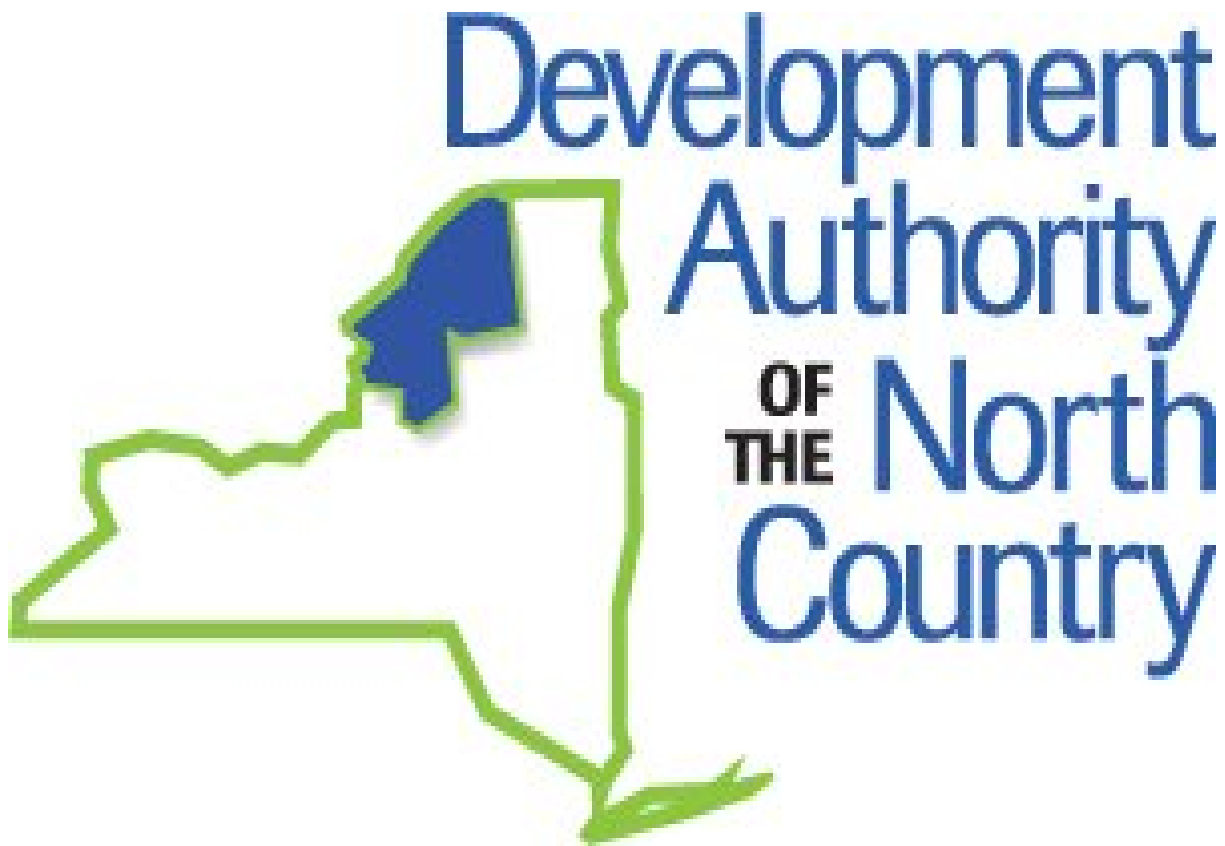


Invitation for Bids
Information Package for
Chemicals



Water/Wastewater & Solid Waste Management Facility

June 26, 2009

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SECTION 1.0 – NOTICE TO BIDDERS

The Development Authority of the North Country is soliciting sealed bids for the purchase and delivery of chemicals necessary for the operation of the Authority's Water/Wastewater & Solid Waste Management facilities. Sealed Bids will be accepted at the Development Authority's Water/Wastewater Offices located at the Warneck Pump Station, 23557 NYS Route 37, Watertown, New York 13601, until 1:15 p.m. on July 17, 2009. All bids will be publicly opened at 1:30 p.m. on July 17, 2009 at the same location. One or more contracts may be awarded to the lowest responsible bidder or bidders submitting a bid which complies with all requirements. For complete details on the scope of services requested and other requirements please visit our website at www.danc.org to download a copy of the Invitation for Bids Information Package or contact Sharon Fitzpatrick at 315/782-8661. All bidders must be in compliance with applicable state and federal requirements. The Development Authority reserves the right to terminate or reduce the scope of the services requested to accommodate budget and/or other business needs. The right is reserved to waive any informalities and to reject any or all bids.

Description: Chemicals, W/WW & SWMF

SECTION 2.0 – INFORMATION TO BIDDERS

2.1 GENERAL REQUIREMENTS

1. Nature of Bid. Bids are being sought for the delivery of chemicals required for the operation of Development Authority of the North Country's Water/Wastewater (W/WW) and Solid Waste Management Facilities (SWMF). See information specific to this bid at paragraphs numbered 26 through 38 and Tables 1 below, and/or in the detailed specifications. For more information, please contact: Bryon Perry, at 23557 NYS Route 37, Watertown, NY 13601; Phone 315/782-8661; Email: bperry@danc.org.

2. Anyone considering bidding must send an email to the contact listed in this bid document. The purpose of this email is to provide your contact information so that you can be notified of any changes prior to the deadline for receipt of bids. Failure to do so absolves the Authority of all responsibility for notification of changes and bidders will be responsible for any errors in such bids due to such changes.

3. Bids should be submitted in a sealed envelope marked with the DANC W/WW & SWMF CHEMICAL BID and the words "SEALED BID" - written on the outside of the envelope. If delivered by mail or courier, such envelope should be placed within the addressed envelope which should be marked "BID DOCUMENTS ENCLOSED". No employee of the Development Authority will be held liable for the premature opening of any bid received not designated as such. All bid pages and signature page should be submitted in duplicate. **Bids submitted by Fax will not be accepted.**

4. Bidder's Checklist. The Bidder's Checklist is provided to assist the Bidder in submitting a complete Bid Package. The Bidder must submit a complete Bidder's Checklist with their submittal. The Bidder must submit all required documents listed on the Bidder's Checklist. Failure to submit a complete bid package may result in disqualification.

5. Delays. Bidders are responsible for timely delivery of their bid to the Development Authority. All bids received after the designated closing time will not be considered.

6. Bid Life. All bids shall remain valid a maximum of Forty-Five (45) days from date of bid opening. Requests for copies of bid results must be submitted in writing.

7. Taxes. No charge will be allowed for federal, state, sales, and excise taxes from which the Development Authority is exempt. Exemption Certificates will be provided upon request.

8. Deviations. Deviations to the specifications must be fully explained, and if judged to be in the best interest of the Development Authority, may be accepted at the sole discretion of the Development Authority. Where an equivalent item is proposed to that specified, the bid must be accompanied by full specifications and a narrative description of the nature of the item proposed as an "equivalent", setting forth how the item is equivalent to that specified by the Development Authority of the North Country. **The Development Authority has standardized on certain**

equipment and materials. If this bid involves any standardized items, they will be identified in the bid documents. Equivalents will not be accepted on items that have been standardized.

9. Equivalency. In submitting a bid, the Bidder is agreeing to provide goods and services consistent with the specifications. Where a brand name or equivalent specification is used in this solicitation, the use of any brand name noted is for the purpose of describing the standard of quality performance and characteristics desired and is not intended to limit or restrict competition. **The Development Authority has standardized on certain equipment and materials. Equivalents will not be accepted on items that have been standardized.**

10. Award. The bid will be awarded to the lowest responsive and responsible Bidder meeting the specifications or providing acceptable deviation (see item 7). Unless noted otherwise the Development Authority reserves the right to award this bid in whole or in part to a single Bidder or to multiple Bidders if deemed to be in the Development Authority's best interest. The Development Authority reserves the right to reject any or all bids deemed not to be in the best interest of the Development Authority at the sole discretion of the Development Authority. An award letter will be issued by the Development Authority. If two or more Bidders submit identical bids as to price, the decision of the Development Authority to award a contract to one of such Bidder shall be final. This contract shall be deemed executory only to the extent of the monies appropriated and available for the purpose of the contract, and no liability on account thereof shall be incurred by the purchaser beyond the amount of such monies. It is understood that neither this contract nor any representation by any public employee or office creates any legal or moral obligation to request, appropriate or make available monies for the purpose of the contract. The bid documents and Notice of Award shall be the agreement between the Development Authority and successful Bidder with respect to the matters dealt with herein, and such shall supersede all other oral and written bids, representations, understandings, and agreements previously made or existing "with respect to" any such matter.

11. Irregularities. It shall be the responsibility of each Bidder to call to the attention of the Development Authority any apparent discrepancy in the specifications or any question of interpretation thereof. Failure to do so constitutes acceptance as written. The apparent silence of this specification as to any details or the omission from it of a detailed description concerning any part shall be interpreted as meaning that only the best commercial practices are to prevail and that only materials and workmanship of first quality are to be used. The Development Authority shall have the right to waive any technical defect, qualification, omission, informality, or irregularity in any bid received if, in its judgment, the best interest of the Development Authority shall thereby be served. The Development Authority reserves the right to "Revise" or "Amend" the bid specification prior to the bid opening date by "Written Addenda."

12. Bid Security. No bid securities are required for this procurement.

Bond Requirements. No bonds are required for this procurement.

13. Legal Requirements. 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.

14. New York State Wage Rate Schedules. If any portion of work being bid is subject to the prevailing wage rate provisions of Labor Law, the Bidder agrees to pay in accordance with the New York State Schedule of Labor Rates. He will conduct his business in strict compliance with New York State Labor Laws, Federal OSHA Laws, and all other laws that apply. Wages paid to workers involved in Public Work contracts shall comply with the provisions of Article 8 (Section 220-223) of the NYS Labor Law.

Applicable Not Applicable

15. Insurance. For all services contracted with Development Authority the successful Bidder shall procure and maintain insurance satisfactory to the Development Authority in the following coverages and amounts:

A. Comprehensive General Liability, including personal injury coverage of \$1,000,000 per occurrence - \$2,000,000 in the aggregate; property damage in the amount of \$500,000 per occurrence and \$1,000,000 in the aggregate.

B. Automobile coverage, with a combined single limit of \$1,000,000.

C. Statutory Workers' Compensation and Disability coverages.

D. BIDDER may provide an umbrella policy to meet coverage limits as set forth above.

E. Insurance not required for this Bid.

The successful Bidder shall arrange with its insurance carrier to have the Development Authority of the North Country, and its officers, employees, and agents listed as additional named insured on all certificates of insurance required for performance of this contract and shall provide proof acceptable to the Development Authority that those amendments to the insurance contract(s) have been accomplished. Notice of policy terminations must be provided to Development Authority of the North Country, 317 Washington Street, Watertown, NY 13601, at least thirty (30) days prior to termination.

16. Indemnification. The successful Bidder agrees to defend, indemnify, and hold harmless the Development Authority of the North Country, its officers, agents, or employees for any and all claims arising which relate to its performance of this bid or any contract arising from the successful bid. It is agreed that the Bidder shall be held responsible for any loss, personal injury, death, and/or damage that may be done or suffered by reason of the Bidder's negligence or failure to perform any of the obligations defined by this bid. The Bidder agrees to defend the Development Authority in any action or suit brought against the Development Authority arising

out of the Bidder's negligence, errors, acts, or omissions under this agreement. The negligence of any agent, servant, or employee of the Bidder is deemed to be the negligence of the Bidder within the meaning of this paragraph.

17. Venues and Disputes. The exclusive means of disposing of any dispute arising under a contract with Development Authority, which is not disposed of by agreement, shall be decided in 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 Bidder must proceed diligently with contract performance. The Bidder waives any dispute or claim not made in writing and received by the Development Authority within thirty (30) days of the occurrence giving rise to the dispute or claim. The claim must be in writing for sum certain and must be fully supported by all cost and pricing information.

18. Shipping. Shipping charges for any order placed with Bidder hereunder shall be only the carrier charge of shipping said order, or parts thereof, actually incurred for shipping the order in the method and using the carrier specified by the Development Authority at the time the order is placed.

19. Term of Agreement. The term of this agreement will be for one year or until re-bid by the Development Authority with an option to extend for sixty (60) days at the sole discretion of the Development Authority or for an additional one (1) year term under the same terms, pricing, and conditions as the original contract award upon agreement of both parties in writing. The Development Authority of the North Country reserves the right to terminate the resulting agreement at any time upon thirty (30) days notice.

20. Assignment of Agreement. Pursuant to the provisions of Section 109 of the General Municipal Law, no Bidder to whom this Contract is granted or awarded, shall assign, transfer, convey, subcontract, or otherwise dispose of all or part of said contract, or of his right, title, and interest herein, including the performance of this contract or the right to receive monies due, or to become due, or of his power to execute this without the prior written consent of the Development Authority of the North Country.

21. Audit. The Development Authority, or its duly authorized agent, shall have access to and copies of the Bidder's records, including any books, computer tapes, disks or programs, or material pertaining to work performed under the contract, at no cost to the Development Authority, to determine and verify the compliance with all contractual conditions. The Development Authority shall be granted access to such records at all reasonable times during the contract period and for three (3) years thereafter.

22. Warranty. In providing goods and services pursuant to this contract seller agrees to be bound by all warranties required by New York State Law including but not limited to the implied warranty of merchantability which states that the goods supplied are for ordinary purposes for which such goods are purchased.

This warranty shall survive beyond termination or expiration of the Agreement.

Nothing in this warranty shall be construed to limit any rights or remedies otherwise available under this Agreement.

In the event of any breach of this warranty, Bidder shall restore the Product to the same level of performance as warranted herein, or repair or replace the Product with conforming Product so as to minimize interruption to Authorized User's ongoing business processes, time being of the essence, at Bidder's sole cost and expense. Bidder shall be responsible for providing all documentation necessary for all applicable manufacturers' warranties to be provided to the Development Authority in full.

23. Please note that Development Authority may access contract pricing available through New York State contracts. If your products or services are offered through this source, please provide applicable pricing and contract number.

24. Requirements Contract. Bidders acknowledge that the Contract that will be entered into as a result of this solicitation will be a Requirements Contract. The Development Authority will have no obligation to the Bidder if no items or services are required. Any quantities which are included in the specification are the present expectations of those who are planning for the Development Authority for the period of the contract. The amount is only an estimate and the Bidder understands and agrees that the Development Authority is under no obligation to the Bidder to buy any amount as a result of having provided this estimate or of having had any normal or otherwise measurable requirement in the past. The Bidder further understands that the Development Authority may require services in excess of the estimated annual contract amount and that such excess shall not give rise to any claim for compensation other than at the unit prices in this Contract.

Applicable Not Applicable

25. Authorization. The Bidder hereby certifies that the undersigned has full and complete authority to execute this bid and agreement and bind the Bidder thereto.

2.2 BID SPECIFIC INSTRUCTIONS & INFORMATION

1. Bidders may submit pricing for any or all of the chemicals listed in Table 1.
2. Chemicals must be delivered to the locations as listed in Table 1. Some chemicals may be delivered on a recurring schedule and others may be ordered as needed.
3. Deliveries must be coordinated in advance since Authority personnel must be present during all deliveries. Delivery hours are between 7:00 a.m. to 12:00 p.m. and 1:00 p.m. to 3:30 p.m. unless prior approval is granted for deliveries outside normal business hours.
4. All chemicals must be NSF certified with certification provided before first delivery. Chemical containers will be labeled in accordance with OSHA & HAZCOM requirements. A

current MSDS will be provided before the first delivery.

5. Certificate of Analysis is required with every shipment.
6. Dry chemicals will be free of lumps, supplied in plastic-lined bags and shrink wrapped to maintain product integrity.
7. Chlorine cylinders must have $\frac{3}{4}$ inch valves and the valves must be compatible with Capital Controls brand cylinder mounted regulators. Valves must be free of corrosion.
8. The Bidder is responsible for clean-up and disposal of any hazardous materials released during a delivery that is due to the Bidder's negligence.
9. The Bidder is responsible for insuring that all employees involved in the handling and delivery of hazardous materials have received all applicable federal, state and local training. Bidder employees involved in delivery must be knowledgeable in spill containment and control methods; be trained in dealing with a chlorine gas leak from a cylinder; and be aware of the Development Authority specific procedures related to emergency evacuation and response in the event of a chlorine leak. Copies of these procedures are available at the Warneck Pump Station and will be reviewed with the Bidder at the time of contract award. *The Bid submittal must include written certification that all employees responsible for the handling and delivery of chemicals associated with this contract have been properly trained according to federal, state and local requirements.*
10. Quantities listed in Table 1 are estimated based on historical usage. These amounts shall not be considered guaranteed. Actual amounts may be more or less than the estimates listed.
11. The Bid must be submitted on Form 2. Costs must be specified on a per unit basis for each of the chemicals specified in Table 1. Container deposits shall be separated from unit price costs and should be noted in the comment section of the Form.
12. The Bidder must include a statement of qualifications and three current customer references.

TABLE 1 – BID ITEMS

<u>Chemical</u>	<u>Estimated Quantity/Year</u>	<u>Estimated Number of Deliveries/Year</u>	<u>Amount Per Delivery/ Container Size</u>	<u>Delivery Address</u>
1) 12.5% Sodium Hypochlorite	1,800 gallons	6	10-30 gallon drums	Fort Drum, Booster Pump Station 2; St. Lawrence Ave.
2) Chlorine Gas	60,000 lbs.	15	2-2000 lbs. cylinders	Warneck Pump Station 23557 NYS Route 37 Pamela, NY
3) 12.5% Sodium Hypochlorite	50 gallons	N/A	10-5 gallon carboys	Deliver to Warneck with 1 ton cylinders as requested
4) 12.5% Sodium Hypochlorite	10 gal.	2	1-5 gallon carboy	DANC Solid Waste Management Facility, 23400 NYS Route 177, Rodman, NY
5) Potassium Permanganate	20 lbs.	1	2-10 lbs container	DANC Solid Waste Management Facility, 23400 NYS Route 177, Rodman, NY
6) FG-10 Anti Foam Emulsion	550 gal.	5	2-55 gallon drums	DANC Solid Waste Management Facility, 23400 NYS Route 177, Rodman, NY

SECTION 3.0 – BID DOCUMENTS

FORM 1 – BIDDER’S CHECKLIST

- 1) Bid Form, Form 2
- 2) Non-Collusive Bidding Certificate, Form 3
- 3) Certification Pursuant to Executive Order 127, Form 4
- 4) Proof of Insurance, Form 6
- 5) Statement of qualifications
- 6) Three current client references
- 7) Safety Requirements:
 - Certification of employee safety training
- 8) NYS Form ST-220. Form can be downloaded from the following Internet address.
<http://www.agmkt.state.ny.us/rfps/VPS7.pdf>

FORM 2 – PRICE BID FORM

BID FOR DANC WATER/WASTEWATER FACILITY CHEMICALS

TO THE DEVELOPMENT AUTHORITY OF THE NORTH COUNTRY (DANC):

The signer of this Bid declares that he or she is fully authorized to submit this bid and thereby bind the person, persons, company, parties or entity named in this Bid, and on whose behalf this Bid is submitted.; that the Bid is in all respects accurate, complete and without known mistakes; and that he has carefully examined the annexed form of Agreement.

If written notice of the acceptance of this Bid is mailed, telefaxed or delivered to the undersigned within thirty (30) days after the date of review of the Bid, or any time thereafter before this Bid is withdrawn, the undersigned will, within five (5) days after the date of such mailing, telefaxing, or delivering of such notice, sign and execute the Contract and return it to the Development Authority.

Pursuant to and in compliance with your Advertisement for Invitation for Bid and the IFB Information Packet relating thereto, the undersigned hereby offers to furnish all labor, materials, supplies, equipment, services and other things required, necessary or proper for, or incidental to the completion of the items identified in the solicitation for bids, and specifically the delivery of chemicals to the facilities listed in Table 1 for the unit prices specified below.

Company Name: _____

Address: _____

Federal Identification No: _____

Area Code/ Telephone No: _____

Area Code/Fax Number: _____

E-mail Address: _____

Web Site: _____

Authorized Signature: _____ Date: _____

Typewritten Name: _____

Title: _____

UNIT PRICE BID FORM

Item No.	Estimated Quantities Per Year	Item With Unit Price Written in Words	Unit Price		Total Amount Based on Estimated Quantities	
			Dollars	Cts.	Dollars	Cts.
1	1,800 gallons	12.5% Sodium Hypochlorite in 30 gallon carboys delivered to Fort Drum, Booster Pump Station 2; St. Lawrence Ave. FOR \$ _____ PER GAL.	\$		\$	
2	60,000 lbs	Chlorine Gas in 2000 lb. cylinder delivered to 23557 NYS Rt. 37, Watertown, NY FOR \$ _____ PER LBS.	\$		\$	
3	50 gallons	12.5% Sodium Hypochlorite in 5 gallon carboys delivered to Warneck Pump Station with chlorine cylinders FOR \$ _____ PER GAL.	\$		\$	
4	10 gallons	12.5% Sodium Hypochlorite in 5 gallon carboys delivered to 23400 NYS Rt. 177, Rodman, NY FOR \$ _____ PER GAL.	\$		\$	
5	20 lbs	Potassium Permanganate in 5 lbs. container delivered to 23400 NYS Rt. 177, Rodman, NY FOR \$ _____ PER LBS.	\$		\$	
6	550 gals	FG-10 Anti Foam Emulsion, or other equivalent, delivered in 55 gallon drums to 23400 NYS Rt. 177, Rodman, NY FOR \$ _____ PER GALLON	\$		\$	

Names of Authorized Representative: _____

Signature of Authorized Representative: _____ Date: _____

FORM 3 - NON-COLLUSIVE BIDDING CERTIFICATE

- (a) 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 his knowledge and belief:
1. The prices in this Bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;
 2. Unless otherwise required by law, the prices which have been quoted in this Bid have not been knowingly, disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and
 3. No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a Bid for the purpose of restricting competition.
- (b) A Bid shall not be considered for award nor shall any award be made where (a) 1., 2., and 3., above have not been complied with; provided, however, that if in any case the Bidder cannot make the foregoing certification, the Bidder shall so state and shall furnish with the Bid a signed statement which sets forth in detail the reasons therefore. Where (a) 1., 2., and 3., above have not been complied with the Bid shall not be considered for award nor shall any award to be made unless the head of the purchasing unit of the political subdivision, public department, agency or official thereof to which the Bid is made, or his designee determines that such disclosure was not made for the purpose of restricting competition.
- (c) The fact that a Bidder (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being Bid, does not constitute, without more, a disclosure within the meaning of paragraph (a) of this certification.
- (d) Any Bid hereafter made to any political subdivision of the State or any public department, agency or official thereof by a corporate Bidder for work or services performed or to be performed or goods sold or to be sold, where competitive Bid is required by statute, rule, regulation, or local law, and where such Bid contains the certification referred to in subdivision one of the section, shall be deemed to have been authorized by the board of directors of the Bid, and such authorization shall be deemed to include the signing and submission of the Bid and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation.

Company Name: _____

By: _____

Title: _____

FORM 4 - CERTIFICATION PURSUANT TO EXECUTIVE ORDER NO. 127

The following persons or organizations are or will be retained, employed or designated on behalf of the Bidder to attempt to influence this procurement process, involving an interest in the Authority's real property, with their financial interest noted:

(If no people are or will be retained, employed or designated on behalf of the Bidder as described above, then check this box and sign the form below.

Name, Address and Phone Number	Place of Principal Employment	Occupation	Financial Interest (Yes or No)
1)			
2)			
3)			
4)			
5)			
6)			

The Bidder shall notify the Authority, in advance, of additions to this list. The Bidder has not, within the past five (5) years, received a finding of non-responsibility by any State agency due to intentionally providing false or incomplete information with respect to Executive Order No. 127.

Certification. The Bidder certifies that all information provided under Executive Order No. 127 is complete, true and accurate.

Bidder Signature

FORM 5 – BID BOND FORM

NOT APPLICABLE FOR THIS PROCUREMENT

FORM 6 – INSURANCE CERTIFICATE

SECTION 4.0 – AGREEMENT

**AGREEMENT WILL BE IN FORM OF PURCHASE ORDER TO VENDOR
ONCE BID IS AWARDED**

SECTION 5.0 – STANDARD TERMS AND CONDITIONS

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A. GENERAL

1. APPLICABILITY The terms and conditions set forth in this Standard Terms and Conditions are expressly incorporated in and applicable to all procurements and resulting procurement contracts let by the Development Authority of the North Country, or let by any other Issuing Entity where incorporated by reference in its Bid Documents. Standard Terms and Conditions shall govern such procurements or contracts unless expressly modified or amended by the terms of a Bid Specification, or a negotiated Contract/Clarification document, if any. Captions are intended as descriptive and are not intended to limit or otherwise restrict the terms and conditions set forth herein.

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

3. APPENDIX A The terms of Appendix A (Standard Clauses for Authority Contracts) are expressly incorporated herein and contained in Section 6 of this document.

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

5. CONFLICT OF TERMS Conflicts between procurement or Contract documents shall be resolved in the following order of precedence:

- a. Standard Clauses for All Authority Contracts
- b. Standard Terms and Conditions
- c. Contract/Clarification Documents - Writing(s) setting forth the final agreements, clarifications, terms, statement of work and/or modifications between the Bid Documents and Contractor's Bid or Proposal.
- d. Project Definition (If any)
- e. Bid Documents (Other than "a" and "b" above)
 - i. Bid Specifications prepared by DANC
 - ii. Addenda to bid specifications
- f. Contractor's Bid or Proposal

6. DEFINITIONS Terms used here in shall have the following meanings:

ATTORNEY GENERAL. Attorney General of the State of New York.

AUTHORITY. The Development Authority of the North Country.

BID OR BID PROPOSAL. An offer or proposal submitted by a Bidder to furnish a described

product or a solution or means of achieving a practical end, at a stated price for the stated Contract term.

BIDDER. Any individual or other legal entity, (including but not limited to partnership, firm or corporation) which submits a bid in response to a Bid Solicitation. The term Bidder shall also include “offeror.” In the case of negotiated contracts, “Bidder” shall refer to the “Contractor”.

BID DOCUMENTS. Writings setting forth the scope, terms, conditions and technical specifications for a procurement of Product. Such writings typically include, but are not limited to: Invitation for Bids (IFB), Request for Quotation (RFQ), Request for Proposals (RFP), addenda or amendments thereto, and terms and conditions which are incorporated by reference, e.g. *Standard Clauses for Authority Contracts, Standard Terms and Conditions, or General Specifications*. Where these General Specifications are incorporated in negotiated contracts which have not been competitively bid, the term “Bid Documents” shall be deemed to refer to the terms and conditions set forth in the negotiated contract.

BID SOLICITATION. The notice or advertisement of intent to purchase a specified Product by or on behalf of Authorized User(s).

BID SPECIFICATION

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

CERTIFICATES OF PARTICIPATION (COPS). Certificates issued pursuant to Article 5-A of the State Finance Law which represent the right to receive a proportionate share in lease, installment or other periodic payments to be made by any state department, agency or the City University of New York.

COMPTROLLER. Comptroller of the State of New York.

CONTRACT. The writing(s) which contain the agreement of the Authority and the Bidder/Contractor setting forth the total legal obligation between the parties as determined by applicable rules of law.

CONTRACT AWARD NOTIFICATION. An announcement to Bidders that a successful Bidder has been selected and a contract will be established.

CONTRACTOR. Any successful Bidder(s) to whom a contract has been awarded by the Authority.

DANC. The Development Authority of the North Country.

DIRECTOR. The Executive Director of the Development Authority of the North Country.

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

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

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

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

ISSUING ENTITY. The Authority generally, or the authorized staff or department who issues the Bid Documents for a procurement.

LATE BID. For purposes of bid openings held and conducted by DANC, a bid not received in such place as may be designated in the Bid Specifications at or before the date and time established in the Bid Specifications for the bid opening. For purposes of bid openings held and conducted by Issuing Entities other than DANC Administration, the term late bid is defined as a bid not received in the location established in the Bid Specifications at or before the date and time specified for the bid opening.

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

LICENSEE. The Authority or one of its Departments, units, officers or employees who have been granted or transferred rights in and to proprietary Product in accordance with the rights and obligations specified in the Contract.

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

LOGICAL PARTITION. A subset of the processing power within a machine which has been divided through hardware and/or software means (i.e., *Processor Resources/System Manager* [PR/SM]) so as to limit the total processing power which is accessible by an operating system image by individual Authorized Users or individual software products.

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

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

PROCUREMENT RECORD. Documentation by the Issuing Entity of the decisions made and approach taken during the procurement process.

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

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

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

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

REQUEST FOR PROPOSALS (RFP). A type of Bid Document 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*.

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

RESPONSIBLE BIDDER. A Bidder that is determined to have skill, judgment and integrity, and that is found to be competent, reliable, experienced and qualified financially, as determined by the Authority.

RESPONSIVE BIDDER. A Bidder meeting the specifications or requirements prescribed in the Bid Document or solicitation, as determined by the Authority.

SINGLE SOURCE. A procurement where two or more offerors can supply the required Product and the Authority may award the contract to one Bidder over the other.

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

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

STATE. State of New York

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

B. BID SUBMISSION

1. BID OPENING Bids may, as applicable, be opened publicly. The Authority reserves the right at any time to postpone or cancel a scheduled bid opening.
2. BID SUBMISSION All bids are to be packaged, sealed and submitted to the location stated in the Bid Specifications. Bidders are solely responsible for timely delivery of their bids to the location set forth in the Bid Specifications prior to the stated bid opening date/time.

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

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

- “**BID ENCLOSED** (bold print, all capitals)
- Group Number
 - IFB or RFP Number
 - Bid Submission date and time”

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

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

3. FACSIMILE SUBMISSIONS Unless specifically authorized by the terms of the Bid Specifications, facsimile bids may not be submitted. If allowed by the terms of the Bid

Specifications, Bidder assumes all risk of delivery, and only the FAX number(s) indicated in the Bid Specifications may be used. Access to the facsimile machine(s) is on a “first come, first serve” basis, and the Authority bears no liability or responsibility and makes no guarantee whatsoever with respect to the Bidder’s access to such equipment at any specific time. Bidders are solely responsible for submission and receipt of the entire facsimile bid by the Issuing Entity prior to bid opening and must include on the first page of the transmission the total number of pages transmitted in the facsimile, including the cover page. Incomplete, ambiguous or unreadable transmissions in whole or in part may be rejected at the sole discretion of the Authority. Facsimile bids are fully governed by all conditions outlined in the Bid Documents and must be submitted on forms or in the format required in the Bid Specifications, including the executed signature page and acknowledgment.

4. AUTHENTICATION OF FACSIMILE BIDS The act of submitting a bid by facsimile transmission, including an executed signature page, shall be deemed a confirming act by Bidder which authenticates the signing of the bid.

5. LATE BIDS Any bid not received at the specified location by the time deadline specified in the bid documents will be considered a late bid. A late bid shall not be considered for award unless i) no timely bids meeting the requirements of the Bid Documents are received or, ii) in the case of a multiple award, an insufficient number of timely bids were received to satisfy the multiple award; and acceptance of the late bid is in the best interests of the Issuing Entity. Delays in United States mail deliveries or any other means of transmittal, including couriers or agents of the Issuing Entity, shall not excuse late bid submissions.

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

7. EXTRANEIOUS TERMS Bids must conform to the terms set forth in the Bid Documents,. Extraneous terms or material deviations (including additional, inconsistent, conflicting or alternative terms) may render the bid non-responsive and may result in rejection. Only those extraneous terms which meet all the following requirements will be considered as having been submitted as part of the Bid:

- a. Each proposed extraneous term (addition, counter-offer, deviation, or modification) must be specifically enumerated in a writing which is not part of a pre-printed form; and
- b. The writing must identify the particular specification requirement (if any) which Bidder rejects or proposes to modify by inclusion of the extraneous term; and
- c. The Bidder shall enumerate the proposed addition, counter offer, modification or deviation from the Bid Document, and the reasons therefore. Extraneous term(s) submitted on standard, pre-printed forms (including but not limited to: product literature, order forms,

license agreements, contracts or other documents), whether or not deemed “material”, which are attached or referenced with submissions and which do not meet the above requirements will not be considered part of the bid or resulting Contract, but rather will be deemed to have been included for informational or promotional purposes only. Acceptance and/or processing of the Bid shall not constitute such written acceptance of Extraneous Term(s) or a waiver of the Authority’s rights set forth above.

8. RECORD DISCLOSURE/ CONFIDENTIALITY OF PROPRIETARY RECORDS Contractor may preserve proprietary rights as to other confidential or business process information in accordance with procedures established under NYS Public Officers Law, § 89, provided that: (i) Contractor shall inform the Authority upon submission of its bid, in writing, that such records are going to be furnished, are proprietary and are not to be disclosed; and (ii) said records shall be sufficiently identified; and (iii) Contractor shall state the reasons why the information should be exempted from disclosure; and (iv) designation of said records as exempt from disclosure is reasonable and accepted by the Authority. Acceptance of the claimed materials does not constitute a determination on the exemption request, which determination will be made in accordance with statutory procedures.

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

a. “Public Works” and “Building Services” - Definitions

i. Public Works *Labor Law* Article 8 applies to contracts for public improvement in which laborers, workers or mechanics are employed on a “public works” project (distinguished from public “procurement” or “service” contracts). The State, a public benefit corporation, a municipal corporation (including a school district), or a commission appointed by law must be a party to the Contract. The wage and hours provision applies to any work performed by Contractor or subcontractors.

ii. Building Services *Labor Law* Article 9 applies to contracts for building service work over \$1,500 with a public agency, which 1) involve the care or maintenance of an existing building, or 2) involve the transportation of office furniture or equipment to or from such building, or 3) involve the transportation and delivery of fossil fuel to such building, and 4) the principal purpose of which is to furnish services through use of building service employees.

b. Prevailing Wage Rate Applicable to Bid Submissions A copy of the applicable prevailing wage rates to be paid or provided are attached to the solicitation. Bidders must submit bids which are based upon the prevailing hourly wages, and supplements in cash or equivalent benefits (i.e., fringe benefits and any cash or non-cash compensation which are not wages, as defined by law) that equal or exceed the applicable prevailing wage rate(s) for the location where the work is to be performed. Where the Bid Documents require the Bidder to enumerate hourly wage rates in the bid, Bidders may not submit bids based upon hourly wage rates and supplements below the applicable prevailing wage rates as established by the New York State Department of Labor. Bids which fail to comply with this requirement will be disqualified.

c. Wage Rate Payments / Changes During Contract Term The wages to be paid under any resulting Contract shall not be less than the prevailing rate of wages and supplements as set forth by law. It is required that the Contractor keep informed of all changes in the Prevailing Wage Rates during the Contract term that apply to the classes of individuals supplied by the Contractor on any projects which result from this Contract which are subject to the provisions of the *Labor Law*. Contractor is solely liable for and must pay such required prevailing wage adjustments during the Contract term as required by law.

d. Public Posting & Certified Payroll Records In compliance with Article 8, Section 220 of the *Labor Law*, as amended by Chapter 565 of the Laws of 1997:

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

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

iii. Submission of Certified Payroll Transcripts for Public Works Contracts Only Contractors and sub-contractors on public works projects must submit monthly payroll transcripts to the Authority or its designated agent, as set forth in the Bid Specifications. For “agency specific” bids, the payroll records should be submitted to the entity issuing the purchase order. For all other OGS centralized contracts, such records should be submitted to the individual agency issuing the purchase order(s) for the work. Upon mutual agreement of the Contractor and the issuing entity, the form of submission may be submitted in a specified disk format acceptable to the Department of Labor provided: 1) the Contractor/subcontractor retains the original records; and, (2) an original signed letter by a duly authorized individual of the Contractor or subcontractor attesting to the truth and accuracy of the records accompanies the disk. This provision does not apply to building services contracts.

iv. Records Retention Contractors and subcontractors must preserve such certified transcripts for a period of three years from the date of completion of work on the awarded Contract.

e. Day’s Labor - Defined for Article 8, Public Works (For Purposes of Article 8 of the *Labor Law*) No laborer, worker or mechanic in the employ of the Contractor, subcontractor or other person doing or contracting to do all or part of the work contemplated by the Contract shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week except in cases of extraordinary emergency including fire, flood or danger to life or property. “Extraordinary emergency” shall be deemed to include situations in which sufficient laborers, workers and mechanics cannot be employed to carry on public work expeditiously as a result of such restrictions upon the number of hours and days of labor and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the NYS Director of Labor for the preservation of the Contract site or for the protection of the life and limb of the persons using the Contract site.

10. TAXES

- a. Unless otherwise specified in the Bid Specifications, the quoted bid price includes all taxes applicable to the transaction.
- b. Purchases made by the Authority are exempt from New York State and local sales taxes and, with certain exceptions, federal excise taxes. To satisfy the requirements of the New York State Sales tax exemption, either the Purchase Order issued by the Authority or the invoice forwarded to authorize payment for such purchases will be sufficient evidence that the sale by the Contractor was made to the Authority, an exempt organization under Section 1116 (a) (1) of the *Tax Law*. No person, firm or corporation is, however, exempt from paying the State Truck Mileage and Unemployment Insurance or Federal Social Security taxes, which remain the sole responsibility of the Bidder/Contractor.
- c. Purchases by the Authority may be subject to such taxes, and in those instances the tax should be computed based on the Contract price and added to the invoice submitted to such entity for payment.

11. EXPENSES PRIOR TO CONTRACT EXECUTION The Issuing Entity is not liable for any costs incurred by a Bidder in the preparation and production of a bid or for any work performed prior to Contract execution.

12. ADVERTISING BID RESULTS A Bidder in submitting a bid agrees not to use the results there from as a part of any commercial advertising without the prior written approval of the Authority.

13. PRODUCT REFERENCES

- a. “Or Equal” In all Bid Specifications the words “or equal” are understood to apply where a copyright brand name, trade name, catalog reference, or patented Product is referenced. References to such specific Product are intended as descriptive, not restrictive, unless otherwise stated. Comparable Product will be considered if proof of compatibility is provided, including appropriate catalog excerpts, descriptive literature, specifications and test data, etc. The Authority’s decision as to acceptance of the Product as equal shall be final.
- b. Discrepancies in References In the event of a discrepancy between the model number referenced in the Bid Specifications and the written description of the Products therein which cannot be reconciled, with respect to such discrepancy, then the written description shall prevail.

14. RECYCLED OR RECOVERED MATERIALS Upon the conditions specified in the Bid Specifications and in accordance with the laws of the State of New York, Contractors are encouraged to use recycled or recovered materials in the manufacture of Products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the Product or packaging unless such use is precluded due to health, welfare, safety requirements or in the Bid Specifications. Where such use is not practical, suitable, or permitted by the Bid

Specifications, Contractor shall deliver new materials in accordance with the "Warranties" set forth below.

Refurbished or remanufactured components or items may only be accepted at the discretion of the Authority, or upon the conditions set forth in the Bid Specifications.

Items with recycled, recovered, refurbished or remanufactured content must be identified in the bid or will be deemed new Product.

15. PRODUCTS MANUFACTURED IN PUBLIC INSTITUTIONS Bids offering Products which are manufactured or produced in public institutions will be rejected.

16. PRICING

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

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

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

d. COPS or Third Party Financing If Product acquisitions are financed through Certificates of Participation (COPS) or any other third party financing, Contractor may be required as a condition of Contract award to agree to the terms and conditions of a "Consent & Acknowledgment Agreement" in a form acceptable to the Authority.

16. DRAWINGS

a. Drawings Submitted With Bid When the Bid Specifications require the Bidder to furnish drawings and/or plans, such drawings and/or plans shall conform to the mandates of the Bid Documents and shall, when approved by the Authority, be considered a part of the bid and of any resulting Contract. All symbols and other representations appearing on the drawings shall be considered a part of the drawing.

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

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

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

18. SAMPLES

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

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

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

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

d. Conformance with Sample(s) Submission of a sample (whether or not such sample is tested by,

or for, the Authority) and approval thereof shall not relieve the Contractor from full compliance with all conditions and terms, performance related and otherwise, specified in the Bid Documents. If in the judgment of the Authority the sample or product submitted is not in accordance with the specifications or testing requirements prescribed in the Bid Documents, the Authority may reject the bid. If an award has been made, the Authority may cancel the Contract at the expense of the Contractor.

e. Testing All samples are subject to tests in the manner and place designated by the Authority, either prior to or after Contract award. Unless otherwise stated in the Bid Specifications, Bidder Samples consumed or rendered useless by testing will not be returned to the Bidder.

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

C. BID EVALUATION

1. BID EVALUATION The Authority reserves the right to accept or reject any and all bids, or separable portions of offers, and waive technicalities, irregularities, and omissions if the Authority determines the best interests of the DANC will be served. The Authority, in its sole discretion, may accept or reject illegible, incomplete or vague bids and its decision shall be final. A conditional or revocable bid which clearly communicates the terms or limitations of acceptance may be considered and Contract award may be made in compliance with the Bidder's conditional or revocable terms in the offer.
2. CONDITIONAL BID Unless the Bid Specifications provides otherwise, a bid is not rendered non-responsive if the Bidder specifies that the award will be accepted only on all or a specified group of items or Product included in the specification. It is understood that nothing herein shall be deemed to change or alter the method of award contained in the Bid Documents.
3. CLARIFICATIONS / REVISIONS Prior to award, the Authority reserves the right to seek clarifications, request bid revisions, or to request any information deemed necessary for proper evaluation of bids from all Bidders deemed to be eligible for contract award. Failure to provide requested information may result in rejection of the bid.
4. PROMPT PAYMENT DISCOUNTS While prompt payment discounts will not be considered in determining the low bid, the Authority may consider any prompt payment discount in resolving bids which are otherwise tied. However, any notation indicating that the price is net, (e.g. net 30 days), shall be understood to mean only that no prompt payment discount is offered by the Bidder. The imposition of service, interest, or other charges, except pursuant to the provisions of Article 11-A of the *State Finance Law*, which are applicable in any case, may render the bid non-responsive and may be cause for its rejection.
5. EQUIVALENT OR IDENTICAL BIDS In the event two offers are found to be substantially equivalent, price shall be the basis for determining the award recipient. If two or more Bidders

submit substantially equivalent bids as to pricing or other factors, the decision of the Authority to award a contract to one or more of such Bidders shall be final.

6. PERFORMANCE QUALIFICATIONS The Authority reserves the right to investigate or inspect at any time whether or not the Product, qualifications or facilities offered by the Bidder/Contractor meet the requirements set forth in the Contract. Contractor shall at all times during the Contract term remain responsible and responsive. A Bidder/Contractor must be prepared, if requested by the Authority, to present evidence of experience, ability and financial standing, as well as a statement as to plant, machinery and capacity of the manufacturer for the production, distribution and servicing of the Product offered/bid. If the Authority determines that the conditions and terms of the Bid Documents or Contract are not complied with, or that items or Product proposed to be furnished do not meet the specified requirements, or that the qualifications, financial standing or facilities are not satisfactory, or that performance is untimely, the Authority may reject such bid or terminate the Contract. Nothing in the foregoing shall mean or imply that it is obligatory upon the Authority to make an investigation either before or after award of a Contract, but should such investigation be made, it in no way relieves the Bidder/Contractor from fulfilling all requirements and conditions of the Contract.
7. DISQUALIFICATION FOR PAST PERFORMANCE Bidder may be disqualified from receiving awards if Bidder, or anyone in Bidder's employment, has previously failed to perform satisfactorily in connection with public bidding or contracts.
8. QUANTITY CHANGES PRIOR TO AWARD The Authority reserves the right, at any time prior to the award of a specific quantity contract, to alter in good faith the quantities listed in the Bid Specifications to conform with requirements. In the event such right is exercised, the lowest responsible Bidder meeting specifications will be advised of the revised requirements and afforded an opportunity to extend or reduce its bid price in relation to the changed quantities. Refusal by the low Bidder to so extend or reduce its bid price may result in the rejection of its bid and the award of such contract to the lowest responsible Bidder who accepts the revised requirements.
9. RELEASE OF BID EVALUATION MATERIALS Requests concerning the evaluation of bids may be submitted under the *Freedom of Information Law*. Information, other than the Bid Tabulation, shall be released as required by law after Contract award. Written requests should be directed to the Authority Representative overseeing the contract award process.
10. TIMEFRAME FOR OFFERS The Authority reserves the right to make awards within sixty (60) days after the date of the bid opening, during which period, bids must remain firm and cannot be withdrawn. If, however, an award is not made within the sixty (60) day period, bids shall remain firm until such later time as either a Contract is awarded or the Bidder delivers to the Authority written notice of the withdrawal of its bid. Any bid which expressly states therein that acceptance must be made within a shorter specified time, may at the sole discretion of the Authority, be accepted or rejected.

D. 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 executed and created upon the Authority's mailing or electronic communication to the address on the bid of: i) a Letter of Acceptance; ii) a fully executed Contract; or iii) a Purchase Order authorized by the Authority.
2. MODIFICATION OF CONTRACT TERMS The terms and conditions set forth in the Contract govern all transactions under this Contract. The Contract may only be modified or amended upon mutual written agreement of the Authority and Contractor. Contractor may not unilaterally modify the terms of the Contract by affixing additional terms to Product upon delivery (e.g., attachment or inclusion of standard pre-printed order forms, product literature, "shrink wrap" terms accompanying or affixed to Product) or by incorporating such terms onto Contractor's order or fiscal forms or other documents forwarded by the Contractor for payment. Acceptance of Product or processing of such documentation on forms furnished by the Contractor for approval or payment does not constitute acceptance of the proposed modification to terms and conditions.
3. SCOPE CHANGES The Authority reserves the right, unilaterally, to require, by written order, changes altering, adding to or deducting from the Contract specifications, 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. Such equitable adjustments require the consent of the Contractor, which consent shall not be unreasonably withheld.
4. ESTIMATED / SPECIFIC QUANTITY CONTRACTS Estimated quantity contracts are expressly agreed and understood to be made for only the quantities, if any, actually ordered during the Contract term. No guarantee of any estimated quantity(s) is implied or given. Unless otherwise set forth in the Bid Specifications, contracts for services and technology are completely voluntary as to use, and therefore no quantities are guaranteed. With respect to any specific quantity stated in the Contract, 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. Notwithstanding the foregoing, the Authority may purchase greater or lesser percentages of Contract quantities should the Authority and Contractor so agree. Such agreement may include an equitable price adjustment.
5. BEST PRICING OFFER During the Contract term, if substantially the same or a smaller quantity of a Product is sold by the Contractor outside of this Contract vehicle upon the same or similar terms and conditions as that of this Contract at a lower price, the price under this Contract, at the discretion of the Authority, shall be immediately reduced to the lower price.
6. PURCHASE ORDERS Unless otherwise authorized in writing by the Authority, no Products 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 termination of the Contract period, addressed to the Contractor at the address for receipt of orders set forth in the Contract or in the Contract Award Notification.

All Purchase Orders issued pursuant to contracts let by the Authority must bear the appropriate contract number and, if necessary, all required approvals. Unless otherwise specified, all Purchase Orders shall be deemed to incorporate the terms and conditions set forth in this Contract by reference. Any discrepancy between the terms stated on the Contractor's order form, confirmation or acknowledgment, and the Contract terms shall be resolved in favor of the terms most favorable to the Authority.

The Purchase Order shall indicate the address for delivery of the Product. Authority shall confirm pricing, supported hardware platforms and model availability with Contractor prior to placement of orders. Contractor's order form shall, at a minimum, contain the product reference number, license type, price, and must separately itemize quantities for software, documentation, and services. The Authority reserves the right to require any other information from the Contractor which the Authority deems necessary in order to verify any Purchase Order placed under the Contract.

7. PRODUCT DELIVERY Delivery must be made as ordered to the address specified on the Purchase Order and in accordance with the terms of the Contract. Unless otherwise specified in the Bid Specifications, 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 notify the Authority or his designee, and confirm in writing the explanation of the delay, and take appropriate action to avoid any subsequent late deliveries. Any extension of the time for delivery must be requested in writing by the Contractor and approved in writing by the Authority. Failure to meet such time schedule may, in the Authority's discretion, be grounds for cancellation of the order or the Contract.
8. WEEKEND AND HOLIDAY DELIVERIES Unless otherwise specified in the Bid Specifications or by the Authority's designated representative, deliveries will not be scheduled for Saturdays, Sundays or legal holidays observed by the State of New York except of Product 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.
9. SHIPPING / RECEIPT OF PRODUCT
 - a. Packaging Tangible Product shall be securely and properly packed for shipment, storage and stocking in appropriate, clearly labeled shipping containers and according to accepted commercial practice, without extra charge for packing materials, cases or other types of containers. The container shall become and remain the property of the receiving entity.
 - b. Shipping Charges Unless otherwise stated in the Bid Specifications, all deliveries shall be

deemed to be FOB destination to the delivery address specified on the Purchase Order. Even where the specifications permit 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 of Product 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 Product to authorized personnel shall be borne exclusively by the Contractor.
10. RISK OF LOSS Notwithstanding the form of shipment, risk of loss shall not pass from the Contractor to the Authority until the Products have been received, inspected and accepted by the personnel authorized to accept delivery on behalf of the Authority. Acceptance shall occur within the acceptance period specified in this Appendix, or such other period of time mutually agreed to by Authority and Contractor. 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 Products. Any delivery of Product which is substandard or does not comply with the Contract terms, may be rejected or accepted on an adjusted price basis, as determined by the Authority.
11. PRODUCT SUBSTITUTION In the event a specified manufacturer's Product listed in the Contract becomes unavailable or cannot be supplied by the Contractor for any reason (except as provided for in the Savings/Force Majeure Clause below) a Product 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. Unless otherwise specified, any substitution of Product prior to the Authority's approval may be cause for cancellation of Contract.
12. REJECTED PRODUCT When Product is rejected, it must be removed by the Contractor from the premises of the receiving entity within ten calendar days of notification of rejection by Authority. Upon rejection notification, risk of loss of rejected or non-conforming Product shall remain with Contractor. Rejected items not removed by the Contractor within ten calendar days of notification shall be regarded as abandoned by the Contractor, and the 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.
13. INSTALLATION Where installation is required, Bidder shall be responsible for placing and installing the equipment in the required locations. All materials 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 equipment or render it structurally unsound. Installation includes the furnishing of any equipment, rigging and materials required to install or replace the Product in the proper location. The Contractor shall protect the site from damage for all its work and shall repair damages or injury of any kind caused by the Contractor, its employees, officers or agents. If any alteration, dismantling or excavation, etc. is required to effect installation, the Contractor shall thereafter

promptly restore the structure or site to its original condition. 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.

14. REPAIRED OR REPLACED PARTS / COMPONENTS Where the Contractor is required to repair, replace or substitute parts components under the Contract, the repaired, replaced or substituted products shall be subject to all terms and conditions for new parts and components set forth in the Contract. 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. All proposed substitutes for the original manufacturer's installed parts or components must be approved by the Authority before installation. The part or component shall be equal to or of better quality than the original part or component being replaced.
15. ON-SITE STORAGE Materials, equipment or supplies may be stored at the Authority's site at the Contractor's sole risk and only with the approval of the Authority.
16. 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 Bid Specifications or the Bid, whichever is better, 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 or agent furnished 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 or change in security status or non-compliance with Authority's security or other requirements. Such approval shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract terms. The Authority reserves the right to reject and/or bar from the facility for cause any employee, subcontractor, or agents of the Contractor.
17. ASSIGNMENT / SUBCONTRACTORS Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the Contract or its right, title or interest therein, or its power to execute such Contract to any other person, company, firm or corporation in performance of the Contract, other than the assignment of the right to receive money due, without the prior written consent of the Authority. Prior to an assignment of the right to receive money becoming effective, Contractor shall file a written notice of such assignment with the Authority.

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) bidders for the subcontract.

18. PERFORMANCE / BID BOND The Authority reserves the right to require the Bidder/Contractor to furnish without additional cost, a performance, payment or bid bond or negotiable irrevocable letter of credit or other form of security for the faithful performance of the Contract. Where required, such bond or other security shall be in the form prescribed by the Authority.

19. SUSPENSION OF WORK The Authority, in his/her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, in the best interests of the Authority. In the event of such suspension, the Contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a budget freeze on Authority spending, declaration of emergency, or other such circumstances. Upon issuance of such notice, the Contractor is not to accept any purchase orders, and shall comply with the suspension order. Activity may resume at such time as the Authority issues a formal written notice authorizing a resumption of work.

20. TERMINATION

- 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 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: This Contract 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 prior to termination. Such termination of the Contract shall not affect any project or Purchase Order which has been issued under the Contract prior to the date of such termination.

21. SAVINGS / FORCE MAJEURE The Contractor shall not be responsible for delay resulting from its failure to perform if neither the fault nor negligence of the Contractor, its officers, employees or agents contributed to such delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires or floods, or other similar cause beyond the control of the Contractor, or for any of the foregoing which affect subcontractors or suppliers and no alternate source of supply is available to the Contractor. In such event, Contractor shall notify the Authority, by certified or registered mail, of the delay or potential delay and the cause(s) thereof either (a) 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 (b) if 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 such delay. In the event performance is suspended or delayed, in whole or in part, by reason of any of the aforesaid causes or occurrences and proper notification is given the Authority, any performance so suspended or delayed shall be performed by the Contractor at no increased cost, promptly after such disabilities 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:

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

In addition, the Authority reserves the right, in its sole discretion, to make an equitable adjustment in the Contract terms and/or pricing should extreme and unforeseen volatility in the marketplace affect pricing or the availability of supply. "Extreme and unforeseen volatility in the marketplace" is defined as market circumstances which meet the following criteria: (1) the volatility is due to causes outside the control of Contractor; (2) the volatility affects the marketplace or industry, not just the particular contract source of supply; (3) the effect on pricing or availability of supply is substantial; and (4) the volatility so affects Contractor's performance that continued performance of the Contract would result in a substantial loss.

22. CONTRACT BILLINGS Contractor and the distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to the Authority in order to receive payment. Billings for Agencies must contain all information required by the Authority. The Authority shall render payment for Authority purchases, and such payment shall be made in accordance with ordinary Authority procedures and practices. Payment of Contract purchases shall be billed directly by Contractor on invoices/vouchers, together with complete and accurate supporting documentation 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 delivered is found to deviate from the terms and conditions of the Contract.

23. DEFAULT – BY THE AUTHORITY In the event Authority fails to make payment to the Contractor for Products delivered, accepted and properly invoiced, within 60 days of such delivery and acceptance, the Contractor may, upon 10 days advance written notice to the Authority and the Authority's contact official, suspend additional shipments of Product or provision of services to Authority until such time as reasonable arrangements have been made and assurances given by such Authority for current and future Contract payments.

Notwithstanding the foregoing, the Contractor shall, at least 10 days prior to declaring a breach of contract by Authority, by certified or registered mail, notify both the Authority and the Authority's contact official, 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.

24. 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 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*.

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

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

Such purchases may, in the discretion of the Authority, be deducted from the Contract quantity and payments due Contractor.

- 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 services, and/or replacement Product. Should the cost of cover be less than the Contract price, the Contractor shall have no claim to the difference. The Contractor covenants and agrees that in the event suit is successfully prosecuted for any default on the part of the Contractor, all costs and expenses expended or incurred by the Authority in connection therewith, including reasonable attorney's fees, shall be paid by the Contractor.

Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the Contract, the Authority 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.

d. 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.

e. 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.

26. ASSIGNMENT OF CLAIM Contractor hereby assigns to the Authority any and all its claims for overcharges associated with this Contract which 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.

27. 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 material safety data sheet, which sheet shall include for each such substance the information outlined in Section 876 of the *Labor Law*.

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

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

29. 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.

30. COOPERATION WITH THIRD PARTIES. The Contractor shall be responsible for fully cooperating with any third party, including but not limited to subcontractors of the Authority, relating to delivery of product or coordination of services.
31. CONTRACT TERM – RENEWAL. In addition to any stated renewal periods in the Contract, any contract or unit portion thereof let by the Authority may be extended by the Authority for an additional period(s) of up to one year (cumulatively) with the written concurrence of the Contractor.
32. WARRANTIES & GUARANTEES. Where Contractor or Product manufacturer/developer generally offers additional or more advantageous warranties than set forth below, Contractor shall offer or pass through any such warranties to Authority. Contractor hereby warrants and represents:
 - a. Product Performance Products delivered pursuant to this Contract conform to the specifications, performance standards and documentation, and the documentation fully describes the proper procedure for using the Products.
 - 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 for the purposes of this Bid 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 documentation establishing the above rights and interests as a condition of payment. Authority's request or failure to request such documentation shall not relieve Contractor of liability under this warranty.
 - c. Contractor Compliance To pay, at its sole expense, all applicable permits, licenses, tariffs, tolls and fees and give all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of the 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, 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 this Contract, in whole or in part, or to take any other action deemed necessary by the Authority.

- d. Product Warranty Unless recycled or recovered materials are available in accordance with the “Recycled or Recovered Materials” clause, Product offered shall be standard new equipment, current model or most recent release of regular stock product with all parts regularly used with the type of equipment offered; and no attachment or part has been substituted or applied contrary to the manufacturer’s recommendations and standard practice.

Contractor further warrants and represents that components or deliverables specified and furnished by or through Contractor shall individually, and where specified and furnished as a system, be substantially uninterrupted or error-free in operation and guaranteed against faulty material and workmanship for the warranty period, or for a minimum of one (1) year from the date of acceptance, whichever is longer (“Project warranty period”). During the Project warranty period, defects in the materials or workmanship of components or deliverables specified and furnished by or through Contractor shall be repaired or replaced by Contractor at no cost or expense to Authority. Contractor shall extend the Project warranty period for individual component(s), or for the System as a whole, as applicable, by the cumulative period(s) of time, after notification, during which an individual component or the System requires servicing or replacement (down time) or is in the possession of the Contractor, its agents, officers, subcontractors, distributors, resellers or employees (“extended warranty”).

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

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

- e. Replacement Parts Warranty If during the regular or extended warranty periods faults develop, the Contractor shall promptly repair or, upon demand, replace the defective unit or component part affected. All costs for labor and material and transportation incurred to repair or replace defective Product during the warranty period shall be borne solely by the Contractor, and the Authority shall in no event be liable or responsible therefore.

Any part of component replaced by the Contractor under the Contract warranty shall be replaced at no cost to the Authority and guaranteed for the greater of: a) the warranty period under

paragraph(d) above; or b) if a separate warranty for that part or component is generally offered by the manufacturer, the standard commercial warranty period offered by the manufacturer for the individual part or component.

- f. Virus Warranty Licensed Software shall contain no known viruses. Contractor is not responsible for viruses introduced at Licensee's site.
- g. Workmanship Warranty Contract warrants that all components or deliverables specified and furnished by or through Contractor under the Project Definition/Work Order meet the completion criteria set forth in the Project Definition/Work Order and any subsequent statement(s) of work, and that services will be provided in a workmanlike manner in accordance with industry standards.
- h. Survival of Warranties All warranties contained in this Contract shall survive the termination of this Contract.

THE WARRANTIES SET FORTH IN THE CONTRACT 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.

33. PRODUCT ACCEPTANCE Unless otherwise provided by mutual agreement of the Authority and the Contractor, Authority shall have sixty (60) days from the date of delivery to accept Product, unless the Contractor is responsible for installation, in which case the sixty day period shall run from completion of installation. Failure to provide notice of acceptance or rejection by the end of the period provided for under this clause constitutes acceptance by the Authority as of the expiration of that period. The License Term shall be extended by the time periods allowed for testing and acceptance.

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

In the event that the documented installation test cannot be completed successfully within the specified acceptance period, and the Contractor or Product is responsible for the delay, Authority shall have the option to cancel the order 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 product specifications during the acceptance period shall be borne fully by Contractor to the extent that said costs or liabilities shall not have been caused by negligent or willful acts or omissions of the Authority's agents or employees. Said costs shall be limited to fees paid to Contractor, if any or any liability for costs incurred at the direction or recommendation of Contractor.

34. OWNERSHIP / TITLE TO PROJECT DELIVERABLES

- a. Title to Deliverables Contractor acknowledges that it is commissioned by the Authority to perform services detailed in the Purchase Order. Unless otherwise specified in writing in the Bid or Purchase Order, ownership and/or license rights shall pass to Authority upon acceptance. Effective upon creation of Custom Products, Contractor hereby conveys, assigns and transfers to Authority the sole and exclusive rights, title and interest in Custom Product(s), whether preliminary, final or otherwise, including all trademark and copyrights. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction and marketing by or through Contractor, its agents, employees, or subcontractors. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under a project definition/work order in the course of Contractor's business.
- b. Where a scope of work does not involve COPS or other third party financing, the Authority may, by providing written notice thereof to the Contractor, elect in the alternative to take a non-exclusive perpetual license to Custom Products in lieu of Authority taking exclusive ownership and title to such Products. In such case, Licensee on behalf of all Authorized Users shall be granted a non-exclusive perpetual license to use, execute, reproduce, display, perform, adapt and distribute Custom Product as necessary to fully effect the general business purpose(s) as stated in paragraph (b)(i)(2), above.
- c. Transfers or Assignments to a Third Party Financing Agent. It is understood and agreed by the parties that a condition precedent to the consummation of the purchase (s) under the Contract may be the obtaining of acceptable third party financing by the Authority. The Authority shall make the sole determination of the acceptability of any financing proposal. The Authority will make all reasonable efforts to obtain such financing, but makes no representation that such financing has been obtained as of the date of bid receipt. Where financing is used, the Authority may assign or transfer its rights in Licensed Products (existing or custom) to a third party financing entity or trustee ("Trustee") as collateral where required by the terms of the financing agreement. Trustee's sole rights with respect to transferability or use of Licensed Products shall be to exclusively sublicense to Authority all of Lessor's rights under the terms and conditions of the License Agreement; provided, further, however, in the event of any termination or expiration of such sublicense by reason of payment in full, all of Trustee's rights in such Licensed Product shall terminate

immediately and Authority's prior rights to such Existing Licensed Product shall be revived.

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

35. ADDITIONAL PRODUCT. Authority may obtain additional Product authorized under this Contract, (e.g., licensed capacity upgrades, new releases, documentation, maintenance, consulting or training) whether or not Product was initially obtained independently of this Contract. The Authority's election to obtain additional Product shall not operate to diminish, alter or extinguish rights previously granted.

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

37. INDEMINIFICATION & LIMITATION OF LIABILITY

- a. Neither party shall be liable for any delay or failure in performance beyond its control resulting from acts of God or force majeure. The parties shall use reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties under Contract.
- b. Contractor shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and save harmless the Authority, its officers, employees 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, partners or subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the 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 Products 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 documentation, 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: i) Authority's unauthorized modification or alteration of a Product; ii) Authority's use of the Product in combination with other products not furnished by Contractor; iii) Authority's use in other than the specified operating conditions and environment.
 - e. In addition to the foregoing, if the use of any item(s) or part(s) thereof 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: (i) to procure for the Authority the right to continue using such item(s) or part (s) thereof, as applicable; (ii) to modify the component so that it becomes non-infringing equipment of at least equal quality and performance; or (iii) to replace said item(s) or part(s) thereof, as applicable, with non-infringing components of at least equal quality and performance, or (iv) if none of the foregoing is commercially reasonable, then provide monetary compensation to the Authority up to the dollar amount of the Project Award.
 - f. For all other claims against the Contractor under any individual Purchase Order where liability is not otherwise set forth in the Contract as being "without limitation", and regardless of the basis on which the claim is made, Contractor's liability under a Purchase Order **for direct damages shall be the greater of \$100,000, the dollar amount of the Contract, or two (2) times the charges rendered by the Contractor under the Contract.** Unless otherwise specifically enumerated herein or in the work order mutually agreed between the parties, neither party shall be liable to the other for special, indirect or consequential damages, including lost data or records (unless the Contractor is required to back-up the data or records as part of the work plan), even if the party has been advised of the possibility of such damages. Neither party shall be liable for lost profits, lost revenue or lost institutional operating savings.
 - g. The Authority may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor, or may proceed against the performance and payment bond, if any, as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them.
38. AUDIT. The Development Authority, or its duly authorized agent, shall have access to and copies of the Contractor's records, including any books, computer tapes, disks or programs, or material pertaining to work performed under the contract, at no cost to the Development Authority, to determine and verify the compliance with all contractual conditions. The Development Authority shall be granted access to such records at all reasonable times during the contract period and for three (3) years thereafter.
39. INSURANCE. Prior to the commencement of work, the Bidder shall procure and maintain throughout the life of the agreement insurance of the kinds and in the amounts specified herein.

Bidder and each sub-Bidder shall cause the authorized representative of the Insurer to complete and execute the Certificate of Insurance form acceptable to Authority, which certifies the kinds and amounts of insurance being issued. The preferred form is the A.I.A. Document G705 Certificate of Insurance, or one containing all equivalent and required information. If requested by Authority, Successful Bidder shall furnish one (1) duplicate of the original policy covering each kind of insurance issued. No work shall commence until the Successful Bidder or sub-Bidder, as the case may be, has delivered the Certificate of Insurance as proof of the issuance of all required insurance policies.

- a. Each policy of insurance required by the Contract Documents shall be issued by an insurance company approved by the Authority, and shall be in form and content satisfactory to Authority and its attorney. Each insurance policy shall be issued by an Insurer having a Best rating of no lower than A by the most recent Best Key Rating Guide or Best Agent Guide and having a financial category of VI or higher, and authorized by the New York State Department of Insurance to do business in New York State as a licensed carrier or approved as a surplus lines carrier for the limits and coverages required.
- b. Each policy shall provide that: (1) coverage provided under such policies will not be cancelled or materially modified until at least thirty (30) days prior written notice has been provided to Authority and Bidder, (2) it shall be automatically renewed upon expiration and continued in force unless the Authority and Bidder are given at least thirty (30) days written notice to the contrary, and (3) the Authority shall be listed as an additional insured.
- c. All claims against the Bidder or sub-Bidders, alleged to arise from the performance of the work or conditions incidental thereto, must be investigated immediately by the insurer furnishing the applicable coverage. Bidder shall require the Insurer to furnish Authority with written reports following the investigation and the disposition of each claim or demand made. A status report shall be provided to Authority on all claims remaining more than two months outstanding.
- d. All liability insurance required by the Contract Documents shall be maintained in force during the term of this agreement and until the later of one year after the date of final acceptance or one year after the Bidder or any Sub-Bidder performs any work under the Contract Documents.
- e. Unless specified otherwise in the Contract Documents, the kinds and amounts of insurance required are as follows:
 - i. Workers' Compensation and Employer's Liability: Policy shall comply with the provisions of the NY State Workers Compensation Law. Amounts shall be as state and federal statute requires. Employer's Liability shall be not less than \$500,000.
 - ii. Non-Occupational Disability Benefits: Policy shall comply with the provisions of the NY State Disability Benefits Law.
 - iii. Comprehensive General Liability Insurance: providing coverage for the Bidder for legal liability and customarily covered expenses for bodily injury and property damage with respect to the Work under this Agreement, including but not limited to liability for bodily injury and property damage (a) arising out of operations performed for the

Bidder by independent Bidders or arising out of acts or omissions of the Bidder in connection with his general supervision of such operations (Bidder's Protective Liability Insurance), (b) occurring after operations have been completed or abandoned (Completed Operations Insurance), (c) arising after physical possession of the products has been relinquished, out of the Bidder's products or reliance upon a representation or warranty with respect thereto (Products Liability Insurance), and (d) assumed under the Contract Documents (Contractual Liability Insurance). The policy shall be endorsed to delete from the Contractual Liability coverage any exclusion for actions on a contract for third-party beneficiary arising out of a project for a public authority. This policy shall include coverage for explosion, collapse and underground operations (XCU hazards). Any exclusion with respect to property under the care, custody and control of Bidder shall be eliminated.

iv. Comprehensive General Liability:

(1) Coverages shall include at least the following hazards:

- a) Premises and Operations Coverage,
- b) Independent Bidder's,
- c) Completed Operation, including products,
- d) Broad Form Property Damage,
- e) Contractual Liability, covering indemnification assumed per Contract Documents,
- f) Explosion, Collapse, and Underground Operations,
- g) Personal Injury with Employment Exclusion deleted.

(2) Coverages shall not be less than the following amounts:

- a) General Aggregate \$2,000,000
- b) Products - Completed Operations Aggregate \$1,000,000
- c) Personal and Advertising Injury \$1,000,000
- d) Each Occurrence (Bodily Injury and Property Damage) \$1,000,000
- e) Excess or Umbrella Liability:
 - (i) General Aggregate \$4,000,000
 - (ii) Each Occurrence \$4,000,000

v. Comprehensive Automobile Liability Insurance: Insurance shall provide coverage for Bidder and Authority for legal liability and customarily covered expenses for bodily injury and property damage arising out of the ownership, maintenance, operation, use, loading or unloading of any automobiles (including hire and non-owned automobiles) customarily defined in such policies, in a combined single limit of not less than \$1,000,000 coverage.

vi. OWNER's Protective Liability Insurance: Insurance shall provide coverage for the Authority as the named insured for legal liability (and customarily covered expenses) for bodily injury and property damage arising out of the operations under the Contract Documents performed for the Authority by the Bidder or any of his Sub-Bidders or out of acts or omissions of the Authority in connection with Authority's general supervision of such operations.

40. VENUES AND DISPUTES. The exclusive means of disposing of any dispute arising under a

contract with the Development Authority, which is not resolved by 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 bidder must proceed diligently with contract performance. The bidder waives any dispute or claim not made in writing and received by the Development Authority within thirty (30) days of the occurrence giving rise to the dispute or claim. The claim must be in writing for sum certain and must be fully supported by all cost and pricing information.

SECTION 6.0 – STANDARD CLAUSES FOR ALL AUTHORITY CONTRACTS

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21. Clauses Required by Law

The parties to the attached contract or other agreement (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee, vendor 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 work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the

Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

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 of the Authority 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 State agency, 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 authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the 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.

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

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

14. 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.

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

16. 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.

17. 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 prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the 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.

18. 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.

19. 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 this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

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

20. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 20, 2000, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Montana, Wyoming, Louisiana and Hawaii and the Canadian provinces of Ontario and Quebec. Contact the NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

21. CLAUSES REQUIRED BY LAW. Legal Requirements. 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.

SECTION 7.0 - SUPPLEMENTAL TERMS AND CONDITIONS

There are no supplemental terms and conditions for this contract.

SECTION 8.0 – SPECIFICATIONS & DETAILS

There are no Specifications & Details for this contract.