



Office of General Services Procurement Services

Corning Tower, Empire State Plaza, Albany, NY 12242 | <https://ogs.ny.gov/procurement> | customer.services@ogs.ny.gov | 518-474-6717

Contract Award Notification Update

Subject: PRICELIST UPDATE

DATE: January 2, 2020 **AWARD #:** [NEG-22659](#) **GROUP #:** 22300

AWARD DESCRIPTION: Voting Systems, Ballot Marking, or Other Voting Devices Accessible to Individuals With Disabilities and Related Services and Accessories

CONTRACT PERIOD: February 1, 2014 to January 31, 2021

CONTACT: Lori L. Bahan | 518-486-7313 | lori.bahan@ogs.ny.gov

CONTRACT NO.: PC66393 **CONTRACTOR:** Dominion Voting Systems Corp.

Dominion Voting Systems Corp has submitted, and we have accepted the following additions to their contract pricelist dated January 2020.

Official Blank Ballot Stock: 14" to 17"

Official Blank Ballot Stock: 22" to 24"

Official Blank Ballot Stock: 26" to 30"

The following item has been deleted from the Dominion Voting Systems Corp Pricelist:

Blank Ballot Stock

This information can be accessed on the OGS website at the following URL address below:
<https://www.ogs.ny.gov/purchase/spg/pdfdocs/2230022659ContractorInfo.pdf>

All other terms and conditions of this Award remain the same.



Office of General Services Procurement Services

Corning Tower, Empire State Plaza, Albany, NY 12242 | <https://ogs.ny.gov/procurement> | customer.services@ogs.ny.gov | 518-474-6717

Contract Award Notification Update

Subject: PRICELIST UPDATE

DATE: June 27, 2019 **AWARD #:** [NEG-22659](#) **GROUP #:** 22300

AWARD DESCRIPTION: Voting Systems, Ballot Marking, or Other Voting Devices Accessible to Individuals With Disabilities and Related Services and Accessories

CONTRACT PERIOD: February 1, 2014 to January 31, 2021

CONTACT: Lori L. Bahan | 518-486-7313 | lori.bahan@ogs.ny.gov

CONTRACT NO.: PC66393 **CONTRACTOR:** Dominion Voting Systems Corp.

Dominion Voting Systems Corp has submitted, and we have accepted the following additions to their contract pricelist dated June 18, 2019.

Item Description	Price
123-000212 – ICE Paper Roll (72') (set of 5)	\$15.00 each
123-000228 – ICE Paper Roll (98') (set of 5)	\$20.00 each
123-001026 – ICE Ink Cartridge	\$25.00 each
123-000429 - Compact Flash Memory Card 16GB (2 units)	\$120.00 each
141-000009 – ICE Cleaning Sheets	\$12.00 each
117-001009 – ICE Battery	\$175.00 each
112-000744 – Plastic Ballot Box Key (set of 2)	\$5.00 each
ImageCast Evolution Extended Firmware Maintenance Annual fee per unit	\$228.00 each
ImageCast Evolution Extended Hardware Warranty Annual fee per unit	\$235.00 each

The following items have been deleted from the Dominion Voting Systems Corp Pricelist:

ImageCast Precinct BMD (ICP-BMD)
123-000119 - Compact Flash Memory Card - 4 GIB (2 units)
120-000068 - BMD Canvas Cover (minimum order of 250 units)
181-000011 - ICP Metal Ballot Box w/cover (1 unit)

This information can be accessed on the OGS website at the following URL address below:
<https://www.ogs.ny.gov/purchase/spg/pdfdocs/2230022659ContractorInfo.pdf>
All other terms and conditions of this Award remain the same.



Contract Award Notification Update

Subject: PRICELIST UPDATE

DATE: December 19, 2018 **AWARD #:** [NEG-22659](#) **GROUP #:** 22300

AWARD DESCRIPTION: Voting Systems, Ballot Marking, or Other Voting Devices Accessible to Individuals With Disabilities and Related Services and Accessories

CONTRACT PERIOD: February 1, 2017 to January 31, 2019

CONTACT: Lori L. Bahan | 518-486-7313 | lori.bahan@ogs.ny.gov

CONTRACT NO.: PC66393 **CONTRACTOR:** Dominion Voting Systems Corp.

Dominion Voting Systems Corp has submitted and we have accepted additions to their contract pricelist dated December 12, 2018.

Additions:

<u>Item Description</u>	<u>Price</u>
ImageCast Evolution (ICE)	\$10,900.00
171-000009 - ICE I-Button Administrative Key – Black	\$25.00
171-000010 - ICE I-Button Technician Key – Yellow	\$25.00

This information can be accessed on the OGS website at the following URL address below:
<https://www.ogs.ny.gov/purchase/spg/pdfdocs/2230022659ContractorInfo.pdf>

All other terms and conditions of this Award remain the same



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Contract Award Notification Update

Subject: CONTRACT EXTENSION

DATE: May 31, 2018 **AWARD #:** [NEG-22659](#) **GROUP #:** 22300

AWARD DESCRIPTION: Voting Systems, Ballot Marking, or Other Voting Devices Accessible to
Individuals With Disabilities and Related Services and Accessories

CONTRACT PERIOD: February 1, 2017 to January 31, 2021

CONTACT: Lori L. Bahan | 518-486-7313 | lori.bahan@ogs.ny.gov

CONTRACT NO.:	PC66393	CONTRACTOR:	Dominion Voting Systems Corp.
	PC66394		Election Systems & Software, LLC

The above referenced Contracts have been extended until January 31, 2021.

This information can be accessed on the OGS website at the following URL address below:
<https://www.ogs.ny.gov/purchase/spg/awards/2230022659CAN.HTM>

All other terms and conditions of this Award remain the same



Contract Award Notification Update

Subject: PRICELIST UPDATE

DATE: August 29, 2017 **AWARD #:** [NEG-22659](#) **GROUP #:** 22300

AWARD DESCRIPTION: Voting Systems, Ballot Marking, or Other Voting Devices Accessible to Individuals With Disabilities and Related Services and Accessories

CONTRACT PERIOD: February 1, 2017 to January 31, 2019

CONTACT: Lori L. Bahan | 518-486-7313 | lori.bahan@ogs.ny.gov

CONTRACT NO.: PC66393 **CONTRACTOR:** Dominion Voting Systems Corp.

Dominion Voting Systems Corp has submitted and we have accepted revision to their contract pricelist dated August 28, 2017.

Additions:

Item Description	Price
ImageCast Central Scanner System (M160-II)	\$14,500.00 each
117-000512 –ICP Backup Battery, Lithium (1 unit	\$165.00each
ImageCast Central (X10C) Extended Hardware Warranty	\$3,400.00 (per unit, per year)
ImageCast Central (7550/G1130) Extended Hardware Warranty	\$1,500.00 (per unit, per year)
ImageCast Central (M160-II) Extended Hardware Warranty	\$650.00 (per unit, per year)
ImageCast Central (X10C) Extended Software Maintenance	\$2,600.00 (per unit, per year)
ImageCast Central (7550/G1130) Extended Software Maintenance	\$2,500.00 (per unit, per year)
ImageCast Central (7550/G1130) Extended Software Maintenance	\$1,000.00 (per unit, per year)

This information can be accessed on the OGS website at the following URL address below:
<https://www.ogs.ny.gov/purchase/spg/pdfdocs/2230022659ContractorInfo.pdf>

All other terms and conditions of this Award remain the same



Contract Award Notification Update

Subject: PRICELIST UPDATE

DATE: October 26, 2016 **AWARD #:** [NEG-22659](#) **GROUP #:** 22300

AWARD DESCRIPTION: Voting Systems, Ballot Marking, or Other Voting Devices Accessible to Individuals With Disabilities and Related Services and Accessories

CONTRACT PERIOD: February 1, 2014 to January 31, 2019

CONTACT: Lori L. Bahan | 518-486-7313 | lori.bahan@ogs.ny.gov

CONTRACT NO.: PC66393 **CONTRACTOR:** Dominion Voting Systems Corp

Dominion Voting Systems Corp has submitted and we have accepted revisions to their contract pricelist dated September 22, 2016.

Additions:

Item Description	Price
09-601 – BMD Aux Table Top Cover (1 unit)	\$ 560.00 each
117-000513 – ICP Coin Battery, 2450 (1 unit)	\$ 5.00 each
123-000002 – ICP Contact Image Sensor (1 unit)	\$ 300.00 each
160-000004 - ICP Motherboard Board, rev2 (1 unit)	\$ 264.00 each
160-000005 - ICP Power Supply Board, PCB (1 unit)	\$ 200.00 each
160-000008 - ICP Motherboard (1 unit)	\$ 110.00 each
165-000022 - ICP 300A Transport Assembly (1 unit)	\$ 750.00 each
165-000029 - ICP 300A LCD Assembly (1 unit)	\$ 265.00 each
165-000046 - ICP 300B Transport Assembly (1 unit)	\$ 750.00 each
123-000087 - Programmable i-button and key ring mount (1 unit)	\$ 20.00 each

117-000521 – UPS Back Up Battery Cell (2 units)	\$ 88.00 per pair
Staff Training (onsite)	Staff Training (onsite)
Classes for EMS (EED and RTR) Programmers – Standard Course <ul style="list-style-type: none"> ▪ Class Size 1 – 6, 1 trainer ▪ 3 days 	\$ 6,000.00 per class
Classes for EMS (EED and RTR) Programmers – Refresher Course <ul style="list-style-type: none"> ▪ Class Size 1 – 6, 1 trainer ▪ 2 days 	\$ 4,500.00 per class
Classes for Voting Machine Technicians Level 1 <ul style="list-style-type: none"> ▪ Class Size 1 – 6, 1 trainer ▪ 2 days 	\$ 4,500.00 per class
Classes for Voting Machine Technicians Level 2 <ul style="list-style-type: none"> ▪ Class Size 1 – 6, 1 trainer ▪ 2 days 	\$ 4,500.00 per class
Classes for Voting Machine Technicians Level 1 and 2 <ul style="list-style-type: none"> ▪ Class Size 1 – 6, 1 trainer ▪ 3 days 	\$ 6,000.00 per class
Classes for Voting Machine Technicians Level 1 <ul style="list-style-type: none"> ▪ Class Size 7 – 12, 2 trainers ▪ 2 days 	\$ 9,000.00 per class
Classes for Voting Machine Technicians Level 2 <ul style="list-style-type: none"> ▪ Class Size 7 – 12, 2 trainers ▪ 2 days 	\$ 9,000.00 per class
Classes for Voting Machine Technicians Level 1 and 2 <ul style="list-style-type: none"> ▪ Class Size 7 – 12, 2 trainers ▪ 3 days 	\$ 12,000.00 per class
Classes for ICC Programmers <ul style="list-style-type: none"> ▪ Class Size 1 – 6, 1 trainer ▪ 1 day 	\$ 3,000.00 per class

Classes for RTR – RTM Users <ul style="list-style-type: none"> ▪ Class Size 1 – 6, 1 trainer ▪ 1 day 	\$ 3,000.00 per class
Staff Training (at Dominion Site)	Staff Training (at Dominion Site)
Classes for Voting Machine Technicians Level 1 <ul style="list-style-type: none"> ▪ Class Size 6 – 8, 1 trainer ▪ 2 days 	\$ 850.00 per attendee
Classes for Voting Machine Technicians Level 2 <ul style="list-style-type: none"> ▪ Class Size 6 – 8, 1 trainer ▪ 2 days 	\$ 850.00 per attendee

Deletions:

Item Description
123-000087 - Programmable i-button and key ring mount (10 units)
117-000521 – UPS Back Up Battery Cell (1 unit)

This information can be accessed on the OGS website at the following URL address below:
<http://www.ogs.ny.gov/purchase/spg/pdfdocs/2230022659ContractorInfo.pdf>

All other terms and conditions of this Award remain the same



Contract Award Notification Update

Subject: ELECTION SYSTEMS & SOFTWARE HARDWARE AND SOFTWARE LICENSE, MAINTENANCE AND SUPPORT SERVICES AGREEMENTS

DATE: December 4, 2015 **AWARD #:** [22659](#) **GROUP #:** 22300

AWARD DESCRIPTION: Voting Systems, Ballot Marking or Other Voting Devices Accessible to
Individuals With Disabilities and Related Services and Accessories

CONTRACT PERIOD: February 1, 2014 to January 31, 2019

CONTACT: Lori L. Bahan | 518-486-7313 | lori.bahan@ogs.ny.gov

CONTRACT NO.: PC66394 **CONTRACTOR:** Election Systems & Software, LLC.

OGS has learned that authorized contract users are being asked to sign additional contracts/agreements which may conflict with the terms and conditions of the OGS centralized contract. OGS wants to assure you this is not necessary. The centralized contract was developed in conjunction with the State Board of Elections to include all terms necessary to protect your interests under the state's election laws.

Please note OGS is working to assist affected authorized users.

Authorized users who make purchases from the centralized contract, such as through the use of a purchase order, do not have to, and shall not, enter into any additional contracts or agreements with the vendors. Those purchases are covered by the terms and conditions of the centralized contract. In the event that an authorized user has made a purchase from the centralized contract and signed an additional contract or agreement, OGS will contact the vendor to have that additional contract/agreement voided. This will not void your purchase; it will just void the additional contract/agreement. The purchase will still be valid pursuant to the terms of the centralized contract. Any authorized user who has made a purchase from the centralized contract and signed an additional contract/agreement should contact Lori Bahan at the contact information above.

This information does not apply if authorized users opt to enter into to any contracts on their own, apart from the state's centralized contract, in compliance with the requirements of the New York State General Municipal Law and local procurement requirements. The terms and conditions of such agreements are between the vendor and the authorized user and are not governed by the centralized contract. If you entered into such an agreement but believed you were making a purchase from the OGS contract we ask that you also contact Lori Bahan.

All other terms and conditions of this Award remain the same.

New York State Office Of General Services
New York State Procurement
Corning Tower Building
Empire State Plaza
Albany, New York 12242
<http://nyspro.ogs.ny.gov>

PURCHASING MEMORANDUM

CONTRACT AWARD NOTIFICATION UPDATE

AWARD NUMBER: [NEG 22659](#)

DATE: January 6, 2015

GROUP: 22300- Voting Systems, Ballot Marking
or Other Voting Devices Accessible to
Individuals With Disabilities and Related
Services and Accessories

PLEASE ADDRESS INQUIRIES TO:
STATE AGENCIES & CONTRACTORS

Lori L. Bahan
Contract Management Specialist
(518) 486-7313
lori.bahan@ogs.ny.gov

CONTRACT PERIOD: February 1, 2014 to
January 31, 2019

OTHER AUTHORIZED USERS

Customer Services
(518) 474-6717
customer.services@ogs.ny.gov

CONTRACTORS

CONTRACT NOS.: Dominion Voting Systems Corp PC66393
Election Systems & Software LLC PC66394

SUBJECT: PRICELIST UPDATES

ALL STATE AGENCIES AND OTHERS AUTHORIZED TO USE STATE CONTRACTS:

Dominion Voting Systems Corp has submitted and we have accepted revisions to their contract pricelist dated December 16, 2014.

Additions:

117-000511 – ICP Battery Lithium Coin 3V 24.5 MM, 3MM High, 290mAh (25 units)*
117-000519 – ITX Battery Lithium Coin 3V 20 MM, 240mAh (25 units)*
117-000521 – UPS Back Up Battery Cell (1 unit)
118-000052 - Labels, Blank for CF Card & Ibutton (100 sheets)

Deletions:

ADA Paddle Buttons (quantity of 10)
Plastic Pull Style Seals (quantity of 50)

Reduced Pricing:

123-000067 - BMD Printer (1 unit)
181-000003 - ATI Rev 1.0 (Audio Tactile Interface) (1 unit)
EMS EED/RTR PC Desktop
123-000178 - BMD Printer Ink Cartridge Set (set of 2) Printer Ink/Toner – 1 Color + 1 Black (up to 800 voters)
120-000067 - ICP Canvas Cover (1 unit)*
120-000068 - BMD Canvas Cover (1 unit)*

*Minimum Orders apply

Election Systems & Software has submitted and we have accepted revisions to their contract pricelist dated October 23, 2014.

Deletions:

6" x 2" Heavy Duty Caster Upgrade (set of 4; 500 lb load limit)
Ballot Box, Non-Stuffable, Aluminum (14" x 14" x 18")
Vinyl Envelope/Plastic Sleeve Sign Holder for AutoMARK Cart (8-1/2 x 11) – Ordered in Package of 50
Election Day Supply Transport Container.
Solenoid Mechanism Stamp
Twisted Harness Cable (Minimum Order Quantities Apply)
USD Multi-sheet Sensor

Reduced Pricing:

2316 Front Cover*
2255 Printed Circuit Board (PCB) Sensor Board*
2304 Rise ATX Power Cable (Minimum Order Quantities Apply)*
2246 Rubber Plugs for Display*
2309 Short Gasket for Display*
2303 Power Management Board (PMB) to Scanner Cable (Minimum Order Quantities Apply)*
86903 DS200 Uninterruptible Power Supply (500 watt capacity)
2308 Long Gasket for Display

*Minimum Orders apply

This information can be accessed on the OGS website at the following URL address below:
<http://www.ogs.state.ny.us/purchase/spg/pdfdocs/2230022659ContractorInfo.pdf>

All other terms and conditions of this Award remain the same.

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New York State Office Of General Services
New York State Procurement
Corning Tower Building
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Albany, New York 12242
<http://nyspro.ogs.ny.gov>

PURCHASING MEMORANDUM

CONTRACT AWARD NOTIFICATION UPDATE

AWARD NUMBER: [NEG-22659](#)

DATE: September 15, 2014

GROUP: 22300- Voting Systems, Ballot Marking
or Other Voting Devices Accessible to
Individuals With Disabilities and Related
Services and Accessories

PLEASE ADDRESS INQUIRIES TO:
STATE AGENCIES & CONTRACTORS

Lori L. Bahan
Contract Management Specialist
(518) 486-7313
lori.bahan@ogs.ny.gov

CONTRACT PERIOD: February 1, 2014 to
January 31, 2019

OTHER AUTHORIZED USERS

Customer Services
(518) 474-6717
customer.services@ogs.ny.gov

CONTRACTORS

CONTRACT NOS.: Dominion Voting Systems Corp PC66393
Election Systems & Software LLC PC66394

SUBJECT: DOMINION VOTING SYSTEMS EXTENDED WARRANTY AGREEMENTS

ALL STATE AGENCIES AND OTHERS AUTHORIZED TO USE STATE CONTRACTS:

The FAQ's dated September 15, 2014, have been updated to include the most recent question:

Question: If an item is not on the approved posted pricelist, can the contract be used?

Response: No, if an item is not on the approved pricelist the centralized contract cannot be used. An end user should follow their agency procedures for non-contract purchases.

All other terms and conditions of this Award remain the same.

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New York State Office Of General Services
New York State Procurement
Corning Tower Building
Empire State Plaza
Albany, New York 12242
<http://www.ogs.ny.gov>

PURCHASING MEMORANDUM
CONTRACT AWARD NOTIFICATION UPDATE

AWARD NUMBER: [22659](#)

DATE: June 16, 2014

GROUP: 22300- Voting Systems, Ballot Marking
or Other Voting Devices Accessible to
Individuals With Disabilities and Related
Services and Accessories

PLEASE ADDRESS INQUIRIES TO:
STATE AGENCIES & CONTRACTORS

Lori L. Bahan
Contract Management Specialist
(518) 486-7313
lori.bahan@ogs.ny.gov

CONTRACT PERIOD: February 1, 2014 to
January 31, 2019

OTHER AUTHORIZED USERS

Customer Services
(518) 474-6717
customer.services@ogs.ny.gov

CONTRACTORS

CONTRACT NOS.: Dominion Voting Systems Corp PC66393

SUBJECT: DOMINION VOTING SYSTEMS EXTENDED WARRANTY AGREEMENTS

ALL STATE AGENCIES AND OTHERS AUTHORIZED TO USE STATE CONTRACTS:

OGS has learned that authorized contract users are being asked to sign additional contracts/agreements which may conflict with the terms and conditions of the OGS centralized contract. OGS wants to assure you this is not necessary. The centralized contract was developed in conjunction with the State Board of Elections to include all terms necessary to protect your interests under the state's election laws.

Please note OGS is working to assist affected authorized users.

Authorized users who make purchases from the centralized contract, such as through the use of a purchase order, do not have to, and shall not, enter into any additional contracts or agreements with the vendors. Those purchases are covered by the terms and conditions of the centralized contract. In the event that an authorized user has made a purchase from the centralized contract and signed an additional contract or agreement, OGS will contact the vendor to have that additional contract/agreement voided. This will not void your purchase; it will just void the additional contract/agreement. The purchase will still be valid pursuant to the terms of the centralized contract. Any authorized user who has made a purchase from the centralized contract and signed an additional contract/agreement should contact Lori Bahan at the contact information above.

This information does not apply if authorized users opt to enter into to any contracts on their own, apart from the state's centralized contract, in compliance with the requirements of the New York State General Municipal Law and local procurement requirements. The terms and conditions of such agreements are between the vendor and the authorized user and are not governed by the centralized contract. If you entered into such an agreement but believed you were making a purchase from the OGS contract we ask that you also contact Lori Bahan.

All other terms and conditions of this Award remain the same.

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New York State Office Of General Services
New York State Procurement
Corning Tower Building
Empire State Plaza
Albany, New York 12242
<http://www.ogs.ny.gov>

PURCHASING MEMORANDUM

CONTRACT AWARD NOTIFICATION UPDATE

AWARD NUMBER: [22659](#)

DATE: May 22, 2014

GROUP: 22300- Voting Systems, Ballot Marking
or Other Voting Devices Accessible to
Individuals With Disabilities and Related
Services and Accessories

PLEASE ADDRESS INQUIRIES TO:

STATE AGENCIES & CONTRACTORS

Lori L. Bahan
Contract Management Specialist
(518) 486-7313
lori.bahan@ogs.ny.gov

CONTRACT PERIOD: February 1, 2014 to
January 31, 2019

OTHER AUTHORIZED USERS

Customer Services
(518) 474-6717
customer.services@ogs.ny.gov

CONTRACTORS

CONTRACT NOS.: Dominion Voting Systems Corp PC66393
Election Systems & Software LLC PC66394

SUBJECT: FAQ'S AND REVISED AWARD

ALL STATE AGENCIES AND OTHERS AUTHORIZED TO USE STATE CONTRACTS:

The revised award dated May 22, 2014, has been updated to include language regarding the legacy maintenance and the travel cost.

The FAQ's dated May 22, 2014, have been updated to include the most recent questions.

This information can be accessed on the OGS website at the following URL address by clicking on the Contractor Info link: <http://www.ogs.ny.gov/purchase/spg/awards/2230022659CAN.HTM>

All other terms and conditions of this Award remain the same

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Albany, New York 12242
<http://www.ogs.ny.gov>

PURCHASING MEMORANDUM

CONTRACT AWARD NOTIFICATION UPDATE

AWARD NUMBER: [22659](#)

DATE: March 6, 2014

GROUP: 22300- Voting Systems, Ballot Marking
or Other Voting Devices Accessible to
Individuals With Disabilities and Related
Services and Accessories

PLEASE ADDRESS INQUIRIES TO:

STATE AGENCIES & CONTRACTORS

Lori L. Bahan
Contract Management Specialist
(518) 486-7313
lori.bahan@ogs.ny.gov

CONTRACT PERIOD: February 1, 2014 to
January 31, 2019

OTHER AUTHORIZED USERS

Customer Services
(518) 474-6717
customer.services@ogs.ny.gov

CONTRACTOR/ Dominion Voting Systems Corp
CONTRACT NO.: PC66393

SUBJECT: PRICELIST CLARIFICATION

ALL STATE AGENCIES AND OTHERS AUTHORIZED TO USE STATE CONTRACTS:

Dominion Voting Systems Corp has made clarifications to the last page of their pricelist. The reference to License Fee has been removed as it is not applicable to the above referenced contract.

The updated pricelist dated February 28, 2014 can be accessed on the OGS website at the following URL address by clicking on the Contractor Info link: <http://www.ogs.ny.gov/purchase/spg/awards/2230022659CAN.HTM>

All other terms and conditions of this Award remain the same

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

CONTRACT AWARD NOTIFICATION

Title	:	Group 22300 – Voting Systems, Ballot Marking or Other Voting Devices Accessible to Individuals With Disabilities and Related Services and Accessories Classification Codes: 43, 44, 45 & 46
Award Number	:	<u>22659</u> (Replaces Award 21231)
Contract Period	:	February 1, 2014 to January 31, 2019
Bid Opening Date	:	August 7, 2013
Date of Issue	:	January 10, 2014
Specification Reference	:	As Incorporated In The Invitation for Bids and Purchasing Memoranda dated July 22, 2013 & August 1, 2013
Contractor Information	:	Appears on Page 2 of this Award

Address Inquiries To:

State Agencies & Vendors	Political Subdivisions & Others
Name : John Normile Title : Contract Management Specialist Phone : 518-408-2557 E-mail : John.normile@ogs.ny.gov	New York State Procurement Customer Services Phone : 518-474-6717 Fax : 518-474-2437 E-mail : customer.services@ogs.ny.gov

**The New York State Procurement values your input.
Complete and return "Contract Performance Report" at end of document.**

Description

This award is for voting systems and/or ballot marking or other voting devices accessible to individuals with disabilities and related services and accessories that comply with the mandates of New York State Election Law and all applicable regulations, guidelines and requirements, including, but not limited to, The Election Assistance Commission's 2005 Voluntary Voting Systems Guidelines.

NOTE: See individual contract items to determine actual awardees.

<u>CONTRACT #</u>	<u>CONTRACTOR & ADDRESS</u>	<u>TELEPHONE #</u>	<u>FED.IDENT.# / NYS VENDOR#</u>
PC66393	DOMINION VOTING SYSTEMS CORP. 215 Spadina Ave., Ste. 200 Toronto, ON M5T2C7 Canada Contact Information: Dominion Voting Systems Corp. 1201 18 th Street, Suite 210 Denver, CO 80202 Sales/Billing: Dominion Voting Systems Corp. 215 Spadina Ave., Ste. 200 Toronto, ON M5T2C7 Canada Maintenance/Service: Dominion Voting Systems Corp. 2010 Redbud Suite 110 McKinney, TX 75069	Phone: 720/257-5209 (9209) Pria Ingram Fax No.: 303/291-3909 E-mail: pria.ingrum@dominionvoting.com Phone: 416/762-8683 (263) Ivan Lobo Fax No.: 416/762-8663 E-mail: ivan.lobo@dominionvoting.com Phone: 214/491-5218 (9332) Phone: 416/762-8663 (6111) Susan Martin Fax No.: 972/542-3260 E-mail: susan.martin@dominionvoting.com	Federal ID 980550251 NYS Vendor ID 1100009621
PC66394	ELECTION SYSTEMS & SOFTWARE, LLC. 11208 John Galt Blvd. Omaha, NE 68137 Contact Information: Thomas F. O'Brien Phone: 402/ 970-1173 Fax No: 402/ 970-1232 E-mail: tfobrien@essvote.com Sales/Billing: Stephanie Berry Phone: 402/ 938-1359 Fax No.: 402/970-1291 Email: smberr@essvote.com Maintenance/Service: Al Moraczewski Phone: 402/591-0101 Toll Free: 877/ 377-8683 Fax No.: 402/ 970-1291 Email: awmoraczewski@essvote.com		Federal ID 470617567 NYS Vendor ID 1000009376

1% Discount for payment within 15 days of delivery and or receipt of invoice

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

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

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

AUTHORIZED USERS SHOULD NOTIFY NYSPRO IF THE CONTRACTOR FAILS TO MEET DELIVERY OR OTHER TERMS OF THIS CONTRACT. PRODUCTS OR SERVICES WHICH DO NOT COMPLY WITH THE SPECIFICATIONS OR ARE OTHERWISE UNSATISFACTORY TO THE AUTHORIZED USER SHOULD ALSO BE REPORTED TO NYSPRO.

SMALL, MINORITY AND WOMEN-OWNED BUSINESSES:

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

RECYCLED, REMANUFACTURED AND ENERGY EFFICIENT PRODUCTS:

The New York State Procurement supports and encourages the purchase of recycled, remanufactured, energy efficient and "energy star" products. If one of the following codes appears as a suffix in the Award Number or is noted under the individual Contract Number(s) in this Contract Award Notification, please look at the individual awarded items for more information on products meeting the suffix description.

RS,RP,RA	Recycled
RM	Remanufactured
SW	Solid Waste Impact
EE	Energy Efficient
E*	EPA Energy Star
ES	Environmentally Sensitive

NOTE: Products purchased for use by the voting public in an election shall not be refurbished, reconditioned or retrofitted Voting Systems and Ballot Marking or Other Voting Devices Accessible to Individuals with Disabilities.

NOTE TO AUTHORIZED USERS:

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

The authorized user, when purchasing from OGS contracts, should hold the contractor accountable for contract compliance and meeting the contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, authorized users are encouraged to seek improved pricing whenever possible.

Authorized users have the responsibility to document purchases, particularly when using OGS multiple award contracts for the same or similar product(s)/service(s), which should include:

- a statement of need and associated requirements,
- a summary of the contract alternatives considered for the purchase,
- the reason(s) supporting the resulting purchase (e.g., show the basis for the selection among multiple contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).

PRICE:

The voting machines that this provision applies to are:

ES & S Precinct-based voting system:

DS 200 v 2.9.0.0	DS 200 Scanner Board v 2.24.2.0	AutoMark v 1.8.3.0
VAT Previewer v 1.8.3.0	EMS/EVS Suite v 5.0.0.2	
Event Log Service v.1.5.2.0	Removable Media v 1.4.2.0	DS 200 Power Management v 1.2.8.0

ES & S central count system:

DS 850 v. 2.4.0.1

DOMINION Precinct-based voting system:

EMS Suite 4.9.17 ImageCast scanner 4.9.10 ImageCast scanner v 4.9.10/BMD 4.9.6

DOMINION central count voting system:

(ICC) v.4.9.

REQUEST FOR CHANGE:

Any request by an authorized user or contractor regarding changes in any part of the contract must be made in writing to the OGS, NYSPPro prior to effectuation.

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT BUSINESS ENTITY:

Contractor is encouraged to maintain an up-to-date Questionnaire during the life of the contract and is also required to ensure this Questionnaire reflects any substantive issues that may have occurred from the time the Contract was initially awarded.

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

The Commissioner of OGS or her designee, in his or her sole discretion, but in consultation with the SBOE, 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.

DEBRIEFING:

Contractors and bidders are accorded fair and equal treatment with respect to the opportunity for debriefing. OGS shall, upon request, provide a debriefing to any bidder or awarded contractor that responded to the IFB or RFP regarding the reason that the proposal or bid submitted by the unsuccessful bidder was not selected for a contract award. The post award debriefing should be requested by the bidder or awarded contractor within thirty days of posting of the contract award on the OGS website.

CONTRACT PAYMENTS:

Contractor and the distributors/resellers designated by the Contractor and approved by the State, if any, shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Invoices shall only be submitted upon receipt of a written, signed, formal acceptance notice for the specified Product by the Authorized User's Purchasing Official. Such notification shall not be unreasonably withheld. 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 the format requested by the Commissioner and in a media commercially available from the Contractor. The Commissioner may direct the Contractor to provide the information to the State Comptroller or to any Authorized User of the Contract.

Billings for Authorized Users must contain all information required by the Contract and the State Comptroller. 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. The State Comptroller shall render payment for Authorized User purchases, and such payment shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller website at www.osc.state.ny.us, by e-mail at epunit@osc.state.ny.us, or by telephone at 518-486-1255. 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.

Payment of Contract purchases made by Authorized Users, other than Agencies, shall be billed directly by Contractor on invoices/vouchers, together with complete and accurate supporting documentation as required by the Authorized User. 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.

For the following voting systems, payment shall be made in accordance with the following Payment Schedule: 80% upon acceptance by the County Board of Elections (CBOE) and 20% upon use in a successful election.

ES & S Precinct-based voting system:

DS 200 v 2.9.0.0 DS 200 Scanner Board v 2.24.2.0 AutoMark v 1.8.3.0
VAT Previewer v 1.8.3.0 EMS/EVS Suite v 5.0.0.2
Event Log Service v.1.5.2.0 Removable Media v 1.4.2.0 DS 200 Power Management v 1.2.8.0

ES & S Central count system:

DS 850 v. 2.4.0.1

PAYMENTS (Cont'd):

DOMINION Precinct-based voting system:

EMS Suite 4.9.17 ImageCast scanner 4.9.10 ImageCast BMD 4.9.6

DOMINION Precinct-based voting system:

(ICC) v.4.9.14

For all other voting systems, the payment schedule is as follows: 70% of the Initial Pollsite Voting System order shall be paid upon acceptance by the CBOE, 15% upon use of the PVS in an election and 15% after use of the PVS in a successful election conducted throughout the jurisdiction (including at least one General Election).

NOTE TO CONTRACTOR:

This Contract Award Notification is not an order. Do not take any action under this contract except on the basis of purchase order(s) from an authorized user. Contractors are not authorized to sell voting systems and/or ballot marking or other voting devices accessible to individuals with disabilities and related services until such machines, devices and/or services are certified by the New York State Board of Elections ("SBOE").

**GROUP 22300 - VOTING SYSTEMS, BALLOT MARKING OR OTHER
VOTING DEVICES ACCESSIBLE TO INDIVIDUALS WITH
DISABILITIES AND RELATED SERVICES AND ACCESSORIES**

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The machines listed below are already deemed certified and therefore, can be sold by the contractor following award of a contract by OGS without going through the SBOE certification process: ES & S Precinct-based voting system:

DS 200 v 2.9.0.0	DS 200 Scanner Board v 2.24.2.0	AutoMark v 1.8.3.0
VAT Previewer v 1.8.3.0	EMS/EVS Suite v 5.0.0.2	
Event Log Service v.1.5.2.0	Removable Media v 1.4.2.0	DS 200 Power Management v 1.2.8.0

ES & S central count system:

DS 850 v. 2.4.0.1

DOMINION Precinct-based voting system:

EMS Suite 4.9.17 ImageCast scanner 4.9.10 ImageCast scanner v 4.9.10/BMD 4.9.6

DOMINION central count voting system:

(ICC) v.4.9.

All other machines that a Contractor requests be added to the contract, or contracts awarded to Bidders who do not currently hold contracts for voting systems, must go through the following certification process:

The Bidder submits voting systems and/or ballot marking or other voting devices accessible to individuals with disabilities and related services that comply with the mandates of New York State Election Law, and meet the Election Assistance Commission's 2005 Voluntary Voting Systems Guidelines http://www.eac.gov/testing_and_certification/voluntary_voting_system_guidelines.aspx to the extent that they are consistent with State law. OGS will then negotiate and award contracts, or add machines to a contract for such systems. However, the Contractor is not yet authorized to actually sell Voting Systems and Ballot Marking or Other Voting Devices Accessible to Individuals with Disabilities and Related Services to Authorized Users until the SBOE certifies the Voting Systems and Ballot Marking or Other Voting Devices Accessible to Individuals with Disabilities and Related Services for use in New York State. NOTE: Any negotiations shall be made in writing with the Designated Contacts from OGS and SBOE. Vendors shall be responsible for payment of the cost of the certification process, as determined by the SBOE. Prospective Contractors should be aware that there is an application fee of \$5,000, unless such requirement is waived by the SBOE, and testing costs are estimated to be in excess of \$1,000,000.00 unless such requirement is waived by the SBOE. Upon completion of the certification process, OGS, in conjunction with the SBOE, will approve the certified systems for purchase under the contract.

NOTE: Issues involving the system certification are to be referred to the Anna Svizzero or Joseph Burns the Designated Contacts for the SBOE.

ELECTRONIC PAYMENTS:

For any purchases made by state agencies, the Office of the State Comptroller (OSC) offers an "electronic payment" option in lieu of issuing checks. To obtain an electronic payment authorization form visit the OSC website at www.osc.state.ny.us or contact them by e-mail at epunit@osc.state.ny.us or by phone at 518-486-1255.

PREFERRED SOURCE PRODUCTS AND SERVICES:

Some products/services in this contract may be available from one or more preferred source suppliers such as Correctional Industries (Corcraft), Industries for the Blind of NYS, and NYS Industries for the Disabled. Agencies are reminded to comply with the statutory requirements under Section 162 of the State Finance Law and the guidelines issued by the State Procurement Council to afford first priority to products and services available from preferred sources which meet your form, function and utility. Products and services obtained from such contracts must comply with state and federal election laws, regulations, guidelines and requirements. Authorized Users may wish to consult with the SBOE before utilizing products from other New York State contracts.

Contractors are required to include this notice in all price lists and contract updates.

OVERLAPPING CONTRACT ITEMS:

Products/services available in this contract may also be available from other New York State contracts. Agencies should select the most cost effective procurement alternative that meets their program requirements and maintain a procurement record documenting the basis for the selection. Products and services obtained from such contracts must comply with state and federal election laws, regulations, guidelines and requirements. Authorized Users may wish to consult with the SBOE before utilizing products from other New York State contracts.

NYSPRO's DISPUTE RESOLUTION POLICY:

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

CONFLICT OF TERMS:

Unless otherwise set forth in the procurement or contract documents, conflicts among documents shall be resolved in the following order of precedence:

- a. **Appendix A** (Standard Clauses for NYS Contracts)
- b. **Contract and other writing(s)** setting forth the final agreements, clarifications and terms between the Bid Documents and Contractor's Bid. In the latter circumstance, clarifications must specifically note in writing what was offered by the Contractor and what was accepted by the State. If not, such clarifications shall be considered last in the order of precedence under this paragraph. Included herein shall be Purchase Orders issued by Authorized Users, any attachments thereto and any documents used to clarify the terms of the same.
- c. **Bid Documents** (Other than **Appendix A**).
 - i. Bid Specifications prepared by the Authorized User.
 - ii. **Appendix B** (General Specifications).
 - iii. Incorporated Contract Appendices and Exhibits, including but not limited to Exhibit 1 link to New York State Election Law Article 7 Title II, Exhibit 2 link to Subtitle V of Title 9 of the Official Compilation of Codes, Rules and Regulations Part 6209, Exhibit 3 Sample Statement of Work, Sample Maintenance and Support Submission and Sample Training Submission and Appendix C Required Contractor Submissions: (# 1 Mandatory Contractor Questionnaire, # 2 Contractor, Reseller & Distributor Information,) following the order of precedence as stated for Contract above.
- d. **Contractor's Bid.**

There will be no unincorporated appendices to this contract. All documents referenced in the contract and made a term thereof will be physically attached to the contract.

IRAN DIVESTMENT ACT

As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a new provision has been added to the State Finance Law (SFL), § 165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) will be developing a list (prohibited entities list) of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law). Pursuant to SFL § 165-a(3)(b), the initial list is expected to be issued no later than 120 days after the Act's effective date, at which time it will be posted on the OGS website.

By entering into this Contract, Contractor (or any assignee) certifies that once the prohibited entities list is posted on the OGS website, it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list.

Additionally, Contractor agrees that after the list is posted on the OGS website, should it seek to renew or extend the Contract, it will be required to certify at the time the Contract is renewed or extended that it is not included on the prohibited entities list. Contractor also agrees that any proposed Assignee of the Contract will be required to certify that it is not on the prohibited entities list before OGS may approve a request for Assignment of Contract

During the term of the Contract, should OGS receive information that a person is in violation of the above-referenced certification, OGS will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Iran Divestment Act of 2012 within ninety (90) days after the determination of such violation, then OGS shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

OGS reserves the right to reject any request for assignment for an entity that appears on the prohibited entities list prior to the award 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.

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 report found evidence of statistically significant disparities between the level of participation of minority and women-owned business enterprises in state procurement contracting verses 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.

EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS

By submission of a bid or proposal in response to this solicitation, the Bidder/Contractor agrees with all of the terms and conditions of Appendix A including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Contractor is required to ensure that it and any subcontractors awarded a subcontract over \$25,000 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, shall undertake or continue 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, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to this contract; or (ii) employment outside New York State.

Further, pursuant to 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 and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex (including gender expression), 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.

BUSINESS PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MINORITY-AND WOMEN OWNED BUSINESS ENTERPRISES (MWBE)

For purposes of this procurement, OGS has conducted a comprehensive search and has determined that the contract does not offer any opportunities for participation by MWBEs.

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

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, bidders/proposers 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.

Contractors 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, contractors 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 contractors 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.

CONTRACT PERIOD AND RENEWALS:

It is the intention of the State to enter into a contract for a term of five years as stated herein.

The parties may renew the contract, upon approval of the NYS OGS & SBOE, upon expiration of the original term for an additional one (1) year term. Upon termination of the Contract, all rights and obligations set forth herein shall survive in accordance with their terms as to procurements made or individual licenses granted to Authorized Users prior to such termination.

CANCELLATION FOR CONVENIENCE:

The State of New York retains the right to cancel this contract, in whole or in part without reason provided that the Contractor is given at least sixty (60) days notice of its intent to cancel. This provision should not be understood as waiving the State's right to terminate the contract for cause or stop work immediately for unsatisfactory work, but is supplementary to that provision. Any such cancellation shall have no effect on existing Authorized User agreements, which are subject to the same 60 day discretionary cancellation or cancellation for cause by the respective Authorized Users.

PROCUREMENT LOBBYING TERMINATION:

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

INSURANCE REQUIREMENTS:

The contractor must provide proof of current insurance throughout the contract term if requested by an Authorized User or OGS NYSPRO. The Contractor shall procure at its sole cost and expense, and shall maintain in force at all times during the term of this Contract, policies of insurance as herein below set forth, written by companies 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". 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 the New York State Office of General Services ("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.

A. Conditions Applicable to Insurance. All policies of insurance required by this Contract must meet the following requirements:

1. Coverage Types and Policy Limits. The types of coverage and policy limits required from the Contractor are specified below.
2. Policy Forms. Except as may be otherwise specifically provided herein or agreed in writing by OGS, policies must be written on an occurrence basis.

3. Certificates of Insurance/Notices. Contractor shall provide a Certificate or Certificates of Insurance, and all required endorsements, in a form satisfactory to OGS, before commencing any work under this Contract. Certificates shall reference the Contract Number. Certificates shall be mailed to the Office of General Services, NYSPRO, Corning Tower- 38th Floor, Empire State Plaza, Albany, NY 12242.

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, as to which notice shall be provided as required by law, to OGS. 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 Certificate(s) of Insurance, and amendatory endorsements.

Certificates of Insurance shall:

- Be in the form approved by OGS.
- Disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by the contract.
- Specify the Additional Insured and Named Insured as required herein.
- Refer to this Contract by number and any other attachments on the face of the certificate, and
- Be signed by an authorized representative of the insurance carrier or producer.

Only original documents (Certificates of Insurance, endorsements and other attachments) will be accepted.

4. 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 Contract, or as a result of the Contractor's activities.

5. If, at any time during the term of this Contract, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in the 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. Any delay, time lost, or additional cost incurred as a result of the Contractor not having insurance required by the Contract or not providing proof of same in a form acceptable to OGS, shall not give rise to a delay claim or any other claim against OGS. Should the Contractor fail to provide or maintain any insurance required by this Contract, or proof thereof is not provided, OGS or Authorized Users may withhold further contract payments, treat such failure as a breach or default of the contract.

6. 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.

7. 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 contract the insurance requirements of this document, as applicable. Required insurance limits should be determined commensurate with the work of the Subcontractor. Proof thereof shall be supplied to OGS.

Acceptance and/or approval by OGS does not, and shall not, be construed to relieve Contractor of any obligations, responsibilities or liabilities under the Contract.

All insurance required by the Contract shall name The People of the State of New York, its officers, agents, and employees as additional insured hereunder (General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number CG 20 26 11 85 or the equivalent). The additional insured requirement does not apply to Workers Compensation, Disability or Professional Liability coverage.

INSURANCE REQUIREMENTS (Cont'd.):

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

1. Commercial General Liability Insurance with a limit of not less than \$2,000,000 each occurrence. Such liability shall be written on the ISO occurrence form CG 00 01, or a substitute form providing equivalent coverages and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage.

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

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Each Occurrence \$1,000,000

2. Comprehensive Business Automobile Liability Insurance with a limit of not less than \$2,000,000 each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non-owned automobiles.

3. Technology Professional Liability: The Contractor shall maintain Technology Professional Liability (Errors and Omissions) insurance with a limit of not less than \$2,000,000.00 for damages arising from computer-related services including, but not limited to, the following: consulting, data processing, programming, system integration, software development, installation, distribution or maintenance, systems analysis or design, training, staffing or other support services, any electronic equipment, computer hardware or software developed, manufactured, distributed, licensed, marketed or sold. This errors and omissions insurance shall include coverage for third party claims and losses including with respect to network risks (such as data breaches, transmission of virus/malicious code; unauthorized access or criminal use of third party, ID/data theft) and invasion of privacy regardless of the type of media involved in the loss of private information (such as computers, paper files and records, or voice recorded tapes), covering collection, use, access, etc. of personally identifiable information, direct liability, as well as contractual liability for violation of privacy policy, civil suits and sublimit for regulatory defense/indemnity for payment of fines and penalties. This coverage is made on a claims-made policy form, so the Contractor shall purchase, at its sole expense, an Extended Discovery Clause for up to three (3) years after the work is completed if the coverage is cancelled or not renewed.

Waiver of Subrogation. 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 OGS, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if Contractor waives or has waived before the casualty, the right of recovery against OGS or (ii) any other form of permission for the release of OGS.

WORKERS' COMPENSATION INSURANCE AND DISABILITY BENEFITS REQUIREMENTS:

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 it has 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 a rejection of your bid or renewal.

Proof of Compliance with Workers' Compensation Coverage Requirements:

An ACORD form is NOT acceptable proof of workers' compensation coverage. In order to provide proof of compliance with the requirements of the Workers' Compensation Law, a Contractor shall:

WORKERS' COMPENSATION INSURANCE AND DISABILITY BENEFITS REQUIREMENTS (Cont'd):

- 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.

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 at the time of bid submission:

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); (Reference applicable IFB/RFP and Group #s on the form.)

B) Certificate of Workers' Compensation Insurance:

1) 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

2) 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, or

C) Form SI-12, Certificate of Workers' Compensation Self-Insurance available from the New York State Workers' Compensation Board's Self-Insurance Office; or

D) Form GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance available from the Contractor's Group Self-Insurance Administrator.

Proof of Compliance with Disability Benefits Coverage Requirements:

In order to provide proof of compliance with the requirements of the Workers' Compensation Law, 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.

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 at the time of bid submission:

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); (Reference applicable IFB/RFP and Group #s on the form.)

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.

ALL OF THE ABOVE REFERENCED FORMS, EXCEPT CE-200, SI-12 & DB-155 MUST NAME: The Office of General Services, NYSPRO, 38th floor, Corning Tower, Albany NY 12242 as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder).

REMEDIES FOR BREACH:

In the event of a breach by the Contractor, 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. Minimum Cures:

i. Minimum cures: Unless otherwise agreed to by the Authorized User, at a minimum, in order to be able to address a failure of voting machine(s) or a failure in the provision of support and/or services, from pre-election day 30 up to pre-election day 15, Contractor shall provide phone support which shall be available on each of said days, from 7:00 am to 10:00 pm, Eastern Time. When a problem with voting machine hardware, or software manifests itself within this 15-day period, and same is unable to be resolved with phone support as provided by the Contractor, upon such notice by the Authorized User, on-site support/assistance must be provided by the Contractor within 24 hours of such when such notice is made. If after such on-site support/assistance, the failure still has not been resolved, upon notice of the CBOE, new, replacement equipment must be delivered to the County Board of Elections ("CBOE"), no later than 48 hours after such notice. For the period of pre-Election Day 15 to pre-Election Day 1, telephone support shall be provided 24 hours a day, seven days a week. In addition, Contractor shall provide, upon request, on-site support/assistance and/or equipment replacement as soon as requested, but in no event shall such on-site support/assistance be provided more than twenty-four (24) hours after request is made by CBOE exceed the time set for the prior Critical Period. In the event that the Contractor discovers a problem, notice should be provided to the SBOE and the CBOE and SBOE shall be advised of the resolution of the problem.

ii. Beyond the State's statutory and regulatory requirements, for the period including Election Day minus 1, Election Day and Election Day plus 1, telephone support must be available during this entire 72-hour period. On Election Day, in addition to phone support as defined above, the Contractor, upon notice of the Authorized User, shall promptly provide on-site support.

iii. For the post-election period, which is defined at Election Day plus 1 through Election Day plus 15, phone support shall be provided by the Contractor, on each of said days, between the hours of 7:00 am until 10:00 pm, EST. If such phone support does not resolve the failure, on-site support must be provided within 24 hours of when notice is made, and if after such on-site support, the failure has not been resolved, the Authorized User shall advise the Contractor of the continuing failure and new replacement equipment must be delivered to the Authorized User, no later than 48 hours after such notice by the Authorized User.

iv. In periods other than as set forth above (hereinafter the "Non-Critical Periods"), except during the conduct of quarterly maintenance processes, phone support shall be made available by the Contractor, on each business day (Monday – Friday), between the hours of 8:00 am and 6:00 pm, Eastern Time. If such phone support fails to resolve the voting equipment or system failure, the Contractor must provide for an on-site service call within 10 business days of when such notice is made by the Authorized User, and if the failure remains unresolved, Contractor must provide replacement within 30 calendar days of when such notice is made by the Authorized User, or by day 1 of the next ensuing Critical Period prior to an election, whichever is sooner.

Cover/Substitute Performance In the event a Contractor's material breach is not cured within the applicable notice and cure period, the Commissioner of OGS ("Commissioner"), in conjunction with the SBOE, and/or any Authorized User may, with or without formally Bidding: (i) Purchase from other sources; or (ii) If the Commissioner and the SBOE, and/or any Authorized User, are unsuccessful after making reasonable attempts, under the circumstances then existing, to timely obtain acceptable service or acquire replacement Product and Services of equal or comparable quality, the Commissioner and the SBOE, and/or any Authorized User, may acquire acceptable replacement Product and Services of equal or greater quality.

Such purchases may, in the discretion of the Commissioner and the SBOE, and/or any Authorized User, be deducted from the Contract quantity and payments due Contractor.

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

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

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

Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the Contract, the ordering Authorized User may rent substitute equipment temporarily. Any sums expended for such rental shall, upon demand, be reimbursed to the Authorized User promptly by the Contractor or deducted by the Authorized User from payments due or to become due the Contractor on the same or another transaction. In addition, any sums required to be expended by the Authorized User in order to carry out their statutory election responsibilities as a result of the Contractor's failure to timely deliver shall be reimbursed promptly by the Contractor or deducted by the Authorized User from payments due or to become due to the Contractor on the same or another transaction.

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

MINIMUM ORDER:

Minimum order shall be \$100.00.

Contractor may elect to honor orders for less than the minimum order. For such orders, at the Contractor's option, shipping costs from the Contractor's address (as stated in bid) 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.

DELIVERY:

Delivery must be made as ordered to each Authorized User according to the specific details included in the Purchase Order and in accordance with the terms of the Contract or this Contract Award Notice. Unless otherwise specified in the Contract, delivery shall be made within thirty calendar days after receipt of a Purchase Order by the Contractor and shall not be complete until acceptance testing has been completed in accordance with the procedures established for acceptance testing by the SBOE. Said procedures shall comply with §6209.10 and the guidelines established by the New York State Board of Elections. The Authorized User and the Contractor shall mutually agree to a delivery schedule as required by §6209.9(A)(4)(a) of the SBOE's Regulations. Said agreed upon delivery schedule shall be adhered to by the Contractor.

The decision of the Commissioner and the SBOE 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, the SBOE and the Authorized User, 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 and the SBOE's discretion, the Contract.

REPORT OF CONTRACT PURCHASES:

Contractor shall furnish quarterly reports containing total sales for both state agency and authorized non-state agency contract purchases no later than forty-five (45) days after the close of each calendar quarter.

In addition to Contractor direct sales, Contractor shall submit sales information for all resellers, dealers, distributors or other authorized distribution channels, where such contract sales are provided by other than the Contractor. Contractors shall verify if each alternate vendor is a NYS Certified Minority (MBE) or Women (WBE) Owned Businesses. Contractors shall verify such status through the Empire State Development Minority and Women Owned Businesses Database web site at: <http://www.nylovesmwbe.ny.gov/cf/search.cfm>.

**GROUP 22300 - VOTING SYSTEMS, BALLOT MARKING OR OTHER
VOTING DEVICES ACCESSIBLE TO INDIVIDUALS WITH
DISABILITIES AND RELATED SERVICES AND ACCESSORIES**

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REPORT OF CONTRACT PURCHASES (Cont'd):

A separate report shall be provided in the following format for each authorized distribution channel. The sales report form is forwarded to each Contractor at time of award for completion in accordance with the contract terms and conditions:

Item/ SubItem Number	Product Catalog Number	or Product/ Service Description	Total Quantity Shipped to State Agencies	Total Quantity Shipped to <u>Authorized</u> <u>Non-State Agencies</u>	Total Sales \$ <u>State Agencies</u>	Total Sales \$ Authorized Non-State <u>Agencies</u> \$
				Grand Total Sales State and Non-State Agencies	\$	

The report is to be submitted electronically in Microsoft Excel 2007 or lower format to The New York State Office of General Services, New York State Procurement (NYSPRO), Tower Bldg., Empire State Plaza, Albany, NY 12242, to the attention of the individual shown on the front page of the Contract Award Notification and shall reference the Group Number, the Award Number, Contract Number, sales period, and contractor's (or other authorized agent) name.

The outlined sales report is the minimum information required. Additional related sales information, such as monthly reports, and/or detailed user purchases may be required and must be supplied upon request.

CONTRACT UPDATES - ADDITION AND DELETION OF PRODUCTS:

Product changes to Contract are addressed in the following manner. In order to expedite processing of a change request that involves more than one specified category below, each request should be submitted separately to OGS.

- a) **AUTO ADDS / DELETIONS** – “Auto Adds/Deletions” are Contract changes and updates made in accordance with the previously approved Contract pricing formula; e.g., a “discount from list” or pricing based on an approved GSA-based price Schedule. “Auto Adds/Deletions” include: i) adding new products within the established, previously approved pricing structure, ii) lowering pricing for Products previously incorporated under the Contract, and iii) deleting Products previously incorporated under the Contract. Contractor shall forward the updated Contract price list to OGS for prior approval before changes (additions or deletions) are made to the Contract. Contractor may not supply new product offerings until after receipt of OGS approval. While price decreases (ii) may take effect at any time, Contractor shall provide to OGS new updated price lists. For category (iii) Auto Deletions, Contractor must supply documentation supporting the unavailability of the product to the US market. Contractor should note, however, that all “Auto Adds” or Deletions approved by OGS may be subject to a post audit by the Office of the State Comptroller.
- b) **REGULAR ADD** - “Regular Adds” are requests for i) price increases for Products incorporated under the Contract for other than previously approved pricing structure, and ii) addition of new products to the Contract which do not fall under the previously established price structure or discounts for Product types previously approved under the Contract. Regular Adds include but are not limited to newly added manufacturer’s product lines, re-bundled Products or Services, etc. Regular Adds must be submitted to OGS for prior approval, and must be accompanied by a justification of reasonableness of price. Regular Adds are subject to post-audit by the Comptroller. If approved, OGS staff will notify Contractor in writing. Contractor may not supply new product offerings until after receipt of OGS approval of the “Regular Add.” When Contract pricing is based on GSA prices, the revised prices or prices of new Products must reflect current GSA prices adjusted as necessary for any additional discounts.
- c) **SPECIAL ADD** – Contract changes and updates that do not fall within either of the above categories will be processed as “Special Adds”. Special Adds are changes that are not specifically covered by the terms of the Contract but inclusion is found to be in the best interest of the State. Contractor must provide a justification of reasonableness of the prices offered and a statement explaining why it is in the best interest of the State to approve the new Products. Special Adds are subject to post-audit by the Office of the State Comptroller. If approved, OGS staff will notify Contractor in writing. Contractor may not supply new offerings until after receipt of OGS approval of the “Special Add.”

All adds are subject to prior approval of the SBOE which shall be obtained by OGS.

GUARANTEE:

The Contractor guarantees that the equipment, all required accessories, associated products and all parts regularly used with the type of equipment offered are either:

New - Standard new equipment, latest model of regular stock equipment, in production at the time of the bid opening. New assembled equipment is factory produced, has been assembled for the first time, and may contain new and/or recycled components that have been fully inspected, tested and fully meet product performance and reliability specifications. Equipment must be newly serialized and the purchaser must be the first end user of the product.

or

Used - Standard equipment, which is assembled and fully inspected, tested and certified as meeting all applicable product performance and reliability specifications. All equipment must be upgraded with the current, certified version of all applicable software.

or

Remanufactured at the time of the bid opening as defined in the "Additional Guarantee for Remanufactured Equipment" clause below.

Every new or used unit delivered must be warranted for five (5) years from the date of acceptance of the Products by an Authorized User. During the warranty period, the purchaser will incur no charges for maintenance.

The Contractor will bear all material and labor costs for repair of equipment defects and failures occurring during the warranty period from date of acceptance of the equipment, all required accessories, associated products and all parts by an Authorized User. Service/maintenance during the warranty period will be no less than service requirements under a maintenance agreement. If the machine does not perform to the satisfaction of the Authorized User during the warranty period, the Contractor will, upon approval of the NYSPRO and the SBOE, replace the Product with a like model. The replacement machine will have a new/remanufactured machine warranty identical to the original machine (not less than five (5) years from the date of acceptance of the Product by an Authorized User).

Contractor will also guarantee that no attachment or part has been substituted or applied contrary to the manufacturer's recommendations and standard practice.

Where accessories (options) are to be supplied, they must be compatible with the rest of the equipment.

ADDITIONAL GUARANTEE FOR REMANUFACTURED EQUIPMENT:

The Contractor guarantees that the equipment offered has been completely remanufactured and is in "like new" condition. Remanufactured equipment shall have been subjected to the following processes:

1. Disassembly to predetermined standards established by the manufacturer;
2. Cleaning;
3. Inspection and testing to new machine test standards;
4. Replacement of defective and/or worn components;
5. Installation of all retrofits designated by the manufacturer as field mandatory as of the date of machine installation.

The warranty on remanufactured equipment must be for five (5) years from the date of acceptance of the Products by an Authorized User and remanufactured equipment must be eligible for the same full service maintenance terms and conditions as newly manufactured equipment.

EPA ENERGY STAR PROGRAM:

The Federal EPA, in cooperation with manufacturers, continues a program to foster the manufacture of energy efficient equipment. New York State fully supports this effort and requires all products offered to comply with EPA Energy Star guidelines for energy efficiency. The State may discontinue use of and/or delete from contract selected products as mandated by any NYS energy legislation that is enacted during the term of this contract. The Contractor shall have no recourse with the State for such discontinuance/deletion.

FINANCIAL STABILITY:

If requested, bidder must document its ability to service a contract with dollar sales volume similar to scope of this bid through submission of financial statements documenting past sales history. The bidder must be financially stable and able to substantiate the financial statements of its company. In addition to sales history, current financial statements may be requested and must be provided within five business days. The state reserves the right to request additional documentation from the bidder and to request reports on financial stability from independent financial rating services. The state reserves the right to reject any bidder who does not demonstrate financial stability sufficient for the scope of this bid.

WARRANTIES:

See "Warranties" in Appendix B, OGS General Specifications. At time of bid opening, product offered must meet all requirements of this solicitation including full commercial/retail availability. Product literature and specifications must also be available.

RESERVATION:

The State reserves the right to negotiate lower pricing, or to advertise for bids for any unanticipated purchase.

TRAVEL, MEALS & LODGING:

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

ENTIRE AGREEMENT:

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

SEVERABILITY:

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

DETAILED SPECIFICATIONS

INSTRUCTION OF PERSONNEL:

Contractor shall provide detailed information regarding in-person training as follows:

- The maximum number of participants per training session.
- The duration of training based on Contractor-recommended roles and responsibilities.
- The cost and terms for training to include both regionalized and on-site county training.
- The cost and terms for training in the procedures to be used to accomplish ballot configuration and ballot programming.

Within ten business days of acceptance by the Contractor of a Purchase Order, the Contractor and the Authorized User shall agree upon mutually-acceptable training dates for the Contractor to provide live instruction by qualified personnel sufficient to ensure that the product is operating correctly and operator-maintained so as to perform to the full extent of its design capabilities. The Authorized Users shall designate personnel to receive instruction.

In addition, Contractors of voting systems, ballot marking or other devices accessible to individuals with disabilities shall, prior to delivery, provide training for Authorized User personnel in the following areas:

- Unpacking, assembling and acceptance testing of the equipment;
- Proper use of the equipment, including maintenance, storage and transportation procedures;
- Procedures to be used to accomplish ballot face layout and ballot programming; and
- Procedures to be followed by inspectors at polling places.

INSTRUCTION MATERIALS:

With ten (10) business days of the SBOE's certification of a voting system, ballot marking or other voting device accessible to individuals with disabilities and prior to the commencement of any training of Authorized Users, the Contractor(s) shall furnish to the SBOE five (5) complete sets of instruction materials (video, graphics, audio or text) for each product and component supplied to the Authorized Users. In addition, prior to the commencement of any training, the Contractor(s) shall furnish to the Authorized User a set of complete instruction materials, (video, graphics, audio or text) for each product and component supplied to the Authorized Users. These instruction materials shall include the following:

- Training on unpacking, assembling and acceptance testing of the equipment.
- Training on adjusting and aligning the equipment.
- Training for proper use of the equipment, including maintenance, storage and transportation procedures.
- Training in the procedures to be used to accomplish ballot face layout and ballot programming.
- Training on operating the product (including layout and interconnection diagrams and schematic and wiring diagrams).
- Training on preventive and corrective maintenance procedures (including complete part lists, manufacturer's catalog numbers, and ordering information, if applicable).
- Training on voter education on the use of the VOTING SYSTEMS and any accessibility devices (including methods to be used by eligible voters to mark a ballot).
- Training on procedures to be followed by inspectors at polling places.

All training materials shall also be provided, at no additional cost, to the SBOE and the Authorized Users in an electronic version to enable the SBOE and the Authorized Users to incorporate the training materials into their training procedures, manuals and outreach materials.

This requirement is separate from, and in addition to, any materials otherwise provided with the bid.

The vendor shall permit the SBOE and Authorized Users to duplicate these materials for wide distribution, including posting to their websites, for use in public education and training programs.

These instruction materials and any other documents provided to the SBOE or an Authorized User shall not bear confidential or proprietary labels of any sort.

CERTIFICATION:

The voting system, ballot marking or other device accessible to individuals with disabilities shall be examined by examiners or testing laboratories to be selected for such purpose by the SBOE. Each examiner or laboratory shall receive compensation and be reimbursed for expenses in connection with making an examination and report of a voting system, ballot marking or other device accessible to individuals with disabilities. Neither any member of the SBOE, nor any examiner or owner or employee of any testing laboratory shall have any pecuniary interest in any voting system, ballot marking or other device accessible to individuals with disabilities. Any voting system, ballot marking or other device accessible to individuals with disabilities that is not certified by the SBOE cannot be purchased or used in any election in New York State.

When any change is made in the operation or material of any feature or component of any voting system, ballot marking or other device accessible to individuals with disabilities which has been certified pursuant to the provisions of this section, such voting system, ballot marking or other device accessible to individuals with disabilities must be submitted for re-examination and re-certification as the SBOE deems necessary.

If at any time after any voting system, ballot marking or other device accessible to individuals with disabilities has been certified pursuant to the provisions of the Election Law, the SBOE has any reason to believe that such voting system, ballot marking or other device accessible to individuals with disabilities does not meet all applicable requirements, it shall forthwith cause such voting system, ballot marking or other device accessible to individuals with disabilities to be examined again in the manner prescribed herein. If the opinions in the report of such examinations do not state that the voting system, ballot marking or other device accessible to individuals with disabilities can safely and properly be used by voters at elections, the SBOE shall forthwith rescind its certification. After the date on which the certification of any voting system, ballot marking or other device accessible to individuals with disabilities is rescinded, those machines or devices cannot be used or purchased for use in this state. The SBOE may examine all voting systems, ballot marking or other devices accessible to individuals with disabilities of such type which were previously purchased, to determine if they may continue to be used in elections in this state.

Examination will have the following principal objectives:

- To demonstrate the ability of a voter to mark a ballot;
- To demonstrate the ability of the voting system, ballot marking or other device accessible to individuals with disabilities to mark a ballot accurately;
- To demonstrate the ability of the voter to verify their ballot, to include notification of any undervote(s), and/or overvote(s), if any and that the voting system, ballot marking or other device accessible to individuals with disabilities allows the voter to correct same; if they choose;
- To demonstrate the ability of the voter to independently verify their ballot after the voting system, ballot marking or other device accessible to individuals with disabilities has marked the ballot;
- To demonstrate that the voting systems, ballot marking or other devices accessible to individuals with disabilities' hardware and software operate in a manner consistent with a voter's ability to mark a ballot;
- To demonstrate that the voting systems, ballot marking or other devices accessible to individuals with disabilities' vendor-provided security requirements and security provisions are identified for each system function and operating mode, and that all features function as described; and
- To independently identify any additional security procedures, tasks or features which the voting system, ballot marking or other device accessible to individuals with disabilities shall accommodate, and verify that such additional requirements are in place and function as required.

Whenever the SBOE is satisfied that a voting system, ballot marking or other device accessible to individuals with disabilities has been proven to meet or exceed these requirements and the bidder is able to provide documentation for the SBOE to establish that those requirements have been met, then the SBOE may, in its discretion, accept such documentation as satisfaction of the required tests.

Exhibit 4 contains samples of one (1) general election ballot, and three (3) primary ballots.

SOURCE CODE ESCROW FOR LICENSED PRODUCTS AND/OR SERVICES:

Bidders shall be required to comply with the source code escrow provisions of the NYS Election Law (Section 7-208) and Regulations (Section 6209.6(F)(10) and as set forth by the SBOE.

TRAINING OF PERSONNEL:

Within ten business days of the acceptance by the Contractor of a purchase order, the Contractor shall provide training by qualified personnel sufficient to ensure that the product is operated and operator-maintained, so as to perform to the full extent of its design capabilities. The Purchaser shall designate personnel which are to receive instruction.

Contractors of Voting Systems and Ballot Marking or Other Voting Devices Accessible to Individuals with Disabilities and Related Services shall, prior to delivery, provide training for boards of elections personnel in the following areas:

- ☐ training on unpacking, assembling and acceptance testing of the equipment;
- ☐ training for proper use of the equipment, including maintenance, storage and transportation procedures;
- ☐ training in the procedures to be used to accomplish ballot face layout and ballot programming; and,
- ☐ provide instruction materials which include procedures to be followed by inspectors at polling places.

The vendor shall allow duplication of these materials, or shall supply sufficient copies for distribution to all elections inspectors.

INSTRUCTION MATERIALS

Within 10 business days of completion of the contract, the Contractor(s) shall furnish to the NYSBOE complete instruction materials, (video, graphics, audio or text) for the product and for each component supplied. The instruction materials shall include complete instructions for unpacking, inspecting, installing, adjusting, aligning, which include procedures to be followed by inspectors at polling places, and operating the product, together with layout and interconnection diagrams, schematic and wiring diagrams, preventive and corrective maintenance procedures, and complete parts lists, manufacturer's catalog numbers, and ordering information, if applicable. The vendor shall also include complete voter education instruction materials on the use of the new voting machines and any accessibility devices, on methods to be used by eligible voters to cast a vote and have that voted counted. The vendor shall permit the SBOE to duplicate these materials

LEGACY MAINTENANCE PLAN PURCHASED FOR VOTING SYSTEMS PURCHASED FROM AWARD 21231 EQUIPMENT:

The Authorized Users of the legacy voting systems will need to be able to maintain the systems and that for the extended maintenance or other maintenance to be done, contractors may charge to get the legacy voting systems up to the most current certification. Pursuant to Contract Award 21231, contractors were required to provide a Project Warranty Period which warranted the voting systems set forth below for five years from the date of acceptance of the voting system by an authorized user. This warranty covered, among other things, modifications required by New York State law or regulation. After the expiration of the Project Warranty Period required by the contract, authorized users had the option to purchase Extended Maintenance Plans and enter into an Extended Warranty Period. Some Authorized Users may not have purchased those plans, however. Therefore, in cases where an Authorized User now wishes to purchase an Extended Maintenance Plan for voting systems purchased under a contract awarded pursuant to Contract Award 21231, Contractors may charge for any parts and labor costs necessary to bring the County's voting system back to the most current certified version, as determined by the SBOE, as a result of any damage or defects which occurred or arose after the end of the Project Warranty Period for the voting system. Contractors shall not charge for any other parts or labor costs as those costs were covered by the Project Warranty Period. Prior to the commencement of any work, the Contractor shall submit a written proposal for any such charges to the Authorized User and must receive written acceptance of such proposal from the Authorized User prior to beginning any work or commencing any extended maintenance plan.

The voting machines that this provision applies to are:

ES & S Precinct-based voting system:

DS 200 v 2.9.0.0	DS 200 Scanner Board v 2.24.2.0	AutoMark v 1.8.3.0
VAT Previewer v 1.8.3.0	EMS/EVS Suite v 5.0.0.2	
Event Log Service v.1.5.2.0	Removable Media v 1.4.2.0	DS 200 Power Management v 1.2.8.0

ES & S central count system:

DS 850 v. 2.4.0.1

DOMINION Precinct-based voting system:

EMS Suite 4.9.17	ImageCast scanner 4.9.10	ImageCast scanner v 4.9.10/BMD 4.9.6
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DOMINION central count voting system:

(ICC) v.4.9.14

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

December 2012

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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.

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

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

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

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

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
<http://esd.ny.gov/MWBE/directorySearch.html>

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.

APPENDIX B

GENERAL SPECIFICATIONS

**PLEASE RETAIN THIS DOCUMENT FOR FUTURE
REFERENCE**

July 2006

GENERAL SPECIFICATIONS

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

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

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

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

a. **Appendix A** (Standard Clauses for NYS Contracts)

b. **Contract and other writing(s)** setting forth the final agreements, clarifications and terms between the Bid Documents and Contractor's Bid. In the latter circumstance, clarifications must specifically note in writing what was offered by the Contractor and what was accepted by the State. If not, such clarifications shall be considered last in the order of precedence under this paragraph. Included herein shall be Purchase Orders issued by Authorized Users, any attachments thereto and any documents used to clarify the terms of the same.

c. **Bid Documents** (Other than Appendix A).

i. Bid Specifications prepared by the Authorized User.

ii. Appendix B (General Specifications).

iii. Incorporated Contract Appendices and Exhibits, including but not limited to Exhibit 1 link to New York State Election Law Article 7 Title II, Exhibit 2 link to Subtitle V of Title 9 of the Official Compilation of Codes, Rules and Regulations Part 6209, Exhibit 3 Statewide Demographic Information, Sample Statement of Work, Sample Maintenance and Support Submission and Sample Training Submission and Exhibit 4 Sample Ballots;

Appendix C Required Contractor Submissions: (# 1 Mandatory Contractor Questionnaire, # 2 Contractor, Reseller & Distributor Information,) following the order of precedence as stated for Contract above.

d. **Contractor's Bid**

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

AFFILIATE Any individual or other legal entity, (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) that effectively controls another company in which (a) the Bidder owns more than 50% of the ownership; or (b) any individual or other legal entity which owns more than 50% of the ownership of the Bidder. In

addition, if a Bidder owns less than 50% of the ownership of another legal entity, but directs or has the right to direct such entity's daily operations, that entity will be an Affiliate.

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

ATTORNEY GENERAL Attorney General of the State of New York.

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

AUTHORIZED USER'S PURCHASING OFFICIAL A County Board of Elections employee who conducts purchasing for that county.

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

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

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

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

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

COMPTROLLER Comptroller of the State of New York.

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

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

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

c. Back-Drop Contracts Multiple Award Centralized Contracts where the Office of General Services defines the specifications for Products and/or Services 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 Products and/or Services, project or particular scope of work may subsequently be made on a single or sole source basis, or on the basis of a Mini-Bid among qualified Back-Drop contract holders, or such other method as set forth in the Bid Document.

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

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

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

CONTRACTOR Any successful Bidder(s) to whom a Contract has been awarded by the Commissioner in conjunction with the NYS Board of Elections.

CRITICAL PERIOD Thirty (30) days prior to and after the election in which such Voting Systems and Ballot Marking or Other Voting Devices Accessible to Individuals with Disabilities and Related Services are used.

DELIVERY Delivery of the Equipment shall include but not be limited to all software, hardware, documentation, and services needed to support election activities. The Contractor shall provide the Equipment along with providing the related services in accordance

with this Contract.

DESIGNATED CONTRACTOR REPRESENTATIVE

The Contractor official authorized in writing to act on behalf of the Contractor in all matters relating to the Contract.

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 Products and/or Services.

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

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

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

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

FIRMWARE a computer program stored in read-only memory

either programmable or nonprogrammable, that becomes a permanent part of the computing device that is not subject to change or modification without review by the State Board.

GROUP A classification of Products and/or Services, services or technology which is designated by OGS.

HARDWARE the actual voting or ballot counting device.

INITIAL ASSEMBLY Placing and assembly of the Products and/or Services in the required locations.

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

LICENSEE One or more Authorized Users who acquire Products and/or Services from Contractor by issuing a Purchase Order in accordance with the terms and conditions of the Contract; provided that, for purposes of compliance with an individual license, the term "Licensee" shall be deemed to refer separately to the individual Authorized User(s) who took receipt of and who is executing the Products and/or Services, and who shall be solely responsible for performance and liabilities incurred. In the case of acquisitions by State Agencies, the Licensee shall be the State of New York.

LICENSE EFFECTIVE DATE The date Products and/or Services are delivered to an Authorized User. Where a License involves Licensee's right to copy a previously licensed and delivered Master Copy of a Program, the license effective date for additional copies shall be deemed to be the date on which the Purchase Order is executed.

LICENSOR A Contractor who transfers rights in proprietary Products and/or Services to Authorized Users in accordance with the rights and obligations specified in the Contract.

MACHINE FAILURE Shall include the failure of all the voting machine's hardware, and any auxiliary components and devices.

MAINTENANCE The activities associated with the repair of any Products and/or Services acquired under this Contract.

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

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

NEW PRODUCTS AND/OR SERVICES RELEASES (Products and/or Services Revisions) Any commercially released revisions to the licensed version of a Products and/or Services 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 Products and/or Services.

NOTICE AND CURE PERIOD The period in time during which the defaulting party must be notified of a default and during which they must fix the cause of the same

OGS The New York State Office of General Services.

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

PRODUCTS AND/OR SERVICES A deliverable under any Bid or Contract which may include commodities, services and/or technology. The term "Products and/or Services" includes Software.

PROJECT WARRANTY PERIOD Five (5) years from the date of acceptance of the Products and/or Services by each Authorized User

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

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

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

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

RESPONSIBLE BIDDER A Bidder that is determined to have financial and organizational capacity, legal authority, satisfactory previous performance, skill, judgment and integrity, and that is found to be competent, reliable and experienced, as determined by the Commissioner in conjunction with the NYS Board of Elections. For purposes of being deemed responsible, a Bidder must also be determined to be in compliance with Sections 139-j and

139-k of the State Finance Law relative to restrictions on contacts during the procurement process and disclosure of contacts and prior findings of non-responsibility under these statutes.

RESPONSIVE BIDDER A Bidder meeting the specifications or requirements prescribed in the Bid Document or solicitation, as determined by the OGS In conjunction with the NYS Board of Elections.

ROUTINE PREVENTIVE MAINTENANCE Any steps recommended by Vendors to ensure the good and proper working order of Voting Systems and Ballot Marking or Other Voting Devices Accessible to Individuals with Disabilities, and such routine maintenance as provided for by the SBOE in §6209.10

SINGLE SOURCE A procurement where two or more Bidders can supply the required Product and Services, and the Commissioner, in conjunction with the NYS Board of Elections, may award the contract to one Bidder over the other. **SITE** The location (street address) where Product and Services will be executed or services delivered.

SOFTWARE Software means any programming instructions used by the vote counting system, including but not limited to system programs and application programs. System programs include but are not limited to the operating system, control programs, communication programs, database managers, and device drivers. Application programs include but are not limited to, any program that processes the data

SOFTWARE FAILURE Failure occurring in either the EMS or within the individual voting system devices

SOFTWARE TRANSFER AND GRANT Software Transfer means the transfer of the license to use particular software product from the purchaser of the license (the voting system vendor) to the Authorized User. Software transfers apply to third party operating systems, database management systems, etc. Software grant means the grant of a license to use by the owner of the license (the voting system vendor) to the Authorized User. Software grants apply to voting system applications (such as the Election Management Software). **SOLE SOURCE** A procurement where only one Bidder is capable of supplying the required Product and Services. **SOURCE CODE** The programming statements or instructions written and expressed in any language understandable by a human being skilled in the art which are translated by a language compiler to produce executable machine Object Code.

STATE State of New York.

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

SUPPORT Services supplied by the Contractor to assist the Authorized Users in the transition to a new voting system and shall be provided during the pre-election, election day and post-election time periods. Such services shall usually be provided on-site and will be provided for both the voting equipment and the EMS system.

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.

TRAINING Services supplied by the Contractor to train Authorized Users on the design, composition, maintenance,

testing and operation of the new voting system, for both the voting equipment and the EMS system, and includes direct hands-on instruction, testing of student participants, and instructional materials for board technical, end-user and Voting Machine Technicians, Board of Elections staff members, as well as poll workers. See solicitation for Training and Training Material Requirements.

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 and Services, 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 and Services manufacturer.

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

7. BID OPENING Bids may, as applicable, be opened publicly. The Commissioner and the NYS Board of Elections reserve the right at any time to postpone or cancel a scheduled Bid opening.

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

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

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

"BID ENCLOSED (bold print, all capitals)

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

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

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

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

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

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

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

Any Bid received at the specified location after the time specified will be considered a late Bid. A late Bid shall not be considered for award unless: (i) no timely Bids meeting the requirements of the Bid Documents are received or, (ii) in the case of a multiple award, an insufficient number of timely Bids were received to satisfy the multiple award; and acceptance of the late Bid is in the best interests of the Authorized Users.

Bids submitted for continuous or periodic recruitment contract awards must meet the submission requirements associated with their specifications. Delays in United States mail deliveries or any other means of transmittal, including couriers or agents of the Authorized User shall not excuse late Bid submissions.

Similar types of delays, including but not limited to, bad weather, or security procedures for parking and building admittance shall not excuse late Bid submissions.

Determinations relative to Bid timeliness shall be at the sole discretion of the Commissioner and the NYS Board of Elections.

12. BID CONTENTS Bids must be complete and legible. All Bids must be signed. All information required by the Bid Specifications must be supplied by the Bidder on the forms or in the format specified. No alteration, erasure or addition is to be made to the Bid Documents. Changes may be ignored by the Commissioner and the NYS Board of Elections 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 and the NYS Board of Elections after the time specified for the Bid opening, may not be considered.

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

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

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

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

14. CONFIDENTIAL/TRADE SECRET MATERIALS

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

b. Commissioner, the NYS Board of Elections or Authorized User Contractor further warrants, covenants and represents that any confidential information obtained by Contractor, its agents, Subcontractors, officers, distributors,

resellers or employees in the course of performing its obligations, including without limitation, security procedures, business operations information, or commercial proprietary information in the possession of the State or any Authorized User hereunder or received from another third party, will not be divulged to any third parties. Contractor shall not be required to keep confidential any such material that is publicly available through no fault of Contractor, independently developed by Contractor without reliance on confidential information of the Authorized User, or otherwise obtained under the Freedom of Information Act or other applicable New York State laws and regulations. This warranty shall survive termination of this Contract. Contractor further agrees to take appropriate steps as to its agents, Subcontractors, officers, distributors, resellers or employees regarding the obligations arising under this clause to insure such confidentiality.

15. RELEASE OF BID EVALUATION MATERIALS

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

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

17. TAXES

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

b. Purchases made by the State of New York and certain non-State Authorized Users are exempt from New York State and local sales taxes and, with certain exceptions, federal excise taxes. To satisfy the requirements of the New York State Sales tax exemption, either the Purchase Order issued by a State Agency or the invoice forwarded to authorize payment

for such purchases will be sufficient evidence that the sale by the Contractor was made to the State, an exempt organization under Section 1116 (a) (1) of the Tax Law. Non-State Authorized Users must offer their own proof of exemption upon request. No person, firm or corporation is, however, exempt from paying the State Truck Mileage and Unemployment Insurance or Federal Social Security taxes, which remain the sole responsibility of the Bidder/Contractor.

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

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

18. EXPENSES PRIOR TO CONTRACT EXECUTION

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

19. ADVERTISING RESULTS The prior written approval of the Commissioner and the NYS Board of Elections 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 and the NYS Board of Elections relative to the Bid or Contract for press or other media releases.

20. PRODUCT AND SERVICES 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 and Services is referenced. References to such specific Product and Services are intended as descriptive, not restrictive, unless otherwise stated. Comparable Product and Services will be considered if proof of compatibility is provided, including appropriate catalog excerpts, descriptive literature, specifications and test data, etc. The decision of the Commissioner and the NYS Board of Elections as to acceptance of the Product and Services 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 and/or Services which cannot be reconciled, with respect to such discrepancy, then the written description shall prevail.

21. 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/or Services and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the Product and Services 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 and/or Services to the maximum extent practicable without jeopardizing the performance or intended end use of the Product and Services 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. Products purchased for use by the voting public in an election shall not be refurbished, reconditioned or retrofitted Voting Systems and Ballot Marking or Other Voting Devices Accessible to Individuals with Disabilities. All other items with recycled, recyclable, recovered, refurbished, reconditioned retrofitted or remanufactured content must be identified in the Bid or Bidder will be deemed to be offering new Product and Services.

22. PRODUCTS AND/OR SERVICES

MANUFACTURED IN PUBLIC INSTITUTIONS Bids offering Products and/or Services that are manufactured or produced in public institutions will be rejected.

23. 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 and the NYS Board of Elections 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 and/or Services as a Group or Lot, a Bidder desiring to Bid "no charge" on a Product and Services 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 and the NYS Board of Elections.

d. Educational Pricing All Products and/or Services 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 and Services 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 and the NYS Board of Elections.

f. Best Pricing Offer During the Contract term, if substantially the same or a smaller quantity of a Product and Services 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 and the NYS Board of Elections, shall be immediately reduced to the lower price. Price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after:

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

(ii) Commercial Price List Reductions: Where NYS Net Prices are based on a discount from Contractor's list prices, the

date Contractor lowers its pricing to its customers generally or to similarly situated government customers during the Contract term; or

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

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

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

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

24. 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 and the NYS Board of Elections, 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 and Services, 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.

25. SITE INSPECTION Site inspection is required for this contract. Bidders are required to inspect each poll site, for environmental or other conditions for pre-existing deficiencies

that may affect the installed Products and Services, to be provided and, which may affect Bidders' ability to properly deliver, install or otherwise provide the required Products and Services or the Authorized User's ability to operate the Products and Services provided. All inquiries regarding such conditions shall be made in writing. Bidders shall be deemed to have knowledge of any deficiencies or conditions which such inspection or inquiry might have disclosed. Bidders must provide a detailed explanation with its Bid if additional work is required under this clause in order to properly complete the delivery and initial assembly of the required Products and Services or provide the requested Products and Services. Bidders should refer to §6209.9(a)(3) of the New York State Board of Elections' Regulations for specific requirements.

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

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

27. SAMPLES

a. Standard Samples Bid Specifications may indicate that the Product and Services to be purchased must be equal to a standard sample on display in a place designated by the Commissioner and the NYS Board of Elections, 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 In conjunction with the NYS Board of Elections reserves the right to request from the Bidder/Contractor a representative sample(s) of the Product and Services offered at any time prior to or after award of a contract. Unless otherwise instructed, samples shall be furnished within the time specified in the request. Untimely submission of a sample may constitute grounds for rejection of Bid or cancellation of the Contract. Samples must be submitted free of charge and be accompanied by the Bidder's name and address, any descriptive literature relating to the Product and Services 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 and the NYS Board of Elections 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 and the NYS Board of

Elections 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 and Services delivered must be of the same enhanced quality and identity as the sample. Thereafter, in the event of a Contractor's default, the Commissioner in conjunction with the NYS Board of Elections may procure a Product and Services substantially equal to the enhanced sample from other sources, charging the Contractor for any additional costs incurred.

d. Conformance with Sample(s) Submission of a sample (whether or not such sample is tested by, or for, the Commissioner and the NYS Board of Elections) 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, and the NYS Board of Elections, the sample or Product and Services submitted is not in accordance with the specifications or testing requirements prescribed in the Bid Specifications, the Commissioner and the NYS Board of Elections may reject the Bid. If an award has been made, the Commissioner and the NYS Board of Elections 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 and the NYS Board of Elections, either prior to or after Contract award. Unless otherwise stated in the Bid Specifications, Bidder samples consumed or rendered useless by testing will not be returned to the Bidder. Testing costs for samples that fails to meet Contract requirements may be at the expense of the Contractor. Certification testing must be done prior to the purchase of PVSs by Authorized Users.

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 and Services or on the issue in question.

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

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

30. CLARIFICATIONS / REVISIONS Prior to award, the Commissioner and the NYS Board of Elections reserve the right to seek clarifications, request Bid revisions, or to request

any information deemed necessary for proper evaluation of Bids from all Bidders deemed to be eligible for Contract award. Failure to provide requested information may result in rejection of the Bid.

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

32. EQUIVALENT OR IDENTICAL BIDS In the event two offers are found to be substantially equivalent, price shall be the basis for determining the award recipient. If two or more Bidders submit substantially equivalent Bids as to pricing or other factors, the decision of the Commissioner, and the NYS Board of Elections, to award a Contract to one or more of such Bidders shall be final.

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

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

35. QUANTITY CHANGES PRIOR TO AWARD The Commissioner, and the NYS Board of Elections, reserve 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.

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

37. 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 mailing or electronic communication by the Commissioner and the NYS Board of Elections 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 and the NYS Board of Elections.

38. PARTICIPATION IN CENTRALIZED CONTRACTS The following shall not limit or inhibit the authority of the OGS Commissioner and the NYS Board of Elections under State Finance Law, Section 163 (10) (e) (Piggybacking):

a. Agencies All State Agencies may utilize and purchase under any state Centralized Contract let by the Commissioner, in conjunction with the NYS Board of Elections, unless the Bid Documents limit purchases to specific State Agencies.

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

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

d. Responsibility for Performance Participation in state Centralized Contracts by Authorized Users is permitted upon the following conditions: (i) the responsibility with regard to performance of any contractual obligation, covenant, condition or term thereunder by any Authorized User other than State Agencies shall be borne and is expressly assumed by such Authorized User and not by the State; (ii) a breach of the Contract by any particular Authorized User shall neither constitute nor be deemed a breach of the Contract as a whole which shall remain in full force and effect, and shall not affect the validity of the Contract nor the obligations of the

Contractor thereunder respecting non-breaching Authorized Users, whether State or otherwise; (iii) for a breach by an Authorized User other than a State Agency, the State specifically and expressly disclaims any and all liability for such breach; and (iv) each non-state agency Authorized User and Contractor guarantees to save the State, its officers, agents and employees harmless from any liability that may be or is imposed by their failure to perform in accordance with its obligations under the Contract.

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

39. 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, the NYS Board of Elections 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), Commissioner and the NYS Board of Elections 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 and Services, shall be valid or binding against Authorized User(s) unless authorized by the Commissioner and the NYS Board of Elections or specified in the Contract Award Notification. No such alteration or modification shall be made by unilaterally affixing such terms to Product and Services upon delivery (including, but not limited to, attachment or inclusion of standard pre-printed order forms, Product and Services 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 and Services, or that Authorized User has subsequently processed such document for approval or payment.

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

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

42. 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 and the NYS Board of Elections determine 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 and Services, the Commissioner and the NYS Board of Elections reserve the right to obtain such Product and Services from any source, including but not limited to this Contract(s), as the Commissioner and the NYS Board of Elections in their sole discretion determines will meet the needs of such emergency. Contractor shall not be entitled to any claim or lost profits for Product and Services procured from other sources pursuant to this paragraph. The reasons underlying the finding that an emergency exists shall be included in the procurement record.

43. PURCHASE ORDERS Unless otherwise authorized in writing by the Commissioner and the NYS Board of Elections, no Product and Services 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 and the NYS Board of Elections, 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, in conjunction with the NYS Board of Elections, must bear the appropriate Contract number and, if necessary, required State approvals. As deemed necessary, the Authorized User may confirm pricing and other Product and Services information with the Contractor prior to placement of the Purchase Order. All documents that are attached to a Purchase Order issued by an Authorized User become a part of the Contract. If the Contractor does not accept the terms of such attachments, then the Contractor shall notify the Authorized User of their disagreement at the time of receipt of the Purchase Order and may not accept such Purchase Order until agreement is reached as to the terms of the said attachments. 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 OGS Commissioner, in conjunction with the NYS Board of

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

44. PRODUCTS AND SERVICES DELIVERY

Delivery for Acceptance Testing:

Vendors must make delivery of machines for acceptance testing to the centralized acceptance testing location specified by the New York State Board of Elections and the New York State Office of General Services as required by the New York State Board of Elections. Once acceptance testing is completed, the vendor is responsible for repackaging and shipping the machines to the Authorized User. Delivery shall not be complete until acceptance testing has been completed in accordance with the procedures established for acceptance testing by the New York State Board of Elections. Said procedures shall comply with §6209.10 and the guidelines established by the New York State Board of Elections.

General Delivery After Acceptance Testing:

Delivery must be made as mutually agreed to in the purchase order issued by the Authorized User or the New York State Office of General Services. It is expected that there will be an initial delivery, to accommodate Authorized User training and outreach needs, and incremental deliveries, as per production schedules provided by vendors, with the balance of machines delivered no later than 30 days prior to use by the applicable County Board of Elections and in accordance with the terms of the Contract or Contract Award Notice. Delivery shall not be complete until acceptance testing has been completed in accordance with the procedures established for acceptance testing by the New York State Board §6209.10 and the guidelines established by the New York State Board of Elections. The acceptance testing period will be based upon the time identified in the State Board's dry run of system-specific acceptance testing, which would not include any time provided to a vendor to cure an identified failure. The Authorized User and the Contractor shall mutually agree to a delivery schedule which shall be preapproved by Commissioner and the NYS Board of Elections. It is expected that there will be an initial delivery, to accommodate Authorized User training and outreach needs, and incremental deliveries, as per production schedules provided by vendors, with the balance of machines delivered no later than 30 days prior to use by the applicable County Board of Elections and in accordance with the terms of the Contract or Contract Award Notice. Said agreed upon delivery schedule shall be adhered to by the Contractor. The decision of the Commissioner and the NYS Board of Elections as to compliance with delivery terms shall be final. The burden of proof for delay in receipt of Purchase Order shall rest with the Contractor. In all instances of a potential or actual delay in delivery, the Contractor shall immediately, but in no event more than three (3) days from the date that the contractor first

learns of the delay or potential for delay in delivery, notify the Commissioner, the NYS Board of Elections 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 and the NYS Board of Election's discretion, the Contract. 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 and/or Services have been received, inspected and accepted by the Authorized User. With respect to Lot II machines purchased prior to December 31, 2008, risk of loss is deemed to have passed on September 9, 2008. Acceptance is expected to begin within seventy-two hours of delivery and shall be completed in accordance with the acceptance testing procedures developed by the New York State Board of Elections after they conduct their dry-run of system specific acceptance testing, but such time period does not include any time provided to a Contractor to cure an identified failure.

45. 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 and Services 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.

46. SHIPPING/RECEIPT OF PRODUCT AND SERVICES

a. Packaging Tangible Product and Services 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 and Services 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 and Services to authorized personnel shall be borne exclusively by the Contractor.

47. 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 and/or Services have been received, inspected and accepted by the Authorized User. With respect to Lot II machines purchased prior to December 31, 2008, risk of loss is deemed to have passed on September 9, 2008. 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. Acceptance testing shall be the testing that is required by the New York State Board of Elections in compliance with §6209.10 and the guidelines established by the New York State Board of Elections. The acceptance testing period will be based upon the time identified in the State Board's dry run of system-specific acceptance testing, which would not include any time provided to a vendor to cure an identified failure. 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 and/or Services received. Any delivery of Product and Services 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 and the NYS Board of Elections. Upon notification of rejection, risk of loss of rejected or non-conforming Product and Services 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 and Services 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.

48. RE-WEIGHING PRODUCT AND SERVICES

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.

49. PRODUCT AND SERVICES SUBSTITUTION In the event a specified manufacturer's Product and Services 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 and Services deemed in writing by the Commissioner and the NYS Board of Elections to be equal to or better than the specified Product and Services must be substituted by the Contractor at no additional cost or expense to the Authorized User. Unless otherwise specified, any substitution of Product and Services prior to the written approval of the Commissioner and the NYS Board of Elections may be cause for cancellation of Contract. In no event shall substitutions be made for any equipment certified by the NYS Board of Elections.

50. REJECTED PRODUCT AND SERVICES Upon receipt of Product and Services, acceptance testing shall be conducted pursuant to processes established by the New York State Board of Elections and consistent with 9 NYCRR part 6209.10 (F) the Authorized User shall promptly evaluate its acceptability. If Product and/or Services are found to be unacceptable, the reasons for its unacceptability will be documented in a Notice of Unacceptability which shall be signed by the Authorized User's Purchasing Official and delivered to the Designated Contractor's Representative. When

Product and Services are rejected, the contractor shall have 15 days to remedy the unacceptability of the Product and Services and resubmit it to the Authorized User in compliance with §6209.10(F). If after the fifteen days the Product is still found to be unacceptable by the Authorized User, the Authorized User may at its discretion, reject the Product and Services. When Product and/or Services 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 and the Authorized User shall have the right to seek equivalent Product from another Contractor at the expense of the original Contractor.

51. INITIAL ASSEMBLY Where initial assembly is required; Contractor shall be responsible for placing and assembly of the Product in the required locations ("Initial Assembly.") All materials used in the initial assembly shall be of good quality and shall be free from any and all defects that would mar the appearance of the or render it structurally unsound. Initial Assembly 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. 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.

52. REPAIRED OR REPLACED PARTS /COMPONENTS Where the Contractor is required to repair, replace or substitute Product and Services or parts or components of the Product and Services under the Contract, the repaired, replaced or substituted Products and/or Services shall be subject to all terms and conditions for new parts and components set forth in the Contract including Warranties, as set forth in the Additional Warranties Clause herein. Replaced or repaired Product and Services or parts and components of such Product and Services shall be new and shall, if available, be replaced by the original manufacturer's component or part. Remanufactured parts or components meeting new Product and Services standards may be permitted by the Commissioner, the NYS Board of Elections or Authorized User. Before installation, all proposed substitutes for the original manufacturer's installed parts or components must be approved by the Authorized User.

The part or component shall be equal to or of better quality than the original part or component being replaced.

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

54. 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 and the NYS Board of Elections reserve the right to conduct a security background check or otherwise approve any employee, Subcontractor or agent furnished by Contractor and to refuse access to or require replacement of any personnel for cause based on, including but not limited to, professional, technical or training qualifications, quality of work or change in security status or noncompliance 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 and the NYS Board of Elections reserve the right to reject and/or bar from the facility for cause any employee, Subcontractor, or agents of the Contractor.

55. 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 and the NYS Board of Elections. Such written consent shall not be unreasonably withheld by the Commissioner and the NYS Board of Elections. Failure to obtain consent to assignment from the Commissioner and the NYS Board of Elections User shall revoke and annul such Contract. Notwithstanding the foregoing, the State shall not hinder, prevent or affect assignment of money by a Contractor for the benefit of its creditors. Prior to a consent to assignment of monies becoming effective, the Contractor shall file a written notice of such monies assignment(s) with the Comptroller. Prior to a consent to assignment of a Contract, or portion thereof, becoming effective, the Contractor shall submit the request to assignment to the Commissioner and the NYS Board of Elections. and seek written agreement from the Commissioner and the NYS Board of Elections, which will be filed with the Comptroller. The Commissioner and the NYS Board of Elections reserve the right to reject any proposed assignee in his/her discretion. Upon notice to the Contractor, the Contract may be assigned without the consent of the Contractor to another State Agency or subdivision of the State pursuant to a governmental reorganization or assignment of functions under which the functions are transferred to a successor Agency or to another Agency that assumes OGS responsibilities for the Contract.

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

57. PERFORMANCE / BID BOND The Commissioner and the NYS Board of Elections require a Bidder or Contractor to furnish without additional cost, a performance, payment or Bid bond or negotiable irrevocable letter of credit or other form of security for the faithful performance of the Contract. Such bond or other security shall be in the form prescribed by the

Commissioner and the NYS Board of Elections. See solicitation for further details.

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

59. TERMINATION

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

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

c. For Violation of Executive Order Number 127 or any subsequent law or Executive Order that supersedes it: The Commissioner and the NYS Board of Elections reserve the right to terminate this Contract in the event it is found that the certification filed by the Contractor in accordance with New York State Executive Order Number 127 was intentionally false or intentionally incomplete. Upon such finding, the State may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms in the Contract.

d. For Violation of the Sections 139-j and 139-k of the State Finance Law: The Commissioner and the NYS Board of Elections reserve 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 and the NYS Board of Elections may exercise their termination right by providing written notification to the Contractor in accordance with the written notification terms of the Contract.

e. For Violation of Revised Tax Law 5a: The Commissioner and the NYS Board of Elections reserve the right to terminate the contract in the event it is found that the certification filed by the Contractor in accordance with §5-a of the Tax Law is not timely filed during the term of the Contract or the certification furnished was intentionally false or intentionally incomplete. Upon such finding, the Commissioner and the NYS Board of Elections may exercise their termination right by providing written notification to the Contractor.

60. SAVINGS/FORCE MAJEURE A force majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled. Force majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the Contractor, the NYS Board of Elections or the Commissioner in the performance of the Contract which non- performance, by exercise of reasonable diligence, cannot be prevented. Contractor shall provide the Commissioner and the NYS Board of Elections with written notice of any force majeure occurrence as soon as the delay is known.

Neither the Contractor, the NYS Board of Elections 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, the NYS Board of Elections 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 and the NYS Board of Elections where the delay or failure will significantly impair the value of the Contract to the State or to Authorized Users, the Commissioner and the NYS Board of Elections may:

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

In addition, the Commissioner and the NYS Board of Elections reserve the right, in their 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.

61. CONTRACT BILLINGS

Contractor and the distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Invoices shall only be submitted upon receipt of a written, signed, formal notice of inspection for the specified Product by the Authorized User's Purchasing Official. Such notification shall

not be unreasonably withheld. Billings for Authorized Users must contain all information required by the Contract and the State Comptroller. The State Comptroller shall render payment for Authorized User purchases, and such payment shall be made in accordance with ordinary State procedures and practices, including, but not limited to, Article 11-A of the New York State Finance Law. Payment of Contract purchases made by Authorized Users, other than Agencies, shall be billed directly by Contractor on invoices/vouchers, together with complete and accurate supporting documentation as required by the Authorized User. Payment shall be due once all products have been delivered, received, inspected and accepted by the Authorized User and /or services have been satisfactorily performed. Payment shall be in accordance with the following Payment Schedule: 60% at the completion of acceptance testing and acceptance at the central location, 20% at delivery to the Authorized User after the completion of acceptance testing, provided certification has been granted by the New York State Board of Elections and 20% after the first general election following certification. In the event that a Lot I voting system, that has been certified, is not used in a general election in 2009, but has been delivered and accepted by the Authorized User 10% will be paid on December 31, 2009 and the remaining 10% will be paid after the first use in a general election in 2010. Submission of an invoice and payment thereof shall not preclude the Commissioner and the NYS Board of Elections from reimbursement or demanding a price adjustment in any case where the Product and Services 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 and the NYS Board of Elections, 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 the NYS Board of Elections and in a media commercially available from the Contractor. The Commissioner and the NYS Board of Elections may direct the Contractor to provide the information to the State Comptroller or to any Authorized User of the Contract.

62. DEFAULT – AUTHORIZED USER

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

b. Failure to Make Payment. In the event a participating Authorized User fails to make payment to the Contractor for Products and/or Services delivered, accepted and properly invoiced, within 60 days of such delivery and acceptance, the Contractor may, upon 10 days advance written notice to the Commissioner, the NYS Board of Elections and the Authorized User, suspend additional shipments of Product and Services or provision of services to such entity until such time as reasonable arrangements have been made and assurances given by such entity for current and future Contract payments.

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

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

63. INTEREST ON LATE PAYMENTS

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

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

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

64. 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. Minimum Cures:

i. Minimum cures: Unless otherwise agreed to by the Authorized User, at a minimum, in order to be able to address a failure of voting machine(s) or a failure in the provision of support and/or services, from pre-election day 30 up to pre-Election Day 15, Contractor shall provide phone support which shall be available on each of said days, from 7:00 am to 10:00 pm, Eastern Time. When a problem with voting machine hardware, or software manifests itself within this 15-day period, and same is unable to be resolved with phone support as provided by the Contractor, upon such notice by the Authorized User, on-site support/assistance must be provided by the Contractor within 24 hours of such notice. If after such on-site support/assistance, the failure still has not been resolved, upon notice of the board, new, replacement equipment must be delivered to the board, no later than 48 hours after such notice. For the period of pre-election day 15 to pre-Election Day 1, telephone support shall be provided 24 hours a day, seven days a week. In addition, Contractor shall

provide, upon request, on-site support/assistance and/or equipment replacement as soon as requested, but in no event to exceed the time set for the prior Critical Period, as defined herein.

ii. Beyond the State's statutory and regulatory requirements, for the period including Election Day minus 1, election day and Election Day plus 1, telephone support must be available during this entire 72-hour period. On Election Day, in addition to phone support as defined above, the Contractor, upon notice of the Authorized User, shall promptly provide on-site support.

iii. For the post election period, which is defined at Election Day plus 1 through election day plus 15, phone support shall be provided by the Contractor, on each of said days, between the hours of 7:00 am until 10:00 pm, EST.

If such phone support does not resolve the failure, on-site support must be provided within 24 hours, and if after such onsite support, the failure has not been resolved, new replacement equipment must be delivered to the Authorized User, no later than 48 hours after such notice by the Authorized User.

iv. In non-critical periods, except during the conduct of quarterly maintenance processes, phone support shall be made available by the Contractor, on each business day, between the hours of 8:00 am and 6:00 pm Eastern Time. If such phone support fails to resolve the voting equipment or system failure, the Contractor must provide for an on-site service call within 10 business days of such notice by the Authorized User, and if the failure remains unresolved, Contractor must provide replacement within 30 days of such notice by the Authorized User, or by day 1 of the next ensuing Critical Period prior to an election.

Cover/Substitute Performance In the event of Contractor's material breach not cured within the applicable notice and cure period, the Commissioner, in conjunction with the NYS Board of Elections, and/or any Authorized Users may, with or without formally Bidding: (i) Purchase from other sources; or (ii) If the Commissioner and the NYS Board of Elections, and/or any Authorized Users, are unsuccessful after making reasonable attempts, under the circumstances then existing, to timely obtain acceptable service or acquire replacement Product and Services of equal or comparable quality, the Commissioner and the NYS Board of Elections, and/or any Authorized Users, may acquire acceptable replacement Product and Services of lesser or greater quality. Such purchases may, in the discretion of the Commissioner and the NYS Board of Elections, and/or any Authorized Users, be deducted from the Contract quantity and payments due Contractor.

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

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

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

Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the Contract, the ordering Authorized User may rent substitute equipment temporarily. Any sums expended for such rental shall, upon demand, be reimbursed to the Authorized User promptly by the Contractor or deducted by the Authorized User from payments due or to become due the Contractor on the same or another transaction. Any sums required to be expended by the Authorized User in order to carry out their statutory election responsibilities shall be reimbursed promptly by the Contractor or deducted by the Authorized User from payments due or to become due to the Contractor on the same or another transaction.

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

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

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

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

insurance, and to provide the Authorized User with certification of such insurance upon request. The Contractor remains responsible for all applicable federal, state and local taxes, and all FICA contributions.

68. 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.

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

70. CONTRACT TERM - RENEWAL In addition to any stated renewal periods in the Contract, any Contract or unit portion thereof let by the Commissioner, in conjunction with the NYS Board of Elections, may be extended by the Commissioner, in conjunction with the NYS Board of Elections, 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.

71. ADDITIONAL WARRANTIES Notwithstanding anything to the contrary herein, with respect to Lot II machines purchased prior to December 31, 2008, the warranty period begins on September 9, 2008. Where Contractor, product manufacturer or service provider generally offers additional or more advantageous warranties than set forth below, Contractor shall offer or pass

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

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

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

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

suspend this Contract, in whole or in part, or to take any other action deemed necessary by the Commissioner and the NYS Board of Elections.

d. Product and Services Warranty Unless recycled or recovered materials are acceptable in accordance with the "Recycled or Recovered Materials" clause, Product offered shall be standard new equipment, current model or most recent release of regular stock Product with all parts regularly used with the type of equipment offered; and no attachment or part has been substituted or applied contrary to the manufacturer's recommendations and standard practice. Contractor further warrants and represents that components or deliverables specified and furnished by or through Contractor shall individually, and where specified and furnished as a system, be substantially uninterrupted or error-free in operation and guaranteed against faulty material and workmanship for the warranty period, or for a minimum of five (5) years from the date of acceptance, whichever is longer ("Project warranty period"). During the Project warranty period, defects in the materials or workmanship of components or deliverables specified and furnished by or through Contractor shall be repaired or replaced by Contractor at no cost or expense to the Authorized User. Contractor shall

extend the Project warranty period for individual component(s), or for the System as a whole, as applicable, by the cumulative period(s) of time, after notification, during which an individual component or the System requires servicing or replacement (down time) or is in the possession of the Contractor, its agents, officers, Subcontractors, distributors, resellers or employees ("extended warranty"). Where Contractor, the Independent Software Vendor ("ISV," or other third party manufacturer markets any Project Deliverable delivered by or through Contractor with a standard commercial warranty, such standard warranty shall be in addition to, and not relieve the Contractor from, Contractor's warranty obligations during the project warranty and extended warranty period(s). Where such standard commercial warranty covers all or some of the Project warranty or extended warranty period(s), Contractor shall be responsible for the coordination during the Project warranty or extended warranty period(s) with ISV or other third party manufacturer(s) for warranty repair or replacement of ISV or other third party manufacturer's Product and Services.

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

e. Replacement Parts Warranty If during the regular or extended warranty period's faults develop, the Contractor shall promptly repair or, upon demand, replace the defective unit or component part affected. All costs for labor and material and transportation incurred to repair or replace defective Product and Services during the warranty period shall be borne solely by the Contractor, and the State or Authorized User shall in no event be liable or responsible therefor. Any part of component replaced by the Contractor under the Contract warranty shall be

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

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

g. Date/Time Warranty Contractor warrants that Product and Services(s) furnished pursuant to this Contract shall, when used in accordance with the Product and Services 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 and/or Services must perform as a package or system, this warranty shall apply to the Products and Services as a system. Where Contractor is providing ongoing services, including but not limited to: i) consulting, integration, code or data conversion, ii) maintenance or support services, iii) data entry or processing, or iv) contract administration services (e.g., billing, invoicing, claim processing), Contractor warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to the inaccuracy of Contractor's business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) various date/time transitions, including leap year calculations. Contractor shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including but not limited to the failure or untimely performance of such services. This Date/Time Warranty shall survive beyond termination or expiration of this contract through: a) ninety (90) days or b) the Contractor's or Product and Services manufacturer/developer's stated date/time warranty term, whichever is longer. Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under this Contract for breach of warranty.

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

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

j. Warranty Limitations

1. Notwithstanding any other terms or provisions of this Contract, Contractor is not obligated to repair or replace, and Contractor's warranty obligations shall not be applicable to, any of the following:

- a. paper, seals, batteries, or other consumable parts or supplies,
- b. products which have been repaired or altered by persons other than those expressly approved in writing by Contractor,
- c. products from which the serial numbers have been removed, defaced or changed,

d. products damaged as a result of accident, disaster, theft, vandalism, neglect, abuse, use of any product for a purpose other than the purpose for which it is designed or use not in accordance with documentation furnished by Contractor,

e. products which have been subjected to physical, mechanical or electrical stress or alteration or any conversion by persons other than those expressly approved in writing by Contractor,

f. damage resulting from or occurring in connection with use, custody or control of any machine or any component thereof by any person other than an Authorized User, employee of an Authorized User, or authorized poll workers and voters during the course of an election. Excludes AU third parties such as transporter, trainer or consultant. So if transporter damages a voting machine, county must pay additionally for its repair. If county damages machine through abuse or neglect, it must pay for repair. Should be a definition of damage or wear due to "normal use".

2. Authorized User's exclusive remedy and Contractor's entire liability for breach of the limited warranty in contract, tort or otherwise, will be, at Contractor's option, repair or replacement of defective components during the Project warranty period. If, however, the identical part or component in any one particular machine experiences an identical failure more than two (2) times in any twelve (12) month period during the term of the Project warranty period, Authorized User may, at its option, require that Contractor replace that specific machine.

72. LEGAL COMPLIANCE Contractor represents and warrants that it shall secure all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of the Commissioner and the NYS Board of Elections 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 and the NYS Board of Elections. Failure to comply or failure to provide proof may constitute grounds for the Commissioner and the NYS Board of Elections to cancel or suspend the Contract, in whole or in part, or to take any other action deemed necessary by the Commissioner and the NYS Board of Elections. Contractor also agrees to disclose information and provide affirmations and certifications to comply with Executive Order No. 127 and Sections 139-j and 139-k of the State Finance Law.

73. INDEMNIFICATION Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully indemnify and save harmless the Authorized Users and the New York State Board of Elections, their Commissioners, officers and employees from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by any intentional act or negligence of Contractor, its agents, employees, partners or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the Authorized Users. Contractor shall have control over the defense of such claims and lawsuits, subject to the participation and approval rights of the State, by and through the

Commissioner, the New York State Board of Elections, Authorized Users, the New York State Attorney General or any other authorized party.

74. INDEMNIFICATION RELATING TO THIRD PARTY RIGHTS

The Contractor will also indemnify and hold the Authorized Users and the New York State Board of Elections, their Commissioners, officers and employees harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs that may be finally assessed against the Authorized Users and/or and the New York State Board of Elections, their Commissioners, officers and employees in any action for infringement of a United States Letter Patent, or of any copyright, trademark, trade secret or other third party proprietary right except to the extent such claims arise from the Authorized Users and/or and the New York State Board of Elections, their Commissioners, officers and employees gross negligence or willful misconduct, provided that the State Authorized Users and the New York State Board of Elections, their Commissioners, officers and employees shall give Contractor: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action at the expense of Contractor. If usage shall be enjoined for any reason or if Contractor believes that it may be enjoined, Contractor shall have the right, at its own expense and sole discretion to take action in the following order of precedence: (i) to procure for the Authorized User the right to continue Usage (ii) to modify the service or Product so that Usage becomes non-infringing, and is of at least equal quality and performance; or (iii) to replace said service or Product or part(s) thereof, as applicable, with non-infringing service or Product of at least equal quality and performance. Contractor shall have control over the defense of such claims and lawsuits, subject to the participation and approval rights of the State, by and through the Commissioner, the New York State Board of Elections, Authorized Users, the New York State Attorney General or any other authorized party. If the above remedies are not available, the parties shall terminate the Contract, in whole or in part as necessary and applicable, provided the Authorized User is given a refund for any amounts paid for the period during which Usage was not feasible. The foregoing provisions as to protection from third party rights shall not apply to any infringement occasioned by modification by the Authorized User of any Product and Services without Contractor's approval. In the event that an action at law or in equity is commenced against the Authorized User arising out of a claim that the Authorized User's use of the service or Product under the Contract infringes any patent, copyright or proprietary right, and Contractor is of the opinion that the allegations in such action in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, Contractor shall immediately notify the Authorized User and the Office of the Attorney General in writing and shall specify to what extent Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract. Contractor shall in such event protect the interests of the Authorized User and secure a continuance to permit the Authorized User to appear and defend its interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the Authorized User may have. This

constitutes the Authorized User's sole and exclusive remedy for patent infringement, or for infringement of any other third party proprietary right.

75. LIMITATION OF LIABILITY Except as otherwise set forth in the Indemnification Paragraphs above, the limit of liability shall be as follows:

a. Contractor's liability for any claim, loss or liability arising out of, or connected with the Products and/or Services provided, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed direct damages in: (i) an amount equal to two (2) times the charges specified in the Purchase Order for the Products and/or Services, or parts thereof forming the basis of the Authorized User's claim, (said amount not to exceed a total of twelve (12) months charges payable under the applicable Purchase Order) or (ii) one million dollars (\$1,000,000), whichever is greater.

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

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

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

THE FOLLOWING CLAUSES PERTAIN TO TECHNOLOGY & NEGOTIATED CONTRACTS

77. SOFTWARE LICENSE GRANT AND TRANSFER

Where Products are 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 Products within its business enterprise in the United States up to the maximum licensed capacity stated on the Purchase Order. Products 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 Products to and for use by any Authorized Users otherwise licensed to use the Products, provided that any modifications, however extensive, shall not diminish Licensor's proprietary title or interest. No license, right or interest in any trademark, trade name, or service mark is granted hereunder. Licensee shall also receive at no additional cost, the transfer of licenses for all third party software necessary to operate and maintain the Contractor's offered voting system.

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 Products and Services, the License Term shall be extended by the time period for testing, acceptance or trial.

c. Licensed Documentation If commercially available, Licensee shall have the option to require the Contractor to deliver, at Contractor's expense: (i) one (1) hard copy and one (1) master electronic copy of the Documentation in a mutually agreeable format; (ii) based on hard copy instructions for access by downloading from the Internet (iii) hard copies of the Products and Services 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 Products and Services) and distribute, either electronically or otherwise, copies of Products and Services Documentation as necessary to enjoy full use of the Products and Services in accordance with the terms of license.

d. Products and Services Technical Support & Maintenance Licensee shall have the option of electing the Products and Services 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 and Services so as to provide Licensee with the ability to utilize the Products and Services in accordance with the Product and Services documentation without significant functional downtime to its ongoing business operations during the maintenance term.

Authorized User shall not be required to purchase maintenance for use of Products and Services, 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 Products and Services, it may, at any time thereafter, reinstate maintenance for Products and Services 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 notification within thirty (30) days to Contractor of such move(s) and certify in writing that the

Products and Services 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 Products and Services 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 Products and Services 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 Products and Services, and means of access; and 2) such party has executed, or agrees to execute, the Products and Services 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 Products and Services (e.g., JAVA Applets), provided that such use shall be limited to the time period during which the third party is using the Products and Services for the function or business activity.

g. Archival Back-Up and Disaster Recovery Licensee may use and copy the Products and Services and related Documentation in connection with: i) reproducing a reasonable number of copies of the Products and Services for archival backup and disaster recovery procedures in the event of destruction or corruption of the Products and Services 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 Products and Services and related Documentation for cold site storage. "Cold Site" storage shall be defined as a restorable back-up copy of the Products and Services not to be installed until and after the declaration by the Licensee of a disaster; iii) reproducing a back-up copy of the Products and Services 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 Products and Services 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 Products and Services are a trade secret, copyrighted and proprietary Products and Services. Licensee and its employees will keep the Products and Services strictly confidential, and Licensee will not disclose or otherwise distribute or reproduce any Products and Services 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 Products and Services;
- (ii) Cause or permit reverse compilation or reverse assembly of all or any portion of the Products and Services;
- (iii) Export the Licensed Software in violation of any U.S. Department of Commerce export administration regulations.

78. PRODUCTS AND/OR SERVICES 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/or Services and sixty (60) days from the date of delivery to accept all other Products and/or Services. Acceptance shall not be complete until acceptance testing has been completed in accordance with the procedures established for acceptance

testing by an Authorized User. Said procedures shall comply with §6209.10 and the guidelines established by the New York State Board of Elections. These procedures will include a check list and reporting form, created by the SBOE, for use at said test in order to implement the provisions of §6209.19 of the New York State Board of Elections' Regulations. The Authorized User and the Contractor shall mutually agree to a delivery schedule as required by §6209.9(A)(4)(a) of the New York State Board of Elections' Regulations. Said agreed upon delivery schedule shall be adhered to by the Contractor. Where the Contractor is responsible for installation, acceptance shall be from completion of installation. Failure to provide notice of acceptance or rejection or a deficiency statement to the Contractor by the end of the period provided for under this clause constitutes acceptance by the Authorized User(s) as of the expiration of that period. The License Term shall be extended by the time periods allowed for trial use, testing and acceptance unless the Commissioner, the NYS Board of Elections or Authorized User agrees to accept the Products and/or Services 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 Products and/or Services 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 Products and/or Services 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 Products and/or Services 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 Products and/or Services as provided herein. If the Products and/or Services do not meet the specifications at the end of the extended testing period, Authorized User, upon prior written notice to Contractor, may then reject the Products and/or Services and return all defective Products and/or Services 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 Products and/or Services to perform in accordance with the functionality tests or Products and/or Services 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.

79. AUDIT OF LICENSED PRODUCTS AND/OR SERVICES USAGE

Contractor shall have the right to periodically audit, no more than annually, at Contractor's expense, use of licensed Products and/or Services at any site where a copy of the Products and/or Services 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.

80. OWNERSHIP/TITLE TO PROJECT DELIVERABLES**a. Definitions**

(i) For purposes of this paragraph, "Products and/or Services." A deliverable furnished under this Contract by or through Contractor, including existing and custom Products and/or Services, including, but not limited to: a) components of the hardware environment, b) printed materials (including but not limited to training manuals, system and user documentation, reports, drawings), whether printed in hard copy or maintained on diskette, CD, DVD or other electronic media c) third party software, d) modifications, customizations, custom programs, program listings, programming tools, data, modules, components, and e) any properties embodied therein, whether in tangible or intangible form (including but not limited to utilities, interfaces, templates, subroutines, algorithms, formulas, source code, object code).

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

(iii) For purposes of this paragraph, "Custom Products and/or Services." Products and/or Services, 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 and/or Services:

1. Hardware - Title and ownership of Existing Hardware Products and/or Services shall pass to Authorized User upon Acceptance.

2. Software - Title and ownership to Existing Software Products and/or Services(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 Products and/or Services"), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products and/or Services, shall remain with Contractor or the proprietary owner of other independent software vendor(s) (ISV). Effective upon acceptance, such Products and/or Services 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 Products and/or Services to the Authorized User up to the license capacity stated in the Purchase Order or work order with all license rights necessary to fully effect the general business purpose(s) stated in the Bid or Authorized User's Purchase Order or work

order, including the financing assignment rights set forth in paragraph (c) below; and (b) recognize the State of New York as the licensee where the Authorized User is a state agency, department, board, commission, office or institution. Where these rights are not otherwise covered by the ISV's owner's standard license agreement, the Contractor shall be responsible for obtaining these rights at its sole cost and expense. The Authorized User shall reproduce all copyright notices and any other legend of ownership on any copies authorized under this paragraph.

(ii.) Custom Products and/or Services: Effective upon creation of Custom Products and/or Services, Contractor hereby conveys, assigns and transfers to Authorized User the sole and exclusive rights, title and interest in Custom Products and/or Services(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 and/or Services 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 and/or Services in lieu of Authorized User taking exclusive ownership and title to such Products and/or Services. 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 Products and/or Services 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 and/or Services (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 and/or Services 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 Products and/or Services shall terminate immediately and Authorized User's prior rights to such Existing Licensed Products and/or Services shall be revived.

d. Sale or License of Custom Products and/or Services Involving Tax-Exempt Financing (i.e., Certificates of Participation - COPS)

The Authorized User's sale or other

transfer of Custom Products and/or Services which were acquired by the Authorized User using third party, tax-exempt financing may not occur until such Custom Products and/or Services are, or become, useable. In the event that the Contractor wishes to obtain ownership rights to Custom Products and/or Services(s), the sale or other transfer shall be at fair market value determined at the time of such sale or other transfer, and must be pursuant to a separate written agreement in a form acceptable to the Authorized User which complies with the terms of this paragraph.

e. Contractor's Obligation with Regard to ISV (Third Party) Products and/or Services Where Contractor furnishes Existing Licensed Products and/or Services(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.

81. PROOF OF LICENSE The Contractor must provide to each Licensee who places a Purchase Order either: (i) the Products and/or Services developer's certified License Confirmation Certificates in the name of such Licensee; or (ii) a written confirmation from the Proprietary owner accepting Products and/or Services 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.

82. PRODUCTS AND/OR SERVICES VERSION

Purchase Orders shall be deemed to reference Manufacturer's most recently released model or version of the Products and/or Services certified by the New York State Board of Elections for use in the State 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.

83. CHANGES TO PRODUCTS AND/OR SERVICES OR SERVICE OFFERINGS

a. Products 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 or Service is being withdrawn from the U.S. market or that maintenance service or technical support provided by Contractor ("withdrawn support") is no longer going to be offered, Contractor shall be required to: (i) notify the Commissioner and the NYS Board of Elections, 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 Products and/or Services 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 Products and/or Services replacement or migration path with at least equivalent functionality at no additional charge to enable Authorized User to continue use and maintenance of the Products and/or Services.

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

described within five (5) business days of Contractor receiving notice from the Product Manufacturer, and (ii) include in such notice the period of time from the date of notice that the Product Manufacturer will continue to provide Products and/or Services 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 Products and/or Services 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 and the NYS Board of Elections 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.

84. 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 Products and/or Services and all Upgrades do not and will not contain any computer code that would disable the Products and/or Services 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 Products and/or Services 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.

85. SOURCE CODE ESCROW FOR LICENSED PRODUCTS AND/OR SERVICES

Vendors shall be required to comply with the source code escrow provisions of the Election Law and as set forth by the State Board of Elections.

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

Clauses: 7, 8, 9, 10, 11, 12, 13, 16, 15, 20, 24, 25, 26, 28, 29, 30, 31, 32, 35, 48, 49, 51, 53 and 36

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**State of New York
Office of General Services
NEW YORK STATE PROCUREMENT
Contract Performance Report**

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

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

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

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

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

CONTRACTOR

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

Comments: _____

_____ (over)

Agency: _____ Prepared by: _____

Address: _____ Title: _____

_____ Date: _____

_____ Phone: _____

_____ E-mail: _____

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

OGS NEW YORK STATE PROCUREMENT
Customer Services, 38th Floor
Corning 2nd Tower - Empire State Plaza
Albany, New York 12242

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