NEW YORK STATE OF OPPORTUNITY.
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

CENTRALIZED CONTRACT FOR THE ACQUISITION OF

VOTING SYSTEMS AND RELATED SERVICES AND ACCESSORIES

BETWEEN

NEW YORK STATE OFFICE OF GENERAL SERVICES

AND

CLEAR BALLOT GROUP, INC.

CONTRACT NUMBER PC69384

THIS CENTRALIZED CONTRACT (hereinafter "Contract") for the acquisition of Voting Systems and Related Services and Accessories is made by and between the People of the State of New York, acting by and through the Commissioner of the Office of General Services (hereinafter "State" or "OGS") whose principal place of business is the 36th Floor, Corning Tower, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242, and Clear Ballot Group, Inc. (hereinafter "Contractor"), whose principal place of business is at 2 Oliver Street, Suite 2, Boston MA 02109. The State and the Contractor shall also be individually referred to as "Party" and collectively as "Parties."

WITNESSETH:

WHEREAS, in the October 19, 2020 edition of the New York State Contract Reporter, OGS advertised the availability of Solicitation 23198 (hereinafter the "Solicitation") to identify qualified vendors of Voting Systems and Related Services and Accessories;

WHEREAS, the Solicitation set forth the minimum requirements that a Bidder must meet to be eligible for consideration to receive a contract award;

WHEREAS, OGS has determined that the Contractor submitted a responsive proposal to the Solicitation, is a responsible vendor and that the Contractor's proposed pricing is reasonable; and

WHEREAS, the Contractor agrees to provide Voting Systems and Related Services and Accessories according to the terms and conditions set forth in this Contract, referenced as PC69384.

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

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ATTACHMENTS

Attachment 1 – Link to NYS Election Law
Attachment 2 – Link to NYS Election Codes, Rules, and Regulations

Section 1 INTRODUCTION.

1.1 OVERVIEW.

This Contract is a statewide Centralized Contract for all NYS County Boards of Elections (hereinafter Authorized Users) to acquire Voting Systems and Related Services and Accessories ("Voting Systems"), including voting systems, ballot marking or other voting devices accessible to individuals with disabilities, and related accessories, consumables, training, maintenance, and other related services as specified herein. Reseller participation is not allowed.

Contracts resulting from Solicitation 23198 are multiple non-competitively established Centralized Contracts awarded on a statewide basis. This Contract allows Authorized Users to procure Voting Systems by submitting a Purchase Order; Authorized Users are not required to release a Request For Quote ("RFQ") to purchase under this Contract. The Contracts shall be awarded for up to five (5) years with the option of a one (1) year extension. The procurement pursuant to Solicitation 23198 includes provisions for Periodic Recruitment of additional Contractors during the term of the contract award.

1.2 SCOPE.

This Contract is for the acquisition, from established and qualified manufacturers, of Voting Systems certified by the New York State Board of Elections ("SBOE").

1.3 ESTIMATED QUANTITIES.

This Contract is an estimated quantity Contract. No specific quantities are represented or guaranteed and the State provides no guarantee of individual Authorized User participation. The Contractor must furnish all quantities actually ordered at or below the Contract prices. See "Estimated/Specific Quantity Contracts" and "Participation in Centralized Contracts" in Appendix B, *OGS General Specifications.*

The individual value of the Contract is indeterminate and will depend upon the number of Contracts issued and the competitiveness of the pricing offered. Authorized Users will be encouraged to purchase from Contractors who offer the Products and pricing that best meet their needs in the most practical and economical manner. See Appendix B, *Estimated/Specific Quantity Contracts and Participation in Centralized Contracts.*

Numerous factors could cause the actual quantities of Products purchased under this Contract to vary substantially from the estimates in Solicitation 23198. Such factors include, but are not limited to, the following:

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

Contractor acknowledges the foregoing and agrees that actual good faith purchasing volumes during

the Contract Term could vary substantially from the estimates provided in Solicitation 23198.

1.4 DEFINITIONS.

Capitalized terms used in this Contract shall be defined according to Appendix B, *Definitions*, or as below:

Term	Definition
Business Day	Monday through Friday from 8:00 AM – 5:00 PM ET, excluding New York State Holidays or federal Holidays.
CBOE(s)	New York State County Boards of Election.
Continental United States (CONUS)	The 48 contiguous States, and the District of Columbia.
Contract Term	The initial term of the Contract and any renewals, or extensions, or both.
Critical Period	Thirty (30) days prior to and after the election in which Voting Systems and Related Services and Accessories are used.
Cyber Incident	An event occurring on or conducted through a computer network or system that actually or imminently jeopardizes the integrity, confidentiality, or availability of computers, information or communications systems or networks, physical or virtual infrastructure controlled by computers or information systems, or information resident thereon. For purposes of this Contract, a cyber incident may include a vulnerability in an information system, system security procedures, internal controls, or implementation that could be exploited by a threat source.
Data Breach	Acquiring of information by a person without valid authorization or through unauthorized acquisition
Days	Unless otherwise specified, reference to days in this Contract shall mean Business Days, not calendar days.
Discount	An allowance, reduction or deduction from a selling price or list price extended by a seller to a buyer in order for the net price to become more competitive.
Early Voting	An option available under NYS law which allows voters to cast their votes prior to Election Day in predetermined locations specified by an Authorized User.
Election Day	A day legally established for the election of public officials.
End-of-Life (EOL)	When a Product is no longer being marketed or sold.
Foreign person/national	Federally defined as a person who is NOT: • Granted permanent U.S. residence, as demonstrated by the issuance ofa permanent residence card, i.e., a "Green Card", • Granted U.S. citizenship, Granted status as a "protected person" under 8 U.S.C. 1324 b(a)(3), e.g.,political refugees, political asylum holders, etc. Also any foreign corporation, business association, partnership, trust, society or any other entity or group that is not incorporated or organized to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of foreign governments (e.g., diplomatic missions).
General Services Administration (GSA)	The department within the U.S. government that is responsible for procurement of goods and services.
Government Entity	A federal, State, municipal entity or tribal government located in the United States.
Hardware	The physical aspect of Voting Systems.
May	Denotes the permissive in a Contract clause or specification. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see "Should."
Minority and/or Woman-Owned Business (MWBE)	Businesses certified as such by Empire State Development's Division of Minority and Women's Business Development. NOTE: Businesses eligible to participate in the program must be owned and operated by women and/or minority group members whoare citizens of the United States or permanent resident aliens. Generally they must have been in operation for at least one year.
Must	Denotes the imperative in a Contract clause or specification. Means required, being determinative/mandatory, as well as imperative. Also see "Shall" and "Will."

Term	Definition
New York State Legal Holidays (NYS Holidays)	The legal holidays for State employees in the classified service of the executive branch, as more particularly specified on the website of the NYS Department of Civil Service. This includes the following: New Year's Day; Martin Luther King Day; Washington's Birthday (observed); Memorial Day; Independence Day; Labor Day; Columbus Day; Veteran's Day; Thanksgiving Day; and Christmas Day.
New York State Service-Disabled Veteran-Owned Business (SDVOB)	A NYS-certified Service-Disabled Veteran-Owned Business. Please refer to New York Executive Law Article 17-B for additional details.
New York State Small Business Enterprise (SBE)	A company that is a resident to New York State, independently owned and operated, with 100 or fewer employees, and not dominant in its field. See State Finance Law §160(8).
New York State Statewide Financial System (SFS)	The NYS Enterprise Resource Planning (ERP) System.
Non-State Agencies	Political subdivisions and other entities authorized by law to make purchases from OGS Centralized Contracts other than those entities that qualify as State Agencies. This includes all entities permitted to participate in Centralized Contracts in accordance with Appendix B, §25(b), Non-State Agency Authorized Users and §25(c), Voluntary Extension and State Finance Law Section 163(1)(k).
Part/Stock Number	A unique identifier assigned to an individual Product and/or Service or part by the Contractor for that Product and/or Service; usually includes a combination of alpha and/or numeric characters or may be a unique product name or unique product description. Part/Stock Numbers must be unique and cannot be the same as any other Part/Stock Number on the price list.
Procurement Services	A business unit of OGS responsible for establishing centralized contracts.
Shall	Denotes the imperative in a Contract clause or specification. Means required, being determinative/mandatory, as well as imperative. Also see "Must" or "Will."
Should	Denotes the permissive in a Contract clause or specification. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see "May."
Small Business	Please refer to State Finance Law section 160(8) for the definition of "small business concern" or "small business."
Software	Shall have the same definition as found in 9 CRR-NY 6209.1.
User Data	Any information, formula, algorithms, or other content that the Authorized User may directly or indirectly provide to the Contractor pursuant to the Contract.
Will	Denotes the imperative in a Contract clause or specification. Means required, being determinative/mandatory, as well as imperative. Also see "Must" or "Shall."
Written / Written Communication	Written Communication makes use of the written word. Examples of Written Communications include e-mail, Internet websites, letters, proposals, and Contracts.

1.5 APPENDICES AND ATTACHMENTS.

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

APPENDICES

Appendix A – *Standard Clauses for NYS Contracts* (October 2019)
Appendix B – *General Specifications* (April 2016)
Appendix C – *Contract Modification Procedure*
Appendix D – *Contractor Information*
Appendix E – *NYS Contract Price List*
Appendix F – *Contractor's Insurance Requirements*
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1.6 CONFLICT OF TERMS - CONTRACT.

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

- Appendix A, *Standard Clauses for NYS Contracts* (October 2019);
- Contract;
- Appendix B, *General Specifications* (April 2016);
- All other appendices and attachments to the Contract.

Section 2 TERMS AND CONDITIONS

2.1 CONTRACT TERM AND EXTENSIONS.

The Contract will be in effect for a term of five (5) years. The Contract Term shall commence after all necessary approvals and shall become effective upon the date of NYS Office of the State Comptroller ("OSC") approval of the final executed documents. Unless terminated in accordance with the terms of this Contract, the Contract Term of each Contract, including those awarded during any subsequent periodic recruitment, shall be a maximum of five (5) years commencing on the date the first Contract is approved by OSC. All OGS Centralized Contracts resulting from Solicitation 23198 shall have a coterminous end date, including those Contracts awarded during any periodic recruitment period.

The Parties may renew the Contract, upon approval of the NYS OGS, and OSC, upon expiration of the original term for an additional one (1) year.

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.

2.2 SHORT TERM EXTENSION.

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

2.3 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) calendar 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 Purchase Orders, which are subject to the same 60-day discretionary cancellation or cancellation for cause by the respective Authorized Users.

2.4 RESERVED RIGHTS.

2.4.1 NYS Reserved Rights.

New York State reserves the right, in its sole discretion, to add templates for use by the Authorized User.

2.4.2 Authorized User Reserved Rights

Authorized Users shall have the rights afforded pursuant to this Contract, at law or in equity.

2.5 NYS CONTRACT PRICE LIST.

The approved NYS Contract Price List for this Contract, Contractor's Appendix E, *NYS Contract Price List*, is posted on the OGS Procurement Services website. Only Products listed on such price list shall be sold under the Contract. OGS reserves the right in its sole discretion to remove any Products deemed to be out of scope of the Contract from the Contract price list at any time during the Contract Term, upon notice to the Contractor.

All prices as defined in Appendix E, NYS Contract Price List ("Net NYS Price") must include all applicable shipping, handling, insurance, and associated delivery charges (F.O.B. Destination the dock/delivery location of the Authorized User). See Appendix B, *Shipping/Receipt of Product*. The prices shown on Appendix E, *NYS Contract Price List* reflect the complete cost of the Products, and the price list states whether prices include the cost of travel, meals and lodging, where applicable.

A Part/Stock Number is to be provided for every Product on Appendix E, *NYS Contract Price List* and for all future offerings. Each Part/Stock Number must be unique. A Part/Stock Number may be equal to the Product's Name. Part/Stock Numbers must be included in the "Part/Stock Number" Column for that Product on Appendix E, *NYS Contract Price List*.

Appendix E, *NYS Contract Price List* shall only contain plain text and shall not include any marketing language, marketing materials, or additional terms and conditions.

2.5.1 Monetary Values.

All monetary values shall be in U.S. Dollar amounts and will be two decimal points (For Example - $1.12).

2.5.2 Discount Percentage Values.

All Discount percentage values shall not exceed two decimal places (For Example - 20.25222% will be rounded to nearest one hundredth 20.25%). A Discount Percentage value cannot be expressed as a range (For Example - 10%-20%, or "varies").

2.5.3 Volume Discounts.

Contractor is encouraged to offer volume Discounts to Authorized Users.

2.5.4 Discounts.

All Discounts shown on the Contractor's Appendix E, *NYS Contract Price List* shall not be decreased by the Contractor during the Contract Term or through any Purchase Orders issued pursuant to this Contract.

Discounts shown on the Contractor's Appendix E, *NYS Contract Price List* may be increased by the Contractor at any time during the Contract Term or through any Purchase Order issued pursuant to this Contract.

2.6 GSA ASSOCIATED DISCOUNTS.

Where the NYS Net Price is based upon an approved GSA supply schedule, New York State shall be entitled to all associated Discounts enumerated in the GSA supply schedule (including, but not limited to Discounts for additional sites and volume Discounts), as well as any other pricing or Discount terms as are expressly enumerated in this NYS Contract or GSA supply schedule, when calculating the NYS Net Price. If Contractor provides such GSA schedule pricing as proof of reasonableness of price for Products on Appendix E, *NYS Contract Price List*, those discounts will be listed on Appendix E in the Category Discounts tab.

2.7 GSA INDUSTRIAL FUNDING FEE.

GSA pricing incorporates a sum referred to as the "GSA Industrial Funding Fee (IFF)". If the Contractor provides GSA pricing it shall identify the amount of the IFF in Appendix E, *NYS Contract Price List*.

2.8 PROMPT PAYMENT DISCOUNTS.

If a Contractor offers a Discount for prompt payment, it shall include the terms of the Discount on all invoices, the amounts which are due if the Authorized User meets the terms, and the number of days for which the prompt payment Discount offer applies. If offered, Contractor's prompt payment Discount percentage and time frame is listed on Contractor's Appendix D, *Contractor Information*.

2.9 PRICE LIST UPDATES.

Contractor may update its price list as provided in this section. All price list modifications proposed by Contractor shall be processed in accordance with Appendix C, *Contract Modification Procedure*.

Contractor may submit a request for Product addition, change, and/or deletion at any time following the commencement date of the Contract, and on an as-needed basis during the Contract Term. The Discount offered on any new Products added to the Contractor's price list shall be no lower than the minimum established product category Discount. Contractors shall submit all requests to the OGS Procurement Services Contract administrator in the form and format contained in Appendix C, *Contract Modification Procedure* for the review and written approval of OGS. The State reserves the right to request copies of existing contracts or price lists to ensure that the prices offered to the State are reasonable and commensurate with similar purchasers.

Commencing at a minimum after the first anniversary of the date that the Contractor's Bid was opened by OGS, and annually thereafter, the Contractor may update the price list to reflect Contractor price changes, once every 365 calendar days per Product. Price Increase updates are subject to all Contract update provisions included within Appendix C, *Contract Modification Procedure*.

Contractors may submit requests for price adjustments no sooner than 30 calendar days prior to the anniversary of the date that their Bid was opened by OGS, but no price adjustments shall become effective until approval by OGS on or after the anniversary date. Contractors may request subsequent price adjustments annually thereafter. Requests from Contractor(s) for price increases at any other time will not be granted. The Contractor shall provide OGS with one electronic copy of the updated pricing. No Price Updates will be granted to any Contractor who needs to submit Sales Reports, Proof of Insurance or any other documentation that is required under the Contract.

Contractors shall be permitted to reduce their pricing any time during the Contract Term.

The Discount offered on any new Products added to price lists shall be no lower than the minimum established product category Discount. Contractors shall submit their updated price list to the OGS Procurement Services contract administrator pursuant to the requirements of this section for review and written approval prior to issuing to Authorized Users or posting to the Contractor's dedicated New York State website. The State reserves the right to request copies of existing contracts or price lists to ensure that the prices offered to the State are reasonable and commensurate with similar purchasers.

All approved price list updates shall apply prospectively upon approval by OGS. Total price increases for price list updates in a single year of the Contract Term shall not exceed the maximum price increase cap as set forth in the *Maximum Price Increase* subdivision, below. All percentage Discounts shall either remain firm (unchanged) or they may increase for the duration of the Contract Term.

2.9.1 Price List Format.

Contractors are required to submit Contract price list updates electronically in an unprotected Microsoft Excel (2019 or lower version) spreadsheet on USB flash drive or via e-mail to the OGS Procurement Services contract administrator. The price list must be dated and the format shall be consistent with the format of the Contractor's approved Contract price list. The price list shall separately include and identify (e.g., by use of separate worksheets or by using highlighting, italics, bold and/or color fonts):

- Price increases;
- Price decreases;
- Products being added; and
- Products being deleted.

2.9.2 Contractor's Submission of Contract Updates.

In connection with any Contract price list update, OGS reserves the right to:

- Request additional information;
- Reject Contract updates;
- Remove Products from Contracts;
- Remove Products from Contract updates; and
- Request additional Discounts for new or existing Products.

2.9.3 Maximum Price Increase.

In a single year of the Contract Term, the maximum price increase for each individual item on Contract shall not exceed the percent increase in the latest available National Consumer Price Index - All Urban Consumers (CPI-U), Not Seasonally Adjusted, U.S. City Average, All Items (Series Id: CUUR0000SA0, CUUS0000SA0); as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212. CPI-U data may be obtained at www.bls.gov.

The following example illustrates the computation of percent change:

CPI for current period	230.000
Less CPI for previous period	225.000
Equals index point change	5.000
Divided by previous period CPI	225.000
Equals	0.022
Result multiplied by 100	0.022 x 100
Equals percent change	2.2

The "CPI for current period" shall be the index in effect at the time the Contract price list update request is

received; "CPI for previous period" shall be the index in effect when the Contract price list was last updated. Increases are not cumulative. Price increases are limited to the prior year prices only.

2.9.4 Reasonableness of Price.

Pricing offered as part of a price list modification request will be reviewed by OGS to assess reasonableness of price. Contractors are encouraged to offer their best possible pricing. Contractors shall submit one or more forms of reasonableness of price set forth in the Acceptable Reasonableness of Pricing Documentation section below to ensure that the prices offered to the State are reasonable and commensurate with similar purchasers. Contractors should carefully read Appendix C, *Contract Modification Procedure* to be sure that all information requested therein is provided and that proposed pricing is equal to or less than the pricing found on the reasonableness of price documentation.

To determine reasonableness of price for a Product, OGS will compare the price of the Part/Stock Number proposed with the price of the same Part/Stock Number (handwritten or otherwise) found on one of the acceptable reasonableness of price documents listed in Section 2.9.4.1 below. The price of the Part/Stock Number proposed must be equal to or less than the price of the same Part/Stock Number (handwritten or otherwise) as found on the reasonableness of price documentation. Any Part/Stock Number not meeting reasonableness of price may be removed from Contractor's price list modification request.

OGS reserves the right to conduct additional research and request additional information to assess the reasonableness of price. Additionally, OGS reserves the right to require the Contractor to lower its offered pricing to that which OGS has determined to be reasonable in price and to remove items from Contractor's Contract modification for which pricing is determined not to be reasonable.

All required information contained in reasonableness of price documentation should be free of restrictions on confidentiality or claims of confidentiality. OGS will not enter into a Non-Disclosure Agreement (NDA) for Contractor who asserts that information contained in Contractor's reasonableness of price documentation is confidential.

If reasonableness of pricing is not demonstrated to OGS's satisfaction, OGS may not approve the Contractor's price list modification request.

2.9.4.1 Acceptable Reasonableness of Price Documentation.

Acceptable reasonableness of price documentation include, but are not limited to:

1. FEDERAL CONTRACT PRICE LIST

    a. Contract must have been executed by the Government Entity;
    b. Contract price list will be the most currently approved or the price list in effect at contract expiration;
    c. If contract has expired, the expiration date of the contract shall be no more than 1 year prior to the date the price list modification request was submitted to OGS; and
    d. Contract and contract price list (both in searchable PDF or Excel spreadsheet) will be included with the price list modification request submission.

2. OTHER GOVERNMENT ENTITY OR NYS CONTRACT PRICE LIST

    a. Contract must have been executed by NYS or the Government Entity;
    b. Contract price list will be the most currently approved or the price list in effect at contract expiration;
    c. If contract has expired, the expiration date of the Contract shall be no more than 1 year prior to the date the price list modification request was submitted to OGS; and
    d. Contract and contract price list (both in searchable PDF or Excel spreadsheet) will be included with the price list modification request submission.

3. PAID INVOICES OR RECEIPTS FROM GOVERNMENT ENTITIES

    a. Product(s) invoices must be paid (i.e. amounts have been paid and funds have been collected by the

Government Entity);

b. Paid invoices are to be provided in searchable PDF;
c. Sufficient information must be included on the invoice to identify the Product(s), including the following:
   1) Government Entity;
   2) Description of Product(s);
   3) Part/Stock Number, SKU, or unique Product name, or unique detailed description of Product; and
   4) Net price of each Product;
d. Invoice date must be no more than 12 months prior to the date the price list modification request was submitted to OGS; and
e. All paid invoices will be included with the price list modification request.

4. NYS CENTRALIZED CONTRACT PRICE LIST OR SALES REPORTS

a. Contract must have been executed by NYS;
b. Contract price list will be the most currently approved or the price list in effect at contract expiration;
c. An itemized sales report for an OGS Centralized Contract would be accepted in lieu of the price list as well;
d. If contract has expired, the expiration date of the Contract shall be no more than 1 year prior to the date the price list modification request as submitted to OGS;
e. Contract and either the contract price list or the sales report (both in searchable PDF or Excel spreadsheet) will be included with the price list modification request.

5. MANUFACTURER SUGGESTED RETAIL PRICE (MSRP) PRICE LIST

a. Only acceptable if proof from options 1 – 4 is not available for the Product(s);
b. MSRP (or equivalent) must be available to Contractor's commercial customers;
c. MSRP price list must be submitted as a searchable PDF;
d. OGS retains the right to reject MSRP as justification of price.

2.10 BEST PRICING OFFER.

During the Contract Term, if substantially the same or a smaller quantity of a Product is sold by the Contractor outside of this Contract upon the same or similar terms and conditions as that of this Contract at a lower price to a federal, State or local Government Entity, the price under this Contract, at the discretion of the Commissioner, shall be immediately reduced to the lower price.

2.11 PERFORMANCE BOND OR LETTER OF CREDIT.

PERFORMANCE BONDS: Upon award, the Contractor has fifteen (15) business days to forward a performance bond or letter of credit in the amount of 0.5% of the total estimated value of the Contract, $75,000,000.00, to OGS. If the performance bond or letter of credit is not received by the close of business on the 15th day, the award may be cancelled. The Performance Bond must be issued annually for five years unless said term is extended after agreement by both parties. OGS has the right to recover damages from the performance bond pursuant to the terms and conditions of the Contract on behalf of the State where standard arrangements for the refund of monies cannot be recovered by a credit issued by the Contractor against present or future payments due, or under circumstances where the Contractor has refused credits to the State where such credits are due under the terms of the Contract. The SBOE may permit substitution of a performance bond of a lesser value during the Contract Term. If the Contractor provides additional security deposit in the form of a performance bond as required herein, the Contractor shall renew the performance bond at least seven (7) calendar days prior to the cancellation date of the performance bond. If the Contractor fails to comply with the foregoing, the State shall thereafter be authorized to take action on the performance bond and utilize the cash proceeds as security for performance under the Contract. If the credit rating of any bonding company that has provided the Contractor with a performance bond provided as security hereunder has fallen below "B", OGS will provide Written notice to the Contractor that the Contractor must provide a replacement bond within fifteen (15) calendar days of OGS's Written notice. If the Contractor fails to comply with the foregoing, the State shall thereafter be authorized to take action on the performance bond and utilize the cash proceeds as security for the Contractor's performance under the Contract. Notwithstanding anything contained in the Contract to the contrary, the State shall be authorized to draw down the full amount of any letter of credit or take action on any

performance bond provided by the Contractor as security hereunder if the Contractor defaults on its performance under the Contract, as required herein.

The State and the Contractor agree that recovery against the performance bond will be subject to the following conditions:

(1) FOR AMOUNTS LESS THAN $1,000,000

(a) signed and dated certification from an authorized representative of the State indicating that:

(i) as applicable, Contractor has failed to issue credits under Contract No. PC69384;

(ii) the State and Contractor have attempted, through good faith dispute resolution efforts undertaken at the Contractor's Vice-Presidential levels and equivalent State senior executive management levels, to 'resolve' such matters to the parties' satisfaction, and such attempts have not been successful;

(iii) after the conclusion of such dispute resolution efforts, the State notified Contractor, as applicable, by either overnight express mail with verifiable delivery or by certified mail, return receipt requested, of the unresolved matters, and, in such notice, gave Contractor 30 calendar days from receipt of such notice to remedy such matters;

(iv) as applicable, Contractor did not satisfactorily remedy such matters; and

(v) the State has calculated the amount of the damages requested in the draft in accordance with the provisions of the Contract and the laws governing the Contract.

(2) FOR AMOUNTS MORE THAN $1,000,000

(a) signed and dated certification from an authorized representative of the State containing the statements set forth in paragraphs 1(a)(i) through 1(a)(v) above, and

(b) such certification shall have attached a certified copy of a final order of a court of competent jurisdiction finding that as applicable, Contractor materially breached and defaulted under the Contract, and that Contractor is liable to the State in the amount requested in the draft. Partial drafts will be permitted.

(3) FOR ALL AMOUNTS

(a) any notice of the issue or the material breach will be specific as to the nature of the issue or the material breach claim and the remedy sought to satisfy such claim;

(b) drafts shall be drawn periodically upon confirmation of the claim by the State and the Contract with partial drafts will be permitted; and

(c) all drafts must reference the number and issue date of the performance bond and have attached the certified letter of notice of identifying either the issue or the material breach that was sent to Contractor, as applicable. Draft(s) must clearly specify that they are drawn under the performance bond and must be presented to the issuer not later than thirty (30) calendar days after expiration of the Contract term.

LETTERS OF CREDIT: The State may, but is not obligated to, draw on a letter of credit, as applicable, upon the occurrence of any one of the following events:

(a) The Contractor owes the State undisputed charges under the Contract that are more than thirty (30) calendar days past due; or

(b) The Contractor admits its inability to pay its debts as such debts become due, has commenced a voluntary case (or has had an involuntary case commenced against it) under the U.S. Bankruptcy Code or any other law relating to insolvency, reorganization, winding-up, composition or adjustment of debts or the like, has made an assignment for the benefit of creditors or is subject to a receivership or similar proceeding.

If the State draws on a letter of credit, upon request by OGS, the Contractor will provide a replacement or

supplemental letter of credit or performance bond conforming to the requirements of this section.

The fact that a letter of credit is requested by the State shall in no way relieve the Contractor from timely compliance with all obligations under this Contract.

At least seven (7) calendar days prior to the expiration of any letter of credit provided by the Contractor as security under the Contract, the Contractor shall renew such letter of credit or provide OGS with evidence that it has obtained a suitable replacement for the letter of credit in the form of a performance bond. If the Contractor fails to comply with the foregoing, the State shall thereafter be authorized to draw down the full amount of such letter of credit and utilize the cash proceeds as security for performance under the Contract. If the Contractor provides additional security deposit in the form of a performance bond as required herein, the Contractor shall renew the performance bond at least seven (7) calendar days prior to the cancellation date of the performance bond. If the Contractor fails to comply with the foregoing, the State shall thereafter be authorized to take action on the performance bond and utilize the cash proceeds as security for performance under the Contract. If the credit rating of any bonding company that has provided the Contractor with a performance bond provided as security hereunder has fallen below "B", OGS will provide Written notice to the Contractor that the Contractor must provide a replacement bond within fifteen (15) calendar days of OGS's Written notice. If the Contractor fails to comply with the foregoing, the State shall thereafter be authorized to take action on the performance bond and utilize the cash proceeds as security for the Contractor's performance under the Contract. Notwithstanding anything contained in the Contract to the contrary, the State shall be authorized to draw down the full amount of any letter of credit or take action on any performance bond provided by the Contractor as security hereunder if the Contractor defaults on its performance under the Contract, as required herein.

2.12 ORDERING.

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

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

2.13 PURCHASING CARD ORDERS.

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

2.14 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 Appendix D – Contractor Information) 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.

2.15 INVOICING AND PAYMENT.

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 that are State entities 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 OSC's procedures to authorize electronic payments. Authorization forms are available at the OSC 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 OSC if it does not comply with OSC'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 all Voting Systems, payment shall be made in accordance with the following Payment Schedule: 80% upon acceptance by the Authorized User and 20% upon use in a successful election.

2.16 PRODUCT 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 Contract Award Notice. Unless otherwise specified in the Contract, delivery shall be made within 30 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 SBOE. The Authorized User and the Contractor shall mutually agree to a delivery schedule as required by §6209.9(A)(4)(a) of the SBOE 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 OGS Contract administrator, 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.

2.17 CONTRACT ADMINISTRATION / DESIGNATED PERSONNEL / CONTACT INFORMATION.

Contractor shall provide and maintain the following personnel for the duration of the Contract at no charge to the State: Contract Administrator, Account Manager, Sales Manager, Billing Contact, and Emergency Contact. The Designated Personnel must have the authority to act on behalf of the Contractor. The Designated Personnel information will be listed in the Contractor's Appendix D, *Contractor Information*.

During the Contract Term and until the end of any related Purchase Orders, Contractor must provide OGS at least

five (5) Business Days' notice prior to making changes to its designated Contract Administrator, Account Manager, Sales Manager, Billing Contact, or Emergency Contact. In addition, Contractor must provide an experienced temporary interim contact person until the position is permanently filled, to ensure no gap in coverage for any of the contacts. Notification of changes shall be submitted electronically via e-mail to the OGS Contract Management Specialist pursuant to the instructions in Appendix C, *Contract Modification Procedure*.

An Authorized User may require the Contractor to conduct background checks on certain Contractor staff at no charge to the Authorized User, and may require the separation of job duties, and that Contractor staff knowledge of User Data be limited to that which is absolutely needed to perform job duties.

2.17.1 Contract Administrator.

The Contract Administrator shall be responsible for the updating and management of the Contract on a timely basis. The Contract Administrator shall serve as the Single Point of Contact (SPOC) for the Authorized User for all issues regarding Products. The Contract Administrator must also serve as the SPOC for any additional Products that may be added to the Contract.

2.17.2 Account Manager.

The Account Manager shall be responsible for the overall relationship with the State during the Contract Term and shall act as the central point of contact.

2.17.3 Sales Manager.

The Sales Manager shall be responsible for the overall relationship with the Authorized Users for matters relating to Purchase Orders.

2.17.4 Billing Contact.

The Billing Contact shall be responsible for serving as the single point of contact between the Contractor and the Authorized User for matters related to invoicing, billing and payment.

2.17.5 Emergency Contact.

The Emergency Contact shall be responsible for being available 24 hours a day, 365 days per year for emergencies occurring during and after business hours Monday through Sunday, Eastern Time, including New York State or federal holidays. OGS reserves the right to determine whether the contact information provided is sufficient.

2.17.6 Toll Free Number.

Contractor shall provide a toll-free telephone number for use by Authorized Users. Contractor shall staff this toll-free number as outlined in Section 2.44.1 – Minimum Cures. This number shall be provided at no cost to the State.

2.18 NYS FINANCIAL SYSTEM (SFS).

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

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

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

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

2.19 ACCESSIBILITY OF WEB-BASED INFORMATION AND APPLICATIONS POLICY.

Contractor is solely responsible for administration, content, intellectual property rights and all materials at Contractor's website. Contractor is solely responsible for its actions and those of its agents, employees, resellers, Subcontractors or assigns, and agrees that neither Contractor nor any of the foregoing has any authority to act or speak on behalf of the State. As applicable, Contractor agrees to comply with the Office of Information Technology Services policy NYS-P08-005 Accessibility of Web-Based Information and Applications, as may be amended, the stated purpose of which is to make State Agency web-based intranet and internet information accessible for persons with disabilities. The following language is incorporated into this Contract:

> Any web-based information and applications development, or programming delivered pursuant to the Contract or procurement, will comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility of Web-Based Information and Applications as such policy may be amended, modified or superseded, which requires that State Agency web-based information and applications are accessible to persons with disabilities. Web-based information and applications must conform to New York State Enterprise IT Policy NYS-P08-005. Quality assurance testing may be conducted by the State and the results of such testing, if performed, must be satisfactory to the State before web-based information and applications will be considered a qualified deliverable under the Contract or procurement.

2.20 AMERICANS WITH DISABILITIES ACT (ADA).

The federal ADA bars employment discrimination and requires all levels of government to provide necessary and reasonable accommodations to qualified workers with disabilities. Contractor is required to identify and offer any Products it manufactures or adapts that may be used or adapted for use by persons with visual, hearing, or any other physical disabilities.

2.21 INSURANCE.

The Contractor shall maintain in force at all times during the Contract Term, policies of insurance pursuant to the requirements outlined in Appendix F, *Contractor's Insurance Requirements*.

2.22 REPORT OF CONTRACT USAGE.

Contractor shall submit Appendix H, *Report of Contract Usage* including total sales to Authorized Users of this Contract by Contractor, and all authorized resellers, dealers and distributors, if any, *no later than 10 calendar days after the close of each calendar quarter*. If the Contract period begins or ends in a fractional portion of a reporting period, only the actual Contract sales for this fractional period should be included in the *quarterly* report.

Contractors shall specify if any authorized resellers, dealers or distributors are NYS Certified Minority- and/or Women-Owned Business Enterprises (MWBEs), small business enterprises (SBEs), or Service-Disabled Veteran- Owned Businesses (SDVOBs).

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

The report in Appendix H, *Report of Contract Usage* contains the minimum information required. Additional

related sales information, such as detailed user purchases may be required by OGS and must be supplied upon request. Failure to submit reports on a timely basis may result in Contract cancellation and designation of Contractor as non-responsible.

By using this Contract, an Authorized User consents to OGS receiving the information listed on Appendix H, *Report of Contract Usage*.

2.23 CONTRACTOR REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NYS CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN.

I. New York State Law

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

II. General Provisions

1. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of $25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of $100,000 for real property renovations and construction.

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

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

III. Equal Employment Opportunity (EEO)

4. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to all Contractors, and any subcontractors, awarded a subcontract over $25,000, for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to, the contracting State agency (the "Work") except where the Work is for the beneficial use of the Contractor.

   a. Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate or distinct from the

Contract; or (ii) employment outside New York State.

b. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor's equal employment opportunity policy. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.

5. Form EEO 100 - Staffing Plan.

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

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

a. The Contractor shall submit, and shall require each of its subcontractors to submit, a Form EEO-101-Commodities and Services to OGS to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Form EEO-101-Commodities and Services must be submitted electronically to OGS at EEO_CentCon@ogs.ny.gov on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January.

b. Separate forms shall be completed by Contractor and any subcontractor.

c. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.

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

IV. Contract Goals

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

9. Good Faith Efforts

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

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

V. Fraud

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

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

2.24 PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES.

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

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

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

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

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

2.25 USE OF RECYCLED OR REMANUFACTURED MATERIALS.

New York State supports and encourages Contractors to use recycled, remanufactured or recovered materials in the manufacture of Products and packaging to the maximum extent practicable without jeopardizing the

performance or intended end use of the Product or packaging unless such use is precluded due to health or safety requirements or Product specifications contained herein. Refurbished or remanufactured components or Products are not allowed. See Appendix B, *Remanufactured, Recycled, Recyclable or Recovered Materials.*

2.26 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.

2.27 GUARANTEE.

1. The Contractor guarantees that the Voting Systems, equipment, all required accessories, associated products and all parts regularly used with the same are:

   - 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 Authorized User must be the first end user of the product.

2. Every new Product 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 Authorized User will incur no charges for maintenance.

3. The Contractor will bear all material and labor costs for repair of defects and failures occurring during the warranty period from date of acceptance of the Products by an Authorized User. Service/maintenance during the warranty period will be no less than service requirements under a maintenance agreement. If a Voting System does not perform to the satisfaction of the Authorized User during the warranty period, the Contractor will, upon approval of the SBOE, replace the Product with a like model. The replacement machine will have a new 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).

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

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

2.28 BULK DELIVERY AND ALTERNATE PACKAGING.

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

2.29 SURPLUS/TAKE-BACK/RECYCLING.

1. A State Agency is reminded of its obligation to comply with the NY State Finance Law § 167, Transfer and Disposal of Personal Property, and § 168, The Management of Surplus Computer Equipment, regarding transfer and disposal of surplus personal property before utilizing take-back, recycling, or other options for disposition of Equipment that is still in operable condition.

2. If Contractor offers a take-back/recycling program, then Contractor shall provide a record of disposition to

each Authorized User who participates in the take-back/recycling program for units transferred for disposition. Contractor shall provide documentation that the units were disposed of in an environmentally sound manner in compliance with applicable local, state and federal laws. See Section 3 below for specific requirements governing electronic equipment recycling.

3. The NYS Department of Environmental Conservation ("DEC") Electronic Equipment Recycling and Reuse Act ("Act") (Environmental Conservation Law, Article 27, Title 26, Electronic Equipment Recycling and Reuse), requires manufacturers to establish a convenient system for the collection, handling, and recycling or reuse of electronic waste. If Contractor is a manufacturer of electronic equipment covered by the Act, Contractor agrees to comply with the requirements of the Act. More information regarding the Act can be found on the DEC website at: http://www.dec.ny.gov/chemical/65583.html

4. If a Contractor offers a take-back/recycling program or offers an electronic equipment recycling program pursuant to the Act, and an Authorized User participates in same, then the Authorized User shall ensure the destruction of all data from any hard drives surrendered with the machines/covered electronic equipment. Contractor shall not require an Authorized User to surrender the hard drive, as an Authorized User may wish to retain the hard drive for security purposes. Contractor shall advise the Authorized User in advance if the retention of the hard drive results in additional fees or reduction in trade-in value. It is recommended that an Authorized User use a procedure for ensuring the destruction of confidential data stored on hard drives or other storage media that meets or exceeds the National Institute of Standards and Technology ("NIST") Guidelines for Media Sanitation as found in NIST Special Publication 800-88.

2.30 ENVIRONMENTAL ATTRIBUTE AND NYS EXECUTIVE ORDER NUMBER 4.

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

2.31 CONSUMER PRODUCTS CONTAINING MERCURY.

Contractor shall comply with the requirements of Title 21 of Article 27 of the NYS Environmental Conservation Law regarding restrictions on the sale, purchasing, labeling and management of any products containing elemental mercury under this Contract.

2.32 DIESEL EMISSION REDUCTION ACT.

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

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

2.33 NYS VENDOR RESPONSIBILITY.

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

The Commissioner of OGS, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of OGS issues a written notice authorizing a resumption of performance under the Contract.

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

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

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

2.34 OSC APPROVAL.

Pursuant to the Memorandum of Understanding ("MOU") dated August 15, 2019 between the Offices of the New York State Governor Andrew M. Cuomo ("Executive"), New York State Comptroller Thomas P. DiNapoli ("OSC"), the State University of New York ("SUNY), the State University of New York Construction Fund ("SUCF"), the City University of New York ("CUNY"), and the City University of New York Construction Fund ("CUCF"), procurement documents and Contracts awarded under Solicitation 23198 shall have no force and effect and the State bears no liability unless such procurement documents and Contracts awarded under Solicitation 23198 are approved by OSC or the pertinent pre-audit review period under the MOU has elapsed.

2.35 NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS.

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

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

2.36 EXTENSION OF USE.

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

2.37 NEW ACCOUNTS.

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

2.38 CENTRALIZED CONTRACT MODIFICATIONS.

1. OGS, an Authorized User, or the Contractor may suggest modifications to the Centralized Contract or its appendices. Except as specifically provided herein, modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the parties. Modifications may take the form of an update or an amendment. "Updates" are changes that do not require a change to the established Centralized Contract terms and conditions. A request to add new Products at the same or better price level is an example of an update. "Voting Systems Updates," as defined in Appendix C, *Contract Modification Procedure*, are changes related to a SBOE approved Voting System. All such changes are subject to the prior approval of SBOE, proof of which must be provided by the Contractor along with the Appendix C, Contract Modification Form. "Amendments" are any changes that are not specifically covered by the terms and conditions of the Centralized Contract, but inclusion is found to be in the best interest of the State. A request to change a contractual term and condition is an example of an amendment.

2. Updates to the Centralized Contract and the appendices may be made in accordance with the contractual terms and conditions to incorporate new Products, make price level revisions, delete Products, or to make such other updates to the established Centralized Contract terms and conditions, not resulting in a change to such terms and conditions, which are deemed to be in the best interest of the State.

3. OGS reserves the right to consider modifications which are not specifically covered by the terms of the Centralized Contract, but are judged to be in the best interest of the State. Such modifications are deemed amendments to the Centralized Contract and may require negotiations between Contractor and OGS before execution.

4. All modifications proposed by Contractor shall be processed in accordance with Appendix C, *Contract Modification Procedure.* The Contractor shall submit all requests in the form and format contained in Appendix C, *Contract Modification Procedure*. The form contained within Appendix C is subject to change at the sole discretion of OGS.

5. Modifications proposed by OGS or an Authorized User, including updates and amendments, shall be processed in accordance with the terms of the Centralized Contract and Appendix B, Section 26, *Modification of Contract Terms.*

2.39 DRUG AND ALCOHOL USE PROHIBITED.

For reasons of safety and public policy, in this Contract, the use of alcoholic beverages or illegal drugs by the Contractor's personnel shall not be permitted in performance of this Contract.

2.40 TRAFFIC INFRACTIONS.

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

2.41 EMBEDDED SOFTWARE/FIRMWARE; UPDATES.

Contractor shall provide at no charge all updates to any embedded Software or firmware in the Product offered to customers generally.

2.42 TRAVEL, MEALS AND LODGING.

When provided for in the Purchase Order, Authorized User may reimburse travel expenses. Travel costs are limited to NYS rates approved by OSC. All rules and regulations associated with this travel can be found at http://osc.state.ny.us/agencies/travel/travel.htm. In no case will any travel reimbursement be paid for charges that exceeds the per diem rates provided at the above link. All travel will be paid only as specified within the Purchase Order and must be billed with the associated services on the same invoice with receipts attached.

The Contractor shall receive prior approval from the Authorized User for any travel that occurs during the term of a Purchase Order. Parking fees and/or parking tickets shall not be paid by an Authorized User.

Unless otherwise specified in writing by the Authorized User, a vehicle will not be provided by Authorized User to the Contractor for travel. Therefore, the Contractor will be responsible for ensuring that the Contractor has access to an appropriate vehicle (e.g., personal vehicle or rental vehicle) or common carrier with which to carry out any necessary travel.

For the Contractor to obtain reimbursement for the use of a rental vehicle, such use must be justified as the most cost-effective mode of transportation under the circumstances (including consideration of the most effective use of time).

The Contractor is responsible for keeping adequate records to substantiate any claims for travel reimbursement.

All services provided under the resultant Purchase Order must be performed within CONUS.

2.43 POOR PERFORMANCE.

An Authorized User should notify OGS Procurement Services Customer Services promptly if the Contractor fails to meet the requirements of this Contract. Performance which does not comply with requirements or is otherwise unsatisfactory to the Authorized User should also be reported to Customer Services:

Office of General Services
New York State Procurement Services
38th Floor Corning Tower
Empire State Plaza
Albany, NY 12242
Customer Services Coordination E-mail: customer.services@ogs.ny.gov
Telephone: (518) 474-6717

2.44 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:

1. **Minimum Cures:**
   a. **Minimum cures**: Unless otherwise agreed to by the Authorized User, at a minimum, in order to be able to address a failure of Voting System(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 calendar days, from 7:00 am to 10:00 pm, Eastern Time. When a problem with Voting System 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 Authorized User, new, replacement equipment must be delivered to the Authorized User, 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 Authorized User exceed the time set for the prior Critical Period, as defined Section 1.10 - Definitions. In the event that the Contractor discovers a problem, notice should be provided to the SBOE and the Authorized User and SBOE shall be advised of the resolution of the problem.

b. 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.

c. For the post-election period, which is defined as Election Day plus 1 through Election Day plus 15, phone support shall be provided by the Contractor, on each of said calendar 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.

d. 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 (as defined in Section 1.4 - Definitions) 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, 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.

2. **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.

3. **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.

4. **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.

5. 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.

Section 3 CONTRACTOR REQUIREMENTS

3.1 NYS ELECTION CODES, RULES, AND REGULATIONS.

Each Voting System must be provided in accordance with all statutory requirements contained in the provisions of NYS Election Law and NYS Election Code and Regulations (https://www.elections.ny.gov/ElectionLaw.html).

3.2 TRAINING.

Contractors shall provide for sufficient training of Authorized User personnel in the following:

1. training prior to delivery of Voting Systems and equipment on procedures for unpacking, inspecting, installing, assembling and acceptance testing of such Voting Systems and equipment
2. adjusting and aligning the Voting Systems and equipment
3. proper use of such Voting Systems and equipment including maintenance, storageand transportation procedures
4. the use of the Contractor's voting system's supporting software
5. procedures to be used to accomplish ballot face layout and ballot programming, and allother features of the software
6. operating the Product (including layout and interconnection diagrams and schematic and wiring diagrams)
7. preventive and corrective maintenance procedures (including complete part lists, manufacturer's catalog numbers, and ordering information, if applicable)
8. voter education instruction materials on the use of the Voting System and any accessibility devices (including methods to be used by eligible voters to mark a ballot, cast a vote and have that vote counted)
9. procedures to be followed by inspectors at polling places
10. the training of all elections personnel (including election inspectors) during the first two elections, to include a general election, in which the Voting System or equipment is used. Such assistance relating to the number of people and the hours of assistance shall be identified in the executed contract

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

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

Such information is provided on Appendix E, *NYS Contract Price List.*

Within ten (10) Business Days of acceptance by the Contractor of a Purchase Order, the Contractor and the Authorized User shall agree upon mutually-acceptable training dates. Training must include live instruction by qualified personnel sufficient to ensure that the product is operating correctly and may be operator-maintained so as to perform to the full extent of its design capabilities. The Authorized User shall designate personnel to receive training.

3.3 TRAINING MATERIALS AND OPERATIONS MANUALS.

Within ten (10) Business Days of the SBOE's certification of a Voting System and prior to the commencement of any training of Authorized Users, the Contractor 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.

The Contractor shall provide complete operations manuals (including operations manuals for any auxiliary features, programming, hardware, telecommunications systems and central vote tabulating systems) upon delivery of voting systems equipment to a jurisdiction. Such manuals shall include one copy of procedures to be followed by inspectors at polling places. The Contractor shall permit this copy to be reproduced and distributed by the Authorized User at its training school for election inspectors or the Contractor shall supply as many copies of the procedures as required by the Authorized User for such distribution.

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.

3.4 SERVICE PROVISIONS.

1. The Contractor must promptly rectify any problems identified through testing any or all of the Voting Systems equipment delivered to the Authorized User.
2. The Contractor shall, without additional cost, provide to the Authorized User a five-year guarantee of parts and service, that such voting equipment shall be kept in good working order and that other statutory requirements are met. Shipping costs for any factory repairs or part replacement will be incurred by the Contractor.
3. The Contractor shall provide to the Authorized User of said Voting Systems equipment a detailed listing of proper maintenance, storage and transportation procedures to be carried out by each Authorized User.
4. The Contractor and the Authorized User shall agree in writing as to the proper maintenance procedures to be implemented on each piece of equipment and shall further agree in writing as to the obligations of each party for servicing and maintenance procedures.
5. The Contractor must correct any problems or defects in the voting equipment or Voting Systems within a commercially reasonable time period. If the time for resolving problems or defects is insufficient to allow for adequate resolution prior to use in an election, an alternate machine or unit shall be provided by the Contractor, and such machine or unit shall be subjected to the acceptance testing requirements of 9 CRR-NY 6209.
6. The Contractor shall provide the Authorized User with the criteria necessary for the proper operation of the voting system or equipment at a polling place.

3.5 POLLING SITE SURVEY.

The Contractor, together with the Authorized User, shall survey the present polling places in a jurisdiction to which its Voting System or equipment has been sold, to determine whether or not such polling places meet environmental conditions for the proper operation of the voting system or equipment. This provision shall apply to those polling places which are in use at the time of the proposed sale. If any polling places are not compatible, the Contractor shall advise the jurisdiction purchasing the voting system or equipment on the methods or procedures that the said jurisdiction may use to remedy any such problem.

3.6 EI-ISAC MEMBERSHIP.

Contractor must be a member of the Elections Infrastructure Information Sharing and Analysis Center (EI-ISAC).

Section 4 VOTING SYSTEM SPECIFIC TERMS AND CONDITIONS.

4.1 VOTING SYSTEM CERTIFICATION.

During the Contract Term, all Voting Systems offered by the Contractor pursuant to the Contract shall meet and maintain compliance with all applicable functional, security, and other report requirements promulgated by the SBOE and maintain certification from the SBOE.

OGS reserves the right in its sole discretion to add or remove Voting Systems from the Contractor's NYS Price List and/or from the scope of this Contract at any time during the Contract Term, including following any approval or removal of a prior approval of a Voting System by the SBOE, upon notice to the Contractor.

Authorized Users shall not implement any Voting System until certification for such system has been obtained from the SBOE.

4.1.1 Voting System Examination.

Contractor is aware that in order to obtain certification of a Voting System, an application fee of $5,000, and the cost of examination of the Voting System, as estimated by SBOE at time of application must be paid by the Contractor, unless such requirements are waived by the SBOE.

When any change is made in the operation or material of any feature or component of any Voting System which has been certified pursuant to the provisions of this section, such Voting System must be submitted for re-examination and re-certification as the SBOE deems necessary.

If at any time after any Voting System has been certified pursuant to the provisions of the Election Law, the SBOE has any reason to believe that such Voting System does not meet all applicable requirements, Contractor must immediately resubmit the Voting System for re-examination. If the opinions in the report of such examinations do not state that the Voting System can safely and properly be used by voters during elections, the SBOE shall rescind its certification. After the date on which the certification of any Voting System is rescinded, those machines or devices cannot be used or purchased for use in this State. The SBOE may, at its discretion, examine all Voting Systems of such type which were previously purchased, to determine if they may continue to be used in elections in this State.

4.2 PROTECTION OF DATA, INFRASTRUCTURE AND SOFTWARE.

Contractor is responsible for providing physical and logical security for all User Data, infrastructure (e.g. hardware, network, physical devices), and Software related to the services the Contractor is providing under the Purchase Order.

All User Data security provisions agreed to by the Authorized User and Contractor within a Purchase Order may not be diminished for the duration of the Purchase Order without prior written agreement by the parties amending the Purchase Order.

4.3 SECURITY POLICIES AND NOTIFICATIONS.

4.3.1 Security Policies and Procedures.

New York State considers the protection of sensitive and confidential information and business systems to be of the utmost importance. The information collected and maintained by SBOE and Authorized Users is protected by a

myriad of Federal, State and local laws and regulations. Access to and use of sensitive and confidential information is limited to authorized government employees and legally designated agents, for authorized purposes only.

The Contractor and its personnel shall review and be familiar with all Authorized User's security requirements (e.g. laws, policies, procedures and directives) currently existing or implemented during the term of the Contract. If required within the Purchase Order, Contractor will provide verification of compliance with Authorized User security requirements.

4.3.2 Security Incidents.

Contractor must notify SBOE and Authorized User(s) within 48 hours of the Contractor's first notice of the incident, based on the criticality outlined below:

1. High-Intensity Incident: cyber-related incident that triggers reporting obligations, or one that is highly visible requiring response.
2. Medium-Intensity Incident: cyber-related incident resulting in the loss or compromise of User Data or Voting Systems, but no formal reporting obligations are triggered.
3. Low-Intensity Incident: cyber-related incident resulting in minor disruption that may not be visible to public.

Notifications must be submitted via e-mail to CyberNY@elections.ny.gov. Each notification must clearly indicate the criticality level of the security incident along with details of the security incident.

4.4 DATA BREACH.

4.4.1 Required Contractor Actions.

Unless otherwise provided by law, in the event of a Data Breach, the Contractor shall:

1. notify the SBOE and any potentially affected Authorized User by telephone as soon as possible, but in no event more than 24 hours from the time the Contractor confirms Data Breach;

2. consult with and receive authorization from the SBOE and, where applicable, Authorized User as to the content of any notice to affected parties prior to notifying any affected parties to whom notice of the Data Breach is required, either by the SBOE, Authorized User or statute;

3. coordinate all communication regarding the Data Breach with the SBOE and, where applicable, Authorized User (including possible communications with third parties);

4. cooperate with the SBOE and where applicable, Authorized User and any Contractor working on behalf of the SBOE and/or Authorized User in attempting (a) to determine the scope and cause of the breach; and (b) to prevent the future recurrence of such security breaches;

5. take such corrective actions that the Contractor deems necessary to contain the Data Breach. Contractor shall provide Written notice to the SBOE and, where applicable, Authorized User as to all such corrective actions taken by the Contractor to remedy the Data Breach. If Contractor is unable to complete the corrective action within the required timeframe, the remedies provided in Section 8.43, *Remedies for Breach* shall apply and (a) the SBOE and/or Authorized User may contract with a third party to provide the required services until corrective actions and services resume in a manner acceptable to the SBOE and/or Authorized User, or until the SBOE or Authorized User has completed a new procurement for a replacement service System; (b) and the Contractor will be responsible for the reasonable cost of these services during this period; and

6. provide Written documentation to the SBOE and, where applicable, Authorized User, as to all such corrective actions taken by the Contractor to remedy the cause of the Data Breach and mitigate against a repeat of the Data Breach.

Nothing herein shall in any way (a) impair the authority of the Office of the Attorney General, or other law

enforcement agency having jurisdiction, to bring an action against Contractor to enforce the provisions of the New York State Information Security Breach Notification Act (ISBNA) or (b) limit Contractor's liability for any violations of the ISBNA or any other applicable statutes, rules or regulations.

4.5 DATA OWNERSHIP, ACCESS AND LOCATION.

4.5.1 Data Ownership.

The Authorized User shall own all right, title and interest in User Data.

4.5.2 Authorized User Access to Data.

The Authorized User shall have access to its User Data at all times, through the term of the Purchase Order, plus the applicable period as specified in Section 4.8, *Expiration, Termination or Suspension of Services*.

The Authorized User shall have the ability to import or export User Data in piecemeal or in its entirety at the Authorized User's discretion at no charge to the Authorized User. This includes the ability for the Authorized User to import or export User Data to/from other Contractors. This can, if specified within the Purchase Order, be carried out by providing application programmable interface or other such efficient electronic tools.

4.5.3 Contractor Access to Data.

The Contractor shall not copy or transfer User Data unless authorized by the Authorized User. In such an event the User Data shall be copied and/or transferred in accordance with the provisions of this Section. Contractor shall not access any User Data for any purpose other than fulfilling the service. Contractor is prohibited from data mining, cross tabulating, monitoring Authorized User's User Data usage and/or access, or performing any other analytics other than those required within the Purchase Order. At no time shall any User Data or processes (e.g. workflow, applications, etc.), which either are owned or used by the Authorized User be copied, disclosed, or retained by the Contractor or any party related to the Contractor. Contractors are allowed to perform industry standard back-ups of User Data. Documentation of back-up must be provided to the Authorized User upon request. Contractor must comply with any and all security requirements within the Purchase Order.

4.5.4 Source Code Escrow for Licensed Product.

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

4.6 TRANSFERRING OF DATA.

4.6.1 General.

Except as required for reliability, performance, security, or availability of the services, the Contractor will not transfer User Data, unless directed to do so in Writing by the Authorized User. All data shall remain in CONUS.

At the request of the Authorized User, the Contractor will provide the services required to transfer User Data from existing databases to physical storage Devices, to facilitate movement of large volumes of User Data.

4.7 REQUESTS FOR DATA BY THIRD PARTIES.

Unless prohibited by law, Contractor shall notify the Authorized User in Writing within 24 hours of any request for User Data (including requestor, nature of User Data requested and timeframe of response) by a person or entity other than the Authorized User, and the Contractor shall secure Written acknowledgement of such notification from the Authorized User before responding to the request for User Data.

Unless compelled by United States law, the Contractor shall not release User Data without the Authorized User's

prior Written approval.

4.8 EXPIRATION, TERMINATION OR SUSPENSION OF SERVICES.

4.8.1 Return of Data.

The Contractor shall return User Data in a format agreed upon within the Purchase Order or as agreed to with the Authorized User. The Contractor must certify all User Data has been removed from its System and removed from backups within timeframes established in the Purchase Order or as agreed to with the Authorized User.

4.8.2 Suspension of Services.

During any period of suspension of service, the Authorized User shall have full access to all User Data at no charge. This can, if specified within the Purchase Order, be carried out by providing an application programmable interface or other such efficient electronic tools. The Contractor shall not take any action to erase and/or withhold any User Data, except as directed by the Authorized User.

4.8.3 Expiration or Termination of Services.

Upon expiration or termination of a Purchase Order, the Authorized User shall have full access to all User Data for a period of 60 calendar days. Unless noted in the original Purchase Order, this period will be covered at no charge. This can, if specified within the Purchase Order, be carried out by providing application programmable interface or other such efficient electronic tools. During this period, the Contractor shall not take any action to erase and/or withhold any User Data, except as directed by the Authorized User.

4.9 ACCESS TO SECURITY LOGS AND REPORTS.

Upon request, the Contractor shall provide access to security logs and reports to the State or Authorized User in a format as specified in the Purchase Order.

4.10 MODIFICATION TO APPROVED VOTING SYSTEMS.

Changes of any size or scope to an approved Voting System require SBOE approval prior to implementation. Proposed changes must first be provided to SBOE in the manner prescribed by the SBOE. Following approval of the changes, changes to any Voting System included on the Contractor's NYS Price List must be submitted to OGS via Appendix C, *Contract Modification Procedure*.

4.11 LEGACY MAINTENANCE PLANS.

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 set forth below 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, 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 Extended Maintenance Plans, and may now wish to purchase an Extended Maintenance Plan for Voting Systems purchased under a Contract awarded pursuant to Contract Award 21231. In such instances, Authorized Users shall be responsible for the cost of any parts and labor necessary, as a result of any damage or defects which occurred or arose after the end of the Project Warranty Period, to bring the Voting System back to its current certified version, as determined by the SBOE. Contractors shall not charge for any other parts or labor costs as those costs are covered by the Project Warranty Period. Prior to the commencement of any work performed in accordance with this paragraph, Contractors 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.

In addition to the foregoing, during the term and any renewal or extension of the Contract, the SBOE may require Authorized Users to obtain maintenance services, which are not covered by the Project Warranty Period or the Extended Maintenance Plans, including those options made available by the Contractor in its normal course of business in order to maintain the voting systems in accordance with their current certification. These services may include on-site maintenance (Contractor will dispatch a Contractor representative to the Authorized User's site) and shall be subject to the charges included in the Contractor's price list attached to the Contract.

The voting machines that this provision applies to are:

ES & S Precinct-based Voting System:
DS200(i) 2.16.0.1, DS200(i) Hardware Revision 1.3, AutoMark 1.8.3.0, VAT Preview 1.8.3.0, EMS/EVS Suite 5.6.0.1, EMS/EVS Suite 5.6.0.2

Event Log Service 1.5.7.0, Removable Media 1.4.7.0, DS 200 Power Management v 1.2.8.0

ES & S Central Count Voting System:
DS 850 v. 2.4.0.1, DS 850 v. 2.13.0.0

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, ImageCast scanner v 4.9.12, ImageCast scanner v 4.9.12/BMD 4.9.6, ImageCast Evolution scanner v 4.14.25, ImageCast Evolution scanner v 4.14.27, BCU v 4.9.18.0

DOMINION Central Count Voting System: (ICC) v.4.9.14, 4.14.18,

CLEARBALLOT Central Count Voting System:

ClearCount v. 1.0, ClearCount v 1.6.0

4.12 APPLICATION PROGRAM INTERFACE (API) OR SELF-SERVICE ELECTRONIC PORTAL.

Except as otherwise provided for in this Section, Contractor may offer an API or self-service electronic portal for such purposes as allowing the Authorized User to access security logs, reports, and audit information, to import or export User Data, and for such other purposes as agreed to in the Purchase Order.

4.13 CAPTIONS

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

4.14 SEVERABILITY

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

4.15 COUNTERPARTS

This Contract may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same Contract. Any signature page of any such counterpart may be attached or appended to any counterpart to complete a fully executed counterpart of this Contract, and shall bind such Party.

4.16 ENTIRE AGREEMENT

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

[Signatures appear on next page]

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

CLEAR BALLOT GROUP, INC.		**THE PEOPLE OF THE STATE OF NEW YORK, ACTING BY AND THROUGH THE COMMISSIONER OF GENERAL SERVICES**	
Signature:		Signature:	
Printed Name:	Justin Shepard	Printed Name:	Marc Kleinhenz
Title:	Chief Financial Officer	Title:	Assistant Director Procurement Services
Date:	04/02/2021	Date:	5/12/2021
Federal ID:	27-0798408		
NYS Vendor ID:	1100122065		

NYS OFFICE OF THE STATE COMPTROLLER

OSC Approval:

Approved ____ Disapproved ____

Approved as Amended ____

APPROVED
DEPT. OF AUDIT & CONTROL
Jun 15 2021
Brian Fuller
FOR THE STATE COMPTROLLER

Signature: _____

Name: _____

Title: _____

Date: _____

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

STATE OF Mass }
: **SS.:**
COUNTY OF Suffolk }

On the 2 day of April in the year 20 21, before me personally appeared Justin Shepard, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that __ maintains an office at _____

_____,and further that:

[Check One]

☐ **If an individual):** __ executed the foregoing instrument in his/her name and on his/her own behalf.

☒ **If a corporation):** __ is the CEO of Clear Ballot, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, X is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, __ executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

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

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

Notary Public
Registration No.

MATTHEW KAPLAN
Notary Public
Commonwealth of Massachusetts
My Comm. Expires May 21, 2021

Agreed and accepted

NYS Board of Elections

Signature:

Printed Name: THOMAS Connolly

Title: Director of Election Operations

Date: 7/14/2021

Signature:

Printed Name: BRENDAN LOVULLO

Title: DEP. DIR OF ELECTION OPERATIONS

Date: 7/14/2021

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT FOR FUTURE REFERENCE.

October 2019

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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 $25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed $85,000 (State Finance Law § 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

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

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

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

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

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

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

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

10. **RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)–(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than $1 million:

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

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

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

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

21. **RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5))) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

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

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

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

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.
To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

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

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

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

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

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

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

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GENERAL

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

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

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

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

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

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

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

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

1. **Agency Specific Contracts** Contracts where the written description for a Product or a particular scope of work is described and defined to meet the needs of one or more Authorized Users.

2. **Centralized Contracts** Single- or multiple-award Contracts where the written description for a Product or general scope of work is described and defined by OGS to meet the needs of Authorized Users. Centralized Contracts may be awarded through multiple awards or through adoption of another jurisdiction's contract or on a sole source, single source, emergency, or competitive basis. Once established, procurements may be made from the selected Contractors without further competition or Mini-Bid unless otherwise required by the Contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

gg. STATE State of New York.

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

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

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

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

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

BID SUBMISSION

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

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

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

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

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

6. **CONFIDENTIAL/TRADE SECRET MATERIALS**

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

b. **COMMISSIONER OR AUTHORIZED USER** Contractor warrants, covenants and represents that any confidential information obtained by Contractor, its agents, Subcontractors, officers, distributors, resellers or employees in the course of performing its obligations, including without limitation, security procedures, business operations information, or commercial proprietary information in the possession of the State or any Authorized User hereunder or received from another third party, will not be divulged to any third parties without the written consent of the Commissioner or Authorized User. Contractor shall not be required to keep confidential any such material that is publicly available through no fault of Contractor, independently developed by Contractor without reliance on confidential information of the Authorized User, or otherwise obtained under the Freedom of Information Law or other applicable New York State laws and regulations. This warranty shall survive termination of this Contract. Contractor further agrees to take commercially reasonable steps to inform its agents, Subcontractors, officers, distributors, resellers or employees of the obligations arising under this clause to ensure such confidentiality.

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

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

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

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

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

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

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

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

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

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

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

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

8. **TAXES**

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

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

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

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

10. **PRODUCT REFERENCES**

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

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

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

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

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

13. **PRICING**

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

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

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

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

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

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

f. **Specific price decreases:**

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

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

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

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

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

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

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

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

BID EVALUATION

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

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

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

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

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

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

TERMS & CONDITIONS

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

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

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

25. PARTICIPATION IN CENTRALIZED CONTRACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31. PRODUCT DELIVERY Delivery must be made as ordered to the address specified on the Purchase Order and in accordance with the terms of the Contract. Delivery shall be made within 30 calendar days after receipt of a Purchase Order by the Contractor, unless otherwise agreed to by the Authorized User and the Contractor. The decision of the Commissioner as to compliance with delivery terms shall be final. The burden of proof for delay in receipt of a Purchase Order shall rest with the Contractor. In all instances of a potential or actual delay in delivery, the Contractor shall immediately notify the Commissioner and the Authorized User, and confirm in writing the explanation of the delay, and take appropriate action to avoid any subsequent late deliveries. Any extension of time for delivery must be requested in writing by the Contractor and approved in writing by the Authorized User. If compliance with the delivery time schedule is a material term of the Contract, failure to meet such delivery time schedule may be grounds for cancellation of the order or, in the Commissioner's discretion, the Contract.

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

33. SHIPPING/RECEIPT OF PRODUCT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43. TERMINATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45. CONTRACT INVOICING

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

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

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

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

46. DEFAULT – AUTHORIZED USER

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

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

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

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

47. PROMPT PAYMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

54. **WARRANTIES**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

64. OWNERSHIP/TITLE TO PROJECT DELIVERABLES

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

a. Definitions

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

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

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

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

(i) Existing Products:

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

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

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

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

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

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

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

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

66. <u>CHANGES TO PRODUCT OR SERVICE OFFERINGS</u>

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

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

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

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

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

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APPENDIX C

CONTRACT MODIFICATION PROCEDURE

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

(1) **TYPES OF CONTRACT MODIFICATIONS**: In order to expedite processing of a contract modification, where proposed changes involve more than one category below, each change should be submitted to OGS as a separate request.

a) **UPDATES**: "Updates" are changes that do not require a change to the established Centralized Contract terms and conditions. Updates may include: Centralized Contract changes and updates made in accordance with the previously approved pricing formula (e.g. discount from list price); adding new products or services within the established, previously approved pricing structure; lowering pricing of products or services already on Contract, deleting products or services available through the Centralized Contract, adding a product or service that does not fall under the previously established price structure or discounts under the Contract, re-bundled products, and other updates not listed above that are deemed to be in the best interest of the State and do not result in a change to the established Centralized Contract terms and conditions. Updates must be submitted to OGS for review and must be accompanied by a justification of reasonableness of price if the change results in a change in pricing methodology. OGS will notify Contractor in writing if approved.

b) **AMENDMENTS**: "Amendments" are changes that are not specifically covered by the terms and conditions of the Centralized Contract but inclusion is found to be in the best interest of the State. Requests for product changes and other requests that would require changes to the terms and conditions of the Centralized Contract would fall into the Amendments category. Contractor must provide a written justification of reasonableness of the price levels offered to the State and a statement explaining why it is in the best interest of the State to approve the requested amendment. Amendments typically require negotiation between OGS and the Contractor. OGS will work directly with the Contractor to obtain the required documentation for each requested amendment and notify Contractor in writing if approved.

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

- request additional information;
- reject Contract modifications;
- remove Products from Contract modification requests; and
- request additional discounts for new or existing Products

(3) **PRICE LEVEL JUSTIFICATION – FORMAT:** Contractor is required to submit the Product and price level information for the update in an Excel spreadsheet format electronically via e-mail (and in hard copy if requested by OGS) to the OGS Contract Administrator. The list must be dated. The Product and price level information should include and identify (e.g., by use of separate worksheets or by using italics, bold and/or color fonts):

- Price level increases;
- Price level decreases;
- Products being added; and
- Products being deleted.

(4) **SUPPORTING DOCUMENTATION:** Each modification request must include the current contract pricing discount relevant to the Products included in the update.

(5) **SUBMITTAL OF MODIFICATION REQUESTS:** A Contract modification request must be accompanied by a completed Contract Modification Form. Contractor should briefly describe the nature and purpose of the update (e.g., update requested in order to reflect a recently approved GSA schedule, to restructure the price level to its customers generally, and/or for new Products which fall into a new group or category that did not

exist at the time of approval of the Contract by OGS). The Contract Modification Form must contain original signatures by an individual authorized to sign on behalf of Contractor and must be notarized.

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

INSTRUCTIONS:

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

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

COMPLETE STATEMENTS 1 THROUGH 5 BELOW:

1. This request is for an: ☐ Update ☐ Amendment See Contract Modification Procedure for an explanation of these terms.	2. The intent of this submittal is to request: ☐ Addition of new products or services ☐ Deletion of products or services ☐ Change in pricing level ☐ Other Update ☐ Other Amendment
3. All discounts are: ☐ GSA ☐ Most Favored Nation* ☐ Other (provide explanation) *Prices offered are the lowest offered to any similarly situated entity. THIS BOX MUST BE COMPLETE	4. Attached documentation includes: ☐ Current approved GSA Price List (labeled "For information only") ☐ Current relevant Price List (labeled "For information only") ☐ Revised NYS Net Price List(s) in same format required for this Contract ☐ Current copy of the "National Consumer Price Index for All Urban Consumers (CPI-U) Northeast region" (for price increases only)

5. Describe the nature and purpose of the modification. If applicable, please explain how pricing has been structured to Authorized Users, and/or identify and describe new Products which fall into a new group or category that did not exist at the time of approval of the Contract by OGS.

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

_____
Signature of Authorized Contractor Representative

ACKNOWLEDGEMENT

STATE OF } ss.:

COUNTY OF }

On the _____day of _____in the year 20____, before me personally came:

_____, to me known, who, being by me duly sworn, did depose and say that _he maintains a business in _____

_____; that _he is the

_____ of _____, the corporation/ partnership/ Limited Liability Company described in the above instrument; that, _he is authorized to execute the foregoing instrument on behalf of the corporation/ partnership/ Limited Liability Company for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said corporation/ partnership/ Limited Liability Company as the act and deed of said corporation/ partnership/ Limited Liability Company.

_____
Notary Public

OGS APPROVAL:

Approved ☐ Approved as amended ☐ Disapproved ☐
OGS Comments:

Name:

Title:

Date:

Contractor Information

Appendix D – Contractor Information
Group 22300 – Award 23198
Voting Systems and Related Services and Accessories

Section 1. Contractor Information

Legal Business Entity Name:	CLEAR BALLOT GROUP, INC.
Doing Business As (If Applicable):	
Mailing Address:	2 Oliver Street, 2nd Floor
City, State, Zip (Mailing)	Boston, MA 02109
Website:	https://clearballot.com/
Federal ID#:	27-0798408
NYS Vendor ID#:	1100122065
Toll-Free Number:	
Contract #:	PC69384
Date:	

Section 2. Procurement Card and Prompt Payment Discount Information

Contractor accepts the New York State Procurement Card? ☒ No ☐ Yes – Up to $

Prompt payment discount percentage for payment within 10 days of delivery and/or receipt of voucher: 0%

Prompt payment discount percentage for payment within 15 days of delivery and/or receipt of voucher: 0%

Prompt payment discount percentage for payment within 30 days of delivery and/or receipt of voucher: 0%

Section 3. Contact Information

CONTRACT ADMINISTRATOR (Responsible for the Updating and Management of the Contract)	
Name:	Avin Bansal
Title:	CFO
Telephone Number:	201-450-1400
Toll-Free Number:	
Email Address:	AVIN.BANSAL@CLEARBALLOT.COM

ACCOUNT MANAGER (Responsible for the Overall Relationship with the State)	
Name:	Ingrid Giordano
Title:	Senior Sales Manager
Telephone Number:	214-642-6293
Toll-Free Number:	
Email Address:	INGRID.GIORDANO@CLEARBALLOT.COM

SALES MANAGER (Responsible for the Overall Relationship with the Authorized Users)	
Name:	Ingrid Giordano
Title:	Senior Sales Manager
Telephone Number:	214-642-6293
Toll-Free Number:	
Email Address:	INGRID.GIORDANO@CLEARBALLOT.COM

BILLING CONTACT (Responsible for matters related to invoicing, billing and payment)	
Name:	Stephen Hultin
Title:	Senior Accounting Manager
Telephone Number:	617-755-5536
Toll-Free Number:	
Email Address:	STEPHEN.HULTIN@CLEARBALLOT.COM

EMERGENCY CONTACT (Must be available 24 hours a day, 7 days a week, 365 days a year for emergency procurements)	
Name:	Ingrid Giordano
Title:	Senior Sales Manager
Telephone Number:	214-642-6293
Toll-Free Number:	
Email Address:	INGRID.GIORDANO@CLEARBALLOT.COM

Appendix E
NYS Contract Price List

Contractor's Name:	**Clear Ballot Group, Inc.**
Contract Number:	**PC69384**
Effective Date:	

Date Contractor's Bid was opened by OGS	**12/22/2020**

Please be advised that this Appendix contains the following four (4) tabs:

1. **This Instructions tab**
2. **Fields**
3. **Product Category Discounts**
4. **Price List**

Instructions:

Contractor will only be permitted to sell Voting System(s) as approved by SBOE under this Contract. Contract must include all the required items that a CBOE needs to be compliant with with the Voting System(s) as approved by SBOE.
The price listed on the NYS Contract Price List for each Contract SKU shall be a not-to-exceed price. Contractor may offer more favorable pricing to Authorized Users for particular
The purpose of this document is to provide Authorized Users with a NYS Contract Price List listing the Products available for purchase under this Contract. Only Products included on this price list may be sold under this Contract.
All NYS Net Prices are all-inclusive and shall cover all shipping, handling, insurance, associated delivery charges (F.O.B Destination to the dock/delivery location of the Authorized User), and all other costs.

Column Title	Entry Type	Type of Field	Definition	Response Examples
Item Number	Numeric	Protected	This field is used to consecutively number items being entered.	1., 2., 3., 4., etc.
Product Category	Text	Required	Types of Products being offered under the Contract. The Product Category has been pre-filled for each individual price sheet to reflect the Product Category.	Voting System, Pollworker Training, Consumables, Support Services
Part/Stock Number	Text	Required	This field is used to provide the Part/Stock Number used by the Contractor for ordering purposes.	ABC-123-456
Product Name	Text	Required	This field is used to indicate a Product's Name.	XYZ tablet, XYZ hot spot, XYZ Stylus, XYZ case, XYZ software
Product Description	Text	Required	This field is used to provide a detailed description of a specific item.	Voting System software
Unit of Measure (UOM)	Text	Required	This field is used to provide the Unit of Measure of an item.	Each, Year
Units Per Unit of Measure	Numeric	Required	This field is used to indicate the total number of items within the unit of measure.	Each (1); Year (1)
Manufacturer Name	Text	Required	This field is used the name of the manufacturer of the Product offered.	Manufacturer XYZ
Manufacturer's Part Number	Text	Required	This field contains the manufacturer's unique identifier assigned to the item, which consists of alphanumeric characters.	ABC-123-456
List Price	Numeric	Required	This field lists the price published in the regularly published commercial catalog for the Product being offered. Monetary values will be two (2) decimal points.	$1,000.00
Minimum NYS Discount/ Category Discount	Percentage	Required	This field contains the Category Discount associated with a Product Category.	25.00%
Actual NYS Discount	Percentage	Optional	This is an alternative discount that is not cumulative with the Category discount. This field is used to indicate a discount that is higher than the Minimum Category Discount percent. Items that contain this discount will have a net price calculated on this discount. All discount percentage values shall not exceed two (2) decimal places (e.g. 20.12333 shall be rounded to 20.12%).	35.00%

Column Title	Entry Type	Type of Field	Definition	Response Examples
Net NYS Price	Calculated	Protected	This field calculates the Net NYS Price by applying the greater discount percentage of either the Minimum Category Discount or the Actual NYS Discount to the List Price. Monetary values will be two (2) decimal points. All Net NYS Contract Prices are Not-to-Exceed prices.	$650.00

Product Category Discounts

Contractor's Name:	Clear Ballot Group, Inc.
Contract Number:	PC69384
Effective Date:	

Contractor offers the following Category Discount percentage from their regularly published commercial price list which will apply to all items within the identified Product Category.

	Product Category	Category Discount
1	ClearCount Software	5.00%
2	Voting System	0.00%
3	Customer Training	0.00%
4	Election Support	0.00%
5	ClearCount Software Warranty	0.00%

Award 23198 Price List

Contractor's Name:	Clear Ballot Group, Inc.
Contract Number:	PC69384
Effective Date:	

Item Number	Product Category	Part/ Stock Number	Product Name	Product Description	Unit of Measure (UOM)	Units Per Unit of Measure	Manufacturer Name	Manufacturer's Part Number	List Price	Minimum NYS Discount/ Category Discount	Actual NYS Discount	Net NYS Price
1	Voting System	41013-1-1	ClearCount Server Bundle	Includes: Server, Desktop Monitor, Router, Hard Drive, Keyboard, Mouse, DVD Drive, Powerstrip, Printer	Each	1	Clear Ballot	41013-1-1	$6,500.00	0%		$6,500.00
2	Voting System	41013-2-1	ClearCount Large Server Bundle	Includes: Server, Desktop Monitor, Router, Hard Drive, Keyboard, Mouse, DVD Drive, Powerstrip, Printer	Each	1	Clear Ballot	41013-2-1	$10,500.00	0%		$10,500.00
3	Voting System	41012-2-1	ClearCount fi-7800 Scanner Bundle	Includes: Scanner, Laptop, Laptop Stand, Scanner Support, ScanAidKit	Each	1	Clear Ballot	41012-2-1	$23,500.00	0%		$23,500.00
4	Voting System	41012-3-1	ClearCount fi-7900 Scanner Bundle	Includes: Scanner, Laptop, Laptop Stand, Scanner Support, ScanAidKit	Each	1	Clear Ballot	41012-3-1	$30,000.00	0%		$30,000.00
5	Voting System	41011-2-1	AdminStation Bundle	Laptop and cables. Also included in scanner bundles.	Each	1	Dell	Latitude 5500	$2,100.00	0%		$2,100.00
6	Voting System	11110-2-1	ClearCount Server	Part of ClearCount Server Bundle	Each	1	Dell	PowerEdge T140	$5,800.00	0%		$5,800.00
7	Voting System	54110-3-1	Desktop Monitor	Part of Server and Large Server Bundle	Each	1	Dell	P2219HE	$250.00	0%		$250.00
8	Voting System	52210-2-1	Hard Drive	Part of Server and Large Server Bundle	Each	1	Western Digital	WDBBGB0040HBK-NESN	$220.00	0%		$220.00
9	Voting System	54214-1-1	Keyboard	Part of Server and Large Server Bundle	Each	1	Dell	Kb216	$28.00	0%		$28.00
10	Voting System	54213-2-1	Mouse	Part of Server and Large Server Bundle	Each	1	Dell	MS116	$29.00	0%		$29.00
11	Voting System	54223-2-1	DVD Drive	Part of Server and Large Server Bundle	Each	1	LG	GP65NB60	$50.00	0%		$50.00
12	Voting System	32000-2-1	Printer	Part of Server and Large Server Bundle	Each	1	Brother	HL-L2350DW	$250.00	0%		$250.00
13	Voting System	51220-1-1	Powerstrip	Part of Server and Large Server Bundle	Each	1	Belkin	F9D1000	$50.00	0%		$50.00
14	Voting System	11120-2-1	ClearCount Large Server	Part of ClearCount Large Server Bundle	Each	1	Dell	PowerEdge T440	$9,500.00	0%		$9,500.00
15	Voting System	21300-2-1	ClearCount fi-7800 Scanner	Part of fi-7800 Scanner Bundle	Each	1	Fujitsu	fi-7800	$19,000.00	0%		$19,000.00
16	Voting System	81112-1-2	Scanner Support	Part of both Scanner Bundles	Each	1	Fujitsu	Scanner Support	$2,250.00	0%		$2,250.00
17	Voting System	65111-1-1	Laptop Stand	Part of both Scanner Bundles	Each	1	Uncaged Ergonomics	WEEs (661799222990)	$150.00	0%		$150.00
18	Voting System	71121-1-1	ScanAid Kit	Part both Scanner Bundles	Each	1	Fujitsu	fi-7800/fi-7900 Scan Aid Kit	$225.00	0%		$225.00
19	Voting System	21400-2-1	ClearCount fi-7900 Scanner	Part of fi-7900 Scanner Bundle	Each	1	Fujitsu	fi-7900	$25,500.00	0%		$25,500.00
20	Voting System	51110-3-1	UPS	Optional Item	Each	1	APC	SMT1500C	$950.00	0%		$950.00
21	Voting System	51120-3-1	Large UPS	Optional Item	Each	1	APC	SMT2200C	$1,250.00	0%		$1,250.00
22	Voting System	73210-1-1	Toner	Consumable	Each	1	Brother	TN-660	$72.00	0%		$72.00
23	Voting System	11120-3-2	ClearCount Optimized Server	Optional Configuration of Large Server/ Large Server Bundle	Each	1	Dell	PowerEdge T440 (Optimized)	$26,985.00	0%		$26,985.00
24	Voting System	52220-2-1	8 TB Hard Drive	Part of ClearCount Large Server Bundle	Each	1	Western Digital	WDBBGB0080HBK-NESN	$260.00	0%		$260.00
25	Voting System	73220-2-1	Printer Drum	Consumable	Each	1	Brother	DR-730	$145.00	0%		$145.00
26	Customer Training	sv-0001	Training	Services	Day	1	n/a	n/a	$1,700.00	0%		$1,700.00
27	Election Support	sv-0002	Election Support	1st year annual license included	Day	1	n/a	n/a	$1,700.00	0%		$1,700.00
28	ClearCount Software	ccsw-0001	ClearCount Software	1st year annual license included	Per License	1	Clear Ballot	ClearCount 1.6	$10,000 up to 10,000 Registered Voters. Plus $.22 per Registered Voter after 10,000	5%		$10,000 up to 10,000 Registered Voters. Plus $.22 per Registered Voter after 10,000
29	ClearCount Software Warranty	ccsw-002	ClearCount Software Warranty	1 Year Annual License	Per Year	1	Clear Ballot	ClearCount 1.6	20% of upfront software p	0%		20% of upfront software price

Appendix F

Contractor's Insurance Requirements

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

The Contractor shall provide proof of compliance with the requirements set forth in this Appendix for Contract renewal and upon request.

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

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

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

1. ***Coverage Types and Policy Limits.*** The types of coverage and policy limits required from Contractors are specified in Paragraph B *Insurance Requirements* below.

2. ***Policy Forms.*** Except as otherwise specifically provided herein, or agreed to in writing by OGS, all policies of insurance required by this Appendix shall be written on an occurrence basis.

3. ***Certificates of Insurance/Notices.*** Bidders and Contractors shall provide OGS with a Certificate or Certificates of Insurance, in a form satisfactory to OGS as detailed below, and pursuant to the timelines set forth in Section A.13. below. Certificates should reference the award number and shall name The New York State Office of General Services, Bureau of Risk and Insurance Management (BRIM), 32nd Floor, Corning Tower, Empire State Plaza, Albany, New York 12242 as the certificate holder.

Certificates of Insurance shall:

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

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

OGS generally requires Contractors to submit only certificates of insurance and additional insured endorsements, although OGS reserves the right to request other proof of insurance. Contractors should refrain from submitting

entire insurance policies, unless specifically requested by OGS. If an entire insurance policy is submitted but not requested, OGS shall not be obligated to review and shall not be chargeable with knowledge of its contents. In addition, submission of an entire insurance policy not requested by OGS does not constitute proof of compliance with the insurance requirements and does not discharge Contractors from submitting the requested insurance documentation.

4. ***Primary Coverage.*** All liability insurance policies shall provide that the required coverage shall be primary and non-contributory to other insurance available to the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to the Contract and their officers, agents, and employees. Any other insurance maintained by the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the and their officers, agents, and employees shall be excess of and shall not contribute with the Contractor's insurance.

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

6. ***Self-Insured Retention/Deductibles***. Certificates of Insurance must indicate the applicable deductibles/self-insured retentions for each listed policy. Deductibles or self-insured retentions above $100,000.00 are subject to approval from OGS. Such approval shall not be unreasonably withheld, conditioned or delayed. Contractors shall be solely responsible for all claim expenses and loss payments within the deductibles or self-insured retentions. If the Contractor is providing the required insurance through self- insurance, evidence of the financial capacity to support the self-insurance program along with a description of that program, including, but not limited to, information regarding the use of a third-party administrator shall be provided upon request.

7. ***Subcontractors.*** Prior to the commencement of any work by a Subcontractor, the Contractor shall require such Subcontractor to procure policies of insurance as required by this Appendix and maintain the same in force during the term of any work performed by that Subcontractor. An Additional Insured Endorsement CG 20 38 04 13 (or the equivalent) evidencing such coverage shall be provided to the Contractor prior to the commencement of any work by a subcontractor and pursuant to the timelines set forth in Section A.13. below, as applicable, and shall be provided to OGS upon request. For subcontractors that are self-insured, the subcontractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the subcontractor would have been required to pursuant to this section had the subcontractor obtained such insurance policies.

8. ***Waiver of Subrogation***. For all liability policies, except professional liability, and the workers' compensation insurance required below, the Contractor shall cause to be included in its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the and their officers, agents, and employees, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if the Contractor waives or has waived before the casualty, the right of recovery against The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees or (ii) any other form of permission for the release of The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. A Waiver of Subrogation Endorsement shall be provided upon request. A blanket Waiver of Subrogation Endorsement evidencing such coverage is also acceptable.

9. ***Additional Insured.*** The Contractor shall cause to be included in each of the liability policies, except professional liability, required below coverage for on-going and completed operations naming as additional insureds (via ISO coverage forms CG 20 10 04 13 or CG 20 38 04 13 and CG 20 37 04 13 and form CA 20 48 10 13, or a form or forms that provide equivalent coverage): The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use /the Contract and their officers, agents, and employees. An Additional Insured Endorsement evidencing such coverage shall be provided to OGS pursuant to the timelines set forth in Section 13 below. A blanket Additional Insured Endorsement evidencing such coverage is also acceptable. For Contractors who are self-insured, the Contractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the Contractor would have been required to pursuant to this Attachment had the

Contractor obtained such insurance policies.

10. ***Excess/Umbrella Liability Policies.*** Required insurance coverage limits may be provided through a combination of primary and excess/umbrella liability policies. If coverage limits are provided through excess/umbrella liability policies, then a Schedule of underlying insurance listing policy information for all underlying insurance policies (insurer, policy number, policy term, coverage and limits of insurance), including proof that the excess/umbrella insurance follows form must be provided upon request.

11. ***Notice of Cancellation or Non-Renewal.*** Policies shall be written so as to include the requirements for notice of cancellation or non-renewal in accordance with the New York State Insurance Law. Within five (5) business days of receipt of any notice of cancellation or non-renewal of insurance, the Contractor shall provide OGS with a copy of any such notice received from an insurer together with proof of replacement coverage that complies with the insurance requirements of the Contract.

12. ***Policy Renewal/Expiration*** Upon policy renewal/expiration, evidence of renewal or replacement of coverage that complies with the insurance requirements set forth in the Contract shall be delivered to OGS. If, at any time during the term of any 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.

13. ***Deadlines for Providing Insurance Documents after Renewal or Upon Request.*** As set forth herein, certain insurance documents must be provided to the OGS BRIM contact identified in the Contract Award Notice after renewal or upon request. This requirement means that the Contractor shall provide the applicable insurance document to OGS as soon as possible but in no event later than the following time periods:

- For certificates of insurance: 5 business days from request or renewal, whichever is later;
- For information on self-insurance or self-retention programs: 15 calendar days from request or renewal, whichever is later;
- For other requested documentation evidencing coverage: 15 calendar days from request or renewal, whichever is later;
- For additional insured and waiver of subrogation endorsements: 30 calendar days from request or renewal, whichever is later; and
- For notice of cancellation or non-renewal and proof of replacement coverage that complies with the requirements of this section: 5 business days from request or renewal, whichever is later.

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

B. Insurance Requirements

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

Minimum Insurance Coverage	
Commercial General Liability	Not less than $2,000,000 each occurrence
General Aggregate	$2,000,000
Products – Completed Operations Aggregate	$2,000,000
Personal and Advertising Injury	$1,000,000
Medical Expenses Limit	$5,000
Business Automobile Liability Insurance	Not less than $2,000,000 each occurrence
Technology/Professional Errors and Omissions	Not less than $2,000,000 each occurrence
Data Breach/Cyber Insurance	Not less than $2,000,000 each occurrence
Crime Insurance	Not less than $50,000 each occurrence

Workers' Compensation
Disability Benefits

C.

1. **Commercial General Liability Insurance:** Such liability shall be written on the current edition of ISO occurrence form CG 00 01, or a substitute form providing equivalent coverage and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, and liability assumed in the Contract (including the tort liability of another assumed in the Contract).
Policy shall include bodily injury, property damage and broad form contractual liability coverage.
   - General Aggregate
   - Products – Completed Operations Aggregate
   - Personal and Advertising Injury
   - Each Occurrence

   Coverage shall include, but not be limited to, the following:
   - Premises liability;
   - Independent contractors;
   - Blanket contractual liability, including tort liability of another assumed in the Contract;
   - Defense and/or indemnification obligations, including obligations assumed under Contract;
   - Cross liability for additional insureds; and
   - Products/completed operations for a term of no less than one (1) year, commencing upon acceptance of the work, as required by the Contract.

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

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

3. **Technology/Professional Errors & Omissions:** The Contractor shall maintain, during the term of the Contract, Technology/Professional Errors and Omissions Insurance for claims for damages arising from computer related services including, but not limited to, the following: consulting, data processing, programming, system integration, hardware or software development, installation, distribution or maintenance, systems analysis or design, training, staffing or other support services, any electronic equipment, computer software developed, manufactured, distributed, licensed, marketed or sold.

   If the policy is written on a claims-made basis, the Contractor must provide to OGS proof that the policy provides the option to purchase an Extended Reporting Period ("tail coverage") providing coverage for no less than one (1) year after work is completed in the event that coverage is cancelled or not renewed. This requirement applies to both primary and excess liability policies, as applicable.

4. **Data Breach/Cyber Insurance:** Contractors are required to maintain during the term of Contract and as otherwise required herein, Data Breach and Privacy/Cyber Liability Insurance, including coverage for failure to protect confidential information and failure of the security of the Contractor's computer systems or the Authorized Users' systems due to the actions of the Contractor which results in unauthorized access to the Authorized User(s) or their data.

   Said insurance shall provide coverage for damages arising from, but not limited to the following:
   - Breach of duty to protect the security and confidentiality of nonpublic proprietary corporate information;
   - Personally identifiable nonpublic information (e.g., medical, financial, or personal in nature in electronicor non-electronic form);

- Privacy notification costs;
- Regulatory defense and penalties;
- Website media liability; and
- Cyber theft of customer's property, including but not limited to money and securities.

If the policy is written on a claims made basis, the Contractor must submit to OGS proof that the policy provides the option to purchase an Extended Reporting Period ("tail coverage") providing coverage for no less than one (1) year after work is completed in the event that coverage is cancelled or not renewed. This requirement applies to both primary and excess liability policies, as applicable.

5. Crime Insurance

Contractors are required to maintain during the term of the Contract and as otherwise required herein, Crime Insurance, with a limit of not less than $50,000, if said coverage is not provided in Data Breach and Privacy/Cyber Liability or Technology Errors and Omissions. If coverage is provided in Data Breach and Privacy/Cyber Liability or Technology Errors and Omissions, a schedule of coverage shall be provided to OGS after renewal and/or upon request to the Certificate Holder.

Crime Insurance shall be on a "loss sustained form" or "loss discovered form" providing coverage for Third Party Fidelity.

In addition to the coverage above:

- The policy must allow for reporting of circumstances or incidents that might give rise to future claims.
- The policy must include an extended reporting period of no less than one (1) year with respect to events which occurred but were not reported during the term of the policy.
- Any warranties required by the Contractor's insurer as a result of the Contract must be disclosed and complied with. Said insurance shall extend coverage to include the principals (all directors, officers, agents and employees) of the Contractor.
- The policy shall include coverage for third party fidelity, including cyber theft if not provided as part of Cyber Liability, and name the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract as an Authorized User and their officers, agents, and employees as "Loss Payees" for all Third Party coverage secured. An Endorsement naming as Loss Payees "The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract as an Authorized User and their officers, agents and employees" shall be provided upon request. A blanket Loss Payee Endorsement evidencing such coverage is also acceptable. This requirement applies to both primary and excess liability policies, as applicable.
  The policy shall not contain a condition requiring an arrest and conviction.

6. Workers' Compensation Insurance and Disability Benefits Requirements

Sections 57 and 220 of the New York State Workers' Compensation Law require the heads of all municipal and state entities to ensure that businesses applying for contracts have appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals. **Failure to provide proper proof of such coverage or a legal exemption will result in a rejection of any Contract renewal.** Proof of workers' compensation and disability benefits coverage, or proof of exemption must be submitted to OGS at the time of policy renewal, Contract renewal and upon request. Proof of compliance must be submitted on one of the following forms designated by the New York State Workers' Compensation Board. **An ACORD form is not acceptable proof of New York State workers' compensation or disability benefits insurance coverage.**

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

Proof of Compliance with Workers' Compensation Coverage Requirements:

- Form CE-200, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not*

Required, which is available on the Workers' Compensation Board's website (www.wcb.ny.gov);

- Form C-105.2 (9/07), *Certificate of Workers' Compensation Insurance*, sent to OGS by the Contractor's insurance carrier upon request, or if coverage is provided by the New York State Insurance Fund, they will provide Form U-26.3 to OGS upon request from the Contractor; or
- Form SI-12, *Certificate of Workers' Compensation Self-Insurance*, available from the New York State Workers' Compensation Board's Self-Insurance Office, or
- Form GSI-105.2, *Certificate of Participation in Workers' Compensation Group Self-Insurance*, available from the Contractor's Group Self-Insurance Administrator.

Proof of Compliance with Disability Benefits Coverage Requirements:

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

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

Appendix G

How to Use

This document provides a NYS County Board of Elections (hereinafter "Authorized User") with instructions on how to use the Voting Systems and Related Services and Accessories Contract ("Contract").

General procurement information is available at the New York State Office of General Services ("OGS") Procurement website. https://ogs.ny.gov/procurement/buyer-information

An Authorized User must adhere to the terms and conditions of the Contract and the instructions herein when procuring Products under the Contract. Terms and conditions of the Contract were created based on the requirements and specifications of Solicitation 23198. An Authorized User who makes purchases from this Centralized Contract, such as through the use of a Purchase Order, does not have to, and shall not, enter into any additional contracts or agreements with a Contractor. Such purchases are covered by the terms and conditions of the Centralized Contract.

Contract information, including a list of contractors, contractor information, and price lists can be found on the Contract website. An Authorized User may contact the OGS Contract Manager at the email address on the website with any questions, concerns, or clarifications regarding the Contract.
https://online.ogs.ny.gov/purchase/spg/awards/2230023198CAN.HTM

An Authorized User with operational questions related to an existing New York State Board of Elections ("SBOE") certified Voting System or Related Services and Accessories or the SBOE certification process may contact the Elections Operations Unit of the SBOE at Election_Ops@elections.ny.gov or 518-473-5086.

SECTION 1 GENERAL INFORMATION

1.1 CONTRACT SCOPE.

This Contract establishes a purchasing vehicle for an individual Authorized User to acquire Voting Systems and related services, accessories, consumables, training and maintenance. Per NYS Election Law, the SBOE must certify any Voting System before it can be used by an Authorized User in New York State.

1.2 PRODUCTS IN SCOPE.

Products purchased under this Contract must be included on the Contractor's Appendix E, *NYS Contract Price List* prior to purchase.

1.1.1 Voting Systems.

A Contractor's Voting System(s), ballot marking or other voting device(s) accessible to individuals with disabilities.

1.1.2 Related Services and Accessories.

In addition to the standard system(s), Contractors may include related accessories, consumables, training, maintenance, and other related services, as approved by SBOE.

1.3 CONTRACT TERM.

The term of a Centralized Contract(s) awarded under Award 23198 is up to five (5) years with a single one (1) year extension option. Please refer to the Contractor Information Summary page on the Contract website for a Contractor's

specific contract period.

SECTION 2 AUTHORIZED USER CONSIDERATIONS.

2.1 GENERAL.

An Authorized User may utilize a Contractor's Appendix E, *NYS Contract Price List* and work with the Contractor to develop a Purchase Order for a project. The Purchase Order will memorialize the responsibilities of the Contractor with respect to a given transaction with an Authorized User and may include items such as, but not limited to: a statement of work, a payment schedule, and a list of deliverables based on the Authorized User's requirements. Authorized Users should review the terms and conditions of the Contract and the Contractors' NYS Contract Price List for approved and available Products.

2.2 PURCHASE ORDER INCLUSIONS.

A Purchase Order may include, as applicable, such factors as, but not limited to:

- Scope/statement of work;
- Manufacturer Part/Stock Numbers;
- Additional security requirements;
- Additional insurance requirements;
- Delivery requirements, including:
  - Product delivery date,
  - Delivery to an inside location, and
  - Any other unique delivery requirements;
- Hardware and Software environment;
- Systems/Networks to integrate with;
- Installation date; and
- Travel Reimbursement.

2.3 PRIMARY SECURITY AND PRIVACY MANDATES.

The information collected and maintained by Authorized Users is protected by a myriad of Federal and State laws and regulations. Access to and use of sensitive and confidential information is limited to authorized government employees and legally designated agents for authorized purposes only. All details should be outlined in the Authorized User's Purchase Order prior to the engagement of services under this Contract.

In addition to all other existing primary security and privacy mandates that apply to User Data, Authorized Users are reminded to consider and address any privacy mandates that exist in sections of NYS Election Law and the New York Codes, Rules and Regulations applicable to Voting Systems when developing a Purchase Order.

2.4 ACCEPTANCE TESTING.

Any Voting System purchased under this Contract is subject to the acceptance testing requirements set forth in 9 CRR-NY 6209.

SECTION 3 HOW TO PURCHASE FROM THE VOTING SYSTEM CONTRACT.

3.1 ORDERING.

Authorized Users shall procure Products that best meet their form, function, and utility requirements. Authorized Users are not required to release an RFQ to purchase under this Contract, however they are encouraged to seek multiple quotes when practical, and negotiate better pricing before purchasing. Not-to-exceed pricing is contained within the

Contractors' NYS Contract Price Lists and has been posted on the Contract website for use by Authorized Users. After selecting Products and finalizing an order with the Contractor, the Authorized User may issue a Purchase Order to the Contractor.

Pursuant to State Finance Law § 163(10)(c), at the time of purchase, Authorized Users must base their selection among multiple Contracts upon which is the most practical and economical alternative that is in the best interests of the State.

3.2 INVOICING.

All invoices shall at a minimum, include the items listed below and any additional information identified in the Purchase Order:

- Voting Systems Contract Number
- Contractor Name
- NYS Vendor ID
- Manufacturer Part Number
- Product Name
- Product Description
- Quantity
- Net NYS Price for each Product
- Specific designation of special price(s) which may be better than the Net NYS Price
- Invoice Total

3.3 PRODUCT PRICING.

All Contractors' NYS Price Lists are posted on the Contract website. Authorized Users should compare all Products and pricing and select the Product that best meets the Authorized User's needs. When reviewing quotes and invoices, Authorized Users should ensure a Contractor's quoted pricing is at or below the Net NYS Price as reflected on the Contractor's price list on the Contract website.

3.4 PRODUCT DELIVERY.

Per Appendix B, *General Specifications*, Section 31. *Product Delivery*, Contractors must deliver the units ordered by the Authorized User within thirty (30) calendar days after receipt of a Purchase Order by the Contractor, unless otherwise agreed to by the Authorized User and the Contractor. The thirty (30) days will start at the time of receipt of a Purchase Order and will conclude with delivery to the Authorized User. This thirty (30) calendar timeframe will include all work to be done by a Contractor.

3.5 AT-RISK WORK PROHIBITED.

Authorized Users are cautioned that at-risk work is strictly prohibited. No work is to be undertaken by the Contractor prior to receipt of the executed Purchase Order.

3.6 PROCUREMENT RECORD AND NEW YORK STATE PROCUREMENT COUNCIL GUIDELINES.

The Authorized User is reminded that it must adhere to the procedures of this Contract, its own internal procurement policies and procedures and all federal, State and/or local statutes, when applicable.

The following link to the New York State Procurement Council Guidelines provides additional procurement information and examples of documentation that should be created and maintained by the Authorized User as part of a procurement record:

https://ogs.ny.gov/system/files/documents/2018/08/psnys-procurement-guidelines.pdf

3.7 OFFICE OF THE STATE COMPTROLLER.

For purchases available from this Contract, the Authorized User may issue a Purchase Order directly to the Contractor without prior approval by the Office of the State Comptroller (OSC).

However, Authorized Users are reminded that the Office of the State Comptroller retains the right to post-audit any procurement, including those executed from this Contract. Authorized Users are reminded to follow all procurement guidelines.

APPENDIX H - REPORT OF CONTRACT USAGE

Award 23198

Enter your Contact Information in the cells below. The information entered below will be prepopulated on the Contract Usage tab.

Contractor Name:	
NYS Contract Number:	
Contract Reporting Period (Dates):	

A Contractor must complete all non-shaded cells on the worksheet. The shaded cells perform automatic calculations of the data entered and are locked or provide the Contractor with additional information in a read-only format. All other cells are read-only. Only those cells provided for entering Sales Information are to be accessed by the Contractor.

Contract Usage Sheet	
Contractor's Invoice #	Invoice number on Contractor's invoice to ordering entity
Invoice Date	Date on Contractor's invoice to ordering entity
PO #	Number on ordering entity's purchase order
Product Category	Category name of the products awarded by OGS.
Authorized User Name	Authorized User placing purchase order with Contractor.
Contractor's Part/Stock Number	Part/Stock used for ordering
Product Description	Description of part/stock product
Manufacturer Name	Manufacturer of the Item purchased
Manufacturer's Part Number	The manufacturer's unique identifier assigned to the item, which consists of alphanumeric characters. Examples of manufacturer's part numbers include Product Order Codes, ID Numbers, Model Numbers and Catalog Numbers. Should the Manufacturer's Model Number and Part Number be identical, then this information should be listed in both the 'Manufacturer's Model Number' and 'Manufacturer's Part Number' fields
Unit of Measure	Packing size of product
Quantity	Quantity purchased by the Authorized User for the term of the reporting period
NYS Contract Price (Unit Price)	Price published on the NYS Contract Price for the item purchased
Extended Price (NYS Contract Price)	The multiplied value of Quantity and NYS Contract Price
Authorized User Price (Unit Price)	Unit Price of the product that an Authorized User will be invoiced
Extended Price (Authorized User Price)	The multiplied value of Quantity and Authorized User Price
% Discount off NYS Contract Price	The percent difference between NYS Contract Price and Authorized User Price

Contractor Name:	
Contract Number:	
Contract Reporting Period (Dates):	

Contractor's Invoice #	Invoice Date	Ordering Entity PO #	Product Category	Authorized User Name	Contractor's Part/Stock Number	Product Description	Manufacturer Name	Manufacturer's Part Number	Unit of Measure	Quantity	NYS Contract Price (Unit Price)	Extended Price (NYS Contract Price)	Authorized User Price (Unit Price)	Extended Price (Authorized User Price)	% Discount off NYS Contract Price
Sample: ABC123	3/29/2021	12-12345	Accessories	Albany County Board of Elections	A1234	Memory Card	Acme Co	45678	each	100	$ 17.00	$ 1,700.00	$ 13.50	$ 1,350.00	21%

Contractor's Invoice #	Invoice Date	Ordering Entity PO #	Product Category	Authorized User Name	Contractor's Part/Stock Number	Product Description	Manufacturer Name	Manufacturer's Part Number	Unit of Measure	Quantity	NYS Contract Price (Unit Price)	Extended Price (NYS Contract Price)	Authorized User Price (Unit Price)	Extended Price (Authorized User Price)	% Discount off NYS Contract Price

Contractor's Invoice #	Invoice Date	Ordering Entity PO #	Product Category	Authorized User Name	Contractor's Part/Stock Number	Product Description	Manufacturer Name	Manufacturer's Part Number	Unit of Measure	Quantity	NYS Contract Price (Unit Price)	Extended Price (NYS Contract Price)	Authorized User Price (Unit Price)	Extended Price (Authorized User Price)	% Discount off NYS Contract Price

Contractor's Invoice #	Invoice Date	Ordering Entity PO #	Product Category	Authorized User Name	Contractor's Part/Stock Number	Product Description	Manufacturer Name	Manufacturer's Part Number	Unit of Measure	Quantity	NYS Contract Price (Unit Price)	Extended Price (NYS Contract Price)	Authorized User Price (Unit Price)	Extended Price (Authorized User Price)	% Discount off NYS Contract Price

Contractor's Invoice #	Invoice Date	Ordering Entity PO #	Product Category	Authorized User Name	Contractor's Part/Stock Number	Product Description	Manufacturer Name	Manufacturer's Part Number	Unit of Measure	Quantity	NYS Contract Price (Unit Price)	Extended Price (NYS Contract Price)	Authorized User Price (Unit Price)	Extended Price (Authorized User Price)	% Discount off NYS Contract Price

Contractor's Invoice #	Invoice Date	Ordering Entity PO #	Product Category	Authorized User Name	Contractor's Part/Stock Number	Product Description	Manufacturer Name	Manufacturer's Part Number	Unit of Measure	Quantity	NYS Contract Price (Unit Price)	Extended Price (NYS Contract Price)	Authorized User Price (Unit Price)	Extended Price (Authorized User Price)	% Discount off NYS Contract Price

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Attachment 1

New York State Election Law
Article 7
Title II

The New York State Election Law can be found at:
https://www.elections.ny.gov/NYSBOE/download/law/2020ElectionLaw.pdf

Attachment 2

New York Codes, Rules and Regulations
Title 9 Executive Department
Subtitle V. State Board of Elections
9 CRR-NY V 6209

The New York State Codes, Rules, and Regulations regarding Voting System standard can be found at: https://govt.westlaw.com/nycrr/Browse/Home/NewYork/NewYorkCodesRulesandRegulations?guid=I0252f210b72b11ddba5e846354f3a78d&originationContext=documenttoc&transitionType=Default&contextData=(sc.Default)&bhcp=1&ignorebhwarn=IgnoreWarns