

STANDARD TERMS, CONDITIONS AND MANDATORY CLAUSES

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PART I. GENERAL TERMS & DEFINITIONS

A. **APPLICABILITY.** The terms and conditions set forth in these Standard Terms, Conditions and Mandatory Clauses are expressly incorporated in and applicable to all Procurements and resulting Contracts for Commodities, Construction Services, Products and Professional Services let by the Development Authority of the North Country, or its designees (collectively, the “Standard T&Cs”). The Standard T&Cs shall govern all written Contracts with the Authority unless expressly modified or amended by the terms of a Contract or an Exempt Contract. For any acquisitions, by or on behalf of the Authority, of software, programs, databases and other similar technology, whether licensed or custom in addition to these Standard T&Cs, the Procurement Documents shall include all applicable licensing provisions. Captions are intended as descriptive and are not intended to limit or otherwise restrict the terms and conditions set forth herein.

B. **GOVERNING LAW.** The Standard T&Cs and all Contracts and Procurements issued hereunder shall be governed by the Laws of the State of New York without regard to provisions governing conflicts to the extent they would result in the application of the Laws of any other jurisdiction. Except where the Federal supremacy clause or the Contract otherwise provides, any actions or proceedings arising from or relating to any Procurements or the Contract shall be heard only in a court of competent jurisdiction in the State of New York in the county where the Development Authority is located.

C. **ETHICS COMPLIANCE.** All Bidders, Proposers and Contractors and their employees must comply with the requirements of Sections 73 and 74 of the *Public Officers Law*, and all other State codes, rules and regulations establishing ethical standards for the conduct of business with New York State. In signing the Bid/Proposal, Bidder/Proposer certifies full compliance with those provisions for any present or future Procurements, or any dealings, transactions, sales, contracts, services, offers, relationships, etc., involving the Authority 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.

D. **DEFINITIONS.** Capitalized words used in these Standard T&Cs and, if not otherwise defined in the Solicitation or the Contract shall have the following meanings:

1. **ADDENDUM, ADDENDA:** Additional provisions, deletions or changes to Solicitations for Procurements issued by the Authority prior to the receipt of Bids, which also may include additive Bid items.

2. **ATTORNEY GENERAL:** Attorney General of the State of New York.

3. **AUTHORITY:** The Development Authority of the North Country.

4. **BID:** A written offer submitted by a Bidder in response to an Invitation for Bids to furnish a described Procurement, at a stated price for the stated Contract term.

5. **BID BONDS:** The percent of a Bid or Proposal that Contractor must submit with any Bid as specified in the Solicitation.

6. **BIDDER:** Any individual or Entity, that submits a Bid in response to an IFB or enters into a negotiated agreement with the Authority for an Exempt Contract.

7. **BONDS:** Collectively, the Contract Bonds and Bid Bonds.

8. **CERTIFICATE OF COMPLETION:** A Written Notice from the Authority or its designee to the Contractor that 100% of the Work is completed satisfactorily.

9. **CHANGE ORDER:** A written order by the Authority or its designee to the Contractor directing an alteration or modification of the nature, scope or type of the Work, Commodities, Products or Services.

10. **COMMENCEMENT DATE:** The date Contractor must start Work following receipt from the Authority of a Notice to Proceed.

11. **COMMODITIES:** Material goods, supplies, equipment, facilities, products, construction items or other standard articles of commerce other than technology or Services.

12. **COMPROLLER:** Comptroller of the State of New York.

13. **CONSEQUENTIAL DAMAGES: SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, INCIDENTAL OR INDIRECT**

LOSSES OR DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUES, LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS OPPORTUNITIES, OR LOSS OF GOODWILL, WHETHER OR NOT ARISING FROM SOLE, JOINT OR CONCURRENT NEGLIGENCE, STRICT LIABILITY, VIOLATION OF LAW, BREACH OF CONTRACT, BREACH OF WARRANTY, OR ANY OTHER BASIS OR THEORY, WHETHER OR NOT FORESEEABLE AND EVEN IF SUCH PARTY OR ITS AFFILIATES, CONTRACTORS, SUBCONTRACTORS OR CUSTOMERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

14. **CONSTRUCTION SERVICES:** Services provided by licensed contractors pursuant to Contracts with the Authority to design, construct, install, relocate, upgrade and maintain facilities relating to the Authority's business operations as set forth in the IFB and more particularly defined in each Contract.

15. **CONTRACT:** The writing agreement signed by the Authority and the Contractor that contains the terms and conditions with the Authority setting forth their legal obligations for the Procurement.

16. **CONTRACT AMENDMENT:** A written alteration or modification of an executed Contract, signed by the Contractor and the Authority.

17. **CONTRACT BONDS:** Collectively, the Labor and Materials Payment Bond and the Performance Bond.

18. **CONTRACT DOCUMENTS:** The Invitation for Bids; any Addendum; the Advertisement For Bids; the Information for Bidders; Wage Rates; Additional Instructions; the Bid; the Additive Bid (if any), the Contract Bonds; the certificates of insurance; the "General Terms & Definitions"; the "Standard Terms & Conditions"; the "Mandatory Clauses"; the Specifications; if applicable, the Technical Exhibits, any approved Drawings, and the Solicitations for RFPs and RFQs.

19. **CONTRACTOR:** Any successful Bidder/Proposer to whom a Procurement has been awarded following a Solicitation by the Authority that enters into a written Contract signed by the Authority, or for Commodities a Contract or Purchase Order along with a Letter of Acceptance.

20. **CUSTOM PRODUCTS:** Product or Commodities, preliminary, final or otherwise, which are created or developed by Contractor for the Authority under the Contract.

21. **DIRECTOR:** The Executive Director of the Development Authority of the North Country.

22. **DOCUMENTATION:** The complete set of manuals (e.g., user, installation, instruction or diagnostic manuals), Drawings, or Specifications in either hard or electronic copy as specified by the Authority which are necessary or desirable for the Authority or its designee to properly test, install, operate and enjoy full use of the Commodities or Construction Services comprising the Procurement.

23. **DRAWINGS:** All shop drawings, setting drawings, working drawings, as-built Drawings, electrical equipment drawings, and construction drawings prepared in accordance with the Specifications or Technical Exhibits as applicable or necessary to the performance of the Work, which are included in the Solicitation, Procurement Specifications or, if applicable, shall be prepared by the Contractor or its suppliers or Subcontractors, and submitted to the Authority for review and approval.

24. **EMERGENCY:** An urgent and unexpected requirement where property, health and public safety or the conservation of public resources is at risk as determined by the Authority.

25. **ENTERPRISE:** The total business operations in the United States of each Bidder/Proposer without regard to geographic location where such operations are performed or the entity actually performs such operations on behalf of a Bidder/Proposer.

26. **EXEMPT CONTRACTS:** Any written agreement for Commodities, Products, or Services for which a Procurement process is impractical and may be awarded on other than a competitive basis. Exempt Contracts may include Services, Products and/or Commodities provided by monopolies, for example utilities or Sole Source providers. Exempt Contracts require the approval of the Executive Director or designee. Specifications shall be incorporated into all Exempt Contracts that have not been competitively bid, and shall be considered part of the terms and conditions as if set forth in the Exempt Contract.

27. **EXTREME AND UNFORSEEN MARKET VOLATILITY:** 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 or Purchase Order source of supply; (iii) the effect on pricing or availability of Commodities, Products or supply is substantial; and (iv) the volatility so affects Contractor's performance that continued performance of the Contract or Purchase Order would result in a substantial loss as determined by the Authority.

28. FORCE MAJEURE EVENT(S): Strikes by employees other than Contractor's or its Subcontractors'; material, supplies or labor shortages provided that such shortages are not a result of Contractor's or its Subcontractors' delays in ordering or any of their failure to hire sufficient personnel; acts of public enemies; strikes; fires; floods or severe weather conditions; war; civil unrest; emergency conditions; acts of terrorism; or other similar conditions beyond Contractor's reasonable control provided Contractor or its Subcontractors did not contribute to the condition.

29. GENERAL CONTRACT: The Contract with the General Contractor, if designed for the Project when more than one Contractor is performing Work on the same Project.

30. GENERAL CONTRACTOR: When the Authority awards other or multiple contracts for collateral work on the same Project, it will designate a general contractor who shall be responsible to perform the duties and obligations set forth in the IFB for General Contractors, in addition to those set forth in the General Contract.

31. INVITATION FOR BIDS (IFB): A type of Procurement Document which is most typically used for Procurements where requirements can be stated and the award will be made to the lowest Responsive and Responsible Bidder(s).

32. LABOR & MATERIALS PAYMENT BOND: The guarantee, signed by the Surety, that the Contractor will pay for all Labor and Material required by the Contract and the Procurement Documents.

34. LAW(S): Federal, State, and local laws, statutes, codes, ordinances, decrees, orders, rules, regulations, and procedures. Duties imposed by local franchising authorities, owners of poles used for attachments, and owners of underlying rights of way used for the Work or Project.

35. LEGAL ENTITY: A firm, partnership, a limited liability company, sole proprietor, corporation or other legal business entity.

36. LETTER OF ACCEPTANCE: A letter to the successful Bidder/Proposer for Commodities or Products indicating the Authority's acceptance of the Bid/Proposal in response to a Solicitation. The issuance of a Letter of Acceptance does not form the Contract and is not an order for Commodities, Professional Services, Construction Services, Product or Commodities or Work. Contractor should not take any action with respect to actual delivery of Commodities, Services or Work except on the basis of Purchase Orders or Contract from the Authority or its designee.

37. MINORITY-OWNED BUSINESS ENTERPRISE: Shall have the same meaning ascribed thereto by [Article 15-A of the Executive Law](#), same may be amended, and shall include any Legal Entity that is:

- A. At least fifty-one percent owned by one or more of the following minority groups: Blacks, Hispanics, Asians, Pacific Islanders or Native Americans, or, in the case of a publicly-owned business, at least fifty-one percent of the common stock or other voting interests of which is owned by Blacks, Hispanics, Asians, Pacific Islanders or Native Americans;
- B. An Enterprise in which the minority ownership is real, substantial and continuing;
- C. An Enterprise in which the minority ownership has, and exercises, the authority to control independently the day-to-day business decisions;
- D. An Enterprise authorized to do business in New York State, independently owned and operated, and not dominant in its field;
- E. An Enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars, as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and
- F. An Enterprise that is a Small Business.

38. NEW YORK BUSINESS ENTERPRISE: A Legal Entity that offers for sale or lease or other form of exchange, Commodities that are substantially manufactured, produced or assembled in New York State, or which offers Construction Services that substantially are performed within New York State or has its principal place of business located in New York State.

39. NOTICE OF AWARD: A Written Notice to the successful Bidder/Proposer indicating acceptance of its Bid or Proposal in response to an IFB for Construction Services, and RFP or RFQ for Professional Services or Sole Source Work. The issuance of a Notice of Award does not form the Contract and is not an order or Notice to Proceed. Contractor should not take any action with respect to the Construction Services or the Work until all Bonds and Insurance Certificates have been approved, the Contract documents are complete, approved and executed, and a Notice to Proceed is issued.

40. NOTICE OF COMPLETION: A written notice from the Authority or its designee to the Contractor that 100% of the Work is completed satisfactorily.

41. **NOTICE TO PROCEED:** After the Contract is fully executed, the Authority's Written Notice to the successful Bidder/Proposer that the Construction Services or Work should be commenced.
42. **NOTICE OF SUBSTANTIAL COMPLETION:** A Written Notice from the Authority or its designee to the Contractor that the Work is substantially completed, subject to completion or correction of minor punch list items.
43. **OUTSIDE COMPLETION DATE:** The outside date to be stated in the Contract that Contractor must complete 100% of the Work for the Project.
44. **PERFORMANCE BOND:** The guarantee, signed by the Surety, that the Contractor will provide all the services and Construction Services required by the Contract and the IFB.
45. **PROCUREMENT(S):** An acquisition by the Development Authority pursuant through a competitive bidding process for Commodities, Professional Services and/or Construction Services pursuant to a Solicitation.
46. **PROCUREMENT DOCUMENTS:** Writings setting forth the scope, terms, conditions for Procurements by or on behalf of the Authority. Such writings typically include, but are not limited to: Invitation for Bids (IFB), Request for Quotations (RFQ), Request for Proposals (RFP), Bid Addenda, Specifications, if applicable, Technical Exhibits, and all terms and conditions which are incorporated by reference, including but not limited to the Contract Documents.
47. **PROCUREMENT POLICY:** The Procurement Policy of the Authority that was developed and authorized by the Board of Directors of the Authority, as may be amended from time to time.
48. **PROCUREMENT RECORD:** Written records created by the Authority or its designees reflecting the decisions made and approach taken during the Procurement process.
49. **PRODUCT:** A deliverable in connection with Services that may include Commodities, facilities, materials, equipment, plant, machinery, vehicles, and other Proprietary or tangible personal property in connection with the Work on a Project.
50. **PROFESSIONAL SERVICES:** Services provided by accountants, auditors, engineers, attorneys and other similar professions that requires special education, training, or skill and for which qualifications, knowledge, skills and abilities are critical factors in evaluating Proposals.
51. **PROJECT:** All the Work, Services and Commodities to be provided by the General Contractor, all Contractors, Subcontractors, Engineers and the Authority under an IFB or RFP, portions of which may be performed by one or more of the foregoing.
52. **PROPOSAL:** An offer submitted in response to an RFP or RFQ to furnish a described product or a solution or means of achieving a practical end, at a stated price for the stated Contract term.
53. **PROPOSER:** Any individual or other Legal Entity that submits a Proposal in response to an RFP or RFQ.
54. **PROPRIETARY:** Valuable data, processes, technology, information and know-how protected by intellectual property Laws, including, patent, copyright or trademark.
55. **PURCHASE ORDER:** The Authority's fiscal form or format which is used when making a purchase pursuant to an IFB for Commodities, RFP, RFQ or entering into an Exempt Contract for Commodities, which may be processed in hard copy or electronic format.
56. **REQUEST FOR PROPOSALS (RFP):** A type of Procurement Document which is used for Procurements where factors in addition to cost are considered and weighted in awarding the Contract and where the method of award is "best value", as defined by the *State Finance Law*.
57. **REQUEST FOR QUOTATION (RFQ):** A type of Procurement Document which can be used when a formal bid opening is not required (e.g. discretionary, Sole Source, Single Source or Emergency purchases).
58. **RESPONSIBLE:** A Bidder/Proposer that is determined by the Authority to have skill, judgment and integrity, and that is found to be competent, reliable, experienced and qualified financially, as determined by the Authority.
59. **RESPONSIVE:** A Bidder/Proposer meeting the Specifications and all requirements prescribed in the Solicitation, as determined by

the Authority.

60. SERVICES: Collectively, Construction Services and Professional Services.

61. SERVICE-DISABLED VETERANS-OWNED BUSINESS: Shall have the same meaning ascribed thereto by [Article 17-B of the Executive Law](#), as same may be amended, and shall include any business enterprise, including a sole proprietorship, partnership, limited liability company or corporation that is:

- A. At least fifty-one percent owned by one or more service-disabled veterans;
- B. An enterprise in which such service-disabled veteran ownership is real, substantial and continuing;
- C. An enterprise in which such service-disabled veteran ownership has and exercises the authority to control independently day-to-day business decisions of the enterprise;
- D. An enterprise authorized to do business in this state and is independently owned and operated;
- E. An enterprise that is a small business which has a significant business presence in the state, not dominant in its field and employs, based on its industry, a certain number of employees as determined by the director, but not to exceed three hundred, taking into consideration factors which include, but not limited to, federal small business administration standards pursuant to 13 CFR part 121 and any amendments thereto; and
- F. Certified by the New York State Office of General Services as a Service-Disabled Veteran-Owned Business.

62. SINGLE SOURCE: A Procurement where two or more persons or Legal Entities can supply the required Product and the Authority may award the Contract to one Bidder/Proposer over the other.

63. SITE: The location (street address) where Work will be executed or services, equipment, machinery and/or materials will be used, delivered, installed or stored.

64. SMALL BUSINESS: Shall have the same meaning ascribed thereto by [Article 15-A of the Executive Law](#), as same may be amended, and shall include a business which has a significant business presence in the State of New York, is independently owned and operated, not dominant in its field and employs, based on its industry, a certain number of persons as determined by the Director of the Division of Minority and Women's Business Development, but not to exceed one hundred, taking into consideration factors which include, but are not limited to, Federal small business administration standards pursuant to 13 CFR part 121 and any amendments thereto.

65. SOLE SOURCE: A Procurement where there is only one provider that has the Commodities, equipment, experience, expertise or ability to meet the performance requirements for a particular acquisition, or where the Authority has standardized a particular manufacturer, make, brand or model of a product or service and there is only one provider or source of.

66. SOLICITATIONS: Collectively, IFBs, RFPs, and RFQs issued by the Authority, which include the necessary qualifications of the Bidder/Proposer, the capacity and capability of the Bidder/Proposer to successfully carry out the proposed Procurement, a written description of the specific terms and procedures to be followed in submission of a Bid/Proposal for an intended Procurement, which may include: identification of documents required to be completed, deadlines for submission, required location and manner of delivery of submission, information required to be submitted, and the Specifications and Contract Documents.

67. SPECIFICATIONS: A written description issued by or for the Authority setting forth the specific technical and detailed terms of the Project and the Work, which may include: physical or functional characteristics, the nature of a Commodity, Product, or construction item, plans or Drawings, technical or construction details, any description of the Work to be performed or facilities to be constructed or installed, the Products to be provided, the suppliers required, the qualifications, capacity and capability of the Bidder/Proposer to successfully carry out the Contract, or the process for achieving specific results and/or anticipated outcomes or any other requirement necessary to perform Work.

68. STANDARDIZATION: Where the Authority has determined that it is in its best interests to standardize on a particular make, manufacturer, model or licensed product for the efficient operation of its business. Any competitive procurement for those standardized items shall be limited to sources providing the specified make, manufacturer, model or licensed product.

69. STATE: State of New York

70. SUBCONTRACTOR: Any person, other than employees of the Contractor, or any firm, Legal Entity or New York Business Enterprise that contracts to act for or on behalf of the Contractor in performing any part of the Work in connection with the Project or the Contract, exclusive of one who furnishes only materials or equipment to the Contractor.

71. SURETY: The person, persons, firm or corporation who executes each of the Contractor's Bonds.

72. TECHNICAL EXHIBITS: The exhibits to the Contract containing all technical specifications and requirements relevant to a particular Project for construction, which may include as-built Drawings, fiber specifications, testing and acceptance, splicing, pole attachment provisions, franchise and rights-of-way requirements, and other similar requirements.

73. THE WORK: All labor, Services and Products, or Commodities, either expressly or by implication in the Procurement, which are to be furnished by a Contractor under its Contract or in connection with Change Orders or Contract Amendments.

74. WARRANTY: Contractor's warranties as set forth in Section 27 of these Standard Terms and Conditions, including, but not limited to, Contractor's extended Warranty and third-party coordination obligations.

75. WOMEN-OWNED BUSINESS ENTERPRISE: Shall have the same meaning ascribed thereto by [Article 15-A of the Executive Law](#) as same may be amended, and shall include any Legal Entity that is:

- A. At least fifty-one percent owned by one or more United States citizens or permanent resident aliens who are women, or, in the case of a publicly-owned business, at least fifty-one percent of the common stock or other voting interests of which is owned by United States citizens or permanent resident aliens who are women;
- B. An Enterprise in which the women ownership is real, substantial and continuing;
- C. An Enterprise in which the women ownership has, and exercises, the authority to control independently day-to-day business decisions;
- D. An Enterprise authorized to do business in New York State, independently owned and operated, and not dominant in its field;
- E. An Enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars, as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and
- F. An Enterprise that is a Small Business.

76. WRITTEN NOTICE: Written communications or notices required by the Contract Documents or the Contract, given by postage prepaid, registered or certified mail, return receipt requested, hand delivery, overnight courier or messenger, email or facsimile, addressed to the Authority to the Development Authority of the North Country, Attention: Executive Director , 317 Washington Street, Watertown, New York 13601; Telephone No.: 315.661.3200; or Facsimile No.: 315.661.3201; or Email and to the Contractor using the contact information specified by Contractor in the Bid or Proposal, or such other addresses given to either by prior communication in writing, which shall be effective upon delivery if by hand delivery, certified mail or overnight courier or messenger and upon confirmation by the sender of successful transmission if by email or facsimile.

Part II. STANDARD TERMS & CONDITIONS

1. **CONTRACT CREATION/EXECUTION.** Except for contracts governed by Article 11-B of the *State Finance Law*, upon receipt of all required approvals a Contract shall be deemed created and executed only upon the Authority's mailing or electronic communication to the address on the Bid/Proposal of a fully executed Contract signed by both the Authority and the Contractor.
2. **MODIFICATION OF CONTRACT/PURCHASE ORDER TERMS.** The terms and conditions set forth in the Contracts for both Construction and Professional Services and any associated Products and the Purchase Orders for Commodities govern all Procurements for each successful Bidder/Proposer. The Contract may only be modified or amended upon mutual written agreement of the Authority and Contractor. Purchase Orders may be modified or amended only upon the Authority issuing an amended Purchase Order. Contractor may not unilaterally modify the terms of the Contract or a Purchase Order by affixing additional terms to invoices, documents or upon delivery, including by attachment or inclusion of standard pre-printed order forms, product literature, "shrink wrap" terms accompanying or affixed to deliveries, or by incorporating such terms onto Contractor's forms or other documents submitted to the Authority for processing or payment. Acceptance of deliveries or processing of forms furnished by the Contractor for approval or payment does not constitute acceptance of any proposed modification to terms and conditions.
3. **CHANGES IN SCOPE.** The Authority reserves the right, unilaterally, to require, by written Change Order, changes altering, adding to or deducting from the Contract Documents, Specifications, Technical Exhibits, Purchase Orders such changes to be within the general scope of the Contract. The Authority may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. The amount of such equitable adjustments requires the consent of the Contractor, which consent shall not be unreasonably withheld. Authority may obtain additional Product or Commodities authorized under the Contract or Purchase Order, whether or not the Product or Commodities were initially obtained independently of the Contract or Purchase Order. The Authority's election to obtain additional Product and Commodities shall not operate to diminish, alter or extinguish rights previously granted.
4. **ESTIMATED/SPECIFIC QUANTITY CONTRACTS.** Solicitations that state estimated quantity, measurements or distance are expressly agreed and understood to be made for only the actual items specified in a Purchase Order for Commodities or Contract for Work and Products actually issued, or to be performed, during the term of the Contract or period covered by a Purchase Order. No guarantee of any estimates are implied or given. Unless otherwise set forth in the Procurement Specifications, Purchase Order or the Contract, Solicitations with estimates are completely voluntary for the Authority to use and order, and therefore no work or orders are guaranteed. With respect to any specific quantity stated in a Solicitation for Commodities or Product in connection with Services, the Authority 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 or Purchase Order. Notwithstanding the foregoing, the Authority may purchase greater or lesser percentages of Contract quantities should the Authority and Contractor so agree in writing in a Contract Amendment or restated Purchase Order issued by the Authority. Such percentage changes may include an equitable price adjustment determined by the Authority.
5. **BEST PRICING OFFER.** During the Contract term, if substantially the same or a smaller quantity of a Commodities or Product used in connection with Services is sold by the Contractor to a third party upon the same or similar terms and conditions as that of the Authority's Contract at a lower price, the price under the Authority's Contract, at the discretion of the Authority, shall be immediately reduced to the lower price.
6. **PURCHASE ORDERS FOR COMMODITIES.**
 - A. Unless otherwise authorized in writing by the Authority, no Commodities are to be delivered or furnished by Contractor until transmittal of an official Purchase Order from the Authority. Unless terminated or canceled pursuant to the authority vested in the Authority, Purchase Orders shall be effective and binding upon the Contractor when placed in the mail or electronically transmitted prior to the expiration or termination of the Contract, addressed to the Contractor at the address for receipt of orders set forth in the Contract or Bid. Purchase Orders shall be deemed to reference Manufacturer's most recently released model or version of the Commodities at time of order, unless an earlier model or version is specifically requested in writing by Authority and Contractor is willing to provide such version.
 - B. Contractor shall not issue, revise, amend or change any Authority Purchase Orders, or submit its own forms for the Authority to acquire any Commodities. If corrections, modifications or changes are required, Contractor shall notify the Authority of any changes requested or perceived errors, and if the Authority agrees it will issue a revised Purchase Order.
 - C. For special orders outside the scope of the Solicitation, Letter of Acceptance and Specifications, the Authority shall confirm pricing, supported hardware platforms and model availability with Contractor prior to placement of such special orders. The Authority reserves the right to require any other information from the Contractor which the Authority deems necessary in order to place any Purchase Order with Contractor.

D. Contractor shall deliver the Commodities ordered to the address the Authority provided in the Contract or on the Purchase Order and in accordance with the terms of the Contract. Unless otherwise specified in the Contract, Solicitation, Letter of Acceptance or Purchase Order, delivery shall be made within thirty calendar days after receipt of a Purchase Order by the Contractor. The decision of the Authority as to compliance with delivery terms shall be final. The burden of proof for delay in receipt of Purchase Order shall rest with the Contractor. In all instances of a potential or actual delay in delivery, the Contractor shall immediately requests an extension of time from the Authority or its designee in writing and shall explain the reason for the delay. If the Authority grants any extension of time for a delivery, Contractor shall take all appropriate action to avoid any subsequent late deliveries. Failure to request an extension to meet an extended date, or multiple late deliveries may, in the Authority's discretion, be grounds for cancellation of the Purchase Order, Letter of Acceptance and/or termination of the Contract. Unless otherwise specified in the Contact, Solicitation, Letter or Acceptance or Purchase Order, deliveries will not be scheduled for Saturdays, Sundays or legal holidays observed by the State of New York except for Commodities for daily consumption or where an Emergency exists or the delivery is a replacement or is late, in which event the convenience of the Authority shall govern.

7. PACKAGING/SHIPPING/RECEIPT OF COMMODITIES AND PRODUCTS.

A. Packaging. Tangible Commodities and Products shall be securely and properly packed for shipment, storage and stocking in appropriate, clearly labeled shipping containers and according to accepted commercial practice, without extra charge for packing materials, cases or other types of containers. The container shall become and remain the property of the Authority or its designee entity.

B. Shipping & Charges. Unless otherwise stated in the Solicitation, Contract, Letter of Acceptance or Purchase Order, all deliveries shall be deemed to be FOB destination to the delivery address specified on the Purchase Order. Even where permitted, Commodities or Product to be purchased at a price FOB shipping point plus transportation charges, it is understood not to relieve the Contractor from responsibility for safe and proper delivery. Contractor shall be responsible for insuring that the Bill of Lading states "charges prepaid" for all shipments.

C. Receipt/Rejection of Product or Commodities. The Contractor shall be solely responsible for assuring that deliveries are made to personnel authorized to accept delivery on behalf of the Authority. Any losses resulting from the Contractor's failure to deliver to Authority personnel authorized to accept delivery shall be borne exclusively by the Contractor. When Product or Commodities are rejected, it must be removed by the Contractor from the premises of the Authority or its receiving entity within ten calendar days of written notification from the Authority. Rejected items not removed by the Contractor timely shall be regarded as abandoned by the Contractor, and the Authority shall have the right to dispose of the items as its own property. The Contractor shall promptly reimburse the Authority for any and all costs and expenses incurred in storage or effecting removal or disposition of rejected Products or Commodities.

D. Risk of Loss. Notwithstanding the form of shipment, risk of loss shall not pass from the Contractor to the Authority until the Product or Commodities have been received, inspected and accepted by the personnel authorized to accept delivery on behalf of the Authority. Mere acknowledgment by Authority personnel of the delivery or receipt of goods (e.g. signed bill of lading) shall not be deemed or construed as acceptance of the Product or Commodities. Any delivery of Product or Commodities which is standard or does not comply with the Contract or Purchase Order terms, may be rejected or accepted on an adjusted price basis, as determined by the Authority. Upon rejection, risk of loss of rejected or non-conforming Product or Commodities shall remain with Contractor.

8. SUBSTITUTION OF PRODUCT, COMMODITIES, COMPONENTS AND PARTS. In the event a specified manufacturer's Product or Commodities listed in the Contract or Purchase Order becomes unavailable or cannot be supplied by the Contractor for any reason) a Product or Commodities deemed by the Authority to be equal to or better than that specified must be substituted by the Contractor at no additional cost or expense to the Authority, subject to the Contractor's approval, which shall not unreasonably be withheld. Any substitution of Product or Commodities prior to the Authority's written approval may be cause for cancellation of Contract, Purchase Order and/or Letter of Acceptance.

Where the Contractor is required to repair, replace or substitute Product, Commodities, parts or components under the Solicitation, the Contract or the Purchase Order, the repaired, replaced or substituted Commodities shall be subject to all the same terms and conditions for new Products and Commodities. Replaced or repaired components or parts 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 Authority in its discretion. All proposed substitutes and remanufactured parts or components for the original manufacturers installed parts or components must be approved by the Authority in writing before installation. The part or component shall be equal to or of better quality than the original part or component being replaced.

9. ACCEPTANCE OF WORK, PRODUCTS OR COMMODITIES. Unless otherwise provided by mutual written agreement of the Authority and the Contractor, Authority shall have sixty (60) days from the date of delivery to accept Commodities or Products, unless the Contractor is responsible for installation, in which case the sixty day period shall run from completion of installation of the Commodities or Product. The Authority's failure to provide a Letter of Acceptance or rejection by the end of the period provided in this paragraph constitutes acceptance by the Authority of the Commodities or Product as of the expiration of that period. For Construction Services, the Work and any Products shall be deemed accepted by the Authority only upon its issuance of a Certificate of Completion.

Unless otherwise provided by mutual agreement of the Authority and the Contractor, Authority shall have the option to run testing on the Work, Product, facilities or materials constructed, installed or provided for Construction Services, prior to acceptance, such tests and data sets to be specified by the Authority or its designee. Where using its own data or tests, the Authority must have the tests or representative set of data available from Contractor up prior to testing. This demonstration will take the form of a documented installation test, capable of observation by the Authority, and shall be made part of the Contractor's Documentation. The test data shall remain accessible to the Authority after completion of the test and for a period of six months after final payment for the Work.

In the event that the documented installation test cannot be completed successfully within a specified acceptance period, and the Contractor is responsible for the delay, Authority shall have the option to cancel the Contract in whole or in part, or to extend the testing period for another sixty (60) day increment. Authority 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 Authority for damages, loss of profits, expenses, or other remuneration of any kind.

Costs and liabilities associated with a failure of the Product to perform in accordance with the functionality tests or Specifications and, if applicable, the Technical Exhibits, 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 Authority's agents or employees. Said costs shall include costs incurred at the direction or recommendation of Contractor.

10. OWNERSHIP/TITLE TO PROJECT DELIVERABLES. Contractor acknowledges that it is commissioned by the Authority to perform Services detailed in the Contract or Purchase Order. Unless otherwise specified in writing in the Contract or Purchase Order, ownership and/or license rights shall pass to Authority upon its acceptance. Effective upon creation of Custom Product or Custom Commodities, Contractor hereby conveys, assigns and transfers to Authority the sole and exclusive rights, title and interest in the Custom Product or Custom Commodities, 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 Product or Customer Commodities 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 in the course of Contractor's business.

If the Authority elects to take a non-exclusive perpetual license in a Custom Product or Custom Commodities in lieu of exclusive ownership and title the Authority will notify Contractor in writing and the appropriate license agreement shall be executed promptly. If the Authority requires financing as a condition precedent to commencement of the Work, the Authority, in its discretion, either will delay execution of a Contract or delay issuance of the Notice to Proceed or Purchase Order, until such financing has been obtained. Any provisions required in connection with any Authority financing, will be included in the Contract or a Contract Amendment.

11. INSTALLATION/STORAGE. Where installation for the Work or of a Product or Commodities is required, Contractor shall be responsible for placing and installing the equipment in the locations specified by the Authority. All materials, machinery and equipment used in the installation shall be of good quality and shall be free from any and all defects which would mar the appearance of the machinery or equipment or render it structurally unsound. Installation includes the furnishing of any machinery, equipment, rigging and materials required to install or replace the Product or Commodities or perform the Services in the proper location. The Contractor shall protect the Site from damage for all its and its Subcontractors' Work and shall repair damages or injury of any kind caused by the Contractor, its employees, officers, Subcontractors or agents. If any alteration, dismantling or excavation, etc. is required to effect installation, the Contractor shall thereafter promptly restore the structure or Site to its original condition at its own costs and expense. Work shall be performed so as to cause the least inconvenience to the Authority 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. Where permitted under the Solicitation or Contract, or authorized in writing in advance by the Authority or its Engineer, materials, equipment, machinery or supplies may be stored at the Authority's Site at the Contractor's sole risk.

12. EMPLOYEES/SUBCONTRACTORS/AGENTS. All employees, Subcontractors or agents performing Work under the Contract must be trained technicians who meet or exceed the technical and training qualifications set forth in the Procurement Documents and must

comply with all security and administrative requirements of the Authority. The Authority reserves the right to conduct a security background check or otherwise approve any employee, Subcontractor or agent furnished or used by Contractor and to refuse access to or require replacement of any personnel for cause, including but not limited to, technical or training qualifications, quality of Work, change in security status or non-compliance with Authority's security or other requirements. The Authority's review of personnel shall not relieve the Contractor of its obligation to perform all Work in compliance with the Contract and Procurement Documents. The Authority reserves the right to reject and/or bar from the facility for cause any employee, Subcontractor, or agents of the Contractor.

The Authority reserves the right to reject any proposed Subcontractor, assignee or supplier for bona fide business reasons, which may include, but are not limited to: that the proposed transferee is on the Department of Labor's list of companies with which New York State cannot do business; the Authority determines that the company is not qualified; unsatisfactory contract performance or service has been previously provided; or attempts were not made to solicit Minority and Women's Business Enterprises (M/WBE) contractors for the subcontract.

13. Left Blank Intentionally

14. BONDS - BID, PERFORMANCE AND PAYMENT.

A. Unless the Procurement Documents provide otherwise, each Bidder/Proposer is required to furnish with its Bid/Proposal, without additional cost to the Authority, cash, bond or negotiable irrevocable letter of credit in the amount of 5% of its Bid, including any Additive Items, as security therefore.

B. Each Contractor to whom a Bid/Proposal and Contract is awarded shall provide both the Labor and Materials Payment Bond and the Performance Bond, or, in the sole discretion of the Authority if specified in the Solicitation, another form of security acceptable to the Authority, for the faithful performance of the Contract in the full amount thereof. All such Bonds or other security (if applicable) shall be in the form prescribed by or acceptable to the Authority.

15. SUSPENSION OF WORK. The Authority, in its sole discretion, reserves the right to suspend the Work and any or all activities under the Contract or Purchase Order, at any time, in the best interests of the Authority. In the event of such suspension, the Contractor will be given a formal Written Notice as specified in the Contract. Examples of the reason for such suspension include, but are not limited to, a budget freeze on Authority spending, declaration of Emergency, violation of the terms and conditions of the Contract or the Contract Documents, or other such circumstances. Upon issuance of such Written Notice, the Contractor is not to accept any Purchase Orders or provide any Commodities, Product or Work, and shall comply with the suspension order. Activity may resume at such time as the Authority issues a formal Written Notice authorizing a resumption of Work.

16. TERMINATION.

The Authority may terminate the Contract or Purchase Order for the reasons stated in the Standard Terms and Conditions, the Contract Documents, the Contract, Purchase Order and as set forth in this Section 16.

A. For Cause: The Contract or Purchase Order may be terminated by the Authority at the Contractor's expense where Contractor becomes unable or incapable of performing the Work, or meeting any requirements or qualifications set forth in the Contract or Purchase Order, or for non-performance, or upon a determination that Contractor is non-Responsible. In such event, the Authority may cause the Work to be completed in any manner as it may deem advisable and pursue available legal or equitable remedies for breach.

B. For Convenience: The Contract or Purchase Order may be terminated at any time by the Authority for convenience upon sixty (60) days Written Notice without penalty or other early termination charges due. Such termination shall not affect the validity of Purchase Orders placed or Work performed under the Contract prior to the date of such termination.

17. SAVINGS/FORCE MAJEURE.

A. Unless otherwise provided in the Contract, Contractor shall not be responsible for delay resulting from a Force Majeure Event. In the event Contractor believes a delay will result from a Force Majeure Event, it shall notify the Authority in writing by hand delivery or by certified or registered mail, of the delay or potential delay, the causes thereof, and the estimated length of the delay. Such Written Notice must be provided either (i) within ten (10) calendar days after the cause which creates or will create the delay first arose if the Contractor could reasonably foresee that a delay could occur by reason thereof; or (ii) if the delay is not reasonably foreseeable, within five (5) calendar days after the date the Contractor first had reason to believe a delay could result. The foregoing shall constitute the Contractor's sole remedy or excuse with respect to delays. In the event performance is suspended or delayed, in whole or in part, by reason of any a Force Majeure Event and proper notification is given the Authority, any performance so suspended or delayed shall be performed by the Contractor at no increased cost to the

Authority, promptly after such Force Majeure events have ceased to exist unless it is determined in the sole discretion of the Authority that the delay will significantly impair the value of the Contract to the Authority, whereupon the Authority may:

- i. Accept allocated performance, services, Work or Commodities from the Contractor. The Contractor, however, hereby agrees to grant preferential treatment to Authority with respect to any such allocations; and/or
- ii. Obtain from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of the Product, Commodities, Services or Work that are the subject of the delay, which costs and expenses incurred by or on behalf of the Authority may be offset or deducted from amounts due or to become due Contractor on the same or another transaction ; or
- iii. Terminate the Contract or Purchase Order, or, if practical for the Authority, terminate the portion thereof that is subject to delays, and thereby discharge any unexecuted portion of the relative part.

B. Notwithstanding anything to the contrary, Contractor must complete the Project on or before the Outside Completion Date, unless the Authority, in its sole discretion, expressly extends the date in a written Contract Amendment.

C. In addition, the Authority reserves the right, in its sole discretion, to make an equitable adjustment in the Contract or Purchase Order, or the terms and/or pricing should Extreme and Unforeseen Market Volatility affects pricing or the availability of Products, Commodities or supply.

18. CONTRACT BILLINGS. Contractor shall provide complete and accurate billing invoices to the Authority in order to receive payment for itself and its Subcontractors. Billings must contain all information required by the Authority, and shall not be submitted more than once per month unless otherwise specified in the Contract Documents. The Authority shall render payment in accordance with ordinary Authority procedures and practices. Payment shall be made by the Authority in such amounts as expressed in the Procurement Solicitation and the applicable Contract. Invoices must be billed directly by Contractor on invoices/vouchers in forms acceptable to the Authority, together with complete and accurate supporting documents for all amounts billed as required by the Authority.

Submission of an invoice and payment thereof shall not preclude the Authority from reimbursement or demanding a price adjustment in any case where the Product or Commodities delivered or Work performed deviates from the terms and conditions of the Contract or applicable Purchase Order.

19. DEFAULT – BY THE AUTHORITY.

A. In the event Authority fails to make payment to the Contractor for Commodities or Work delivered, accepted and properly invoiced, within 60 days of the Letter of Acceptance or Certificate of Completion, the Contractor may, upon 10 days advance Written Notice to the Authority and the Authority’s contact official, suspend additional shipments of Commodities or provision of services or Work to Authority until such time as reasonable arrangements have been made and assurances given by such Authority for current and future Contract payments.

B. Notwithstanding the foregoing, the Contractor shall, at least 10 days prior to declaring a breach of contract by Authority, by personal delivery, certified or registered mail, notify both the Authority and the Authority’s designated contact for the Project, of the specific facts, circumstances and grounds upon which a breach will be declared for the purpose of allowing the Authority to cure the claimed breach. It is understood, however, that if the Contractor’s basis for declaring a breach is insufficient, the Contractor’s declaration of breach and failure to service the Authority and the Authority’s contact official, shall constitute a breach of its Contract and the Authority may thereafter utilize any remedy available at Law or equity.

20. INTEREST ON LATE PAYMENTS.

A. By Authority: The payment of interest on certain payments due and owed by a State agency may be made in accordance with Article 11-A of the *State Finance Law* and Title 2 of the New York Code of Rules and Regulations, Part 18 (Implementation of Prompt Payment Legislation).

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

21. REMEDIES FOR BREACH. It is understood and agreed that all rights and remedies of the Authority afforded below shall be in addition to all remedies or actions otherwise authorized or permitted by Law or in equity and as provided in the Contract and the Contract Documents:

A. Cover/Substitute Performance. In the event of Contractor's breach, the Authority may, with or without formally bidding same: (i) Purchase from other sources, or retain other contractors; or (ii) If, after making reasonable attempts, under the circumstances then existing, to timely obtain acceptable Service or acquire replacement Product, Commodities or Work of equal or comparable quality, the Authority is unsuccessful, the Authority may acquire acceptable replacement Product, Commodities, Work or Service of lesser or greater quality. Such acquisition may, in the discretion of the Authority, be deducted from the Contract quantity and payments due or to become due Contractor on the same or another transaction.

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

C. Reimbursement of Costs Incurred. The Contractor agrees to reimburse the Authority promptly for any and all additional costs and expenses incurred for acquiring acceptable Work, Services, and/or replacement Product or Commodities. Should the cost of cover be less than the Contract or Purchase Order 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 or its Subcontractors, all costs and expenses expended or incurred by the Authority in connection therewith, including reasonable attorney's fees, actual court costs and filing fees, shall be paid by the Contractor.

D. Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the Contract or Purchase Order, in addition to its other rights, the Authority also may rent substitute equipment temporarily. Any sums expended for such rental shall, upon demand, be reimbursed to the Authority promptly by the Contractor or deducted by the Authority from payments due or to become due the Contractor on the same or another transaction.

E. Deduction/Credit. Sums due as a result of these remedies may be deducted or offset by the Authority 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 Authority the amount of such claim or portion of the claim still outstanding, on demand. The Authority reserves the right to determine the disposition of any rebates, settlements, restitution, liquidated damages, etc., which arise from the administration of the Contract.

F. Fee Refund. In the event that a Purchase Order is cancelled for breach, Authority shall be entitled to a refund of any fees paid by Authority for usage or services prospectively from the date of breach.

22. ASSIGNMENT OF CLAIM. Contractor hereby assigns to the Authority any and all its claims for overcharges associated with the Contract and any Purchase Orders that may arise under the antitrust Laws of the United States, 15 U.S.C. Section 1, et seq. and the antitrust Laws of the State of New York, G.B.L. Section 340, et seq.

23. TOXIC SUBSTANCES. Each Contractor furnishing a toxic substance as defined by Section 875 of the *Labor Law*, shall provide Authority 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 user agency representative.

24. INDEPENDENT CONTRACTOR. It is understood and agreed that the legal status of the Contractor, its Subcontractors, agents, distributors, resellers, officers and employees under the Contract is that of an independent Contractor, and in no manner shall any be deemed employees of the Authority, and shall not be entitled to any of the benefits associated with such employment. The Contractor agrees, during the term of this Contract, to maintain at Contractor's expense, those benefits to which its employees would otherwise be entitled by Law, including health benefits, and all necessary insurance for its employees, including worker's compensation, disability and unemployment insurance, and to provide the Authority with certification of such insurance upon request. The Contractor remains responsible for all applicable federal, state and local taxes, and all FICA contributions.

25. SECURITY/CONFIDENTIALITY. Contractor warrants, covenants and represents that it will comply fully with all security procedures of the Authority in performance of the Contract. Contractor further warrants, covenants and represents that any confidential information obtained by Contractor, its agents, distributors, resellers Subcontractors, officers, 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 Authority, or received from another third party, will not be divulged to any third parties. Contractor shall not be required to keep confidential any such confidential material which is publicly available through no fault of Contractor, independently developed by Contractor without reliance on confidential information of the Authority, or otherwise obtained under the Freedom of Information Act or other applicable New York State Laws and Regulations. This warranty shall survive termination of this Contract. Contractor further agrees to take appropriate steps as to its personnel, agents, officers and any Subcontractors regarding the obligations arising under this clause to insure such confidentiality.

26. COOPERATION WITH THIRD PARTIES. The Contractor shall be responsible for fully cooperating with any third party, including but not limited to any General Contractor, other contractors, all Subcontractors, Engineers, agents and designees of the Authority, relating to delivery of Product or Commodities, the Project or coordination of Work or Services.

27. WARRANTIES AND GUARANTEES. Where Contractor or the manufacturer/developer of Products or Commodities generally offers additional or more advantageous warranties than set forth below or in the Solicitation, Bid, Contract or Contract Documents, Contractor shall offer or pass through any such warranties to Authority.

Contractor hereby agrees, warrants, and represents to the Authority as follows:

A. Product & Commodities Performance. Product and Commodities delivered pursuant to the Contract or Purchase Order conforms to the Procurement Specifications, Contract Documents, the Contract, Purchase Order, and any performance standards, and the Documentation fully describes the proper procedure for using the Products, Commodities or Services.

B. Title and Ownership Warranty. Full ownership, clear title free of all liens, and/or that Contractor has obtained on behalf of Authority perpetual license rights to use the Product and Commodities for the purposes of this Contract or individual Purchase Order. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor fully indemnifies the Authority for any loss, damages or actions arising from a breach of said warranty without limitation. Authority may require Contractor to furnish appropriate written documents establishing the above rights and interests as a condition of payment. Authority's request or failure to request such documents shall not relieve Contractor of liability under this warranty.

C. Contractor Compliance. To pay, at its sole expense, all applicable permits, licenses, tariffs, franchises, right of way fees, pole attachment fees, tolls and other fees and give all notices and comply with all Laws in conjunction with the performance of obligations under the Contract, Purchase Order and Contract Documents. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of the Authority that it meets or exceeds all requirements of the Bid/Contract and any applicable Laws, including but not limited to, permits, insurance coverage, licensing, Bonds, proof of coverage for workman's compensation, and shall provide such proof as required by the Authority. Failure to do so may constitute grounds for the Authority to cancel or suspend a Contract or Purchase Order, in whole or in part, or to take any other action deemed necessary by the Authority.

D. Product/Commodities Warranty. Unless recycled or recovered materials are available and authorized in the Solicitation, Product and Commodities offered shall be standard new equipment, current model or most recent release of regular stock product with all parts regularly used with the type of equipment offered; and no attachment or part has been substituted or applied contrary to the manufacturer's recommendations and standard practice.

E. Components or deliverables specified and furnished by or through Contractor shall individually, and where specified and furnished as a system, be substantially uninterrupted or error-free in operation and guaranteed against faulty material and workmanship for the warranty period, or for a minimum of one (1) year from the date of the Letter of Acceptance for Commodities or Products and Certificate of Completion for Services whichever is longer. During the warranty period for the Project, defects in the Products, Commodities, the Work, Services workmanship shall be repaired or replaced by Contractor at no cost or expense to Authority. Contractor shall extend the project warranty period for individual component(s), or for the System as a whole, as applicable, by a cumulative period of time equal to another year after the date of the notification until repairs and replacements are completed.

F. Where Contractor or a third party manufacturer markets any components or deliverables in connection with the Project, the Work, the Contract or Purchase Order that is 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 set forth in this Section 27 and the Contract Documents. Where such standard commercial warranty overlaps Contractor's required warranties, Contractor shall be responsible for the coordination with the other third party manufacturer(s) for warranty repair or replacement of the Product or Commodities.

G. Where Contractor or a third party manufacturer markets any components or deliverables in connection with the Project, the Work, the Contract or Purchase Order that is with a standard commercial warranty which goes beyond the Contractors Warranty periods, Contractor shall notify the Authority in writing and shall pass through the manufacturer's standard commercial warranty to the Authority at no additional cost, expense or charge; provided, however, that Contractor shall not be responsible for coordinating services under the third party extended warranty after expiration of Contractor's Warranty periods.

H. Replacement Parts Warranty. If during the Warranty periods faults develop, the Contractor shall promptly repair or, upon demand, replace the defective Product, Commodities, unit or component part affected. All costs for labor, material and transportation incurred for such repair or replacement during the Warranty period shall be borne solely by the Contractor, and the Authority shall in

no event be liable or responsible therefore. All repairs and replacements under the Warranty shall be guaranteed for the greater of: (i) the Warranty period as extended pursuant to this Section 27, or the longer periods applicable for the manufacturer's warranty or the standard commercial warranty period.

I. Virus Warranty. Licensed software and other technology used in connection with the Project shall contain no known viruses. Contractor is not responsible for viruses introduced by software used by it or its Subcontractors. Contractor is responsible, at its sole cost and expense, for obtaining and maintaining all intellectual and other rights required or appropriate for any licensed software and technology provided to or used on behalf of the Authority for the Project.

J. Workmanship Warranty. Contractor warrants that all Work, Products and Commodities for the Project and furnished by or through Contractor meet the completion criteria set forth in the Specifications and, if applicable, the Technical Exhibits, the Contract Documents, Purchase Order or Contract, as applicable, and that all Work and Services will be provided in a workmanlike manner in accordance with industry standards.

K. Survival of Warranties. All Warranties set forth in this Section 27 are deemed to be incorporated in the Contract and each Purchase Order, without further act or document, and the Warranties shall survive termination of the Contract and Purchase Orders.

THE WARRANTIES SET FORTH IN THE SECTION 27 ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Misuse, accident, unsuitable physical or operating environment, modification or operation inconsistent with standard industry practice, or failure caused by a product for which Contractor is not responsible may void the warranties.

28. INDEMINIFICATION AND LIMITATION OF LIABILITY.

A. EXCEPT AS PROVIDED IN PARAGRAPHS B AND C OF THIS PARAGRAPH 11, UNLESS OTHERWISE PROVIDED IN THE CONTRACT OR SOLICITATION, NEITHER THE AUTHORITY OR CONTRACTOR AND NONE OF THEIR RESPECTIVE CONTRACTORS, SUBCONTRACTORS OR CUSTOMERS SHALL BE LIABLE TO ANY OTHER PARTY OR ANY OTHER PARTY'S AFFILIATES, CONTRACTORS, SUBCONTRACTORS OR CUSTOMERS OR TO ANY THIRD PARTY FOR ANY CONSEQUENTIAL DAMAGES, WHETHER OR NOT ARISING FROM SOLE, JOINT OR CONCURRENT NEGLIGENCE, STRICT LIABILITY, VIOLATION OF LAW, BREACH OF CONTRACT, BREACH OF WARRANTY, OR ANY OTHER BASIS OR THEORY, AND WHETHER OR NOT FORESEEABLE AND EVEN IF SUCH PARTY OR ITS CONTRACTORS, SUBCONTRACTORS OR CUSTOMERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

B. Contractor shall be fully liable for the actions of its agents, employees, or Subcontractors and shall fully indemnify and save harmless the Authority, its officers, employees designees, agents and representatives from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by Contractor, its agents, employees, or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss or damage due to the negligent act or failure to act of the Authority.

C. Contractor will indemnify, defend and hold the Authority harmless, *without limitation*, from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs which may be finally assessed against the Authority in any action for infringement of a United States Letter Patent with respect to the Work, Product or Commodities furnished, or of any copyright, trademark, trade secret or intellectual property right, provided that the Authority shall give the Contractor: (i) prompt Written Notice of any action, claim or threat of infringement suit, or other suit; (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense; and (iii) assistance in the defense of any such action at the expense of Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the Authority may require Contractor, at its sole expense, to submit such information and documents, including formal patent attorney opinions, as the Authority shall require.

D. The Contractor shall not be obligated to indemnify that portion of a claim or dispute based upon Product or Commodities that: (i) were modified or altered by the Authority without authorization in the Contract Documents or manufacturer's specifications; (ii) contrary to the manufacturer's specifications, are used by the Authority in combination with other products or commodities that were not furnished by Contractor; (iii) are used by the Authority in other than the specified operating conditions and environment.

E. In addition to the foregoing, if the use of any Product or Commodities, or parts and components 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 as the Authority's exclusive remedy to take action in the following order of precedence, to: (i) procure for the

Authority's continued right of use ; (ii) modify the applicable item so that it becomes non-infringing equipment of at least equal quality and performance; (iii) replace the applicable item with non-infringing ones of at least equal quality and performance; or (iv) if none of the foregoing is commercially reasonable or acceptable to the Authority, then provide monetary compensation to the Authority up to the dollar amount of the total Bid.

F. For all other claims against the Contractor under any individual Purchase Order where liability is not otherwise set forth in the Contract or Purchase Order as being "without limitation", and regardless of the basis on which the claim is made, Contractor's liability under a Purchase Order or Contract for direct damages shall be the greater of: (i) \$100,000; (ii) the dollar amount of the Contract or applicable Purchase Order; or (iii) two (2) times the charges billed by the Contractor under the Contract or applicable Purchase Order. The Authority may, in addition to other remedies available to it under the Contract, Contract Documents, at Law or in equity and upon Written Notice to the Contractor, retain such monies from amounts due or to become due Contractor on the same or another transaction, or may proceed against either or both Bonds, as the Authority deems necessary to satisfy any claim for damages, penalties, costs and the like asserted by the Authority or any of its designees.

29. AUDIT. The Authority, or its duly authorized agent or designee, shall have access to and copies of the Contractor's and its Subcontractors' records, including any books, computer tapes, disks or programs, electronically stored emails, documents, Drawings, invoices or documents relating to the Project, and all or material pertaining to Work performed and Products required under the Contract, or Commodities required under any Purchase Order, at no cost to the Authority, to determine and verify the compliance with all contractual terms and conditions. The Authority shall be granted access to such records at all reasonable times during the contract period and for three (3) years thereafter.

30. INSURANCE. Prior to execution of the Contract and the commencement of Work or prior to the Authority's issuance of the initial Purchase Order, Contractor shall procure and maintain throughout the life of the Contract or period insurance of the kinds and in the amounts specified in the Procurement Solicitation and shall name the Authority and its designees as additional insureds. If the Contract requires any additional coverage or insurance, or corrections and changes to the certificates of insurance submitted, Contractor shall obtain it prior to the Authority's execution of the Contract.

All claims against the Contractor or its Subcontractors, alleged to arise from the performance of the Work, conditions incidental thereto, or the Products or Commodities must be investigated immediately by the insurer furnishing the applicable coverage. Contractor shall require the insurer to furnish the Authority with written reports following the investigation and the disposition of each claim or demand made. A status report must be provided to Authority on all claims remaining more than two months outstanding.

31. VENUES AND DISPUTES. The exclusive means of disposing of any dispute arising under a contract with the Authority, which is not resolved by mutual agreement, shall be by a New York State Court of competent jurisdiction located within Jefferson County, New York. There shall be no right to binding arbitration. Pending final resolution of a dispute, the Contractor must proceed diligently with performance under the Contract or Purchase Order. The Contractor waives any dispute or claim not made in writing and received by the Authority within thirty (30) days of the occurrence giving rise to the dispute or claim. Contractor's Written Notice of any such claim must be in writing for a sum certain and must be fully supported by all cost and pricing information and all relevant written information and receipts.

32. RESPONSIBILITY OF THE AUTHORITY. The Authority shall decide questions which may arise as to the quality and acceptability of Product used, Work performed, rate of progress of Work, interpretation of Drawings, Documentation, Specifications and Technical Exhibits and all questions as to the acceptable fulfillment of the Contract or Purchase Order on the part of the Contractor.

A. Observation of the Work: The Authority or its designee may make periodic visits to the site to observe the progress and the quality of the executed Work. All Product, materials, facilities and each part or detail of the Work shall be subject at all times to observation by the Authority and its designees, and the Contractor will be held strictly to the intent of the Contract and Contract Documents in regard to quality of materials, facilities and workmanship, and the diligent execution of the Contract. Observations may be made at the site or at the source of material supply, whether mill, plant or shop. Without cost, expense or charges, the Authority shall be allowed access to all parts of the Work and shall be furnished with such information and assistance by the Contractor as is required for the Authority to make its observations and construction review.

B. Acceptability of Work: The Authority's decision as to the acceptability or adequacy of the Work and Product shall be final and binding upon the Contractor. The Contractor agrees to abide by the Authority's decision relative to the acceptability of the Work and Products. Contractor shall present any information relative to the Authority's decision in writing but the Authority's decision shall be final.

C. The Authority shall not be responsible for the Contractors or any Subcontractor's construction means, methods, controls,

techniques, sequences, procedures or construction safety or any of their failures to complete the Work or provide the Products or Commodities in accordance with the Contract, Purchase Order and Contract Documents.

D. Oral Agreements: No oral order, objection, claim or notification by the Authority or the Contractor shall affect or modify any of the terms or obligations contained in any of the Contract, Purchase Order and Contract Documents, and none of the provisions of the Contract, Purchase Order or Contract Documents shall be held to be waived or modified by reason of any act whatsoever, other than by an executed Contract Amendment signed by the Authority and the Contractor or a revised Purchase Order issued by the Authority, and no other evidence to support a claim of changes, amendment or modification of the Contract, Purchase Order or Contract Documents or waiver of any of provisions shall be introduced in any action or proceedings.

33. INSPECTION OF WORK. Inspection services, performed by the Authority pursuant to Contract and the Contract Documents, whether of Work, Services or Product, and whether performed prior to, during or after completion of the Services, are performed by the Authority or its designee solely for the purpose of determining general conformity of the Work and Product with the Contract, Contract Documents, Drawings, Specifications, and, if applicable, the Technical Exhibits.

Nothing contained in the Standard Terms, Conditions and Mandatory Clauses shall create, or be deemed to create: (i) any duty upon the Authority to supervise the Work, the Construction Services or construction procedures and safety procedures followed by any Contractor or Subcontractor or their respective employees or agents or by any other persons at the job site; or (ii) any liability whatsoever by the Authority to any employees or any Contractor or Sub-contractor or to any other person.

34. NO WAIVER OF AUTHORITY RIGHTS. Any: (i) inspection or approval by the Authority, or any of its employees/agents/designees; (ii) order, measurement or certification; (iii) payment for, or acceptance of the whole or any part of the Work, Product or Commodities by the Authority; (iv) order of the Authority for payment of money; (v) possession taken by the Authority; or (vi) extension of time, shall operate as a waiver of any provision of the Contract, Contract Documents or Purchase Order or of any right to Warranty or damages herein provided or of any power herein reserved. Neither shall a waiver of any breach of the Contract be construed to be a waiver of any other or subsequent breach. All remedies in the Contract shall be construed as being cumulative, in addition to each and every other remedy herein contained. The Authority shall have any and all legal and equitable remedies and recourse available to it by Law, notwithstanding anything to the contrary.

III. MANDATORY CLAUSES

The parties to any Contract or other agreement with the Authority for all Procurements shall be bound by the following Mandatory Clauses which are hereby made a part of all Contracts (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee, vendor, supplier or any other party):

1. **EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the Authority 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 previous consent, in writing, of the Authority and any attempts to assign the contract without the Authority's written consent are null and void. The Contractor may, however, assign its right to receive payment without the Authority's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. **WORKERS' COMPENSATION BENEFITS.** 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.

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

5. **WAGE AND HOURS PROVISIONS.** If this is a public works 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 Authority of any Authority approved sums due and owing for Work done upon the project.

6. **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 warrants, under penalty of perjury, that its Bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its Bid, an authorized and responsible person executed and delivered to the Authority a non-collusive bidding certification on Contractor's behalf.

7. **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 Authority Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

8. **SET-OFF RIGHTS.** The Authority shall have all of its common law, equitable and statutory rights of set-off. These rights shall

include, but not be limited to, the Authority '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 Authority with regard to this contract, any other contract with the Authority, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the Authority for any other reason including, without limitation, fee delinquencies or monetary penalties relative thereto. The Authority shall exercise its set-off rights in accordance with normal Authority practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the Authority, its representatives, or the State Comptroller.

9. 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 Authority, 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 Authority 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 Authority 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 Authority's right to discovery in any pending or future litigation.

10. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

(a) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. All invoices or Authority standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to Authority must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Authority standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(b) PRIVACY NOTIFICATION.

(1) The authorization to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authorization 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 Authority is mandatory. The principal purpose for which the information is collected is to enable the Authority 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 Authority 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 Authority in order 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 Authority's accounting system, and may be maintained in the New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, AESOB, Albany, New York 12236.

11. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law, 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 Authority; or (ii) a written agreement in excess of \$100,000.00 whereby the Authority 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 Authority, as 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:

(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, 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, upgrading, 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 Authority 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.

(d) 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; or (iii) banking services, insurance policies or the sale of securities. The Authority shall consider compliance by a Contractor or Subcontractor with the requirements of any federal Law concerning equal employment opportunity which effectuates the purpose of this section. The Authority 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 Governor's Office of Minority and Women's Business Development pertaining hereto.

12. CONFLICTING TERMS. Unless otherwise stated in the Contract, conflicts between or among Contract Documents shall be resolved in the following order of precedence:

- (i) Mandatory Clauses
- (ii) Procurement Documents
 - a. Procurement Specifications prepared by the Authority
 - b. Addenda to Procurement Specifications
- (iii) Specifications, and, if applicable the Technical Exhibits
- (iv) Drawings
- (v) General Terms & Definitions
- (vi) Standard Terms & Conditions
- (ix) Contractor's Bid or Proposal

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

14. NO ARBITRATION. The Authority Contractor shall make a good faith effort to resolve any dispute involving this contract. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily required), but must, instead, be heard in a court of competent jurisdiction of the State of New York sitting in Jefferson County.

15. 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 Authority's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the Authority, in writing, of each and every change of address to which service of process can be made. Service by the Authority to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

16. 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 State Finance Law §165. (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 Authority.

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 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 Authority; 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 Authority.

17. 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.

18. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of Authority 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
30 South Pearl St. -- 7th Floor
Albany, New York 12245
Telephone: 518-292-5220

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
30 South Pearl St. -- 2nd Floor
Albany, New York 12245
<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing each Bid Proposal and 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-Owned Business Enterprises and Women-Owned Business Enterprises, on this project, and has retained written documents showing all these efforts to be provided upon request to the Authority and/or 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 prepare and maintain written records these efforts and to provide said records to the State upon request; and

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

20. CLAUSES REQUIRED BY LAW. Clauses required by Law to be inserted in this document shall be deemed to be incorporated here and the document shall be read and enforced as though they were included herein and if through mistake or otherwise, any such provision is not inserted or is not correctly inserted, then upon the application of either party, the contract shall forthwith be physically amended to make such insertion.

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

22. 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 Authority, the Department of Civil Service and the State Comptroller.

23. PROCUREMENT LOBBYING LAW. Pursuant to State Finance Law 139-j and 139-k, this solicitation includes and imposes certain restrictions on the communications between the Authority and a Bidder/Proposer during the procurement process. A Bidder/Proposer is restricted from making contacts from the earliest notice of intent to solicit offers through contract award (“restricted period”) to other than designated staff unless it is a contract that is included among certain statutory exceptions set forth in State Finance Law 139-j(3)(a). Designated staff are identified as the Primary Point of Contract for this solicitation which is included in the Notice to Bidders. Authority employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Bidder/Proposer pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two finding within a 4 year period; the Bidder/Proposer is debarred from obtaining governmental Procurement Contracts. To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

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

25. IRAN ENERGY SECTOR DIVESTMENT. Bidder/Proposer hereby represents that said Bidder/Proposer is in compliance with New York State Public Authorities Law Section 2879-c entitled “Iranian Energy Sector Divestment”, in that said Bidder/Proposer has not:

- a) Provided goods or services of \$20 million or more in the energy sector of Iran including but not limited to the provision of oil or liquefied natural gas tankers or products used to construct or maintain pipelines used to transport oil or liquefied natural gas for the energy sector of Iran; or
- b) Acted as a financial institution and extended \$20 million or more in credit to another person for forty-five (45) days or more, if that person’s intent was to use the credit to provide goods or services in the energy sector in Iran.

Any Bidder/Proposer who has undertaken any of the above and is identified on a list created pursuant to Section 165-a (3) (b) of the New York State Finance Law as a person engaging in investment activities in Iran, shall not be deemed a Responsible bidder pursuant to Section 103 of the New York State General Municipal Law.

Bidder/Proposer certifies and affirms the following under penalties of perjury: “By submission of this Bid, each Bidder and each person signing on behalf of any Bidder certifies and in the case of a joint Bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief, that each Bidder is not on the list created pursuant to NYS Finance Law Section 165-a (3) (b).”