



**Office of General Services**  
**Procurement Services**

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

**AGREEMENT FOR**

**VEHICLE AND EQUIPMENT PARTS**

**AND RELATED PRODUCT (STATEWIDE)**

**BY AND BETWEEN**

**NEW YORK STATE**

**OFFICE OF GENERAL SERVICES**

**AND**

**Elliott Auto Supply Co., Inc.**  
**dba Factory Motor Parts**

**CONTRACT NUMBER PC70839**

**CONTENTS**

**ATTACHMENTS.....3**

**1. INTRODUCTION .....5**

1.1 Overview.....5

1.2 Scope.....5

1.3 Estimated Quantities.....7

1.4 NYS Comptroller Approval.....7

1.5 Definitions.....7

1.6 Appendices and Attachments..... 10

1.7 Conflict of Terms..... 10

**2. SPECIFICATIONS..... 11**

2.1 Standards, Codes, & Requirements..... 11

2.2 Instruction Manuals..... 11

2.3 Procurement Instructions for Authorized Users..... 11

**3. TERMS AND CONDITIONS ..... 12**

3.1 Contract Term and Extensions ..... 12

3.2 Short Term Extension ..... 12

3.3 Price..... 12

3.4 Best Pricing Offer..... 13

3.5 Price Structure ..... 13

3.6 Ordering..... 13

3.7 Minimum Order ..... 14

3.8 Invoicing and Payment..... 14

3.9 Product Delivery..... 14

3.10 Product Returns and Exchanges ..... 15

3.11 Unanticipated Excessive Purchase..... 15

3.12 Contract Administration..... 15

3.13 NYS Financial System (SFS)..... 16

3.14 Web-Based Ordering ..... 16

3.15 Accessibility of Web-Based Information and Applications Policy..... 17

3.16 Americans with Disabilities Act (ADA)..... 17

3.17 Insurance ..... 17

3.18 Report of Contract Usage ..... 17

3.19 Contractor Requirements and Procedures for Participation by New York State Certified Minority- and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women ..... 18

3.20 Participation Opportunities For New York State Certified Service-Disabled Veteran Owned Businesses ..... 21

3.21 Use of Recycled or Remanufactured Materials..... 21

3.22 Bulk Delivery and Alternate Packaging..... 21

3.23 Environmental Sustainability and NYS Executive Order Number 22 ..... 22

3.24	Consumer Products Containing Mercury .....	22
3.25	Diesel Emission Reduction Act .....	22
3.26	Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment	23
3.27	Overlapping Contract Products .....	23
3.28	Preferred Source Products .....	23
3.29	NYS Vendor Responsibility .....	23
3.30	NYS Tax Law Section 5-a .....	24
3.31	“OGS or Less” Guidelines .....	24
3.32	Non-State Agencies Participation in Centralized Contracts .....	24
3.33	Extension of Use .....	25
3.34	Contractor Locations .....	25
3.35	Resellers .....	26
3.36	New Accounts .....	27
3.37	Centralized Contract Modifications .....	27
3.38	Drug and Alcohol Use Prohibited .....	28
3.39	Traffic Infractions .....	28
3.40	Samples .....	28
3.41	Contract Documents; Electronic Format .....	29
3.42	Purchasing Card Orders .....	29
<b>4.</b>	<b>GENERAL PROVISIONS .....</b>	<b>29</b>
4.1	Notices .....	29
4.2	Captions .....	29
4.3	Severability .....	29
4.4	Counterparts .....	29
4.5	Entire Agreement .....	30

**APPENDICES**

- Appendix A – *Standard Clauses for NYS Contracts* (June 2023)
- Appendix B – *General Specifications* (April 2016)
- Appendix C – *Federal Funding Agency Mandatory Terms and Conditions* (October 2023)
- Appendix D – *Contract Modification Procedure*

**ATTACHMENTS**

- Attachment 1 – *Pricing*
- Attachment 2 – *Insurance Requirements*
- Attachment 3 – *Report of Contract Usage*
- Attachment 4 – *Contractor/Subcontractor Information Sheet*

**STATE OF NEW YORK  
OFFICE OF GENERAL SERVICES  
AGREEMENT # PC70839  
CENTRALIZED CONTRACT FOR THE ACQUISITION OF  
VEHICLE AND EQUIPMENT PARTS  
AND RELATED PRODUCT (STATEWIDE)**

**THIS AGREEMENT** (hereinafter the “Contract” or the “Agreement”) is made this **6th** day of **August, 2025**, by and between the People of the State of New York, acting by and through the **Commissioner of the Office of General Services (OGS)**, whose office is on the 36<sup>th</sup> Floor, Corning Tower, Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242 (hereinafter the “State” or “OGS”) and **Elliott Auto Supply Co., Inc dba Factory Motor Parts**, having its principal place of business at **1380 Corporate Center Curve, Suite 200, Eagan, MN 55121** (hereinafter the “Contractor”). OGS and the Contractor are collectively referred to as the “Parties.”

**WHEREAS**, OGS is statutorily authorized to enter into centralized contracts for commodities for use by New York State agencies, departments, public authorities, political subdivisions and any other entities authorized by statute to utilize its centralized contracts (hereinafter “Authorized Users”);

**WHEREAS**, OGS has identified a need by New York State agencies and other Authorized Users for Vehicle and Equipment Parts and Related Product, as further described herein;

**WHEREAS**, OGS conducted a competitive procurement to identify the bidder(s) which could provide the Vehicle and Equipment Parts and Related Product at the lowest cost, referred to as IFB #23362 (hereinafter the “IFB” or the “Solicitation”), which was advertised on **April 1<sup>st</sup>, 2025** in the New York State Contract Reporter, as required by New York State Economic Development Law;

**WHEREAS**, multiple awards were made to the three responsive and responsible bidders that submitted Bids with the lowest Grand Totals, in accordance with the method of award set forth in the IFB; and

**WHEREAS**, the State has determined: that the Contractor submitted one of the three responsive bids with the lowest Grand Total; that the Contractor is a responsible vendor; and that the Contractor is willing to provide the commodities set forth herein under the terms and conditions contained herein.

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

## 1. INTRODUCTION

### 1.1 Overview

The purpose of this Contract is to provide Authorized Users with a means of acquiring Commonly Stocked and Direct Order Vehicle and Equipment Parts, and Related Product. The Contract contains 32 Part Groups, which are described in further detail below in Section 1.2 - *Scope*.

### 1.2 Scope

- A. The Scope of the Contract includes:
- i. Parts for Light Duty Vehicles (Part Groups 1 – 30);
  - ii. Parts for Heavy Duty Vehicles (Part Group 31); and
  - iii. Parts for Heavy Equipment (Part Group 32).

Contractor shall provide Parts as follows:

1. **Required:** Contractor shall provide its entire Product Line(s) of Commonly Stocked Parts for Part Groups 1 through 32 for multiple Light Duty Vehicle OEMs (e.g., Ford, GM, FCA), and Heavy Duty Vehicle and Heavy Equipment OEMs (e.g. Caterpillar, Case, John Deere, Mack, Navistar, Henderson, etc.).
2. **Optional:** Contractor is not required to, but may also, provide Direct Order Parts for Part Groups 1 through 32 for multiple Light Duty Vehicle OEMs (e.g., Ford, GM, FCA), and Heavy Duty Vehicle and Heavy Equipment OEMs (e.g. Caterpillar, Case, John Deere, Mack, Navistar, Henderson, etc.).

Part Groups	
1 – Brake Shoes & Linings	17 – Automotive Lighting
2 – Brake Parts	18 – Electric Wiring
3 – Rotors and Drums	19 – Spark Plugs
4 – Shock Absorbers	20 – Fluids / Chemicals / Lubricants
5 – Mirrors & Lamps	21 – Repair Equipment / Tools
6 – Belts & Hoses	22 – Steering
7 – Windshield Wipers	23 – Electric Motors
8 – Fuel Pumps	24 – Batteries
9 – Exhaust Equipment	25 – Water Pumps
10 – Ignition Equipment (Electrical)	26 – Radiators
11 – Starters & Alternators	27 – A/C Compressors
12 – Seals	28 – Tire Parts / Accessories
13 – Gaskets	29 – Filters
14 – Bearings, Ball & Roller	30 – Miscellaneous Light Duty Vehicle Parts
15 – Chassis Parts	31 – Heavy Duty Vehicle Parts
16 – Universal Joints	32 – Heavy Equipment Parts

- B. **Related Products:** The scope of the Contract includes Related Products as defined in Section 1.5 – *Definitions*. Any services provided by Contractor pursuant to this Contract shall be listed on Attachment 1 – *Pricing* under Part 3. Examples of Related Products include, but are not limited to the following:
1. Consumables and supplies that shall be used for Vehicle or Heavy Equipment maintenance or repair, but are not required for the continued operation of a Vehicle or Heavy Equipment (e.g., cleanser, polish, sponges, towels, chamois, wax, paint, enamels, and touch-up liquids);
  2. Supplies, tools and equipment that shall be used in the operation of the facility where Vehicles or Heavy Equipment are repaired, or to install or service Parts, but are not required for the continued operation of a Vehicle or Heavy Equipment (e.g., tool storage containers, janitorial/cleaning supplies, power tools, battery charger, wheel balancers);
  3. Acceptance of used Parts (also known as “cores”) for remanufacturing purposes;
  4. Short-term rental of Parts and equipment;
  5. Inventory stocking programs, including the stocking of Parts owned by the Contractor at the Authorized User location, but not billed to the Authorized User until used;
  6. Technician training for Parts installation;
  7. Software directly related to Parts (e.g. inventory management);
  8. Online Parts inventory and management that includes, but is not limited to, online Parts lookup, ordering, pricing verification, and the ability to track inventory; and
  9. Services that are directly related to Parts.
- C. **Excluded Products:** The following Products are excluded from the scope of the Contract:
1. Services that are not directly related to Parts;
  2. Used Parts (this exclusion does not include Remanufactured Parts);
  3. Tires; and
  4. On-site staffing of a Parts room at the Authorized Users’ location(s).

### 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. The individual value of this 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 the Solicitation. Such factors include, but are not limited to, the following:

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

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

### 1.4 NYS Comptroller Approval

In accordance with Section 112 of the State Finance Law, this Contract shall not be valid, effective or binding upon the State until this Contract has been approved by the Office of the New York State Comptroller (“OSC”). Purchase orders or other procurement transactions issued under this Contract may also be subject to OSC approval.

### 1.5 Definitions

Capitalized terms used in this Contract shall be defined in accordance with Appendix B – *Definitions*, or as below.

“**Contractor-Published Price List**” shall refer to the electronic (i.e. in a web-based format, Excel, or PDF) document(s) issued by the Contractor which lists, among other things, a Part Number, description and List Price for the Contractor’s complete Product Line(s) of Commonly Stocked Parts.

“**Contractor Location**” shall refer to the Contractor’s, or its Subcontractor’s, place of business, including retail storefronts and warehouses.

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

“**Commonly Stocked**” shall refer to a Part that is stocked by the Contractor in its usual course of business at its Contractor Location(s), and is included in the Contractor-Published Price List.

“**Compatible Equivalent**” shall refer to any Product which is equal or better in performance, quality and design to, and is directly interchangeable with, the referenced Product without modification.

“**Contractor Location**” is the Contractor’s, or its Subcontractor’s, place of business, including retail storefronts and warehouses.

**Contract PC70839, Elliott Auto Supply Co., Inc. dba Factory Motor Parts**

“**Direct Order**” shall refer to a Part that is not stocked by the Contractor in its usual course of business at its Contractor Location(s), and that may be acquired by the Contractor directly from the Part OEM or its Distributor(s).

“**Distributor(s)**” shall refer to an intermediary entity between the OEM and another entity in the distribution channel or supply chain, such as a Reseller.

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

“**Heavy Duty Vehicle(s)**” shall refer to a mobile machine that may be used to transport passengers and cargo, with a GVWR equal to 10,001 pounds or greater, (i.e., Class 3 through Class 8 Vehicles, as designated by the U.S. Department of Transportation). Heavy Duty Vehicles include, but are not limited to, large pickup trucks, and chassis-cab trucks with an attached body (e.g., aerial lift, ambulance, beverage, box/van, bus, concrete mixer, dump, fire apparatus, flat bed, log, pickup, recyclable/refuse, refrigerator, service/utility, stake, sweeper, tank, tow truck, trailer).

“**Heavy Equipment**” shall refer to equipment intended for heavy work such as earthmoving, construction, lifting containers or materials, drilling holes in earth or rock, concrete or paving application or street sweeping (e.g., aerial lifts, large towable air compressors, generators and light towers, concrete saws, earth compactors and rollers, backhoes, motor graders, skid-steer loaders, bulldozers, wheel loaders, trenchers, utility tractors, excavators, forklifts, sweepers and utility vehicles), and their related attachments and equipment.

“**Light Duty Vehicle(s)**” shall refer to a mobile machine that is primarily used to transport passengers and cargo, with a GVWR less than or equal to 10,000 pounds, (i.e., Class 1 through Class 2 Vehicles, as designated by the U.S. Department of Transportation). Light Duty Vehicles include, but are not limited to, cars, vans, SUVs, and light duty pickup trucks.

“**List Price**” shall refer to the price that is reduced by the NYS Discount Percentage to create the NYS Contract Price for Contract purchases of Commonly Stocked Parts.

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

“**NYS Contract Price(s)**” shall refer to the dollar amount charged to the Authorized User for a Product provided under the Contract, and is inclusive of all Contractor costs associated with providing that Product to the Authorized User (e.g., delivery and all other incidentals normally included with providing the Product).

“**NYS Cost-Plus Percentage**” shall refer to the maximum percentage amount that will be added to the OEM Invoice Price for NYS Contract purchases of Direct Order Parts.

“**NYS Discount Percentage**” shall refer to the minimum percentage amount that the List Price will be reduced for NYS Contract purchases of Commonly Stocked Parts.

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

“**NYS Vendor ID**” shall refer to a unique ten-character identifier issued by the NYS Office of the State Comptroller (OSC) when the vendor is registered on the Vendor File System.

“**OEM**” shall refer to the Original Equipment Manufacturer.

“**OEM Invoice**” shall refer to a document from the OEM or its Distributors that includes the OEM Invoice Price for a Direct Order Part provided under the Contract.

“**OEM Invoice Price**” shall refer to the price that the Contractor pays for a Product at the time of purchase from the OEM or its Distributors.

“**OEM Quote**” shall refer to a document from the OEM or its Distributors that includes a quotation for the price identified by the Bidder as the OEM Quote Price on Attachment 1 – *Pricing*.

“**OEM Quote Price**” shall refer to the price for the Part that has been quoted by the Part OEM or its Distributors for the purposes of this Solicitation.

“**OEM Price List**” shall refer to the nationally published or internal document(s) issued by the OEM or its Distributors which lists, among other things, a description and MSRP for the OEM’s Product Line.

“**Part(s)**” shall refer to new and Remanufactured Products that may be used to replace an existing component of either a Vehicle or Heavy Equipment, accessories that may be added to a Vehicle or Heavy Equipment to enhance its operation, and Related Product (excluding services). For the purposes of this Contract, “Part(s)” shall include, but shall not be limited to, all Products that may be included in the Part Groups identified in the table included in Section 1.2 – *Scope*.

“**Part Group(s)**” shall refer to a category of Parts included in this Contract.

“**Part Number(s)**” shall refer to the code that uniquely identifies a Product.

“**Preferred Source Products**” shall refer to those Products that have been approved in accordance with New York State Finance Law § 162.

“**Preferred Source Program**” shall refer to the special social and economic goals set by New York State in State Finance Law § 162 that require a governmental entity purchase select Products from designated organizations when the Products meet the “form, function and utility” requirements of the governmental entity. Under State Finance Law § 163, purchases of Products from Preferred Sources are given the highest priority and are exempt from the competitive bidding requirements. The New York State Preferred Sources include: The Correctional Industries Program of the Department of Corrections and Community Supervision (“Corcraft”); New York State Preferred Source Program for People Who Are Blind (“NYSPSP”); and the New York State Industries for the Disabled (“NYSID”). These requirements apply to state agencies, political subdivisions and public benefit corporations (including most public authorities).

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

“**Product Line**” shall refer to a group of related Products manufactured by a single company or offered by a company in its usual course of business.

“**Related Product(s)**” shall refer to Product, as defined in Appendix B, that shall be used either to install or service Parts, for maintenance or repair of Vehicles or Heavy Equipment, for the operation of the facility where Vehicles or Heavy Equipment are maintained and repaired, or that is a service directly related to Parts. See also Section 1.2 – *Scope*.

“**Remanufactured**” shall refer to the state of a Product which has been restored to original performance and regulatory standards and functions.

“**Reseller**” shall refer to a distribution source for an OEM, authorized and designated by said OEM, subject to approval by New York State, which may include the OEM or an alternate entity.

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

“**Subcontractor**” shall refer to 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.

“**Vehicle(s)**” shall refer to a mobile machine that may be used to transport passengers and cargo. Light Duty Vehicles and Heavy Duty Vehicles are collectively referred to as “Vehicle(s)” in this Contract. Vehicles shall not include “Heavy Equipment” as defined in this Section.

## 1.6 Appendices and Attachments

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

Appendix A – *Standard Clauses for NYS Contracts* (June 2023)

Appendix B – *General Specifications* (April 2016)

Appendix C – *Federal Funding Agency Mandatory Terms and Conditions* (October 2023)

Appendix D – *Contract Modification Procedure*

Attachment 1 – *Pricing*

Attachment 2 – *Insurance Requirements*

Attachment 3 – *Report of Contract Usage*

Attachment 4 – *Contractor/Subcontractor Information Sheet*

## 1.7 Conflict of Terms

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

1. Appendix A – *Standard Clauses for New York State Contracts* (June 2023);
2. Appendix C – *Federal Funding Agency Mandatory Terms and Conditions* (October 2023);
3. This Document;
4. Appendix B – *General Specifications* (April 2016);
5. Attachment 2 – *Insurance Requirements*;
6. Attachment 1 – *Pricing*;
7. Attachment 4 – *Contractor/Subcontractor Information Sheet*;
8. Appendix D – *Contract Modification Procedure*; and.
9. Attachment 3 – *Report of Contract Usage*.

## 2. SPECIFICATIONS

Contractor shall provide Product as specified by the Authorized User on the Purchase Order. A Compatible Equivalent may be provided only with the prior written approval of the Authorized User. Product delivered to an Authorized User in a condition that would be considered unacceptable to a reasonable person may be rejected (see also Appendix B – *Rejected Product*). The following minimum specifications set forth below and in Section 2.1 – *Standards, Codes, & Requirements* and Section 2.2 – *Instruction Manuals* apply to all orders.

- A. Contractor shall provide its Product Line(s) of Commonly Stocked Parts.
- B. Contractor may also provide Direct Order Parts, and may acquire such Direct Order Parts on behalf of the Authorized User from any Distributor or OEM for which the Contractor is a reseller.
- C. Contractors may also offer Related Products.

### 2.1 Standards, Codes, & Requirements

All Parts and Related Product shall comply with all applicable federal, state and local laws, regulations and requirements. Parts offered shall be manufactured in accordance with any codes, standards and engineering practices as recommended by any applicable professional organizations for the specific equipment.

### 2.2 Instruction Manuals

At the time of delivery, Contractor shall provide a complete instruction manual for the Product and for each component supplied, as applicable, to the Authorized User.

### 2.3 Procurement Instructions for Authorized Users

Authorized Users should follow the following procurement instructions when purchasing from this Contract.

- A. Before proceeding with their purchase, Authorized Users shall check the list of Preferred Source offerings and are reminded that they must comply with State Finance Law, particularly § 162, regarding commodities/services provided by preferred source suppliers. Some Products in the resultant Contract are available from one or more Preferred Sources, including, but not limited to janitorial/cleaning supplies and Vehicle care Products (e.g., bug/tar remover, wash agents, carb/brake cleaner, diesel exhaust fluid, oil filters, lubricants, surface protectants, windshield washer fluid, windshield wipers, wheel cleaner and Vehicle covers).
- B. When utilizing this Contract, the Authorized User should be familiar with and follow the terms and conditions governing its use. The Authorized User is accountable and responsible for compliance with the requirements of public procurement processes. The Authorized User, when purchasing from OGS contracts, should hold the Contractor accountable for Contract compliance and meeting the Contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, Authorized Users are encouraged to seek improved pricing whenever possible. Authorized Users have the responsibility to document purchases which should include:
  - A statement of need and associated requirements;
  - Obtaining all necessary prior approvals;
  - A summary of the Contract alternatives considered for the purchase; and
  - The reason(s) supporting the resulting purchase (e.g., show that basis for the selection among multiple Contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).

- C. This Contract is issued under a multiple award structure. 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.

Awarded Contractors' Product offerings, Contract and pricing information will be posted to the OGS website. The Authorized User shall procure Products that best meet their form, function, and utility requirements.

### 3. TERMS AND CONDITIONS

#### 3.1 Contract Term and Extensions

The Contract shall be in effect for a term of up to five (5) years. The Contract term shall commence after all necessary approvals and shall become effective upon the date of OSC approval of the final executed documents and the Contract term shall end five (5) years from the date of OSC approval.

This Contract and all OGS Centralized Contracts resulting from the Solicitation shall have a co-terminus end date, including those Contracts awarded during any subsequent periodic recruitment. At the State's option, the Contract may be extended for two (2) years, in increments as deemed to be in the best interest of the State. Whether the optional extensions are exercised is at the sole discretion of the State. A Contractor shall retain the right to decline a Contract extension offered under this section. Any Contract extension will be under the same terms and conditions, subject to the approval of OSC and any additional applicable statutory and policy requirements. Any extensions provided under this section shall apply in addition to any rights set forth in Appendix B *Contract Term – Extension*.

The Contract term provided for in this section shall extend 6 months beyond its termination date only for Authorized Users whose contracts must be registered with the Office of the New York City Comptroller. During the 6-month period the definition of Authorized User shall be deemed to refer only to Authorized Users whose contracts must be registered with the Office of the New York City Comptroller. This extension is in addition to any other extensions available under the Contract. The extension provided for in this paragraph shall be upon the then-existing terms and conditions; provided, however, during such extension an Authorized User, as defined in this paragraph, may agree to amend such terms and conditions solely to comply with changes in statutory requirements (e.g. changes in minimum, prevailing or living wages, or regulated services).

#### 3.2 Short Term Extension

This section shall apply in addition to any rights set forth in Appendix B *Contract Term – Extension*. In the event that OGS determines that a short term extension is in the best interests of the State, (e.g., a replacement Contract has not been issued, or an extended period is needed for Authorized Users to transition to another procurement method), 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 previously 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, unless otherwise noted in the extension notification or agreement, this extension automatically terminates should a replacement Contract be issued in the interim.

#### 3.3 Price

The following terms and conditions apply to Contract pricing. See also Appendix B, Section 13 – *Pricing*.

- A. Commonly Stocked Parts. The NYS Contract Price for the Contractor's complete Product Line of Commonly Stocked Parts shall be a discounted price from the List Price included on the Contractor-Published Price List at the time the Purchase Order was received. The discount applied shall either be the agreed-upon NYS Discount Percentage identified in the Contract and on the Contract Award Notification page on the OGS website, or a greater discount. The NYS Discount Percentage may be increased by the Contractor at any time during the Contract term, but may not be decreased for the entire term of the Contract. The NYS Discount Percentage may be increased using Appendix D – *Contract Modification Procedure*.

**Contract PC70839, Elliott Auto Supply Co., Inc. dba Factory Motor Parts**

- B. Direct Order Parts. The NYS Contract Price for the Direct Order Parts shall be OEM Invoice Price plus an additional percentage. The additional percentage shall either be the agreed-upon NYS Cost-Plus Percentage identified in the Contract and on the Contract Award Notification page on the OGS website, or a lesser percentage. The NYS Cost-Plus Percentage may be decreased by the Contractor at any time during the Contract term, but may not be increased for the entire term of the Contract. The NYS Cost-Plus Percentage may be decreased using Appendix D – *Contract Modification Procedure*.
- C. Services. If the Related Product is a service (e.g. Parts installation at the Contractor Location, inventory stocking program or technician training), the price charged shall either be the price identified in the Contract and on the Contract Award Notification page on the OGS website, or less.
- D. Pricing Incentives and Rebates. More favorable pricing can be offered to Authorized Users and it is expected that Authorized Users will obtain the same rebates and special offers such as regional and national promotional pricing as provided to other customers. If the aforementioned pricing offer provides a lower price than the NYS Contract Price, then the Authorized User shall receive the lower of the two prices.
- E. Delivery. Standard delivery shall be provided at no additional expense to the Authorized User (see Section 3.9 - *Product Delivery* and definition of NYS Contract Price in Section 1.5 - *Definitions*). Additional charges for an emergency or rush delivery may be made with prior approval from the Authorized User. Such Emergency or rush shipping charges shall be at or below the rates charged in the Contractor's normal course of business, and shall be added to the invoice as a separate line item. In the event an emergency or rush delivery is required as the result of a Contractor's error, all shipping cost shall be paid by the Contractor.

### 3.4 Best Pricing Offer

During the Contract term, if the Commissioner becomes aware that the Contractor is selling substantially the same or a smaller quantity of a Product outside of this Contract upon the same or similar terms and conditions as that of this Contract at a lower price to a federal, state or local governmental entity, the price under this Contract, after consultation with the Contractor, may be reduced to a lower price on a prospective basis at the discretion of the Commissioner. The Commissioner reserves the right to request information to verify pricing for the purposes of this clause.

### 3.5 Price Structure

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

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

### 3.6 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, e-mail, or facsimile at any time. Orders submitted shall be deemed received by Contractor on the date submitted.

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

### 3.7 Minimum Order

There is no minimum order for this Contract. However, the Contractor may set a minimum order amount for delivery.

### 3.8 Invoicing and Payment

Invoicing and payment shall be made in accordance with the terms set forth in Appendix B – *Contract Invoicing*.

The Contractor is required to provide the Authorized User with one invoice for each Purchase Order at the time of delivery. The invoice must include detailed line item information to allow Authorized Users to verify that pricing at point of receipt matches the Contract price on the original date of order. At a minimum, the following fields must be included on each invoice:

- Contractor Name
- Contractor Billing Address
- Contractor Federal ID Number
- NYS Vendor ID Number
- Account Number
- NYS Contract Number
- Name of Authorized User indicated on the Purchase Order
- NYS Agency Unit ID (if applicable)
- Authorized User's Purchase Order Number
- Order Date
- Invoice Date
- Invoice Number
- Invoice Amount
- Product Descriptions
- Unit Price
- Quantity
- Unit of Measure
- Dates of Service (if applicable)

Cost centers or branch offices within an Authorized User may require separate invoicing as specified by each Authorized User. The Contractor's billing system shall be flexible enough to meet the needs of varying ordering systems in use by different Authorized Users. Visit the following link for further guidance for vendors on invoicing: <https://bsc.ogs.ny.gov/nys-vendors>.

### 3.9 Product Delivery

Delivery shall be made in accordance with this section and with Appendix B – *Shipping/Receipt of Product*. Contractor shall be required to deliver Parts and Related Products anywhere within NYS, at the location and time designated by the Authorized User on the Purchase Order, or by other mutual agreement. Delivery shall not be made at a time or location not previously agreed upon by the Authorized User. The Contractor shall work with the Authorized User to establish a regular delivery schedule, if requested. The Contractor shall also offer emergency delivery outside the Authorized Users' standard business hours, and "over-the-counter" service, in accordance with its standard business practices. The following terms and conditions apply to Delivery:

- A. Commonly Stocked. All in-stock Commonly Stocked Parts must be delivered within timeframes equal to or shorter than the Contractor's standard commercial delivery practices, which shall be set forth on the Contractor's dedicated NYS Contract website. If the Part is out of stock, or delivery time is expected to exceed twenty-four (24) hours (excluding days the Contractor Location is closed for business), the Contractor must notify the Authorized User at the time of order and provide an anticipated delivery timeframe.
- B. Direct Order. The Contractor shall provide the Authorized User with an anticipated delivery date for Direct Order Parts at the time of order. If the anticipated delivery date cannot be provided by the Contractor at the time of the acknowledgement of order, then the Contractor shall provide the Authorized User with a reasonable explanation for not providing a date, and shall provide the anticipated delivery date at the time it becomes known to the Contractor (e.g., when the date is provided by the Part OEM or its Distributor).
- C. 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 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 the anticipated delivery timeframe provided at the time of order is unacceptable, or if a delay occurs and the Part cannot be provided within the agreed-upon delivery time, the Authorized User shall have the right to cancel or modify the order at their discretion, and may purchase from another source. An order shall not be canceled or modified by the Contractor without the prior written approval of the Authorized User.

### **3.10 Product Returns and Exchanges**

In addition to the provisions of Appendix B – *Title and Risk of Loss, Product Substitution, and Rejected Product*, Products returned or exchanged due to quality problems, duplicated shipments, outdated Product, incorrect Product shipped, Contractor errors otherwise not specified, or Products returned or exchanged due to Authorized User errors, shall be replaced with specified Products or the Authorized User shall be credited or refunded for the full purchase price.

Products shall be replaced within 10 business days of written notification to the Contractor of the Authorized User's intent to return or exchange the Product. Contractor can charge only a restocking fee for Product returned or exchanged due to Authorized User error that is determined not to be suitable for resale; the restocking fee cannot exceed the net price of the returned or exchanged Product.

Any credit or refund shall be applied against the next bill/invoice submitted by the Contractor to the Authorized User. If no credit or refund, or only a partial credit or refund, is made in such fashion, the Contractor shall pay to the Authorized User the amount of such credit or refund or portion thereof still outstanding, within 30 calendar days of demand.

### **3.11 Unanticipated Excessive Purchase**

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

### **3.12 Contract Administration**

The Contractor shall provide a sufficient number of Customer Service employees who are knowledgeable and responsive to Authorized User needs and who can effectively service the Contract. Contractor shall also provide an Emergency Contact in the event of an emergency occurring after business hours or on weekend/holidays.

Contractor shall provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Information regarding the Sales/Billing Contact, Emergency Contact, and Contract Administrator shall be set forth in Attachment 4 – *Contractor/Subcontractor Information Sheet*. Contractor must notify OGS within five Business Days if its Contract Administrator, Emergency Contact, or Sales/Billing employees change, and provide an interim contact person until the position is filled. Changes shall be submitted electronically via e-mail to the OGS Contract Management Specialist.

**Contract PC70839, Elliott Auto Supply Co., Inc. dba Factory Motor Parts**

### 3.13 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 supports requisition-to-payment processing and financial management functions.

Further information regarding business processes, interfaces, and file layouts currently in place may be found at: <https://www.osc.ny.gov/state-agencies/gfo/chapter-iii/iii1-statewide-financial-system-sfs-overview>.

### 3.14 Web-Based Ordering

The State requires that the Contractor establish and maintain a website specifically for the Contract that has a web-based ordering system with the capability of receiving electronic orders from over 5,000 Authorized Users via the internet. The web-based ordering system shall have full order inquiry capabilities and shall acknowledge receipt of an Authorized User's order. The website link(s) will be listed under the Contractor information on the OGS website. The Contractor's website will be the responsibility of the Contractor to maintain and keep updated. The Contractor's website shall be operational and able to accept orders within 60 calendar days of Contract execution. The State reserves the right to request demonstrations of the Contractor's website.

The web-based ordering system must be capable of controlling, documenting, and reporting on the following minimum data elements:

- Contractor Name and Address
- Contract Number
- Ordering Agency/Facility/Political Subdivision, etc. and Address
- Purchase Order/Requisition Numbers
- Contact (individual placing order)
- Delivery Location
- Delivery Instructions
- Stock Number
- Manufacturer
- Description
- Unit of Measure
- List Price (unit)
- Net Price (unit)

**Warranty:** Contractor warrants and represents that Contract and related information will be accurately and completely posted, maintained and displayed in an objective and timely manner which renders it clearly distinguishable from other, non-contract offerings at Contractor's Internet website. Contractor shall indemnify the State and Authorized Users for damages resulting from errors or inaccuracies in such information, or from any failure to maintain or timely post Contract information in accordance with this paragraph.

**Contract Pricing:** Contractor is required to make available on their website their complete NYS Contract offerings of Commonly Stocked Parts, with both List Price and NYS Contract Price (See Section 3.3 – *Price*). Contract Products and pricing shall be presented in an online shopping format. Posting the currently effective List Prices and NYS Contract Prices only in Excel or PDF format shall not be acceptable.

**Price Data Retention & Audit:** Contractor shall maintain a record of historical Price List information, including additions, deletions and price changes, for the entire Contract term, and shall make this data available at the request of OGS or the Authorized User. Contractor may fulfill this requirement via either a searchable web-based format, by posting the data in Excel or PDF format at the Contract website, or by maintaining the records within an internal Contractor database. See also Appendix A, Section 10 – *Records*.

**Site Changes:** Contractor hereby consents to OGS establishing a link from the Contractor Information page on the OGS website to the Contractor's website in order to facilitate access to Contract information. The establishment of the link is provided solely for convenience in carrying out the business operations of the State, and OGS reserves the right to terminate or remove a link at any time, in its sole discretion, without advance

**Contract PC70839, Elliott Auto Supply Co., Inc. dba Factory Motor Parts**

notice, or to deny a future request for a link. OGS will provide Contractor with subsequent notice of link termination or removal. Contractor shall provide OGS with timely written notice of any change in URL or other information needed to access the Contractor's website and/or maintain the link.

**Use of Access Data:** If Contractor stores, collects or maintains data electronically as a condition of accessing State Contract information, such data shall only be used internally by Contractor for the purpose of implementing or marketing the State Contract, and shall not be disseminated to third parties or used for other marketing purposes.

This Contract constitutes a public document under the laws of the State of New York and Contractor cannot restrict general access to the Contract terms and conditions including pricing (e.g., through use of restrictive technology or passwords). Therefore, Contractor must provide OGS with either link to the website with unrestricted access to Contract pricing, or a generic username and password for OGS and Authorized User access to enable Product and price browsing, and for auditing purposes. The generic username and password will be posted on the Contractor Information page at the OGS website. Contractor must restrict access, by means of a specific username and password, for Authorized User transactions.

### **3.15 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 the 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.

### **3.16 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. Although it is not mandatory for Contractor to have these Products in order to receive an award, it is necessary to identify any such Products offered that fall into the above category.

### **3.17 Insurance**

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

### **3.18 Report of Contract Usage**

Contractor shall submit Attachment 3 – *Report of Contract Usage* including total sales to Authorized Users of this Contract by Contractor, and all authorized resellers, dealers and distributors, if any, 30 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 Attachment 3 – *Report of Contract Usage* contains the minimum information required. Additional related sales information, such as detailed user purchases may be required by OGS and must be supplied upon request. Failure to submit reports on a timely basis may result in Contract cancellation and designation of Contractor as non-responsible.

This Contract may be terminated if, on the one-year anniversary date of the Contract Award, and annually thereafter, the reports required to be filed under this Section show that the Contractor has made no sales to any Authorized User under the Contract for the prior year. Termination of the Contract under this Section is in addition to Appendix B – *Termination*, and shall take effect upon written notification to the Contractor. The Contract may also be terminated for failure to file the reports required under this Section.

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

#### **I. New York State Law**

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

#### **II. General Provisions**

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

---

### III. Equal Employment Opportunity (EEO)

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

1. Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate, or distinct from the Contract; or (ii) employment outside New York State.
2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor's equal employment opportunity policy. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.

#### B. Form EEO 100 – Staffing Plan

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

#### C. NYS Contract System Workforce Utilization Reporting Module (Commodities & Services)

1. The Contractor shall complete and shall require each of its subcontractors to complete a Workforce Audit on a quarterly basis throughout the term of this Contract, by the 10th day of April, July, October, and January. 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. Contractor shall coordinate with its subcontractors to ensure that all workers associated with this Contract are properly counted and reported. To prepare the report, Contractor and its subcontractors shall use the NYS Contract System Workforce Audit Module found at the following website: <https://ny.newnycontracts.com>.
2. Separate audits shall be completed by Contractor and all subcontractors utilized on this contract and the Contractor is responsible for ensuring timely submission of the Workforce Audit by their subcontractors.
3. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall complete the Workforce Audit 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 complete the Workforce Audit and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.

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

#### IV. Contract Goals

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

#### B. Good Faith Efforts

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

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

#### V. Fraud

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

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

Vendor must scroll down to the section titled COMMODITY & SERVICE CONTRACTS and use the appropriate forms under this section only.

### **3.20 Participation Opportunities For New York State Certified Service-Disabled Veteran Owned Businesses**

Article 3 of the New York State Veterans' Services 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](mailto: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/>

### **3.21 Use of Recycled or Remanufactured Materials**

New York State supports and encourages Contractors to use recycled, remanufactured or recovered materials in the manufacture of Products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the Product or packaging unless such use is precluded due to health or safety requirements or Product specifications contained herein. Refurbished or remanufactured components or Products are required to be restored to original performance and regulatory standards and functions and are required to meet all other requirements of this Contract. Warranties on refurbished or remanufactured components or Products must be identical to the manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment. See Appendix B – *Remanufactured, Recycled, Recyclable or Recovered Materials*.

### **3.22 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.

### 3.23 Environmental Sustainability and NYS Executive Order Number 22

New York State is committed to environmental sustainability, and seeks to minimize the environmental impact of any Products that the State Procures. Executive Order No. 22 Leading By Example: Directing State Agencies to Adopt a Sustainability and Decarbonization Program (“EO 22”), requires State Agencies, authorities, and public benefit corporations (“Affected Entities”) to follow GreenNY procurement specifications for commodities, services and technology. The GreenNY specifications consider a wide range of factors including avoidance of toxic substances, pollution reduction and prevention, sustainable manufacturing, reduction of greenhouse gas emissions, packaging, and water conservation. Resources are available on the OGS website at <https://ogs.ny.gov/greenny-purchasing-requirements-and-tools> for procurement managers and Contractors to learn about which Contracts provide environmentally preferable Products.

A list of currently approved specifications is located on the OGS website at <https://ogs.ny.gov/greenny/approved-greenny-specifications>. Specification(s) currently applicable to this Contract are:

1. Brake Pads (see <https://ogs.ny.gov/greenny/brake-pads>)
2. Vehicle Wheel Weights and Continuous Wheel Balancers (see <https://ogs.ny.gov/greenny/vehicle-wheel-weights-and-continuous-wheel-balancers>)
3. Engine Block Heaters (see <https://ogs.ny.gov/greenny/engine-block-heaters>)
4. Hydraulic Oil, High Detergent (see <https://ogs.ny.gov/greenny/hydraulic-oil-high-detergent>)
5. Lubricating Oil, High Detergent (see <https://ogs.ny.gov/greenny/lubricating-oil-high-detergent>)
6. Various Janitorial specifications (see [https://ogs.ny.gov/greenny/approved-greenny-specifications?q=/greenny/approved-greenny-specifications&f%5B0%5D=filter\\_term%3A2676](https://ogs.ny.gov/greenny/approved-greenny-specifications?q=/greenny/approved-greenny-specifications&f%5B0%5D=filter_term%3A2676)).

Contractor(s) shall note Products that meet GreenNY Specifications on its Contract Usage Reports (see Section 3.18 – *Report of Contract Usage*), in the format requested by OGS. OGS reserves the right to require that Contractors provide supporting documentation to demonstrate how identified Products meet the applicable GreenNY Specification(s).

### 3.24 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.

### 3.25 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.

### **3.26 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment**

In accordance with Section 889 of the National Defense Authorization Act (NDAA) for fiscal year 2019, under this Contract or subcontract resulting from the Solicitation, Contractor or Subcontractor shall not provide to the State or Authorized User any equipment, system, or service that uses covered telecommunications equipment or services, as defined by the NDAA, as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception applies or the covered telecommunications equipment or services are covered by a waiver, as set forth in the NDAA and the rules and regulations promulgated thereunder.

### **3.27 Overlapping Contract Products**

Products available under this Contract may also be available from other New York State Contracts. Authorized Users will be advised to select the most cost effective procurement alternative that meets their program requirements and to maintain a procurement record documenting the basis for this selection.

### **3.28 Preferred Source Products**

Section 162 of the State Finance Law requires that Authorized Users afford first priority to the Products of Preferred Source suppliers such as Corcraft (the marketplace name for the NYS Department of Corrections and Community Supervision, Division of Industries), New York State Preferred Source Program for People who are Blind (NYSPSP), and New York State Industries for the Disabled (NYSID), and others determined by law, when such Products meet the form, function and utility of the Authorized User. Some Products in this Contract may be available from one or more Preferred Sources. An Authorized User must determine if a particular Product is approved for a Preferred Source and follow the requirements of State Finance Law § 162(3) or (4)(b), respectively, before engaging the Contractor.

### **3.29 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.

### 3.30 NYS Tax Law Section 5-a

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

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

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

### 3.31 “OGS or Less” Guidelines

Purchases of the Products included in this Contract are subject to the “OGS or Less” provisions of State Finance Law § 163(3)(a)(v). This means that State Agencies can purchase Products from sources other than the Contractor provided that such Products are substantially similar in form, function or utility to the Products herein and are (1) lower in price and/or (2) available under terms which are more economically efficient to the State Agency (e.g. delivery terms, warranty terms, etc.).

Agencies are reminded that they must provide the State Contractor an opportunity to match the non-Contract savings at least two business days prior to purchase. In addition, purchases made under “OGS or Less” flexibility must meet all requirements of law including, but not limited to, advertising in the New York State Contract Reporter, prior approval of the Office of the State Comptroller and competitive bidding of requirements exceeding the discretionary threshold. State Agencies should refer to Procurement Council Guidelines for additional information.

### 3.32 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://ogs.ny.gov/procurement/nys-laws-extending-use-state-centralized-contracts>). 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.

### 3.33 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.

### 3.34 Contractor Locations

Contractor Locations utilized to provide services under the Contract may include both Contractor-owned and Subcontractor-owned locations (e.g., a Contractor may partner with third-party independently owned locations in order to provide statewide coverage). The following terms and conditions apply to Contractor Locations.

#### A. Definitions for “Contractor Location” and “Subcontractor”

Please refer to Section 1.5 - *Definitions*.

#### B. Conditions of Subcontractor-owned Contractor Locations

Subcontractor-owned Contractor Locations must be approved in advance by the State as a condition of eligibility under the Contract. The State also reserves the right to rescind any such participation or request that Contractor name additional locations in the best interests of the State, at the State's sole discretion, at any time. Contractor shall have the right to qualify Subcontractor-owned Contractor Locations and their participation under this Contract by Product Line, contracting program (e.g., government/educational sales), geographic region, size/sales volume, technical training or other criteria (“qualifying criteria”), provided that:

1. Such qualifying criteria are uniformly applied to all potential Subcontractor-owned Contractor Locations based upon Contractor's established, neutrally applied commercial/governmental program criteria, and not to a particular procurement;
2. All general categories of qualifying criteria must be disclosed by the Contractor to the State, in advance, at the beginning of the Contract term;
3. Those qualifying criteria met by the Subcontractor must be identified in Subcontractor designations on Attachment 4 – *Contractor/Subcontractor Information Sheet*, at the time that Subcontractor approval is requested; and
4. Immediate advance notice is provided to OGS in the event that a change in Subcontractor's status occurs during the Contract term.

All Subcontractors who have been approved in accordance with the foregoing paragraph shall be eligible to quote lower pricing for procurements under this Contract which meet their qualifying criteria. Contractor warrants and represents that it shall not, directly or indirectly, by agreement, communication or any other means, restrict any Subcontractor's participation or ability to quote a particular order.

#### C. Designation of Contractor Locations

For all Contractor Locations to be utilized under the Contract, Contractor must provide the State, in advance, with the information requested in Attachment 4 – *Contractor/Subcontractor Information Sheet*, in the format requested. Contractor shall also specify whether orders must be placed directly with Contractor, or may be placed directly with designated Subcontractors. The information provided on Attachment 4 – *Contractor/Subcontractor Information Sheet* will be posted at the Contract Award Notification page on the OGS website.

During the Contract term, requests to add or delete Contractor Locations or to modify Contractor Location information, must be submitted for prior approval of the State. Contractor may request changes to the designated Contractor Location list by submission of a completed Appendix D – *Contract Modification Procedure*, and a completed, revised version of Attachment 4 – *Contractor/Subcontractor Information Sheet*.

D. Responsibility for Reporting/Performance

Contractor shall be fully liable for a Subcontractor's performance and compliance with all Contract terms and conditions. Product purchased through a Subcontractor must be reported by Contractor in the required quarterly sales reports to the State as a condition of payment. In addition to inclusion of Subcontractor volume in the Contractor's sales reporting obligation to the State, at the request of an Authorized User, the Subcontractor shall provide the Authorized User with reports of the individual Authorized User's Contract activity with the Subcontractor.

E. Applicability of Contract Terms

Product ordered directly through Subcontractors shall be limited to Products previously approved for inclusion under this Contract and shall be subject to all terms and conditions of this Contract as a condition of Subcontractor participation.

### 3.35 Resellers

A. Definitions

Please refer to Section 1.5 - *Definitions*.

B. Conditions of Reseller Participation

Resellers must be approved in advance by the State as a condition of eligibility under the Contract. The State also reserves the right to rescind any such participation or request that Contractor name additional Resellers, in the best interests of the State, at the State's sole discretion, at any time. Contractor shall have the right to qualify Resellers and their participation under this Contract by Product Line, contracting program (e.g., government/educational sales), geographic region, size/sales volume, technical training or other criteria ("qualifying criteria"), provided that:

1. Such qualifying criteria are uniformly applied to all potential Resellers based upon Contractor's established, neutrally applied commercial/governmental program criteria, and not to a particular procurement;
2. All general categories of qualifying criteria must be disclosed by the Contractor to the State, in advance, at the beginning of the Contract term;
3. Those qualifying criteria met by the Reseller must be identified in Reseller designations in Attachment 4 – *Contractor/Subcontractor Information Sheet* at the time that Reseller approval is requested; and
4. Immediate advance notice is provided to OGS in the event that a change in Reseller's status occurs during the Contract term. In addition to notification, if the Contract has goals, Contractors MUST submit to OGS a completed MWBE 100 EVERY TIME they add or remove a reseller that has been certified by NYS as an MWBE.

All Resellers who have been approved in accordance with the foregoing paragraph shall be eligible to quote lower pricing for procurements under this Contract which meet their qualifying criteria. Contractor warrants and represents that it shall not, directly or indirectly, by agreement, communication or any other means, restrict any Reseller's participation or ability to quote a particular order.

### C. Designation of Resellers

When Resellers are submitted for approval, Contractor must provide the State, in advance, with all necessary ordering information, billing addresses and Federal Identification numbers in the format requested in Attachment 4 – *Contractor/Subcontractor Information Sheet*. Contractor shall also specify whether orders must be placed directly with Contractor or may be placed directly with designated Resellers.

### D. Responsibility for Reporting/Performance

Contractor shall be fully liable for a Reseller's performance and compliance with all Contract terms and conditions. Product purchased through a Reseller must be reported by Contractor in the required quarterly sales reports to the State as a condition of payment. In addition to inclusion of Reseller volume in the Contractor's sales reporting obligation to the State, at the request of an Authorized User, the Reseller shall provide the Authorized User with reports of the individual Authorized User's Contract activity with the Reseller.

### E. Applicability of Contract Terms

Product ordered directly through Resellers shall be limited to Products previously approved for inclusion under this Contract and shall be subject to all terms and conditions of this Contract as a condition of Reseller participation.

## 3.36 New Accounts

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

## 3.37 Centralized Contract Modifications

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

### 3.38 Drug and Alcohol Use Prohibited

For reasons of safety and public policy, in this Contract, the Contractor's personnel shall not be impaired by alcohol or drugs of any kind in the performance of the Contract.

### 3.39 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.

### 3.40 Samples

- A. **Contractor Supplied Samples** - The Commissioner reserves the right to request from the Contractor a representative sample(s) of the Product offered at any time prior to or after award of a Contract. Unless otherwise instructed, samples shall be furnished within the time specified in the request. Untimely submission of a sample may constitute grounds for cancellation of the Contract. Samples must be submitted free of charge and be accompanied by the Contractor's name and address, any descriptive literature relating to the Product and a statement indicating how and where the sample is to be returned. Where applicable, samples must be properly labeled with the appropriate Contract reference.

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

- B. **Enhanced Samples** - When an approved sample exceeds the minimum specifications, all Product delivered must be of the same enhanced quality and identity as the sample. Thereafter, in the event of a Contractor's default, the Commissioner may procure a Product substantially equal to the enhanced sample from other sources, charging the Contractor for any additional costs incurred.
- C. **Conformance with Samples** - Submission of a sample (whether or not such sample is tested by, or for, the Commissioner) and approval thereof shall not relieve the Contractor from full compliance with all terms and conditions, performance related and otherwise, specified in the Solicitation. If in the judgment of the Commissioner the sample or Product submitted is not in accordance with the specifications or testing requirements prescribed in the Solicitation, the Commissioner may reject the Bid. If an award has been made, the Commissioner may cancel the Contract at the expense of the Contractor.
- D. **Testing** - All samples are subject to tests in the manner and place designated by the Commissioner, either prior to or after Contract award. Unless otherwise agreed to by the Contractor and the Authorized User, Contractor samples consumed or rendered useless by testing will not be returned to the Contractor. Testing costs for samples that fail to meet Contract requirements may be at the expense of the Contractor.
- E. **Requests for Samples by Authorized Users** - Requests for samples by Authorized Users require the consent of the Contractor. Where Contractor refuses to furnish a sample, Authorized User may, in its sole discretion, make a determination on the performance capability of the Product or on the issue in question.

### **3.41 Contract Documents; Electronic Format**

OGS encourages Contractor to submit all documents to OGS in an electronic format, including electronic copies of documents with original signatures. Documents requested by OGS should be submitted in the format specified by OGS. Contractor is responsible for retaining the original documents with original signatures that have been scanned and submitted electronically for the term of the contract and any extensions thereof, and for a period of six (6) years after the term of the contract has ended. Contractor shall submit such documents with original signatures to OGS upon request. If Contractor seeks to assign the contract during the term, Contractor shall provide all documents relating to the bid and contract that it has retained to the successor Contractor (assignee) upon OGS consent to the assignment.

### **3.42 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.

## **4. GENERAL PROVISIONS**

### **4.1 Notices**

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this Contract shall be in writing and shall be validly given when mailed by registered or certified mail, or hand delivered, (i) if to the State, addressed to the State at its address set forth below, and (ii) if to Contractor, addressed to Contract Administrator at the address set forth below.

The parties may, from time to time, specify any address in the United States as its address for purpose of notices under this Contract by giving fifteen (15) days written notice to the other party. The Parties agree to mutually designate individuals as their respective representatives for purposes of this Contract. Contact information for the designated individuals will be set forth on the Contract Award Notification (CAN) and on the Contractor Information page for this Contract, which will be posted on the OGS website.

All notices sent shall be effective upon actual receipt by the receiving party. The Contractor will be required to forward a copy of the official notice to any Authorized User that is associated with the subject of the notice.

Written notice of any alleged breach by one party to the other shall provide specific facts, circumstances and grounds upon which the breach is being declared.

### **4.2 Captions**

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

### **4.3 Severability**

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

### **4.4 Counterparts**

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

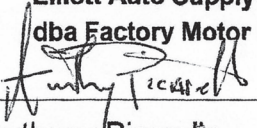
#### 4.5 Entire Agreement

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

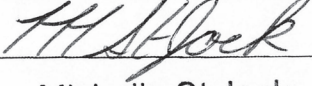
**CONTRACT SIGNATURE PAGE**

**IN WITNESS WHEREOF**, the Parties therefore hereby execute their mutual agreement to the terms of this Contract. This agreement shall be executed and shall be a binding Contract between the parties effective on the date of OSC approval. The State further warrants that, where Contractor is asked to execute multiple original copies of this signature page along with a complete original copy of the Contract, the approved signature page(s) will be affixed by the State, upon receipt of all necessary approvals, to additional copies of this Contract which conform exactly to the complete original copy as submitted by Contractor and executed simultaneously therewith.

**CONTRACTOR**  
**Elliott Auto Supply Co., Inc.**  
**dba Factory Motor Parts**

Signature:   
Printed Name: Anthony Picarello  
Title: Vice President  
Company Name: Elliott Auto Supply Co., Inc. dba Factory Motor Parts  
Federal ID: 41-0639421  
NYS Vendor ID: 1100297141  
Date: 7/11/2025

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

Signature:   
Printed Name: Michelle St. Jock  
Title: Assistant Director  
Date: 7/16/2025

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), Appendix C, 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).

**APPROVED AS TO FORM**  
Letitia James  
Attorney General

**APPROVED**  
Thomas P. DiNapoli  
State Comptroller

**APPROVED**  
DEPT. OF AUDIT & CONTROL

Aug 06 2025  
James M. Iwaneczko

FOR THE STATE COMPTROLLER





ARIZONA SECRETARY OF STATE

Arizona Secretary of State																																									
<b>Name</b> Celeste Wyatt	<b>Other Names:</b> Celeste N Wyatt Celeste Wyatt			<b>Business Hours:</b>																																					
<b>Current Status</b>	Active																																								
	<b>Public Address</b> 4960 S Gilbert Rd Ste 1 Chandler, AZ, 85249-5982			<b>Foreign Language(s):</b> English																																					
<b>Public Phone</b>	(480) 889-3264																																								
	<table border="1"> <thead> <tr> <th colspan="7">Commission Details</th> </tr> <tr> <th>Status</th> <th>Type</th> <th>Begin Date</th> <th>End Date</th> <th>County</th> <th>Electronic</th> <th>Remote</th> </tr> </thead> <tbody> <tr> <td>Expired</td> <td></td> <td>07/13/2018</td> <td>07/12/2022</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Expired</td> <td></td> <td>09/24/2024</td> <td>09/23/2024</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Active</td> <td>Standard</td> <td>09/24/2024</td> <td>09/23/2028</td> <td>Maricopa</td> <td></td> <td></td> </tr> </tbody> </table>						Commission Details							Status	Type	Begin Date	End Date	County	Electronic	Remote	Expired		07/13/2018	07/12/2022				Expired		09/24/2024	09/23/2024				Active	Standard	09/24/2024	09/23/2028	Maricopa		
Commission Details																																									
Status	Type	Begin Date	End Date	County	Electronic	Remote																																			
Expired		07/13/2018	07/12/2022																																						
Expired		09/24/2024	09/23/2024																																						
Active	Standard	09/24/2024	09/23/2028	Maricopa																																					
<input style="float: left;" type="button" value=" &lt;&lt; Back "/>																																									

[Website Policies](#) | [Contact Us](#)

©2025 Arizona Secretary of State, All Rights Reserved

**APPENDIX A**

**STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

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

**TABLE OF CONTENTS**

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

## **STANDARD CLAUSES FOR NYS CONTRACTS**

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

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

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

**3. COMPTROLLER’S APPROVAL.** In accordance with Section 112 of the State Finance Law, if this contract exceeds \$50,000 (or \$75,000 for State University of New York or City University of New York contracts for goods, services, construction and printing, and \$150,000 for State University Health Care Facilities) 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, either for itself or its customer agencies by the Office of General Services Business Services Center, is required when such contracts exceed \$85,000. Comptroller’s approval of contracts established as centralized contracts through the Office of General Services is required when such contracts exceed \$125,000, and when a purchase order or other procurement transaction issued under such centralized contract exceeds \$200,000.

**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, citizenship or immigration status, 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 and Technology Development  
625 Broadway  
Albany, New York 12245  
Telephone: 518-292-5100

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 33rd Floor  
New York, NY 10017  
646-846-7364  
email: [mwbebusinessdev@esd.ny.gov](mailto:mwbebusinessdev@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/searchcertifieddirectory.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 May 2023, 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 899-bb and State Technology Law § 208).

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

**24. PROCUREMENT LOBBYING.** To the extent this agreement is a “procurement contract” as defined by State Finance Law §§ 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/iran-divestment-act-2012>

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

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

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

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

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

## TABLE OF CONTENTS

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

**GENERAL**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- o. LICENSED SOFTWARE** Software transferred upon the terms and conditions set forth in the Contract. "Licensed Software" includes Error Corrections, upgrades, or enhancements, and any deliverables due under a technical support/maintenance or service contract (e.g., Patches, programs, code or data conversion, or custom programming).
- p. LICENSEE** An Authorized User who acquires Product from Contractor by issuing a Purchase Order in accordance with the terms and conditions of the Contract; provided that, for purposes of compliance with an individual license, the term "Licensee" shall be deemed to refer separately to the individual Authorized User who took receipt of and who is executing the Product, and who shall be solely responsible for performance and liabilities incurred. In the case of acquisitions by State Agencies, the Licensee shall be the State of New York.
- q. LICENSE EFFECTIVE DATE** The date Product is delivered to an Authorized User. Where a License involves Licensee's right to copy a previously licensed and delivered master copy of a program, the License Effective Date for additional copies shall be deemed to be the date on which the Purchase Order is executed.
- r. LICENSOR** A Contractor who transfers rights in proprietary Product to Authorized Users in accordance with the rights and obligations specified in the Contract.
- s. MINI-BID** A document used by an Authorized User containing transaction-specific requirements soliciting responses from Contractors previously qualified under a Centralized Contract for such Products.
- t. OGS** The New York State Office of General Services.
- u. PATCH** Software designed to update, fix, or improve the Product or its supporting data. This includes fixing security vulnerabilities and other bugs, including hot fixes, to improve usability or performance.
- v. PRODUCTS** Items or deliverables under any Solicitation or Contract and may include commodities, services and/or technology.
- w. PURCHASE ORDER** The Authorized User's fiscal form or format that is used when making a purchase (e.g., formal written Purchase Order, Purchasing Card, electronic Purchase Order, or other authorized instrument).
- x. REQUEST FOR PROPOSALS (RFP)** A type of Solicitation that is used for procurements where factors in addition to cost are considered and weighted in awarding the contract and where the award will be made based on "best value," as defined by the State Finance Law, to one or more responsive and responsible Bidders.
- y. REQUEST FOR QUOTATION (RFQ)** A procurement method that can be used in situations such as discretionary, sole source, single source, or emergency purchases and certain Centralized Contracts.
- z. RESPONSIBLE BIDDER** A Bidder that is determined to have financial and organizational capacity, legal authority, satisfactory previous performance, skill, judgment and integrity, and that is found to be competent, reliable and experienced, as determined by the Commissioner. For purposes of being deemed responsible, a Bidder must also be determined to be in compliance with Sections 139-j and 139-k of the State Finance Law relative to restrictions on contacts during the procurement process and disclosure of contacts and prior findings of non-responsibility under these statutes.
- aa. RESPONSIVE BIDDER** A Bidder meeting the specifications or requirements prescribed in the Solicitation, as determined by the OGS Commissioner.
- bb. SINGLE SOURCE** A procurement where two or more Bidders can supply the required Product, and the Commissioner may award the contract to one Bidder over the other.
- cc. SITE** The location (street address) where Product will be delivered or executed.
- dd. SOLE SOURCE** A procurement where only one Bidder is capable of supplying the required Product.
- ee. SOLICITATION** Writings by the State setting forth the scope, terms, conditions and technical specifications for a procurement of Product. The procurement may be undertaken on a competitive or non-competitive basis. Such writings typically include, but are not limited to: Invitation for Bids (IFB), Request for Quotations (RFQ), Request for Proposals (RFP), addenda or amendments thereto, and terms and conditions that are incorporated by reference, including but not limited to Appendix A (Standard Clauses for NYS Contracts), Appendix B (General Specifications), and identified attachments. Where the procurement is undertaken on a non-competitive basis, the term "Solicitation" shall be deemed to refer to all the terms and conditions identified by the State.
- ff. SOURCE CODE** The programming statements or instructions written and expressed in any language understandable by a human being skilled in the art which are translated by a language compiler to produce executable machine object code.
- gg. STATE** State of New York.
- hh. STATE AGENCY OR AGENCIES** The State of New York, acting by or through one or more departments, boards, commissions, offices or institutions of the State of New York.
- ii. SUBCONTRACTOR** Any individual or legal entity (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) who has entered into a contract, express or implied, for the performance of a portion of a Contract with a Contractor.
- jj. TERMS OF LICENSE** The terms and conditions set forth in the Contract that are in effect and applicable to a Purchase Order at the time of order placement.
- kk. THIRD-PARTY SOFTWARE** Any software that is developed independently of Contractor and which may be governed by a separate license.
- ll. VIRUS** Any computer code, whether or not written or conceived by Contractor, that disrupts, disables, harms, or otherwise impedes in any manner the operation of the Product, or any other associated software, firmware, hardware, or computer system (such as local area or wide-area networks), including aesthetic disruptions or distortions, but does not include security keys or other such devices installed by Product manufacturer. Virus shall also include any malware, adware, or other computer code, whether or not written or conceived by Contractor, that allows data or metrics to be copied, redirected, or modified without the express consent of the Authorized User.

**BID SUBMISSION**

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

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

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

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

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

**6. CONFIDENTIAL/TRADE SECRET MATERIALS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **8. TAXES**

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

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

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

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

## **10. PRODUCT REFERENCES**

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

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

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

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

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

## **12. PRODUCTS MANUFACTURED IN PUBLIC INSTITUTIONS**

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

## **13. PRICING**

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

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

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

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

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

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

**f. Specific price decreases:**

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

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

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

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

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

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

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

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

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

**BID EVALUATION**

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

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

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

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

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

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

**TERMS & CONDITIONS**

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

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

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

**25. PARTICIPATION IN CENTRALIZED CONTRACTS**

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

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

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

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

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

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

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

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

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

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

**28. ESTIMATED/SPECIFIC QUANTITY CONTRACTS**

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

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

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

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

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

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

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

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

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

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

**33. SHIPPING/RECEIPT OF PRODUCT**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **43. TERMINATION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **45. CONTRACT INVOICING**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**54. WARRANTIES**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**a. Definitions**

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

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

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

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

**(i) Existing Products:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

---

---

## INDEX

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

---

## APPENDIX C

Authorized users that may want to seek federal funds from the federal funding agencies for the purchase of goods or services during a declared disaster are advised that federal funding agencies require particular terms and conditions be included in the contract for those goods and services. For the convenience of authorized users, those terms and conditions are set out below and can also be found at the FEMA website.

Authorized users of statewide contracts should consider adding this language to future purchase orders and secondary level competitions (often referred to as RFQs or mini- bids), unless the language is already attached to the statewide contract. State agencies making purchases to respond to disasters through a vehicle other than a centralized contract are required by Section H.6. of [Budget Bulletin H-501R](#) to include these and other terms into their contracts using the Appendix set forth in the Budget Bulletin.

### **Federal Funding Agency Mandatory Terms and Conditions**

The following provisions are required by federal funding agencies in order for expenditures by Authorized Users to be eligible for federal reimbursement in the event of a State declaration of disaster emergency pursuant to Section 28 of the Executive Law.

#### **1. REMEDIES**

Remedies for Contractor failure to observe or perform any term or condition shall be as provided in the OGS centralized contract (if applicable), including all appendices.

#### **2. TERMINATION FOR CAUSE AND CONVENIENCE**

Termination for cause and convenience will be in accordance with Termination, Appendix B, General Specifications, if a statewide centralized contract, and Section 5, Copeland Anti-Kickback Act, of this document and/or the rules and regulations of your governing authority.

#### **3. EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of the contract, OGS centralized contract (if applicable) or any purchase by an Authorized User, the Contractor agrees as follows:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- B. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- C. The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the

---

compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

- D. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- F. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- G. In the event of the Contractor's noncompliance with the nondiscrimination clauses of the OGS centralized contract or with any of the said rules, regulations, or orders, the OGS centralized contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- H. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The Authorized User further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the Authorized User so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The Authorized User agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision

of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The Authorized User further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the Authorized User agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the Authorized User under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such Authorized User; and refer the case to the Department of Justice for appropriate legal proceedings.

**4. DAVIS-BACON ACT. (Applicable to all construction contracts in excess of (\$2000))**

- A. If applicable, all transactions regarding the OGS centralized contract or any purchase by an Authorized User shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The Contractor shall comply with 40 U.S.C. 3141- 3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- B. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- C. Additionally, Contractors are required to pay wages not less than once a week.

**5. COPELAND ANTI-KICKBACK ACT. (Applicable to all construction contracts in excess of (\$2000))**

- A. Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into the OGS centralized contract.
- B. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as Federal funding agency may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- C. Breach. A breach of the clauses above may be grounds for termination of the OGS centralized contract, and for debarment as a Contractor and subcontractor as provided in 29 C.F.R. § 5.12.

**6. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT. (Applicable to all contracts in excess of \$100,000 that involve employment of mechanics and laborers)**

- A. Overtime requirements. No Contractor or subcontractor for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

- 
- B. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
- C. Withholding for unpaid wages and liquidated damages. The Authorized User shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal Agreement with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
- D. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

## **7. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT**

All such rights shall be addressed in accordance with Ownership/Title to Project Deliverables, Appendix B, General Specifications.

## **8. CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT. (Applicable to all contracts in excess of \$150,000)**

### **Clean Air Act**

- A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et, seq.
- B. The Contractor agrees to report each violation to the contract manager or the Office of General Services and the Authorized User if a statewide centralized contract and understands and agrees that the Office of General Services or the Authorized User will, in turn, report each violation as required to assure notification to the Federal funding agency, and the appropriate Environmental Protection Agency Regional Office.
- C. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by the Federal funding agency.

### **Federal Water Pollution Control Act**

- A. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- B. The Contractor agrees to report each violation to the Office of General Services and Authorized User and understands and agrees that the Office of General Services or the Authorized User will, in turn, report each

violation as required to assure notification to the Federal funding agency, and the appropriate Environmental Protection Agency Regional Office.

- C. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by the Federal funding agency.

## 9. DEBARMENT AND SUSPENSION

- A. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- B. The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- C. This certification is a material representation of fact relied upon by the State or Authorized User. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State or an Authorized User, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- D. The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

## 10. BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352 (as amended)

If the OGS centralized contract or any purchase by an Authorized User has a value of \$100,000 or more, Contractor shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

- A. Required Certification. If applicable, Contractors must sign and submit to the State the following certification.

### APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

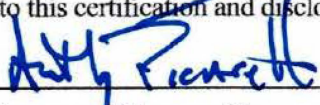
Certification for Contracts, Grants, Loans, and Cooperative Agreements. The undersigned certifies, to the best of his or her knowledge and belief, that:

- 1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- 2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- 3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, Elliott Auto Supply Co., Inc. dba Factory Motor Parts, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official 

Name of Contractor's Authorized Official Anthony Picarello

Title of Official Vice President

Date: 5/5/25

## 11. PROCUREMENT OF RECOVERED MATERIALS

- A. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired —
- Competitively within a timeframe providing for compliance with the contract performance schedule;
  - Meeting contract performance requirements; or
  - At a reasonable price.
- B. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>
- C. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

## 12. ACCESS TO RECORDS

- A. The Contractor agrees to provide the Office of General Services or the Authorized User, the Federal funding agency, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor that are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- B. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

- C. The Contractor agrees to provide the Federal funding agency or its authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- D. The State and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the Federal funding agency or the Comptroller General of the United States.

### **13. CHANGES**

Amendments to this contract shall be in accordance with the terms of the OGS centralized contract.

### **14. FEDERAL SEAL(S), LOGOS, AND FLAGS**

The Contractor shall not use the seal(s), logos, crests, or reproductions of flags or likenesses of Federal agency officials without specific pre-approval.

### **15. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS**

This is an acknowledgement that Federal funding agency financial assistance may be used to fund all or a portion of the contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA or other federal agency policies, procedures, and directives.

### **16. NO OBLIGATION BY FEDERAL GOVERNMENT**

The Federal Government is not a party to this Contract or any purchase by an Authorized User and is not subject to any obligations or liabilities to the State, Contractor, or any other party pertaining to any matter resulting from the Contract or any purchase by an Authorized User.

### **17. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Contract or any purchase by an Authorized User.

### **18. FEDERAL DEBT**

The Contractor certifies that it is non-delinquent in its repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowance, and benefit overpayments.

### **19. CONFLICTS OF INTEREST**

The Contractor shall notify the Office of General Services and Authorized User as soon as possible if this Agreement or any aspect related to the anticipated work under this Agreement raises an actual or potential conflict of interest (as described in 2 C.F.R. Part 200). The Contractor shall explain the actual or potential conflict in writing in sufficient detail so that the Office of General Services and Authorized User is able to assess the actual or potential conflict. The Contractor shall provide any additional information necessary for the Office of General Services and Authorized User to fully assess and address the actual or potential conflict of interest.

### **20. U.S. EXECUTIVE ORDER 13224**

Contractor, and its subcontractors, must comply with U.S. Executive Order 13224 and U.S. Laws that prohibit transactions with and provision of resources and support to individuals and organizations associated with terrorism.

---

**APPENDIX D****CONTRACT MODIFICATION PROCEDURE**

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

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

or category that did not exist at the time of approval of the Contract by OGS). The Contract Modification Form must contain original signatures by an individual authorized to sign on behalf of Contractor and must be notarized.

**INSTRUCTIONS:**

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

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

<b>CONTRACT MODIFICATION FORM</b>	
OGS CONTRACT NO.: _____	DATE OF SUBMISSION: _____
CONTRACT DESCRIPTION: _____	
CONTRACT PERIOD: From: _____  To: _____	CONTRACTOR CONTACT: NAME: _____  PHONE NO: _____  E-MAIL: _____
<b>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).</b>	

**COMPLETE STATEMENTS 1 THROUGH 5 BELOW:**

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

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

\_\_\_\_\_  
Signature of Authorized Contractor Representative

**CORPORATE ACKNOWLEDGMENT**

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

ss.:

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

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_, before me personally came:  
\_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say that he/she/they  
reside(s) in \_\_\_\_\_; that he/she/they is (are) \_\_\_\_\_ (the President or  
other officer or director or attorney in fact duly appointed) of  
\_\_\_\_\_, the corporation described in and which executed the above  
instrument; and that he/she/they signed his/her/their name(s) thereto by authority of the board of directors of said  
corporation.

\_\_\_\_\_  
Notary Public

**OGS APPROVAL:**

Approved \_\_\_\_\_ Approved as amended \_\_\_\_\_ Disapproved \_\_\_\_\_

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

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

## Group 30310- Award 23362, Vehicle and Equipment Parts and Related Product Pricing

### Elliott Auto Supply Co., Inc. dba Factory Motor Parts

Online Orders	
Contractor Website for Orders	<a href="https://www.nexpart.com">https://www.nexpart.com</a>
Contractor Website Username	FMP17696
Contractor Website Password	FMP2023!

List Price Type	The name of the type of List Price (e.g., MSRP, Jobber, Dealer) that the NYS Discount Percentage will be applied to for NYS Contract purchases of Commonly Stocked Parts.	NYS-OGS REFERENCE PRICE
NYS Discount Percentage	The minimum percentage amount that the List Price will be reduced for NYS Contract purchases of Commonly Stocked Parts.	75%
NYS Cost-Plus Percentage	The maximum percentage amount that will be added to the OEM Invoice Price for NYS Contract purchases of Direct Order Parts.	10%

Pricing Terms	
If awarded a contract, will Bidder accept the NYS Purchasing Card (see Appendix B, <i>Purchasing Card</i> ) at no additional charge, for orders up to and including \$50,000?	Yes
If Bidder requires a minimum purchase amount for orders placed using the NYS Purchasing Card, please indicate the minimum purchase amount:	None
If Bidder limits the maximum acceptable purchase amount for orders placed using the NYS Purchasing Card, please indicate the maximum purchase amount:	None
If Bidder offers an additional discount for purchases made with the NYS Purchasing Card, enter it here (%):	None
Does Bidder offer a prompt payment discount for payments made in less than-30 days after receipt of a proper invoice?	No
If yes, please detail the additional discounts by providing the percentage of discounts and the specific number of days within which payment must be made for the discounts to apply (for example: 2% / 15 days; 1% / 20 days):	N/A

**Group 30310-23362, Vehicle and Equipment Parts and Related Product (Statewide)  
Attachment 3 – Report of Contract Usage**

Enter information for this report in the cells below. The information entered below will be prepopulated on the Contract Usage tab.

<b>Bidder Company Business Name:</b>	
<b>NYS Contract Number:</b>	

<b>Contract Reporting Period (Dates):</b>	
---	--

<b>Contract Usage Sheet Definitions</b>	
<b>Column Name</b>	<b>Definition</b>
<b>Contract Number:</b>	Contractor's Contract number issued by OGS (e.g., PC12345)
<b>Contractor's Invoice Number:</b>	Number on Contractor's invoice to ordering entity
<b>Contractor's Invoice Date:</b>	Date on Contractor's invoice to ordering entity
<b>Authorized User Order Number:</b>	Number on ordering entity's purchase order, or other ordering document
<b>Authorized User Order Date:</b>	Date on the ordering entity's purchase order, or other ordering document
<b>Authorized User Entity Name:</b>	Name of the entity (e.g., NYS agencies, political subdivisions, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations) that issued the purchase order, or other ordering document.
<b>Region/ Facility/ Location Name:</b>	Region, facility, or location associated with the entity
<b>"State" or "Non-State" Entity:</b>	See "State Agency List" tab of this workbook
<b>Ship to Authorized User County:</b>	County where the Product was delivered (or provided over-the-counter)
<b>Ship to Authorized User City:</b>	City (village/town/etc.) where the Product was delivered (or provided over-the-counter)
<b>Contractor Location Name:</b>	Name of the Contractor or Subcontractor location that sold the Product to the Authorized User.
<b>Contractor Location County:</b>	County where the Contractor or Subcontractor Location is located.
<b>Contractor Location City:</b>	City (village/town/etc.) where the Contractor or Subcontractor Location is located.
<b>Contract Part Group Number:</b>	Number of the Contract Part Group (e.g., 22) under which the Product was sold. See list of Parts Groups below.
<b>Contract Part Group Description:</b>	Description of the Contract Part Group (e.g., Steering) under which the Product was sold. See list of Parts Groups below.
<b>Contractor's Part Number:</b>	Contractor's code that uniquely identifies the Product.
<b>Part or Service Description:</b>	Contractor's description of the Product.
<b>OEM Name:</b>	Name of the manufacturer of the Product.
<b>OEM Part Number:</b>	Manufacturer's code that uniquely identifies the Product.
<b>Commonly Stocked or Direct Order:</b>	Enter "Commonly Stocked" or "Direct Order," to identify how the Product was acquired by the Contractor
<b>List Price or OEM Invoice Price (Per Unit):</b>	Unit price for the Product published in either the Contractor-Published Pricelist, or on the OEM Invoice.
<b>NYS Discount Percentage or NYS Cost-Plus Percentage:</b>	Percent difference between List Price, or OEM Invoice Price, and NYS Contract Price
<b>NYS Contract Price (Per Unit):</b>	Dollar amount charged to the Authorized User for the Product.
<b>Quantity Ordered:</b>	The number of units of the Product that was ordered by the Authorized User
<b>NYS Contract Price (Total):</b>	The NYS Contract Price multiplied by the Quantity Ordered

<b>GreenNY:</b>	<p>Indicate whether each line item is Executive Order 22 (EO 22) compliant. A list of currently approved specifications is located on the OGS website at:<a href="https://ogs.ny.gov/greenny/approved-greenny-specifications">https://ogs.ny.gov/greenny/approved-greenny-specifications</a>. Specification(s) currently applicable to this Contract are:</p> <ol style="list-style-type: none"><li>1. Brake Pads (see <a href="https://ogs.ny.gov/greenny/brake-pads">https://ogs.ny.gov/greenny/brake-pads</a>)</li><li>2. Vehicle Wheel Weights and Continuous Wheel Balancers (see <a href="https://ogs.ny.gov/greenny/vehicle-wheel-weights-and-continuous-wheel-balancers">https://ogs.ny.gov/greenny/vehicle-wheel-weights-and-continuous-wheel-balancers</a>)</li><li>3. Engine Block Heaters (see <a href="https://ogs.ny.gov/greenny/engine-block-heaters">https://ogs.ny.gov/greenny/engine-block-heaters</a>)</li><li>4. Hydraulic Oil, High Detergent (see <a href="https://ogs.ny.gov/greenny/hydraulic-oil-high-detergent">https://ogs.ny.gov/greenny/hydraulic-oil-high-detergent</a>)</li><li>5. Lubricating Oil, High Detergent (see <a href="https://ogs.ny.gov/greenny/lubricating-oil-high-detergent">https://ogs.ny.gov/greenny/lubricating-oil-high-detergent</a>) [e.g., "Floor Coverings (see <a href="https://ogs.ny.gov/greenny/floor-coverings">https://ogs.ny.gov/greenny/floor-coverings</a>)"].</li><li>6. Various Janitorial specifications (see <a href="https://ogs.ny.gov/greenny/approved-greenny-specifications?q=/greenny/approved-greenny-specifications&amp;f%5B0%5D=filter_term%3A2676">https://ogs.ny.gov/greenny/approved-greenny-specifications?q=/greenny/approved-greenny-specifications&amp;f%5B0%5D=filter_term%3A2676</a>).</li></ol>
-----------------	--

Contract Part Groups	
01 – Brake Shoes & Linings	17 – Automotive Lighting
02 – Brake Parts	18 – Electric Wiring
03 – Rotors and Drums	19 – Spark Plugs
04 – Shock Absorbers	20 – Fluids / Chemicals / Lubricants
05 – Mirrors & Lamps	21 – Repair Equipment / Tools
06 – Belts & Hoses	22 – Steering
07 – Windshield Wipers	23 – Electric Motors
08 – Fuel Pumps	24 – Batteries
09 – Exhaust Equipment	25 – Water Pumps
10 – Ignition Equipment (Electrical)	26 – Radiators
11 – Starters & Alternators	27 – A/C Compressors
12 – Seals	28 – Tire Parts / Accessories
13 – Gaskets	29 – Filters
14 – Bearings, Ball & Roller	30 – Miscellaneous Vehicle Parts
15 – Chassis Parts	31 – Heavy Duty Vehicle Parts
16 – Universal Joints	32 – Heavy Equipment Parts



## State Agency List:

The following entities are considered NY State Agencies. When completing the Report of Contract Usage, indicate "State" in Column H for the entity type for Authorized Users with these entity names. **Note: Other entities (counties, towns, villages, etc.) may have divisions with similar names ( e.g., Wayne County Department of Transportation), but are not considered "State" entities).**

State Agency Name:	Department Name(s):
Adirondack Park Agency	
Aging, State Office for the	
Agriculture and Markets, Department of	Department of Agriculture & Markets - State Fair
Alcoholic Beverage Control, Division of	
Alcoholism and Substance Abuse Services, Office of	Kingsboro Addiction Treatment Center
Arts, Council on the	
Attorney General, Office of the	
Board of Elections	
Budget, Division of the	
Children and Family Services, Office of	
City University Construction Fund	
City University of New York	Baruch College
City University of New York	Brooklyn College
City University of New York	City College
City University of New York	City University Accounting Office
City University of New York	College of Staten Island
City University of New York	CUNY School of Law
City University of New York	Graduate School
City University of New York	Hunter College
City University of New York	John Jay College
City University of New York	Lehman College
City University of New York	Medgar Evers College
City University of New York	New York City Technical College
City University of New York	Queens College
City University of New York	School of Professional Studies
City University of New York	York College
Civil Service, Department of	
Commission on Quality of Care and Advocacy for Persons with Disabilities	
Correctional Services, Department of (Corcraft)	Correctional Industries - Albion
Correctional Services, Department of (Corcraft)	Correctional Industries - Attica
Correctional Services, Department of (Corcraft)	Correctional Industries - Auburn
Correctional Services, Department of (Corcraft)	Correctional Industries - Central Office

State Agency Name:	Department Name(s):
Correctional Services, Department of (Corcraft)	Correctional Industries - Clinton
Correctional Services, Department of (Corcraft)	Correctional Industries - Coxsackie
Correctional Services, Department of (Corcraft)	Correctional Industries - Elmira
Correctional Services, Department of (Corcraft)	Correctional Industries - Fishkill
Correctional Services, Department of (Corcraft)	Correctional Industries - Great Meadow
Corrections and Community Supervision, Department of	Adirondack Correctional Facility
Corrections and Community Supervision, Department of	Albion Correctional Facility
Corrections and Community Supervision, Department of	Altona Correctional Facility
Corrections and Community Supervision, Department of	Arthur Kill Correctional Facility
Corrections and Community Supervision, Department of	Attica Correctional Facility
Corrections and Community Supervision, Department of	Auburn Correctional Facility
Corrections and Community Supervision, Department of	Bare Hill Correctional Facility
Corrections and Community Supervision, Department of	Bayview Correctional Facility
Corrections and Community Supervision, Department of	Beacon Correctional Facility
Corrections and Community Supervision, Department of	Bedford Hills Correctional Facility
Corrections and Community Supervision, Department of	Butler Correctional Facility
Corrections and Community Supervision, Department of	Camp Georgetown Correctional Facility
Corrections and Community Supervision, Department of	Camp Pharsalia Correctional Facility
Corrections and Community Supervision, Department of	Cape Vincent Correctional Facility
Corrections and Community Supervision, Department of	Cayuga Correctional Facility
Corrections and Community Supervision, Department of	Central Office Medical Bill Paying Unit
Corrections and Community Supervision, Department of	Central Pharmacy
Corrections and Community Supervision, Department of	Chateaugay Alcohol Substance Abuse Correctional Treatment Center
Corrections and Community Supervision, Department of	Clinton Correctional Facility
Corrections and Community Supervision, Department of	Collins Correctional Facility
Corrections and Community Supervision, Department of	Coxsackie Correctional Facility
Corrections and Community Supervision, Department of	Department of Correctional Services - Agencywide
Corrections and Community Supervision, Department of	Department of Corrections and Community Supervision
Corrections and Community Supervision, Department of	Downstate Correctional Facility
Corrections and Community Supervision, Department of	Eastern Correctional Facility
Corrections and Community Supervision, Department of	Edgecombe Correctional Facility
Corrections and Community Supervision, Department of	Elmira Correctional Facility
Corrections and Community Supervision, Department of	Fishkill Correctional Facility
Corrections and Community Supervision, Department of	Five Points Correctional Facility
Corrections and Community Supervision, Department of	Franklin Correctional Facility
Corrections and Community Supervision, Department of	Fulton Correctional Facility
Corrections and Community Supervision, Department of	Gouverneur Correctional Facility
Corrections and Community Supervision, Department of	Gowanda Correctional Facility
Corrections and Community Supervision, Department of	Great Meadow Correctional Facility
Corrections and Community Supervision, Department of	Green Haven Correctional Facility

State Agency Name:	Department Name(s):
Corrections and Community Supervision, Department of	Greene Correctional Facility
Corrections and Community Supervision, Department of	Groveland Correctional Facility
Corrections and Community Supervision, Department of	Hale Creek Alcohol Substance Abuse Treatment Correctional Annex
Corrections and Community Supervision, Department of	Hudson Correctional Facility
Corrections and Community Supervision, Department of	Lakeview Shock Incarceration Correctional Facility
Corrections and Community Supervision, Department of	Lincoln Correctional Facility
Corrections and Community Supervision, Department of	Livingston Correctional Facility
Corrections and Community Supervision, Department of	Lyon Mountain Correctional Facility
Corrections and Community Supervision, Department of	Marcy Correctional Facility
Corrections and Community Supervision, Department of	Mid-Orange Correctional Facility
Corrections and Community Supervision, Department of	Mid-State Correctional Facility
Corrections and Community Supervision, Department of	Mohawk Correctional Facility
Corrections and Community Supervision, Department of	Monterey Shock Incarceration Correctional Facility
Corrections and Community Supervision, Department of	Moriah Shock Incarceration Correctional Facility
Corrections and Community Supervision, Department of	Mt. McGregor Correctional Facility
Corrections and Community Supervision, Department of	Ogdensburg Correctional Facility
Corrections and Community Supervision, Department of	Oneida Correctional Facility
Corrections and Community Supervision, Department of	Oneida Food Production Center
Corrections and Community Supervision, Department of	Operations - NYC Central Administration
Corrections and Community Supervision, Department of	Orleans Correctional Facility
Corrections and Community Supervision, Department of	Otisville Correctional Facility
Corrections and Community Supervision, Department of	Queensboro Correctional Facility
Corrections and Community Supervision, Department of	Riverview Correctional Facility
Corrections and Community Supervision, Department of	Shawangunk Correctional Facility
Corrections and Community Supervision, Department of	Sing Sing Correctional Facility
Corrections and Community Supervision, Department of	Southport Correctional Facility
Corrections and Community Supervision, Department of	Sullivan Correctional Facility
Corrections and Community Supervision, Department of	Summit Shock Incarceration Correctional Facility
Corrections and Community Supervision, Department of	Taconic Correctional Facility
Corrections and Community Supervision, Department of	Ulster Correctional Facility
Corrections and Community Supervision, Department of	Upstate Correctional Facility
Corrections and Community Supervision, Department of	Walkkill Correctional Facility
Corrections and Community Supervision, Department of	Washington Correctional Facility
Corrections and Community Supervision, Department of	Watertown Correctional Facility
Corrections and Community Supervision, Department of	Wende Correctional Facility
Corrections and Community Supervision, Department of	Willard Drug Treatment Center
Corrections and Community Supervision, Department of	Woodbourne Correctional Facility
Corrections and Community Supervision, Department of	Wyoming Correctional Facility
Criminal Justice Services, Division of	
Development Authority of the North Country	

State Agency Name:	Department Name(s):
Dormitory Authority, State of New York	
Economic Development, Department of	Division of Science, Technology and Innovation (NYSTAR)
Education Department, State	New York State Archives Partnership Trust
Education Department, State	State Education Department - Federal - State Grants
Employee Relations, Governor's Office of	Deferred Compensation Board
Energy Research and Development Authority	
Environmental Conservation, Department of	
Environmental Facilities Corporation	
Executive Chamber	
Financial Services, Department of	
General Services, Office of	
HE Capital Matching Grants	
Health, Department of	Helen Hayes Hospital
Health, Department of	Veterans' Home at Montrose
Health, Department of	Veterans' Home at Oxford
Health, Department of	Veterans' Home at Saint Albans
Health, Department of	Western New York Veterans' Home at Batavia
Higher Education Services Corporation	
Homeland Security and Emergency Services, Office of	State Emergency Management Office
Housing and Community Renewal, Division of	
Hudson River - Black River Regulating District	
Hudson River Park Trust	
Hudson River Valley Greenway Communities Council	
Human Rights, Division of	
Indigent Legal Services, Office of	
Inspector General, Office of the State	
Interest on Lawyer Account	
Job Development Authority	
Judicial Conduct, Commission on	
Labor, Department of	
Lake George Park Commission	
Legislative Bill Drafting Commission	
Legislature - Assembly	Assembly Ways & Means Committee
Legislature - Assembly	Legislative Task Force on Demographic Research & Reapportionment
Legislature - Assembly	New York State Assembly
Legislature - Senate	New York State Senate
Lottery, Division of the	
Medicaid Inspector General, Office of	
Mental Health, Office of	Binghamton Psychiatric Center
Mental Health, Office of	Bronx Psychiatric Center

State Agency Name:	Department Name(s):
Mental Health, Office of	Bronx Psychiatric Center - Children's Services
Mental Health, Office of	Brooklyn Children's Center
Mental Health, Office of	Buffalo Psychiatric Center
Mental Health, Office of	Capital District Psychiatric Center
Mental Health, Office of	Central New York Psychiatric Center
Mental Health, Office of	Creedmoor Psychiatric Center
Mental Health, Office of	Elmira Psychiatric Center
Mental Health, Office of	Hudson River Psychiatric Center
Mental Health, Office of	Hutchings Psychiatric Center
Mental Health, Office of	Kingsboro Psychiatric Center
Mental Health, Office of	Kirby Forensic Psychiatric Center
Mental Health, Office of	Manhattan Psychiatric Center
Mental Health, Office of	Mid-Hudson Forensic Psychiatric Center
Mental Health, Office of	Mohawk Valley Psychiatric Center
Mental Health, Office of	Nathan S. Kline Institute
Mental Health, Office of	New York Psychiatric Institute
Mental Health, Office of	New York Psychiatric Institute - Washington Heights Unit
Mental Health, Office of	Office of Mental Health
Mental Health, Office of	Pilgrim Psychiatric Center
Mental Health, Office of	Queens Psychiatric Center - Children's Services
Mental Health, Office of	Rochester Psychiatric Center
Mental Health, Office of	Rockland Psychiatric Center
Mental Health, Office of	Rockland Psychiatric Center - Children's Services
Mental Health, Office of	Sagamore Psychiatric Center - Children's Services
Mental Health, Office of	South Beach Psychiatric Center
Mental Health, Office of	St. Lawrence Psychiatric Center
Mental Health, Office of	St. Lawrence Psychiatric Center - Children's Services
Mental Health, Office of	Western New York Psychiatric Center - Children's Services
Metropolitan Transportation Authority	Long Island Rail Road Company
Metropolitan Transportation Authority	Metro-North Commuter Rail Road Company
Metropolitan Transportation Authority	Metropolitan Suburban Bus Authority
Metropolitan Transportation Authority	MTA Bus Company
Metropolitan Transportation Authority	MTA Capital Construction Company
Metropolitan Transportation Authority	New York City Transit Authority
Metropolitan Transportation Authority	Triborough Bridge and Tunnel Authority
Military and Naval Affairs, Division of	
Mortgage Agency, State of New York	
Motor Vehicles, Department of	Governor's Traffic Safety Committee
National and Community Service	
Natural Heritage Trust	

State Agency Name:	Department Name(s):
New York City Off-Track Betting Corporation	
New York Local Government Assistance Corporation	
New York State Housing Finance Agency	Division of Housing & Community Renewal
New York State Housing Finance Agency	Homeless Housing Assistance Corporation
New York State Racing and Wagering Board	
Niagara Frontier Transportation Authority	
North Country Power Authority	
Oil Spill Fund	Department of Environmental Conservation - Oil Spill
Olympic Regional Development Authority	
Parks, Recreation and Historic Preservation, Office of	
People with Developmental Disabilities, Office For	Bernard M. Fineson Developmental Disabilities Service Office
People with Developmental Disabilities, Office For	Brooklyn Developmental Disabilities Service Office
People with Developmental Disabilities, Office For	Broome Developmental Disabilities Service Office
People with Developmental Disabilities, Office For	Broome Developmental Disabilities Service Office
People with Developmental Disabilities, Office For	Capital District Developmental Disabilities Service Office
People with Developmental Disabilities, Office For	Central New York Developmental Disabilities Service Office
People with Developmental Disabilities, Office For	Finger Lakes Developmental Disabilities Service Office
People with Developmental Disabilities, Office For	Hudson Valley Developmental Disabilities Service Office
People with Developmental Disabilities, Office For	Institute for Basic Research
People with Developmental Disabilities, Office For	Long Island Developmental Disabilities Service Office
People with Developmental Disabilities, Office For	Metro New York Developmental Disabilities Service Office
People with Developmental Disabilities, Office For	Office For People with Developmental Disabilities
People with Developmental Disabilities, Office For	Staten Island Developmental Disabilities Service Office
People with Developmental Disabilities, Office For	Sunmount Developmental Disabilities Service Office
People with Developmental Disabilities, Office For	Taconic Developmental Disabilities Service Office
People with Developmental Disabilities, Office For	Western New York Developmental Disabilities Service Office
Power Authority	
Prevention of Domestic Violence, Office for the	
Public Employment Relations Board	
Public Integrity, Commission on	
Public Service, Department of	
Regulatory Reform, Governor's Office of	
Roosevelt Island Operating Corporation	
State Comptroller, Office of the	
State of New York Municipal Bond Bank Agency	Tobacco Settlement Financing Corporation
State Police, Division of	Division of State Police
State Police, Division of	Division of State Police - Troop A
State Police, Division of	Division of State Police - Troop B
State Police, Division of	Division of State Police - Troop C
State Police, Division of	Division of State Police - Troop D

State Agency Name:	Department Name(s):
State Police, Division of	Division of State Police - Troop E
State Police, Division of	Division of State Police - Troop F
State Police, Division of	Division of State Police - Troop G
State Police, Division of	Division of State Police - Troop K
State Police, Division of	Division of State Police - Troop L
State University Construction Fund	
State University of New York	College at Brockport
State University of New York	College at Buffalo
State University of New York	College at Cortland
State University of New York	College at Fredonia
State University of New York	College at Geneseo
State University of New York	College at Morrisville
State University of New York	College at New Paltz
State University of New York	College at Old Westbury
State University of New York	College at Oneonta
State University of New York	College at Oswego
State University of New York	College at Plattsburgh
State University of New York	College at Potsdam
State University of New York	College at Purchase
State University of New York	College of Agriculture and Technology at Cobleskill
State University of New York	College of Ceramics at Alfred University
State University of New York	College of Environmental Science & Forestry
State University of New York	College of Optometry
State University of New York	College of Technology at Alfred
State University of New York	College of Technology at Canton
State University of New York	College of Technology at Delhi
State University of New York	College of Technology at Farmingdale
State University of New York	Empire State College
State University of New York	Fiduciary Student Loan - Federal and State
State University of New York	General State Charges
State University of New York	Institute of Technology at Utica/Rome - Union
State University of New York	Maritime College
State University of New York	New York State Statutory College - Cornell University
State University of New York	State University of New York - Agency-wide
State University of New York	State University of New York - System Administration
State University of New York	SUNY - Health Science Center at Brooklyn
State University of New York	SUNY - Upstate Medical University
State University of New York	SUNY at Albany
State University of New York	SUNY at Binghamton
State University of New York	SUNY at Buffalo

State Agency Name:	Department Name(s):
State University of New York	SUNY at Stony Brook
State, Department of	Tug Hill Commission
Statewide Financial System	
Tax Appeals, Division of	Department of Taxation & Finance - Division of Tax Appeals
Taxation and Finance, Department of	Department of Taxation & Finance
Taxation and Finance, Department of	Office of Real Property Services
Technology, Office for	Office for Technology - Statewide Wireless Network
Technology, Office for	Office for Technology - Telecommunications
Temporary and Disability Assistance, Office of	Office of Temporary & Disability Assistance
Thruway Authority	New York State Canal Corporation
Transportation, Department of	Department of Transportation - Region 1
Transportation, Department of	Department of Transportation - Region 2
Transportation, Department of	Department of Transportation - Region 3
Transportation, Department of	Department of Transportation - Region 4
Transportation, Department of	Department of Transportation - Region 5
Transportation, Department of	Department of Transportation - Region 6
Transportation, Department of	Department of Transportation - Region 7
Transportation, Department of	Department of Transportation - Region 8
Transportation, Department of	Department of Transportation - Region 9
Transportation, Department of	Department of Transportation - Region 10
Transportation, Department of	Department of Transportation - Region 11
Unified Court System	Office of Court Administration - Regional Control Services
Unified Court System - Appellate	Appellate Division - 2nd Department
Unified Court System - Appellate	Appellate Division - 3rd Department
Unified Court System - Appellate	Appellate Division - 4th Department
Unified Court System - Appellate	Appellate Term - 2nd Department
Unified Court System - Appellate	Law Library Appellate - 4th Department
Unified Court System - Appellate	State Board Law Examiners
Unified Court System - Appellate	Unified Court System Business Division
Unified Court System - Claims	Civil Court - New York City
Unified Court System - Claims	Court of Claims
Unified Court System - Claims	Fourth Judicial District
Unified Court System - Claims	New York City Administrative Judge
Unified Court System - Claims	New York City Criminal Court
Unified Court System - Claims	Office of Court Administration - Eighth Judicial District
Unified Court System - Claims	Office of Court Administration - Fifth Judicial District
Unified Court System - Claims	Office of Court Administration - Seventh Judicial District
Unified Court System - Claims	Office of Court Administration - Sixth Judicial District
Unified Court System - Claims	Office of Court Administration - Central Payroll 3rd/4th Department PR
Unified Court System - Claims	Superior Court - 3rd Judicial District

State Agency Name:	Department Name(s):
Unified Court System - Claims	Tenth Judicial District Nassau County Administration
Unified Court System - Claims	Tenth Judicial District Suffolk County Administration
Unified Court System - Court of Appeals	Court of Appeals
Unified Court System - Office of Court Administration	Community Dispute Resolution
Unified Court System - Office of Court Administration	Office of Court Administration
Unified Court System - Office of Court Administration	Office of Court Administration - Budget & Finance
Unified Court System - Supreme	Lawyers Fund for Client Protection
Urban Development Corporation (dba Empire State Development Corporation)	New York State Urban Development Corporation
Veterans' Affairs, Division of	Division of Veterans' Affairs - Blind Veterans Annuity
Victim Services, Office of	
Workers' Compensation Board	

<b>Product Category:</b>	<b>Product Category:</b>
1	Brake Shoes & Linings
2	Brake Parts
3	Rotors and Drums
4	Shock Absorbers
5	Mirrors & Lamps
6	Belts & Hoses
7	Windshield Wipers
8	Fuel Pumps
9	Exhaust Equipment
10	Ignition Equipment (Electrical)
11	Starters & Alternators
12	Seals
13	Gaskets
14	Bearings, Ball & Roller
15	Chassis Parts
16	Universal Joints
17	Automotive Lightning
18	Electric Wiring
19	Spark Plugs
20	Fluids / Chemicals / Lubricants
21	Repair Equipment / Tools
22	Steering
23	Electric Motors
24	Batteries
25	Water Pumps
26	Radiators
27	A/C Compressors
28	Tire Parts / Accessories
29	Filters
30	Miscellaneous Vehicle Parts

**Group 30310-23362, Vehicle and Equipment Parts and Related Product (Statewide)  
ATTACHMENT 4 – CONTRACTOR/SUBCONTRACTOR INFORMATION SHEET**

<b>Contractor Company Information</b>	
Legal Business Name (including any DBA)	Elliott Auto Supply Co., Inc. dba Factory Motor Parts
Principal Place of Business (complete mailing address)	1380 Corporate Center Curve, Suite 200, Eagan, MN 55121
Federal ID Number	41-0639421
NYS Vendor ID Number	1100297141
Company Website	www.factorymotoparts.com
<b>Contact for Contract Administration Issues</b>	
Name	Diana Carney
Title	Sr Fleet Manager
Address (if different from above)	
Telephone Number	(720) 251-1776
Toll Free Telephone Number	N/A
E-Mail Address	d.carney@fmppo.com
<b>Contact for Contract Sales/Billing</b>	
Name	James Stracker
Title	Regional Fleet Sales Manager
Address (if different from above)	
Telephone Number	(215) 421-8448
Toll Free Telephone Number	N/A
E-Mail Address	jstracker@fmppo.com
<b>Contact for Emergencies</b>	
Contact Name	Patrick Pluck
Title	Regional Vice President
Address	137 N Branford Rd, Branford, CT 06405
Email	p.pluck@fmppo.com
Phone	203-887-6526
Cell Phone	203-887-6526
<b>Invoicing (Entity information that will appear on invoices, for orders placed directly with the Contractor, if different from Contractor/Company information above)</b>	
Invoicing Entity/Company Name	Factory Motor Parts
Federal Tax ID #	41-0639421
NYS Vendor ID #	1100297141
Is payment made to the above Entity/Federal ID#?	Yes
Note: If yes, the invoicing entity NYS Vendor ID MUST be referenced on Purchase Orders	

Enter the information requested below for each Contractor Location that will provide Parts and Related Product to Authorized Users. In Columns B through E, indicate if the location is a NYS certified Minority- or Women-Owned Business Enterprise, Service-Disabled Veteran Owned Business Division, or a Small Business. In Columns I through K, indicate if the location is authorized to take orders, deliver Parts, and/or receive payment.

Contractor Location Name	WBE	MBE	SDVOB	SB	FEIN	NYS Vendor ID	Is this Location a Subcontractor?	Take Orders	Deliver Parts	Receive Payment	Over-the-Counter Hours	Street Address	City	Zip Code	County	Contact Name	Telephone Number	Fax Number	Email Address	Restrictions Applicable to this Contractor Location
ELLIOTT AUTO SUPPLY CO., INC. DBA FACTORY MOTOR PARTS					41-0639421	1100297141	No			X	M-F 8:00-5:00	Bin 139107 PO Box 9107	Minneapolis	55480	Hennepin	Kelly Hazzard	(651) 405-4100	(651) 405-3599	khazzard@fmppo.com	PAYMENTS ONLY
FACTORY MOTOR PARTS - ARCADE					41-0639421	1100297141	No	X	X	X	M-F 8:00-5:00, SAT 8:00-12:00	28 Edward St	Arcade	14009	Wyoming	Kim Murphy	(585) 492-5114	NONE	kmurphy@fmppo.com	CREDIT CARD PAYMENTS ONLY
FACTORY MOTOR PARTS - AVON					41-0639421	1100297141	No	X	X	X	M-F 8:00-5:00, SAT 8:00-2:00	275 East Main St	Avon	14414	Livingston	William Rath	(585) 226-6114	NONE	w.rath@fmppo.com	CREDIT CARD PAYMENTS ONLY
FACTORY MOTOR PARTS - BATAVA					41-0639421	1100297141	No	X	X	X	M-F 8:00-5:00, SAT 8:00-12:00	4330 Commerce Dr	Batavia	14020	Genesee	Roger Kubasiwicz	(585) 300-2081	NONE	r.kubasiwicz@fmppo.com	CREDIT CARD PAYMENTS ONLY
FACTORY MOTOR PARTS - BATH					41-0639421	1100297141	No	X	X	X	M-F 8:00-5:00, SAT 8:00-12:00	7172 State Route 54	Bath	14810	Steuben	Jason Taff	(607) 726-7606	NONE	jtaff@fmppo.com	CREDIT CARD PAYMENTS ONLY
FACTORY MOTOR PARTS - BINGHAMTON					41-0639421	1100297141	No	X	X	X	M-F 7:30-5:00, SAT 8:00-1:00	111 Clinton St	Binghamton	13905	Bronx	Raymond Shook	(607) 729-7454	NONE	r.shook@fmppo.com	CREDIT CARD PAYMENTS ONLY
FACTORY MOTOR PARTS - BRONX					41-0639421	1100297141	No	X	X	X	M-F 8:00-5:00, SAT 8:00-6:00	1170 Bronx River Ave	Bronx	10472	Bronx	Miguel Teran	(718) 842-3440	NONE	m.teran@fmppo.com	CREDIT CARD PAYMENTS ONLY
FACTORY MOTOR PARTS - BUFFALO					41-0639421	1100297141	No	X	X	X	M-F 8:00-5:00, SAT 8:00-1:00	1501 William St	Buffalo	14206	Erie	Steven Pfohl	(716) 892-4753	NONE	s.pfohl@fmppo.com	CREDIT CARD PAYMENTS ONLY
FACTORY MOTOR PARTS - CANADANGUA					41-0639421	1100297141	No	X	X	X	M-F 7:30-5:30, SAT 8:00-12:00	2495 Brinkyard Rd	Canadagua	14624	Ontario	Brooke Simpson	(585) 396-3170	NONE	bsimpson@fmppo.com	CREDIT CARD PAYMENTS ONLY
FACTORY MOTOR PARTS - ENDICOTT					41-0639421	1100297141	No	X	X	X	M-F 7:30-5:00, SAT 8:00-12:00	311 Harrison Ave	Endicott	13760	Bronx	Donald (Tom) Springer	(609) 748-1585	NONE	d.springer@fmppo.com	CREDIT CARD PAYMENTS ONLY
FACTORY MOTOR PARTS - GENESSE					41-0639421	1100297141	No	X	X	X	M-F 7:30-5:30, SAT 8:00-2:00	4143 Lakeville Rd	Genesee	14454	Livingston	Mark Salsman	(585) 243-2771	NONE	m.salsman@fmppo.com	CREDIT CARD PAYMENTS ONLY
FACTORY MOTOR PARTS - HAVERSTRAW					41-0639421	1100297141	No	X	X	X	M-F 8:00-5:00, SAT 8:00-2:00	280 Route 9W	Haverstraw	10927	Rockland	Jennifer Fischetta	(845) 947-3355	NONE	j.fischetta@fmppo.com	CREDIT CARD PAYMENTS ONLY
FACTORY MOTOR PARTS - HORNELL					41-0639421	1100297141	No	X	X	X	M-F 8:00-5:00, SAT 8:00-12:00	195 Seneca St	Hornell	14843	Steuben	Jeffrey Buchholz	(607) 324-5320	NONE	jbuchholz@fmppo.com	CREDIT CARD PAYMENTS ONLY
FACTORY MOTOR PARTS - LATHAM					41-0639421	1100297141	No	X	X	X	M-F 7:30-5:00	348 Old Nakayana Rd	Latham	12110	Franklin	Bambi Woods	(518) 266-1130	NONE	b.woods@fmppo.com	CREDIT CARD PAYMENTS ONLY
FACTORY MOTOR PARTS - LOCKPORT					41-0639421	1100297141	No	X	X	X	M-F 7:30-5:00, SAT 8:00-12:00	5714 S. Transit Rd	Lockport	14094	Niagara	Wesley Hanef	(716) 433-4474	NONE	w.hanef@fmppo.com	CREDIT CARD PAYMENTS ONLY
FACTORY MOTOR PARTS - NANUET					41-0639421	1100297141	No	X	X	X	M-F 8:00-5:30, SAT 8:00-2:00	85 New Clarkstown Rd, Suite 3	Nanuet	10954	Rockland	Erich Koelling	(845) 364-4164	NONE	e.koelling@fmppo.com	CREDIT CARD PAYMENTS ONLY
FACTORY MOTOR PARTS - NEW HYDE PARK					41-0639421	1100297141	No	X	X	X	M-F 7:30-5:00	150 Nassau Terminal Road	New Hyde Park	11040	Sheltygan	Orestre Jerez	(620) 459-2540	NONE	o.jerez@fmppo.com	CREDIT CARD PAYMENTS ONLY
FACTORY MOTOR PARTS - PEARL RIVER					41-0639421	1100297141	No	X	X	X	M-F 7:00-6:00, SAT 8:00-5:00, SUN 9:00-	150 North Middletown Rd	Pearl River	10965	Rockland	Kyle Coleman	(845) 205-2005	NONE	k.coleman@fmppo.com	CREDIT CARD PAYMENTS ONLY
FACTORY MOTOR PARTS - ROCHESTER					41-0639421	1100297141	No	X	X	X	M-F 7:30-5:00, SAT 8:00-12:00	54 Adelaide St	Rochester	14606	Monroe	Matthew Bellam	(585) 613-0975	NONE	m.bellam@fmppo.com	CREDIT CARD PAYMENTS ONLY
FACTORY MOTOR PARTS - SYRACUSE					41-0639421	1100297141	No	X	X	X	M-F 7:30-5:00, SAT 8:00-12:00	210 Lemoyne Ave	Syracuse	13208	Onondaga	Elizabeth Reed	(315) 478-3181	NONE	e.reed@fmppo.com	CREDIT CARD PAYMENTS ONLY
FACTORY MOTOR PARTS - UTICA					41-0639421	1100297141	No	X	X	X	M-F 8:00-5:00, SAT 8:00-12:00	8 Lee St	Utica	13502	Oneida	Jeffrey Guffy	(315) 732-3117	NONE	j.guffy@fmppo.com	CREDIT CARD PAYMENTS ONLY
FACTORY MOTOR PARTS - WAPPINGERS FALLS					41-0639421	1100297141	No	X	X	X	M-F 8:00-5:30, SAT 8:00-1:00	18 Delaware Ave	Wappingers Falls	12590	Dutchess	Francis Casazza	(845) 297-7300	NONE	f.casazza@fmppo.com	CREDIT CARD PAYMENTS ONLY
FACTORY MOTOR PARTS - WEBSTER NY					41-0639421	1100297141	No	X	X	X	M-F 7:30-5:00, SAT 8:00-12:00	101 Commercial St	Webster	14590	Monroe	Zachary Fratall	(585) 216-9997	NONE	z.fratall@fmppo.com	CREDIT CARD PAYMENTS ONLY
FACTORY MOTOR PARTS - WELLSVILLE					41-0639421	1100297141	No	X	X	X	M-F 8:00-5:00, SAT 8:00-12:00	3377 Andover Rd	Wellsville	14895	Allegany	Bary Bailey	(585) 593-1221	NONE	b.bailey@fmppo.com	CREDIT CARD PAYMENTS ONLY
FACTORY MOTOR PARTS - WEST SENECA					41-0639421	1100297141	No	X	X	X	M-F 8:00-5:00, SAT 8:00-1:00	1780 Union Rd	West Seneca	14224	Erie	David Pfohl	(716) 674-2604	NONE	d.pfohl@fmppo.com	CREDIT CARD PAYMENTS ONLY
FACTORY MOTOR PARTS - WOODSIDE FLEET					41-0639421	1100297141	No	X	X	X	M-F 8:00-5:00, S 8:00-2:00	5034 69th Place	Woodside	11377	Queens	Edwin Love	(718) 397-5663	NONE	e.love@fmppo.com	CREDIT CARD PAYMENTS ONLY