditions of the Original Contract by the way of the MMS14003 Amendment 8 into November 2, 2015, Amendment 15 into December 11, 2017, Amendment 17 into February 26, 2018, Amendment 19 into October 11, 2018, and Amendment 20 into January 24, 2019; together, Original Contract and Amendments 8, 15, 17, 19 and 20 will be referred to as "Agreement";

WHEREAS, MMCAP and Vendor have agreed to certain changes in the terms and conditions set forth in the Agreement and have agreed to amend the Agreement to reflect said changes;

WHEREAS, besides the terms and conditions of the Original Contract amended in this Amendment, the Agreement remains in full force and effect; and

NOW, THEREFORE, the parties acknowledge and hereby agree that the Original Contract shall be amended as follows:

**Capitalized Terms; Definitions; Conditions.** The Agreement and Amendment shall be read together as one document. Any capitalized terms used in Amendment which are defined in the Agreement will have the same meaning(s) when used herein, unless the context clearly requires otherwise. To the extent there shall exist a conflict between the Agreement and this Amendment, the terms of this Amendment will control. Unless otherwise clearly altered, modified, deleted or amended otherwise, the terms of the Agreement will continue in their entirety and govern the contractual relationship between Vendor and MMCAP.

**Article and Clause Addendums**

**Revision 1:** Table 1 of Article 2.1 of the Original Contract is amended to decrease the pricing of the following product for the 2019-2020 season.

Table 1

Mfr. Name	Product Name	Container Type, Product Age Indication	Pack Size	MMCAP Price Per Container (Prices do not include FET)	Florida Cost (Prices do not include FET) <sup>1</sup>	OK, SC Cost (Prices do not include FET) <sup>1</sup>	Alaska Cost (Prices do not include FET) <sup>1</sup>	Georgia Cost (Prices do not include FET) <sup>1</sup>
AstraZeneca	Flumist	0.2ml Nasal Sprayer; 2 to 49 years	Pack of 10	\$183.60	\$184.89	\$185.44	\$186.35	\$ 187.27

All prices listed are not inclusive of Federal Excise Tax of \$0.75/dose.

**Revision 2:** Section 2.15.1 is deleted in its entirety.

**Revision 3:** 2019-2020 FFF Prebook order form replaces the current Exhibit A as set forth on Amendment 20.

Except as herein amended, the provisions of the Agreement between the parties are hereby expressly reaffirmed and remain in full force and effect.

<sup>1</sup> Reference Contract Section 2.11 State Specific Requirements

**VENDOR: FFF ENTERPRISES, INC**

The Vendor certified that the appropriate person(s) have executed this Original Contract on behalf of the Vendor as required and by applicable articles, bylaws, resolutions, or ordinances.

Name: Luke D. Noll  
Signature: [Signature]  
Title: Director Vaccine Sales  
Date: 2-14-19

**STATE OF MINNESOTA FOR MMCAP**

In accordance with Minn. State. 16C.03, Subd.3

Name: Sara Turnbow  
Signature: [Signature]  
Date: 2-14-19

**COMMISSIONER OF ADMINISTRATION**

In accordance with Minn. Stat. 16C, Subd. 2

Name: Perry Egartson  
Signature: [Signature]  
Date: 2/14/19

**SIGNATURE PAGE**