AGREEMENT
IN CONNECTION WITH
NEW JERSEY STATE WAIVER NO. 34-24-DOH

This Agreement is made effective as of _____, by and between Cepheid, with a place of business at US904 Caribbean Dr, Sunnyvale, California 94089, and the State of New Jersey, Department of the Treasury, Division of Purchase and Property, whose address is 33 West State Street, 8th Floor, P.O. Box 039, Trenton, New Jersey 08625-0039, on behalf of the State of New Jersey, Department of Health, Public Health Laboratories (collectively, the "State," and collectively with Cepheid, the "Parties").

THEREFORE, for good and valuable consideration, the Parties to this Agreement hereby agree as follows:

1. The Parties agree the agreement between Cepheid and the State consists of the following documents (which shall be collectively referred to as the "Contract"):

   A. This Agreement;

      A. The State of New Jersey Standard Terms and Conditions (Rev: 2/8/2024), and Waivered Contracts/Delegated Purchase Authority Supplement to the State of New Jersey Standard Terms and Conditions (Rev: 1/11/22), signed on May 21, 2024 ("Terms and Conditions"); and

   B. GeneXpert® Service Agreement, Quote Number CSQN-00007429 v2.0;
   C. Sales Quote Number : 0020114518;
   D. Sales Quote Number 0020109005.

   In the event of a conflict in the terms and conditions among the documents comprising the Contract, the above order shall prevail for purposes of the interpretation thereof (listed from highest ranking to lowest ranking). For the avoidance of doubt, the Terms and Conditions shall prevail over any other terms not otherwise amended by a written agreement signed by the Parties.

2. Amendments to the State of New Jersey Standard Terms and Conditions:

   For purposes of the products and services set forth in this Contract only, the State of New Jersey Standard Terms and Conditions are hereby amended as follows:

   I. Section 4.1 Indemnification is amended as follows:

      E. In the event of a claim or suit involving third-party Intellectual Property Rights, the Contractor, at its option, may: (1) procure for the State the legal right to continue the use of the product; (2) replace or modify the product to provide a non-infringing product that is the functional equivalent; or (3) in the event that Contractor cannot accomplish (1) or (2), then Contractor may terminate the Agreement with no further liability to the State except for a pro-rated refund of the purchase price paid by the State representing the remainder of the unused term. In the event any claim or suit arises that may give rise to Contractor's indemnification obligation under Section 4.1(A)(1), the State will (1) promptly notify Provider in writing of the claim or suit; (2) Provider

shall have control of the defense and settlement of any claim that is subject to Section 4.1(A)(1), provided, however, that the State must approve, in writing, any settlement of the alleged claim that places an obligation on the State to (i) pay money, (ii) make any admissions, or (iii) imposes prospective injunctive relief on the State, which approval shall not be unreasonably withheld; and (3) subject to applicable law, subsection (2) that directly precedes this, and the State's written consent, the State will provide assistance when reasonably requested by the Contractor in defending or settling any legal action. The State may observe the proceedings relating to the alleged claim and confer with the Provider at the State's expense. Furthermore, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of the State of New Jersey or any Agency , nor purport to act as legal representative of the State of New Jersey or any Agency, without having provided notice to the Director of the Division of Law in the Department of Law and Public Safety and to the Director of DPP. Subject to the foregoing, the State of New Jersey may, at its election and expense, assume its own defense and settlement of claims under this Section that involve State-specific issues. "State-specific issues" shall mean any claims, arguments or positions concerning the State's sovereign, statutory or other immunities.

D. Notwithstanding the foregoing, the Contractor has no obligation or liability for any claim or suit concerning third-party Intellectual Property Rights arising from: (1) the State's unauthorized combination, operation, or use of a product supplied under the Contract with any product, device, or Software not supplied by the Contractor; (2) the State's unauthorized alteration or modification of any product supplied under the Contract; (3) the Contractor's compliance with the State's designs, specifications, requests, or instructions, provided that if the State provides the contractor with such designs, specifications, requests, or instructions, the contractor reviews same and advises that such designs, specifications, requests or instructions present potential issues of patent or copyright infringement and the State nonetheless directs the contractor to proceed with one or more designs, specifications, requests or instructions that present potential issues of patent or copyright infringement; or (4) the State's failure to promptly implement a required update or modification to the product provided by the Contractor.

E. The Contractor will be relieved of its responsibilities under subsection (a)(i) and (ii) for any claims made by an unaffiliated third party that arise solely from the actions or omissions of the State, its officers, employees or agents.

F. This section states the entire obligation of the Contractor and its suppliers, and the exclusive remedy of the State, in respect of any infringement or alleged infringement of any Intellectual Property Rights. This indemnity obligation and remedy are given to the State solely for its benefit and in lieu of, and the Contractor disclaims, all warranties, conditions and other terms of non-infringement or title with respect to any product.

G. The provisions of this indemnification clause shall in no way limit the Contractor's obligations assumed in the Contract, nor shall they be construed to relieve the contractor from any liability, nor preclude the State from taking any other actions available to it under any other provisions of the Contract or otherwise at law or equity.

H. The State of New Jersey will not indemnify, defend or hold harmless the Contractor. The State will not pay or reimburse for claims absent compliance with subsection I. below and a determination by the State to pay the claim or a final order of a court of competent jurisdiction.

I. Subject to the New Jersey Tort Claims Act (N.J.S.A. 59:1-1 et seq.), the New Jersey Contractual Liability Act (N.J.S.A. 59:13-1 et seq.) and the appropriation and availability of funds, the State will be responsible for any cost or damage arising out of actions or inactions of the State, its employees or agents under Section 4.1(1)(a) of the Standard Terms and Conditions which results in an unaffiliated third party claim. This is the Contractor's exclusive remedy for these claims.

II. The following changes are made to Section 4.2 Insurance:

i. Words "material change" are deleted from the first paragraph.

ii. The last sentence of subsection A is modified to read as follows: "The coverage to be provided under these policies shall be at least as broad as that provided by the standard basic Commercial General Liability Insurance occurrence coverage forms or its equivalent currently in use the State of New Jersey."

III. Section 5.4 State's Option to Reduce Scope of Work is deleted in its entirety.

IV. Section 5.11 Performance Guarantee of Contractor is deleted and replaced with the following:

Contractor warrants that the goods: (i) shall be free from defects in material and workmanship for a period of one year after shipment; (ii) conform to Contractor's published specifications; and (iii) are free of liens and encumbrances when shipped. Contractor does not warrant any defects in any goods caused by: (a) improper use, installation, removal, or testing; (b) the State's failure to provide a suitable operating environment; (c) use of the goods for purposes other than that for which they were designed; (c) unauthorized attachments; (d) unusual physical or electrical stress; (e) modifications or repairs performed by anyone other than Contractor or authorized service provider; or (f) any other abuse, misuse, or neglect of the goods. This warranty extends to the State only, and not to any other third party. Except as expressly set forth in these terms, goods are sold "AS IS."

CONTRACTOR EXPRESSLY DISCLAIMS, AND DOES NOT AGREE TO PROVIDE, ANY WARRANTY REGARDING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AS RELATES TOTHE GOODS. EXCEPT AS EXPRESSLY SET FORTH HEREIN, CONTRACTOR WILL HAVE NO LIABILITY FOR ANY USE OF THE GOODS IN ANY APPLICATION.

V. Section 5.12 Delivery Requirements is deleted in its entirety and replaced with the following:

Goods shall be packed in Contractor's standard shipping packages and shipped by method and carrier to be selected by Contractor, unless otherwise permitted in writing by Contractor. Contractor shall use reasonable efforts to effect shipment of the goods on or before quoted, estimated, or requested dates, but makes no representations, warranties, or guarantees as to shipment or delivery dates. Customer understands that supply is limited. Contractor may, in its sole discretion, modify delivery dates with notice to the State. Deliveries shall be made F.O.B. Destination. Title and risk of loss with respect to the goods, except software, shall pass from Contractor to the State upon transfer of possession to a common carrier.

The State shall inspect all goods within forty-five (45) days of receipt. Any good that is defective may be rejected by the State, provided: (i) it is (or has been) a product offered by the Contractor; and (ii) it has not been used, abused, or damaged by the State or State's agents. To reject or return a good described in this section, the State must notify the Contractor in writing of the reason for the rejection or return within forty-five (45) days of receipt of the good, obtain a return material authorization number, and promptly return the good to the Contractor, freight collect. The Contractor shall promptly repair or replace the good with a conforming good or return the purchase price of the Goods. Except as expressly set forth in this section, all sales are final, and goods are not returnable or refundable.

VI. Section 6.3 Payment to Vendors, subsection A, is amended and restated in its entirety as follows:

The using agency(ies) is (are) authorized to order and the contractor is authorized to ship only those items covered by the contract resulting from the RFP. If a review of orders placed by the using agency(ies) reveals that goods and/or services other than that covered by the contract have been ordered and delivered, such delivery shall be a violation of the terms of the contract and may be considered by the Director as a basis to terminate the contract and/or not award the contractor a subsequent contract. Consistent with acceptance requirements in Section 5.12 of the Standard Terms and Conditions, the Director may take such steps as are necessary to have the items returned by the agency, within forty-five (45) of delivery and discovery of the violation. In such event, the contractor shall reimburse the State the full purchase price.

3. Amendments to Waivered Contracts/Delegated Purchase Authority Supplement to the State of New Jersey Standard Terms and Conditions:

I. Section 4.2 Insurance, subsection D, second sentence if modified as follows:

The insurance shall be in the amount of not less than $5,000,000 in the aggregate and in such policy forms as shall be approved by the State.

4. The Parties hereby acknowledge and agree that notwithstanding anything contrary stated in the Contractor's provided documents, including, all payments under this Contract are subject to Section 6.0, Terms Relating to Price and Payment, of the Standard Terms and Conditions.

F. For avoidance of the doubt, all additional terms and conditions included in the GeneXpert® Service Agreement, Quote Number CSQN-00007429 v2.0. and Sales Quote Numbers 0020114518 and 0020109005, including terms or conditions that are only accessible if the State visits external websites are not applicable to this contract.

5. The parties hereto agree that this Agreement may be executed in counterparts with each original signed page to become part of the original document.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of execution by the parties below.

STATE OF NEW JERSEY
Department Of The Treasury
Division Of Purchase And Property

By: Robert A. Storino

Name: Robert A. Storino

Title: Assistant Director

Date: 7/16/2024

Cepheid

By: [signature]

Name: Elmer Ma

Title: Government Contracts Specialist

Date: 6-26-24

STATE OF NEW JERSEY
Department of Health
Public Health Laboratories

By: Eric Anderson
Eric Anderson (Jul 1, 2024 11:08 EDT)

Name: Eric Anderson Title:

CFO

Date: 07/01/2024

Approved as to Form:

Matthew J. Platkin
Attorney General of the State of New Jersey

By: _____
Roza Dabaghyan
Deputy Attorney General

State of New Jersey
New Jersey Department of
Public Health and Environmental Laboratories (4280)
Release Purchase Order

34-24-DOH

P.O. Date: 5/24/2024

Blanket Order Number

24-WAIVE-77071:1

SHOW THIS NUMBER ON ALL PACKAGES, INVOICES AND SHIPPING PAPERS.

Agency Ref. # RT 132746 Virology

VENDOR

Vendor Number: [redacted]
Cepheid

904 Caribbean Drive
Sunnyvale, CA 94089
elmer.ma@cepheid.com
888-838-3222

Vendor Alternate ID: [redacted]

Remit Address:
Dana Brown
PO BOX 74007537
Chicago, IL 60674
US

Email: ar.remit@cepheid.com
Phone Number: (408)709-1739

SHIP TO

[redacted]
Public Health Environmental & Agricultural Lab
3 Schwarzkopf Drive
Ewing, NJ 08628
US
Email: [redacted]
Phone: [redacted]

BILL TO

[redacted]
55 North Willow 6th floor
po box 360
Trenton, NJ 08625-0360
US
Email: [redacted]
Phone: [redacted]

INVOICES: Direct invoices in DUPLICATE to the address shown above. TERMS AND CONDITIONS set forth in our Bid or Quotation, on the reverse side hereof or incorporated herein by reference become a part of this

ATTN: [redacted]

Account Code: 20-100-S2LB- -090-2001-4110- - -1129

Solicitation (Bid) No.:

Payment Terms:
Shipping Terms:
Freight Terms:
Delivery Calendar Day(s) A.R.O.: 0

Item # 1
Class-Item 193-36

GX16A1Y (serial 846216) service agreement from 3/25/24 through 2/9/25, per quote CSQN-00007429 v2.0, customer 1000002276

Quantity	Unit Price	UOM	Discount %	Total Discount	Tax Rate	Tax Amount	Freight	Total Cost
1.00	$ 18,211.35	EA	0.00 %	$ 0.00		$ 0.00	$ 0.00	$ 18,211.35

LN/FY/Account Code	Dollar Amount
1/24/20-100-S2LB- -090-2001-4110- - -1129	$ 18,211.35

Item # 2
Class-Item 193-36

GX16A1Y (serial 846220) service agreement from 3/25/24 through 2/9/25, per quote CSQN-00007429 v2.0, customer 1000002276

Quantity	Unit Price	UOM	Discount %	Total Discount	Tax Rate	Tax Amount	Freight	Total Cost
1.00	$ 18,211.35	EA	0.00 %	$ 0.00		$ 0.00	$ 0.00	$ 18,211.35

LN/FY/Account Code	Dollar Amount
2/24/20-100-S2LB- -090-2001-4110- - -1129	$ 18,211.35

Item # 3
Class-Item 193-36

GX16A1Y (serial 846198) service agreement from 2/10/24 through 2/9/25, per quote CSQN-00007429 v2.0, customer 1000002276

Quantity	Unit Price	UOM	Discount %	Total Discount	Tax Rate	Tax Amount	Freight	Total Cost
1.00	$ 20,884.00	YR	0.00 %	$ 0.00		$ 0.00	$ 0.00	$ 20,884.00

LN/FY/Account Code	Dollar Amount
3/24/20-100-S2LB- -090-2001-4110- - -1129	$ 20,884.00

Item # 4
Class-Item 193-36

GX-REINST-PM (serial 846216), reinstatement lapsed service agreement, per quote CSQN-00007429 v2.0, customer 1000002276

Quantity	Unit Price	UOM	Discount %	Total Discount	Tax Rate	Tax Amount	Freight	Total Cost
1.00	$ 5,000.00	EA	0.00 %	$ 0.00		$ 0.00	$ 0.00	$ 5,000.00

LN/FY/Account Code	Dollar Amount
4/24/20-100-S2LB- -090-2001-4110- - -1129	$ 5,000.00

Item # 5
Class-Item 193-36

GX-REINST-PM (serial 846220), reinstatement lapsed service agreement, per quote CSQN-00007429 v2.0, customer 1000002276

Quantity	Unit Price	UOM	Discount %	Total Discount	Tax Rate	Tax Amount	Freight	Total Cost
1.00	$ 5,000.00	EA	0.00 %	$ 0.00		$ 0.00	$ 0.00	$ 5,000.00

LN/FY/Account Code	Dollar Amount
5/24/20-100-S2LB- -090-2001-4110- - -1129	$ 5,000.00

Item # 6
Class-Item 193-36

GX-REINST-PM (serial 846216), reinstatement lapsed service agreement, per quote CSQN-00007429 v2.0, customer 1000002276

Quantity	Unit Price	UOM	Discount %	Total Discount	Tax Rate	Tax Amount	Freight	Total Cost
1.00	$ 5,000.00	EA	0.00 %	$ 0.00		$ 0.00	$ 0.00	$ 5,000.00

LN/FY/Account Code	Dollar Amount
6/24/20-100-S2LB- -090-2001-4110- - -1129	$ 5,000.00

Item # 7
Class-Item 193-36

GX16A1Y (serial 846198) service agreement from 12/18/23 through 2/9/24, per quote CSQN-00007429 v2.0, customer 1000002276

Quantity	Unit Price	UOM	Discount %	Total Discount	Tax Rate	Tax Amount	Freight	Total Cost
1.00	$ 3,000.57	EA	0.00 %	$ 0.00		$ 0.00	$ 0.00	$ 3,000.57

LN/FY/Account Code	Dollar Amount
7/24/20-100-S2LB- -090-2001-4110- - -1129	$ 3,000.57

TAX:	$ 0.00
FREIGHT:	$ 0.00
TOTAL:	$ 75,307.27

APPROVED
By: [redacted]
Phone#: [redacted]
BUYER

State of New Jersey
New Jersey Department of
Public Health and Environmental Laboratories (4280)
Release Purchase Order

34-24-DOH

P.O. Date: 10/24/2024

Blanket Order Number

24-WAIVE-77071:2

SHOW THIS NUMBER ON ALL PACKAGES, INVOICES AND SHIPPING PAPERS.

Agency Ref. # RT 138000

VENDOR

Vendor Number: [redacted]
Cepheid

904 Caribbean Drive
Sunnyvale, CA 94089
elmer.ma@cepheid.com
888-838-3222

Vendor Alternate ID: [redacted]

Remit Address:
Dana Brown
PO BOX 74007537
Chicago, IL 60674
US

Email: ar.remit@cepheid.com
Phone Number: (408)709-1739

SHIP TO

[redacted]
Public Health Environmental & Agricultural Lab
3 Schwarzkopf Drive
Ewing, NJ 08628
US
Email: [redacted]
Phone: [redacted]

BILL TO

[redacted]
55 North Willow 6th floor
po box 360
Trenton, NJ 08625-0360
US
Email: [redacted]
Phone: [redacted]

INVOICES: Direct invoices in DUPLICATE to the address shown above. TERMS AND CONDITIONS set forth in our Bid or Quotation, on the reverse side hereof or incorporated herein by reference become a part of this

ATTN: [redacted]

Solicitation (Bid) No.:

Payment Terms:
Shipping Terms:
Freight Terms:
Delivery Calendar Day(s) A.R.O.: 0

Item # 1
Class-Item 193-36

GXCARBAR-10 (Kit, Carba-R, IVD, GX) for sold-to/ship-to account 1000002276 (refer to quote 0020109005)

Quantity	Unit Price	UOM	Discount %	Total Discount	Tax Rate	Tax Amount	Freight	Total Cost
60.00	$ 415.75	EA	0.00 %	$ 0.00		$ 0.00	$ 0.00	$ 24,945.00

Item # 2
Class-Item 193-36

GXMTB/RIF-US-10 (kit, MTB, IVD, US) for sold-to/ship-to account 1000002276 (refer to quote 0020109005)

Quantity	Unit Price	UOM	Discount %	Total Discount	Tax Rate	Tax Amount	Freight	Total Cost
30.00	$ 595.00	EA	0.00 %	$ 0.00		$ 0.00	$ 0.00	$ 17,850.00

Item # 3
Class-Item 193-36

Shipping & Handling

Quantity	Unit Price	UOM	Discount %	Total Discount	Tax Rate	Tax Amount	Freight	Total Cost
334.11	$ 1.00	EA	0.00 %	$ 0.00		$ 0.00	$ 0.00	$ 334.11

TAX:	$ 0.00
FREIGHT:	$ 0.00
TOTAL:	$ 43,129.11

APPROVED
By: [redacted]
Phone#: [redacted]
BUYER

State of New Jersey
New Jersey Department of
Public Health and Environmental Laboratories (4280)
Release Purchase Order

34-24-DOH

P.O. Date: 11/27/2024

Blanket Order Number

24-WAIVE-77071:3

SHOW THIS NUMBER ON ALL PACKAGES, INVOICES AND SHIPPING PAPERS.

Agency Ref. # RT 138494 Virology

VENDOR

Vendor Number: [redacted]
Cepheid

904 Caribbean Drive
Sunnyvale, CA 94089
elmer.ma@cepheid.com
888-838-3222

Vendor Alternate ID: [redacted]

Remit Address:
Dana Brown
PO BOX 74007537
Chicago, IL 60674
US

Email: ar.remit@cepheid.com
Phone Number: (408)709-1739

SHIP TO

[redacted]
Public Health Environmental & Agricultural Lab
3 Schwarzkopf Drive
Ewing, NJ 08628
US
Email: [redacted]
Phone: [redacted]

BILL TO

[redacted]
55 North Willow 6th floor
po box 360
Trenton, NJ 08625-0360
US
Email: [redacted]
Phone: [redacted]

INVOICES: Direct invoices in DUPLICATE to the address shown above. TERMS AND CONDITIONS set forth in our Bid or Quotation, on the reverse side hereof or incorporated herein by reference become a part of this

ATTN: [redacted]

Solicitation (Bid) No.:

Payment Terms:
Shipping Terms:
Freight Terms:
Delivery Calendar Day(s) A.R.O.: 0

Item # 1
Class-Item 193-36

GX16A1Y [serial number 846198] service agreement for GeneXpert 2/10/2025 to 2/9/2026 per quote CSQN-00011916 v3.0 [customer 1000002276]

Quantity	Unit Price	UOM	Discount %	Total Discount	Tax Rate	Tax Amount	Freight	Total Cost
22555.00	$ 1.00	YR	0.00 %	$ 0.00		$ 0.00	$ 0.00	$ 22,555.00

Item # 2
Class-Item 193-36

GX16A1Y [serial number 846216] service agreement for GeneXpert 2/10/2025 to 2/9/2026 per quote CSQN-00011917 v2.0 [customer 1000002276]

Quantity	Unit Price	UOM	Discount %	Total Discount	Tax Rate	Tax Amount	Freight	Total Cost
22555.00	$ 1.00	YR	0.00 %	$ 0.00		$ 0.00	$ 0.00	$ 22,555.00

Item # 3
Class-Item 193-36

GX16A1Y [serial number 846220] service agreement for GeneXpert 2/10/2025 to 2/9/2026 per quote CSQN-00011915 v2.0 [customer 1000002276]

Quantity	Unit Price	UOM	Discount %	Total Discount	Tax Rate	Tax Amount	Freight	Total Cost
22555.00	$ 1.00	YR	0.00 %	$ 0.00		$ 0.00	$ 0.00	$ 22,555.00

TAX:	$ 0.00
FREIGHT:	$ 0.00
TOTAL:	$ 67,665.00

APPROVED
By: [redacted]
Phone#: [redacted]
BUYER

State of New Jersey
New Jersey Department of
Public Health and Environmental Laboratories (4280)
Release Purchase Order

34-24-DOH

P.O. Date: 1/21/2025

Blanket Order Number

24-WAIVE-77071:4

SHOW THIS NUMBER ON ALL PACKAGES, INVOICES AND SHIPPING PAPERS.

Agency Ref. # RT 138711

VENDOR

Vendor Number: [redacted]
Cepheid

904 Caribbean Drive
Sunnyvale, CA 94089
elmer.ma@cepheid.com
888-838-3222

Vendor Alternate ID: [redacted]

Remit Address:
Dana Brown
PO BOX 74007537
Chicago, IL 60674
US

Email: ar.remit@cepheid.com
Phone Number: (408)709-1739

SHIP TO

[redacted]
Public Health Environmental & Agricultural Lab
3 Schwarzkopf Drive
Ewing, NJ 08628
US
Email: [redacted]
Phone: [redacted]

BILL TO

[redacted]
55 North Willow 6th floor
po box 360
Trenton, NJ 08625-0360
US
Email: [redacted]
Phone: [redacted]

INVOICES: Direct invoices in DUPLICATE to the address shown above. TERMS AND CONDITIONS set forth in our Bid or Quotation, on the reverse side hereof or incorporated herein by reference become a part of this

ATTN: [redacted]

Solicitation (Bid) No.:

Payment Terms:
Shipping Terms:
Freight Terms:
Delivery Calendar Day(s) A.R.O.: 0

Item # 1
Class-Item 193-36

GX04A1Y [Advantage level service agreement for GeneXpert serial number 110015669, 3/4/25 thru 3/3/26, per quote CSQN-00012145 for account 1000002276]

Quantity	Unit Price	UOM	Discount %	Total Discount	Tax Rate	Tax Amount	Freight	Total Cost
1.00	$ 10,912.00	YR	0.00 %	$ 0.00		$ 0.00	$ 0.00	$ 10,912.00

Item # 2
Class-Item 193-36

GX04A1Y [Advantage level service agreement for GeneXpert serial number 110013157, 3/4/25 thru 3/3/26, per quote CSQN-00012144 for account 1000002276]

Quantity	Unit Price	UOM	Discount %	Total Discount	Tax Rate	Tax Amount	Freight	Total Cost
1.00	$ 10,912.00	YR	0.00 %	$ 0.00		$ 0.00	$ 0.00	$ 10,912.00

TAX:	$ 0.00
FREIGHT:	$ 0.00
TOTAL:	$ 21,824.00

APPROVED
By: [redacted]
Phone#: [redacted]
BUYER

GeneXpert® Service Agreement

Cepheid US		Quote Number	CSQN-00007429 v2.0
904 Caribbean Dr		Quote Date	11/03/2023
Sunnyvale CA 94089		Quote Expire	12/31/2023
USA		Print Date	04/08/2024 13:38:12
Phone	(888) 838-3222	Payment Terms	Net 30 Days
Fax	(408) 716-2442		
Email	service.agreements@cepheid.com		

Sold To	Ship To
1000002276 New Jersey Health & Environment Lab Div of Lab & Research 3 Schwarzkoph Drive Ewing NJ 08628-0000 USA	1000002276 New Jersey Health & Environment Lab 3 Schwarzkoph Drive Ewing NJ 08628-0000 USA

Notes:	A $5,000 reinstatement fee has been added (applied to all instruments 90+ days past warranty/service agreement) to ensure the instrument is in proper working order. Previous Service Agreement End Date: 2/9/2023

No contrary or additional terms or conditions contained on the purchase order shall apply. Applicable taxes will be applied on final invoice. Payment terms are subject to Cepheid's credit line approval. PLEASE ENSURE PURCHASE ORDER COVERS VALUE OF CONTRACT VALUE AND APPLICABLE TAXES.

GeneXpert® Service Agreement

Line	Item Number	Serial Number	Start Date	End Date	Qty	Net Price	Discount	Extended Price
1	GX-REINST-PM	846216				USD 5,000		USD 5,000.00
2	GX16A1Y	846198	02/10/2024	02/09/2025	12.00	USD 20,884		USD 20,884.00
3	GX16A1Y	846216	03/25/2024	02/09/2025	10.46	USD 18,211.35		USD 18,211.35
4	GX16A1Y	846220	03/25/2024	02/09/2025	10.46	USD 18,211.35		USD 18,211.35
5	GX16A1Y	846198	12/18/2023	02/09/2024	1.72	USD 3,000.57		USD 3,000.57
6	GX-REINST-PM	846220				USD 5,000		USD 5,000.00
7	GX-REINST-PM	846198				USD 5,000		USD 5,000.00

Total Extended Price: USD 75,307.27

GeneXpert® Service Agreement

ADVANTAGE LEVEL SERVICE AGREEMENT INCLUDES:

24x7 Phone Support

Onsite 5x10 hours (8AM – 5PM)

Annual Preventative Maintenance Check-up performed by Field Service Engineer

Includes Parts, Labor & Travel

Software Upgrades included

Advantage Service Agreement for GeneXpert s/n: **846198,846216,846220**

Acceptance of any Purchase Order is Subject to Customer's Acceptance of **Cepheid**'s Terms and Conditions.

Customer's Purchase Order Must Indicate Quote: **CSQN-00007429**

Please send a copy of your approved purchase order to: service.agreements@cepheid.com or via fax to: (408) 716-2442

GeneXpert® Service Agreement

This Service Agreement (the "Agreement") is entered into this 3th day of November, 2023 between Cepheid, with offices at 904 Caribbean Drive, Sunnyvale, CA 94089 and Customer New Jersey Health & Environment Lab Div of Lab & Research

Agreement Type Quoted: Contract Winback

GeneXpert System Configuration	Serial Number	Period of Coverage		Service Plan
		Start Date	End Date	
GXXVI-16	846198	02/10/2024	02/09/2025	GX16A1Y
GXXVI-16	846216	03/25/2024	02/09/2025	GX16A1Y
GXXVI-16	846220	03/25/2024	02/09/2025	GX16A1Y
GXXVI-16	846198	12/18/2023	02/09/2024	GX16A1Y

The instrument listed above is herein referred as "Equipment".

GeneXpert® Service Agreement

Plan*	Onsite Coverage*	Key Deliverables*
Advantage Plus	■ 5 days per week ■ 8am to 5pm (local time) ■ Weekend & holiday coverage**	- FSE On-Site Annual Preventative Maintenance ■ Annual on-site service visit by trained field service engineer (FSE) to conduct Preventative Maintenance (PM), including: ■ Replace worn module ejectors ■ Lubricate moving parts ■ Replace fan filters ■ Brush clean module optics ■ Replace automation batteries (if necessary) ■ Xpert Check ■ Loaner system at no additional charge*** ■ One Wellness visit****
Advantage	■ 5 days per week ■ 8am to 5pm (local time)	FSE On-Site Annual Preventative Maintenance ■ Annual on-site service visit by trained field service engineer (FSE) to conduct Preventative Maintenance (PM), including: ■ Replace worn module ejectors ■ Lubricate moving parts ■ Replace fan filters ■ Brush clean module optics ■ Replace automation batteries (if necessary) ■ Xpert Check

GeneXpert® Service Agreement

*Under this Agreement, Tech Support, maintenance and repair for covered GeneXpert systems will be prioritized over customers without a service plan. As part of the services offered under this Agreement, Cepheid will provide, at no additional charge, all parts, labor, and return shipping costs associated with GeneXpert/GeneXpert Infinity system repair incurred during the duration of this Agreement. Routine parts replacement includes any device associated with the system, except for parts provided in calibration kits or consumable items such as printer cartridges or other supplies identified in the Operator's Manual. Service visits exclude holidays recognized by Cepheid (list available upon request). During this Agreement, Customer is entitled to any and all GeneXpert/GeneXpert Infinity system updates (bug fixes etc.) and Cepheid software upgrades (software feature enhancements) at no additional charge. This Agreement does not cover any upgrades to hardware or third party software.

All Plans above include telephone technical support as follows:

Cepheid will provide telephone technical support through its Technical Support Call Center 1-888-838-3222.

Technical Support personnel are available Monday-Thursday 4AM to 8PM PST and Friday 4AM to 7PM PST. Holiday coverage is from 4AM to 6PM PST.

**Weekend and holiday coverage pertains to system down and excludes routine service interventions. Onsite coverage may be subject to the availability of a field service engineer and parts. Routine service repairs and preventative maintenance will be completed during standard business hours.

*** In the event that an Advantage Plus customer's Equipment is down for greater than 3 consecutive business days, Cepheid will provide a comparable no charge loaner system for Advantage Plus Customer upon request. Notwithstanding the foregoing, Advantage Plus Customers with Equipment that are Infinity systems will be provided loaner GX16 system(s) at no additional charge with an equivalent number of modules as Advantage Plus Customer's Infinity system.

****For the purpose of this Agreement, a Wellness visit is an annual scheduled visit to perform preventative maintenance, which includes basic system overview and routine maintenance checks. A Wellness visit does not include Xpert Check.

TERMS AND CONDITIONS

1. This Agreement entitles Customer to preferential consideration for scheduling service for GeneXpert and GeneXpert Infinity systems over service requests from customers who are not covered by a service agreement. As a condition of receiving the Services described herein, Customer shall make reasonable efforts to provide Cepheid with secure internet access to the GeneXpert system(s) to assess the need for repair, provide calibration, and provide software updates. If Customer elects not to provide such access, Cepheid may withhold service or charge Customer for any additional costs incurred by Cepheid that would have been avoided had internet access been provided.

2. All system repairs under this Agreement will be performed by Cepheid and/or a third party service provider approved by Cepheid.

3. At Cepheid's sole discretion, parts may be either repaired or replaced with new or reconditioned parts from an Authorized Cepheid Service Center. Parts for which replacements have been provided by Cepheid shall, at Cepheid's option, become the property of Cepheid. Cepheid reserves the right to determine conclusively what repairs are performed on the system.

GeneXpert® Service Agreement

4. GeneXpert systems or components thereof must not be returned to Cepheid without prior arrangement with Cepheid. Cepheid Service will issue a Return Material Authorization (RMA) number, which must be obtained prior to shipping any item to Cepheid. If a system needs to be returned to Cepheid for repair, Cepheid will offer a loaner system free of charge.

5. Prior to the arrival of a Cepheid Service Representative or shipment of a system or component thereof to the Cepheid Service Center, Customer must ensure that the system is safe to handle according to Cepheid's procedures described in the applicable Operator Manual. Customer must inform Cepheid of any hazards which may be encountered by Cepheid during the service visit. Customer must provide a completed "Clearance Certificate" from Cepheid with any item shipped to Cepheid. The Clearance Certificate must list all potential biohazards that have been analyzed on the system or to which the system has been exposed.

6. Customer must not attempt to repair or remove parts during the duration of this Agreement without prior written approval from Cepheid. Any such attempt may invalidate this Agreement and/or result in additional Time and Material charges to Customer.

7. Cepheid will use commercially reasonable efforts to schedule a visit to occur within 2 business days after Technical Support determines the need for on-site service. Advantage Plus Customers, will be prioritized for service on the next available day from Technical Support determining the need for on-site service.

8. This Agreement covers only defects arising from normal usage and does not cover malfunctions or failures resulting from: operation in an unsuitable environment, use of the system for purposes other than that for which it was designed, unauthorized attachments, acts of nature, unusual physical or electrical stress, modifications or repairs done by other than a Cepheid or Cepheid-authorized service provider, or misuse, abuse or neglect of the system.

9. If this Agreement is entered into after expiration of the original system warranty or expiration or termination of a previous Service Agreement, Cepheid may require a re-instatement inspection before any system(s) can be placed under this Agreement. Cepheid reserves the right to refuse acceptance of this Agreement for any system which, in Cepheid's opinion, has not been properly maintained. Cepheid's acceptance of this Agreement may be further contingent upon the completion of repairs or maintenance as required by such inspection. Customer shall pay any re-instatement inspection fee, and the cost of any repairs or maintenance required to bring the system to a level of operation acceptable to Cepheid, as a condition of receiving any benefits under this Agreement.

10. All repair work completed by Cepheid's Service Representatives is warranted to have been performed in accordance with industry standards for the greater of 90 days or for the duration of this Agreement. All replacement parts used by Cepheid are warranted to be free from defects in workmanship.

11. Except as stated in the immediately preceding paragraph above, Cepheid disclaims all warranties, express or implied, including the implied warranties of merchantability and fitness for a particular purpose.

GeneXpert® Service Agreement

12. If Cepheid does not perform the services provided for in this Agreement, Customer's sole remedy shall be return of any fees or charges paid by Customer in connection with this Agreement.

13. Cepheid shall not be liable for any incidental or consequential damages (including lost profits) for breach of any of its obligations under this Agreement, including breach of warranty. Cepheid's total liability under this Agreement shall not exceed the total payments made by Customer to Cepheid under this Agreement.

14. Confidential Information, Feedback, Customer Data:

    1. Customer agrees to keep any confidential information disclosed by Cepheid under this Agreement about future Cepheid products, software, and services, including any planned or future development efforts. If Customer provides Cepheid with any feedback regarding any Cepheid product, software, or service, Cepheid shall be entitled to use any such feedback for any purpose, without notice, restriction, or remuneration to anyone.

    2. If Customer returns any equipment to Cepheid for any reason, Customer shall ensure that it saves any data it wishes to retain, and removes and deletes all data from such equipment, prior to its return. Customer understands and agrees that Cepheid shall: (i) delete any data remining on returned equipment; and (ii) shall have no responsibility or liability with respect to such data.

    3. If Customer provides Cepheid with "protected health information," as such term is defined in in 45 C.F.R. § 160.103 of the Privacy Rule, the Business Associate Agreement available on Cepheid's website (https://www.cepheid.com/en_US/systems/business-associates-agreement) shall apply.

    4. The provisions of this Section shall survive any expiration or termination of this Agreement.

15. Service under this Agreement shall not be transferable and shall be binding on the Parties hereto, their successors and assigns.

Sales Quote

Cepheid
US904 Caribbean Dr
Sunnyvale CA US904 Caribbean Dr
USA

Quote Number : 0020114518

Quote Date : 4/6/2023 8:00 AM
Quote Expire : 7/5/2023

Print Date : 4/6/2023
Contact : [redacted]

Phone : (609) 530-3258
Fax :

Sold To : 1000002276
New Jersey Health & Environment Lab
3 Schwarzkoph Drive
Ewing NJ 08628-0000
USA

Buyer : [redacted]
Phone :

Ship To: 1000002276
New Jersey Health & Environment Lab
3 Schwarzkoph Drive
Ewing NJ 08628-0000
USA

Phone :

Attention : [redacted]
Phone :
Sales Rep : [redacted]
GPO : Non-Des Gov

PLEASE EMAIL PURCHASE ORDERS TO: [redacted]

LINE	ITEM NO.	QTY	UOM	UNIT PRICE	NET PRICE	EXTENDED PRICE	SERIAL NUMBER
1	GXXVI-16-D-10C	2.00	EA	USD 196,800.00	USD 167,280.00	USD 334,560.00	
GENEXPERT XVI R2, 16 MODULE, DSKTOP, 10C							
2	GXIV-4-D-10C	10.00	EA	USD 71,900.00	USD 61,115.00	USD 611,150.00	
GENEXPERT IV R2, 4 MODULE, DESKTOP, 10C							
3	850-0386	1.00	EA	USD 1,050.00	USD 1,050.00	USD 1,050.00	
PRO APC POWER-SAVING BACK-UPS KIT							
4	PRINTER-BW	1.00	EA	USD 260.00	USD 260.00	USD 260.00	

LINE	ITEM NO.	QTY	UOM	UNIT PRICE	NET PRICE	EXTENDED PRICE	SERIAL NUMBER
B&W PRINTER FOR GENEXPERT AND SMARTCYCL							
5	850-0386	11.00	EA	USD 1,050.00	USD 1,050.00	USD 11,550.00	
PRO APC POWER-SAVING BACK-UPS KIT							
6	PRINTER-BW	11.00	EA	USD 260.00	USD 260.00	USD 2,860.00	
B&W PRINTER FOR GENEXPERT AND SMARTCYCL							
7	GX16A4Y	2.00	EA	USD 17,836.00	USD 17,836.00	USD 35,672.00	
4 Year GX 16-16 Advantage Service Agreem							
8	GX44A4Y	10.00	EA	USD 6,652.00	USD 6,652.00	USD 66,520.00	
4 Year GX 4-4 Advantage Service Agreemen							

Non-Infinity Instrument Terms

YOUR PURCHASE ORDER MUST REFERENCE THE QUOTE NUMBER ABOVE. PRICE ADJUSTMENTS MAY NOT BE ALLOWED AFTER SHIPMENT.
Cepheid warrants that the Products (i) shall be free from defects in material and workmanship for a period of one year after shipment, (ii)
conform to Cepheid's published specifications for the Products, and (iii) are free of liens and encumbrances when shipped to Customer. Your purchase is governed by any direct agreement between you and Cepheid and any applicable agreement(s) with your GPO and/or IDN. If no such agreements are in effect, the Terms and Conditions available at https://www.cepheid.com/en_US/support/order-management shall govern your purchase and by submitting a purchase order, you agree to such Terms and Conditions. No terms or conditions in a purchase order that are contrary or in addition to those in any of the foregoing agreements shall apply. Except as otherwise agreed upon by Cepheid: standard orders ship via FedEx 2-Day; quoted freight charge is an estimate only and final charges will be prepaid and added to the invoice, and ALL SALES ARE FINAL AND ARE NON-RETURNABLE AND NON-REFUNDABLE. Customer's preferred carrier and account number are required if shipped collect. Please fax Purchase Orders to 408-716-2840, or email a PDF version of the Purchase Order to ordermanagement@cepheid.com.

Standard Terms

YOUR PURCHASE ORDER MUST REFERENCE THE QUOTE NUMBER ABOVE. PRICE ADJUSTMENTS MAY NOT BE ALLOWED AFTER SHIPMENT.
Cepheid warrants that the Products shall be free from defects in material and workmanship for a period of one year after shipment, (ii) conform to Cepheid's published specifications for the Products, and (iii) are free of liens and encumbrances when shipped to Customer. Your purchase is governed by any direct agreement between you and Cepheid and any applicable agreement(s) with your GPO and/or IDN. If no such agreements are in effect, the Terms and Conditions available at https://www.cepheid.com/en_US/support/order-management shall govern your purchase and by submitting a purchase order, you agree to such Terms and Conditions. No terms or conditions in a purchase order that are contrary or in addition to those in any of the foregoing agreements shall apply. Except as otherwise agreed upon by Cepheid: standard orders ship via FedEx 2-Day; quoted freight charge is an estimate only and final charges will be prepaid and added to the invoice, and ALL SALES ARE FINAL AND ARE NON-RETURNABLE AND NON-REFUNDABLE. The customer's preferred carrier and account number are required if shipped collect. Please fax Purchase Orders to 408-716-2840, or email a PDF version of the Purchase Order to [redacted]

Total :	USD 1,063,622.00
Shipping & Handling :	USD 24,725.88
Total Tax :	USD 0.00
Grand Total :	USD 1,088,347.88

GPO	Non-Des Gov
Payment Terms	Net due in 60 Days
Freight Terms	ORI
FOB Point	Origin
Ship Via	FEDEX 2DAY (3:00 PM SECOND BUSINESS
SalesPerson	[redacted]

Cepheid GeneXpert® & GeneXpert® Infinity

Checklist for Submitting a Purchase Order to Cepheid

Purchase Order Requirements:

- Cepheid **Quote Number is listed** on the Purchase Order.
- No special Terms and Conditions are listed on the Purchase Order that would contradict either GPO (where applicable) or Cepheid Terms and Conditions
  - Note: Contradictions to standard GPO or Cepheid Terms and Conditions will require a Cepheid Legal review and acceptance before system shipments can occur
- **Payment Terms** are specified as “Net 30”
- FOB Terms are aligned with Cepheid quote.
- Billing contact information is clearly stated
- Pricing and **Part Numbers** match the Cepheid Quote
- Purchase Order freight charges match the Cepheid Quote
- Freight charges for Infinity Systems should match the quote charges and carrier
- For GeneXpert I to XVI Systems Only: Freight that is “PrePay & Add” will be invoiced at the exact freight amount. The freight total on the Purchase Order does not have to match the Cepheid Quote.
- Delivery Date and **Shipping Location** are clearly specified

Submit to your Cepheid Sales Rep Prior to the Purchase Order

- **Credit Application** has been submitted to a Cepheid Sales Rep
- **New Customer Setup Form** has been submitted to a Cepheid Sales Rep
- **GPO Letter of Commitment** (when applicable) should be submitted to a Cepheid Sales Rep
- **Signed agreement** (when applicable) should be submitted to a Cepheid Sales Rep
- **Tax Exemption Certificate** has been submitted (when applicable) to a Cepheid Sales Rep
- **PO** should be submitted directly to your Cepheid Sales Representative.

Thank you for your order and for choosing Cepheid!



GeneXpert® Xpress System



GeneXpert® Infinity Systems



GeneXpert® Systems

Sales Quote

Cepheid
US904 Caribbean Dr
Sunnyvale CA US904 Caribbean Dr
USA

Quote Number : 0020109005

Quote Date : 2/2/2023 12:21 PM
Quote Expire : 5/3/2023

Print Date : 2/2/2023
Contact : [redacted]

Phone : (609) 530-3258
Fax :

Sold To : 1000002276
New Jersey Health & Environment Lab
3 Schwarzkoph Drive
Ewing NJ 08628-0000
USA

Buyer : [redacted]
Phone :

Ship To: 1000002276
New Jersey Health & Environment Lab
3 Schwarzkoph Drive
Ewing NJ 08628-0000
USA

Phone :

Attention : [redacted]
Phone :
Sales Rep : [redacted]
GPO : Non-Des Gov

PLEASE EMAIL PURCHASE ORDERS TO: order.management@cepheid.com

LINE	ITEM NO.	QTY	UOM	UNIT PRICE	NET PRICE	EXTENDED PRICE	SERIAL NUMBER
1	GXCT/NG-10	50.00	EA	USD 408.00	USD 323.00	USD 16,150.00	
KIT,CT/NG,GX,IVD							
2	GXCARBAR-10	60.00	EA	USD 590.00	USD 415.75	USD 24,945.00	
KIT,CARBA-R,IVD,GX							
3	GXMTB/RIF-US-10	30.00	EA	USD 740.00	USD 595.00	USD 17,850.00	
KIT,MTB,IVD,US							
4	CARBAR-BU1	10.00	EA	USD 1,500.00	USD 1,500.00	USD 15,000.00	

LINE	ITEM NO.	QTY	UOM	UNIT PRICE	NET PRICE	EXTENDED PRICE	SERIAL NUMBER
BUNDLE,OEM CONTROLS AND PANEL,CARBA-R,GX							
5	GXCARBAR-SPAK1	2.00	EA	USD 3,750.00	USD 3,750.00	USD 7,500.00	
STARTER KIT,GX CARBA-R,IVD							
6	CARBAR-BU1	1.00	EA	USD 1,500.00	USD 0.00	USD 0.00	
BUNDLE,OEM CONTROLS AND PANEL,CARBA-R,GX							
7	CT/NG-BU1	10.00	EA	USD 2,590.00	USD 2,590.00	USD 25,900.00	
BUNDLE,OEM CONTROL REAGENTS,CT/NG							
8	XP3COV2/FLU/RSV-10	500.00	EA	USD 1,100.00	USD 680.00	USD 340,000.00	
KIT,XPRESS,COV-2/FLU/RSV PLUS,10 TEST							

STARTPAK without GSA Terms

YOUR PURCHASE ORDER MUST REFERENCE THE QUOTE NUMBER ABOVE TO RECEIVE THE ABOVE DISCOUNTS. PRICE ADJUSTMENTS MAY NOT BE ALLOWED AFTER SHIPMENT.

Your purchase is governed by any direct agreement between you and Cepheid and any applicable agreement(s) with your GPO and/or IDN. If no such agreements are in effect, the Terms and Conditions available at https://www.cepheid.com/en_US/support/order-management shall govern your purchase and by submitting a purchase order, you agree to such Terms and Conditions. No terms or conditions in a purchase order that are contrary or in addition to those in any of the foregoing agreements shall apply. Except as otherwise agreed upon by Cepheid: StartPak orders ship FedEx Standard Overnight; quoted freight charge is an estimate only and final charges will be prepaid and added to invoice; and ALL SALES ARE FINAL AND ARE NON-RETURNABLE AND NON-REFUNDABLE. Customer's preferred carrier and account number are required if shipped collect. Please fax Purchase Orders to 408-716-2840, or email a PDF version of the Purchase Order to ordermanagement@cepheid.com.

Mixed Products without GSA Terms

YOUR PURCHASE ORDER MUST REFERENCE THE QUOTE NUMBER ABOVE TO RECEIVE THE ABOVE DISCOUNTS. PRICE ADJUSTMENTS MAY NOT BE ALLOWED AFTER SHIPMENT
Your purchase is governed by any direct agreement between you and Cepheid and any applicable agreement(s) with your GPO and/or IDN. If no such agreements are in effect, the Terms and Conditions available at https://www.cepheid.com/en_US/support/order-management shall govern your purchase and by submitting a purchase order, you agree to such Terms and Conditions. No terms or conditions in a purchase order that are contrary or in addition to those in any of the foregoing agreements shall apply. Except as otherwise agreed upon by Cepheid: Orders with Reagent and StartPak products combined will ship Overnight unless otherwise requested; quoted freight charge is an estimate only and final charges will be prepaid and added to the invoice, and ALL SALES ARE FINAL AND ARE NON-RETURNABLE AND NON-REFUNDABLE. The customer's preferred carrier and account number are required if shipped collect. Please fax Purchase Orders to 408-716-2840, or email a PDF version of the Purchase Order to ordermanagement@cepheid.com.

Standard Terms

YOUR PURCHASE ORDER MUST REFERENCE THE QUOTE NUMBER ABOVE. PRICE ADJUSTMENTS MAY NOT BE ALLOWED AFTER SHIPMENT.
Cepheid warrants that the Products shall be free from defects in material and workmanship for a period of one year after shipment, (ii) conform to Cepheid's published specifications for the Products, and (iii) are free of liens and encumbrances when shipped to Customer. Your purchase is governed by any direct agreement between you and Cepheid and any applicable agreement(s) with your GPO and/or IDN. If no such agreements are in effect, the Terms and Conditions available at https://www.cepheid.com/en_US/support/order-management shall govern your purchase and by submitting a purchase order, you agree to such Terms and Conditions. No terms or conditions in a purchase order that are contrary or in addition to those in any of the foregoing agreements shall apply. Except as otherwise agreed upon by Cepheid: standard orders ship via FedEx 2-Day; quoted freight charge is an estimate only and final charges will be prepaid and added to the invoice, and ALL SALES ARE FINAL AND ARE NON-RETURNABLE AND NON-REFUNDABLE. The customer's preferred carrier and account number are required if shipped collect. Please fax Purchase Orders to 408-716-2840, or email a PDF version of the Purchase Order to [redacted]

Total :	USD 447,345.00
Shipping & Handling :	USD 1,140.78
Total Tax :	USD 0.00
Grand Total :	USD 448,485.78

GPO	Non-Des Gov
Payment Terms	Net due in 60 Days
Freight Terms	ORI
FOB Point	Origin
Ship Via	FEDEX PRI ONIGHT (10:30 AM NEXT BUS
SalesPerson	[redacted]

State of New Jersey Standard Terms and Conditions

(Revised June 21, 2023)

STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY - DIVISION OF PURCHASE AND PROPERTY
33 WEST STATE STREET, P.O. BOX 230 TRENTON, NEW JERSEY 08625-0230

1.0 STANDARD TERMS AND CONDITIONS APPLICABLE TO THE CONTRACT

The following terms and conditions shall apply to all contracts or purchase agreements made with the State of New Jersey. The State's terms and conditions shall prevail over any conflicts set forth in a Contractor's Quote or Proposal.

2.0 STATE LAW REQUIRING MANDATORY COMPLIANCE BY ALL CONTRACTORS

The statutes, laws, regulations or codes cited herein are available for review at the New Jersey State Library, 185 West State Street, Trenton, New Jersey 08625.

2.1 BUSINESS REGISTRATION

Pursuant to N.J.S.A. 52:32-44, the State is prohibited from entering into a contract with an entity unless the Contractor and each subcontractor named in the proposal have a valid Business Registration Certificate on file with the Division of Revenue and Enterprise Services. A subcontractor named in a bid or other proposal shall provide a copy of its business registration to the Contractor who shall provide it to the State.

The contractor shall maintain and submit to the State a list of subcontractors and their addresses that may be updated from time to time with the prior written consent of the Director of the Division of Purchase and Property (Director) during the course of contract performance. The contractor shall submit to the State a complete and accurate list of all subcontractors used and their addresses before final payment is made under the contract.

Pursuant to N.J.S.A. 54:49-4.1, a business organization that fails to provide a copy of a business registration, or that provides false business registration information, shall be liable for a penalty of $25 for each day of violation, not to exceed $50,000 for each business registration copy not properly provided under a contract with a contracting agency.

The contractor and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury, the Use Tax due pursuant to the "Sales and Use Tax Act, P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.) on all sales of tangible personal property delivered into the State. Any questions in this regard can be directed to the Division of Revenue at (609) 292-1730. Form NJ-REG can be filed online at http://www.state.nj.us/treasury/revenue/busregcert.shtml.

2.2 OWNERSHIP DISCLOSURE

Pursuant to N.J.S.A. 52:25-24.2, in the event the Contractor is a corporation, partnership or limited liability company, the Contractor must complete an Ownership Disclosure Form.

A current completed Ownership Disclosure Form must be received prior to or accompany the submitted Quote. A Contractor's failure to submit the completed and signed form prior to or with its Quote will result in the Contractor being ineligible for a Contract award, unless the Division of Purchase and Property (Division) has on file a signed and accurate Ownership Disclosure Form dated and received no more than six (6) months prior to the Quote submission deadline for this procurement. If any ownership change has occurred within the last six (6) months, a new Ownership Disclosure Form must be completed, signed and submitted with the Quote.

In the alternative, a Contractor with any direct or indirect parent entity which is publicly traded may submit the name and address of each publicly traded entity and the name and address of each person that holds a 10 percent or greater beneficial interest in the publicly traded entity as of the last annual filing with the federal Securities and Exchange Commission or the foreign equivalent, and, if there is any person that holds a 10 percent or greater beneficial interest, also shall submit links to the websites containing the last annual filings with the federal Securities and Exchange Commission or the foreign equivalent and the relevant page numbers of the filings that contain the information on each person that holds a 10 percent or greater beneficial interest. N.J.S.A. 52:25-24.2.

2.3 DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN

Pursuant to N.J.S.A. 52:32-58, the Contractor must utilize this Disclosure of Investment Activities in Iran form to certify that neither the Contractor, nor one (1) of its parents, subsidiaries, and/or affiliates (as defined in N.J.S.A. 52:32-56(e)(3)), is listed on the Department of the Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither the Contractor, nor one (1) of its parents, subsidiaries, and/or affiliates, is involved in any of the investment activities set forth in N.J.S.A. 52:32-56(f). If the Contractor is unable to so certify, the Contractor shall provide a detailed and precise description of such activities as directed on the form. A Contractor's failure to submit the completed and signed form will preclude the award of a Contract to said Contractor.

2.4 ANTI-DISCRIMINATION

All parties to any contract with the State agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A. 10:5-1 et seq. and N.J.S.A. 10:5-31 through 10:5-38, and all rules and regulations issued thereunder are hereby incorporated by reference. The agreement to abide by the provisions of N.J.S.A. 10:5-31 through 10:5-38 include those provisions indicated for Goods, Professional Service and General Service Contracts (Exhibit A, attached) and Constructions

Contracts (Exhibit B and Exhibit C - Executive Order 151 Requirements) as appropriate.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time.

2.5 AFFIRMATIVE ACTION

In accordance with N.J.A.C. 17:27-1.1, prior to award, the Contractor and subcontractor must submit a copy of a New Jersey Certificate of Employee Information Report, or a copy of Federal Letter of Approval verifying it is operating under a federally approved or sanctioned Affirmative Action program. Contractors or subcontractors not in possession of either a New Jersey Certificate of Employee Information Report or a Federal Letter of Approval must complete the Affirmative Action Employee Information Report (AA-302) located on the web at https://www.state.nj.us/treasury/contract_compliance/.

2.6 AMERICANS WITH DISABILITIES ACT

The contractor must comply with all provisions of the Americans with Disabilities Act (ADA), P.L 101-336, in accordance with 42 U.S.C. 12101, et seq.

2.7 MACBRIDE PRINCIPLES

The Contractor must certify pursuant to N.J.S.A. 52:34-12.2 that it either has no ongoing business activities in Northern Ireland and does not maintain a physical presence therein or that it will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.5 and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles.

2.8 PAY TO PLAY PROHIBITIONS

New Jersey law insulates the negotiation and award of State contracts from political contributions that pose a risk of improper influence, purchase of access or the appearance thereof. P.L.2005, c.51, as amended by the Elections Transparency Act, P.L.2023, c.30, codified at N.J.S.A. 19:44A-20.13 to 20.25 ("Chapter 51") and Executive Order 333 (2023).

Pursuant to N.J.S.A. 19:44A-20.13 et seq. (P.L.2005, c.51, rev. P.L.2023, c.30), a "fair and open process" means, at a minimum, that the contract shall be: publicly advertised in newspapers or on the Internet website maintained by the public entity in sufficient time to give notice in advance of the contract; awarded under a process that provides for public solicitation of proposals or qualifications and awarded and disclosed under criteria established in writing by the public entity prior to the solicitation of proposals or qualifications; and publicly opened and announced when awarded. A contract awarded under a process that includes public bidding or competitive contracting pursuant to State contracts law shall constitute a fair and open process. N.J.S.A. 19:44A-20.23. The agency conducting the procurement will need to determine whether the procurement meets the Election Transparency Act definition of a "fair and open process" and instruct vendors on the applicability of Chapter 51.

A. For Contracts Awarded Pursuant to a Fair and Open Process

Pursuant to P.L.2005, c.51, as amended by the Elections Transparency Act, P.L.2023, c.30, codified at N.J.S.A. 19:44A-20.13 to 20.25 ("Chapter 51"), and Executive Order No. 333 (2023), contracts awarded pursuant to a fair and open process do not require a certification or disclosure of any solicitation or contribution of money, or pledge of contribution, including in-kind contributions.

B. For Contracts Awarded Pursuant to a Non-Fair and Open Process

Pursuant to N.J.S.A. 19:44A-20.13 et seq. (P.L.2005, c.51, rev. P.L.2023, c.30), and Executive Order 333 (2023), the State shall not enter into a Contract to procure services or any material, supplies or equipment, or to acquire, sell, or lease any land or building from any Business Entity, where the value of the transaction exceeds $17,500, if that Business Entity has solicited or made any contribution of money, or pledge of contribution, including in-kind contributions, to a Continuing Political Committee or to a candidate committee and/or election fund of any candidate for or holder of the public office of Governor or Lieutenant Governor during certain specified time periods. It shall be a breach of the terms of the contract for the Business Entity to:

(1) Make or solicit a contribution in violation of the statute;
(2) Knowingly conceal or misrepresent a contribution given or received;
(3) Make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
(4) Make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate of holder of the public office of Governor or Lieutenant Governor;
(5) Engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of the Legislation;
(6) Fund contributions made by third parties, including consultants, attorneys, family members, and employees;
(7) Engage in any exchange of contributions to circumvent the intent of the Legislation; or
(8) Directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Legislation.

Further, the Contractor is required, on a continuing basis, to report any contributions it makes during the term of the Contract, and any extension(s) thereof, at the time any such contribution is made.

A "Continuing Political Committee" means any political organization (a) organized under section 527 of the Internal Revenue Code; and (b) consisting of any group of two or more persons acting jointly, or any corporation, partnership, or any other incorporated or unincorporated association, including a political club, political action committee, civic association or other organization, which in any calendar year contributes or expects to contribute at least $5,500 to the aid or promotion of the candidacy of an individual, or of the candidacies of individuals, for elective public office, or the passage or defeat of a public question or public questions, and which may be expected to make contributions toward such aid or promotion or passage or defeat during a subsequent election, provided that the group, corporation, partnership, association or other organization has been determined to be a Continuing Political Committee by the New Jersey Election Law Enforcement Commission under N.J.S.A.19:44A-8. A Continuing Political Committee does not include a "political party committee," a "legislative leadership committee," or an "independent expenditure committee," as defined in N.J.S.A. 19:44A-3.

Prior to awarding any Contract or agreement to any Business Entity pursuant to a non-fair and open process, the Business Entity proposed as the intended Contractor of the Contract shall submit the Two-Year Chapter 51 /Executive Order 333 Vendor Certification and Disclosure of Political Contributions for Non-Fair and Open Contracts, certifying either that no contributions to a Continuing Political Committee or to a candidate committee or election fund of a gubernatorial candidate have been made by the Business Entity and reporting all qualifying contributions made by the Business Entity or any person or entity whose contributions are attributable to the Business Entity. The required form and instructions, available for review on the Division's website at http://www.state.nj.us/treasury/purchase/forms/eo134/Chapter51.pdf.

2.9 POLITICAL CONTRIBUTION DISCLOSURE

The contractor is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.27 (P.L.2005, c.271, rev. P.L.2023, c.30) if in a calendar year the contractor receives one or more contracts valued at $50,000.00 or more. It is the contractor's responsibility to determine if filing is necessary. Failure to file can result in the imposition of penalties by ELEC. Additional information about this requirement is available from ELEC by calling 1(888)313-3532 or on the internet at http://www.elec.state.nj.us/.

2.10 STANDARDS PROHIBITING CONFLICTS OF INTEREST

The following prohibitions on contractor activities shall apply to all contracts or purchase agreements made with the State of New Jersey, pursuant to Executive Order No. 189 (1988).

A. No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or partnership, firm or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g;

B. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the New Jersey Office of the Attorney General and the Executive Commission on Ethical Standards, now known as the State Ethics Commission;

C. No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he/she is employed or associated or in which he/she has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, now known as the State Ethics Commission, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest;

D. No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his/her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee;

E. No vendor shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his/her official position to secure unwarranted privileges or advantages for the vendor or any other person; and

F. The provisions cited above in paragraphs 2.8A through 2.8E shall not be construed to prohibit a State officer or employee or Special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards, now known

as the State Ethics Commission may promulgate under paragraph 3c of Executive Order No. 189.

2.11 NEW JERSEY BUSINESS ETHICS GUIDE CERTIFICATION

The Treasurer has established a business ethics guide to be followed by a Contractor in dealings with the State. The guide can be found at: https://www.nj.gov/treasury/purchase/pdf/BusinessEthicsGuide.pdf.

2.12 NOTICE TO ALL CONTRACTORS SET-OFF FOR STATE TAX NOTICE

Pursuant to N.J.S.A. 54:49-19, effective January 1, 1996, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off that taxpayer's or shareholder's share of the payment due the taxpayer, partnership, or S corporation. The amount set off shall not allow for the deduction of any expenses or other deductions which might be attributable to the taxpayer, partner or shareholder subject to set-off under this act.

The Director of the Division of Taxation shall give notice to the set-off to the taxpayer and provide an opportunity for a hearing within 30 days of such notice under the procedures for protests established under R.S. 54:49-18. No requests for conference, protest, or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. Interest that may be payable by the State, pursuant to P.L. 1987, c.184 (c.52:32-32 et seq.), to the taxpayer shall be stayed.

2.13 COMPLIANCE - LAWS

The contractor must comply with all local, State and Federal laws, rules and regulations applicable to this contract and to the goods delivered and/or services performed hereunder.

2.14 COMPLIANCE - STATE LAWS

It is agreed and understood that any contracts and/or orders placed as a result of [this proposal] shall be governed and construed and the rights and obligations of the parties hereto shall be determined in accordance with the laws of the State of New Jersey.

2.15 WARRANTY OF NO SOLICITATION ON COMMISSION OR CONTINGENT FEE BASIS

The contractor warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. If a breach or violation of this section occurs, the State shall have the right to terminate the contract without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage or contingent fee.

2.16 DISCLOSURE OF INVESTIGATIONS AND OTHER ACTIONS

The Contractor should submit the Disclosure of Investigations and Other Actions Form which provides a detailed description of any investigation, litigation, including administrative complaints or other administrative proceedings, involving any public sector clients during the past five (5) years, including the nature and status of the investigation, and, for any litigation, the caption of the action, a brief description of the action, the date of inception, current status, and, if applicable, disposition. If a Contractor does not submit the form with the Quote, the Contractor must comply within seven (7) business days of the State's request or the State may deem the Quote non-responsive.

2.17 DISCLOSURE OF PROHIBITED ACTIVITIES WITH RUSSIA OR BELARUS

Pursuant to N.J.S.A. 52:32-60.1 (P.L. 2022, c.3), a person or entity seeking to enter into or renew a contract for the provision of goods or services shall certify that it is not identified on the Department of the Treasury's List of Persons or Entities Engaging in Prohibited Activities in Russia or Belarus. If the Contractor is unable to so certify, the Contractor shall provide a detailed and precise description of such activities. A Contractor's failure to submit a certification will preclude the award or renewal of a Contract to said Contractor.

3.0 STATE LAW REQUIRING MANDATORY COMPLIANCE BY CONTRACTORS UNDER CIRCUMSTANCES SET FORTH IN LAW OR BASED ON THE TYPE OF CONTRACT

3.1 COMPLIANCE - CODES

The contractor must comply with New Jersey Uniform Construction Code and the latest National Electrical Code 70®, B.O.C.A. Basic Building code, Occupational Safety and Health Administration and all applicable codes for this requirement. The contractor shall be responsible for securing and paying all necessary permits, where applicable.

3.2 PREVAILING WAGE ACT

The New Jersey Prevailing Wage Act, N.J.S.A. 34: 11-56.25 et seq. is hereby made part of every contract entered into on behalf of the State of New Jersey through the Division of Purchase and Property, except those contracts which are not within the contemplation of the Act. The Contractor 's signature on [the proposal] is his/her guarantee that neither he/she nor any subcontractors he/she might employ to perform the work covered by [the proposal] has been suspended or debarred by the Commissioner, Department of Labor and Workforce Development for violation of the provisions of the Prevailing Wage Act and/or the Public Works Contractor Registration Acts; the Contractor's signature on the proposal is also his/her guarantee that he/she and any subcontractors he/she might employ to perform the work covered by [the proposal] shall comply with

the provisions of the Prevailing Wage and Public Works Contractor Registration Acts, where required.

3.3 PUBLIC WORKS CONTRACTOR REGISTRATION ACT

The New Jersey Public Works Contractor Registration Act requires all contractors, subcontractors and lower tier subcontractor(s) who engage in any contract for public work as defined in N.J.S.A. 34:11-56.26 be first registered with the New Jersey Department of Labor and Workforce Development pursuant to N.J.S.A. 34:11-56.51. Any questions regarding the registration process should be directed to the Division of Wage and Hour Compliance.

3.4 PUBLIC WORKS CONTRACT - ADDITIONAL AFFIRMATIVE ACTION REQUIREMENTS

N.J.S.A. 10:2-1 requires that during the performance of this contract, the contractor must agree as follows:

A. In the hiring of persons for the performance of work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates;

B. No contractor, subcontractor, nor any person on his/her behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex;

C. There may be deducted from the amount payable to the contractor by the contracting public agency, under this contract, a penalty of $50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and

D. This contract may be canceled or terminated by the contracting public agency, and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the contractor from the contracting public agency of any prior violation of this section of the contract.

N.J.S.A. 10:5-33 and N.J.A.C. 17:27-3.5 require that during the performance of this contract, the contractor must agree as follows:

A. The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause;

B. The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex;

C. The contractor or subcontractor where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment, N.J.A.C. 17:27-3.7 requires all contractors and subcontractors, if any, to further agree as follows:

1. The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2;
2. The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices;
3. The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions; and
4. In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

3.5 BUILDING SERVICE

Pursuant to N.J.S.A. 34:11-56.58 et seq., in any contract for building services, as defined in N.J.S.A. 34:11-56.59, the employees of the contractor

or subcontractors shall be paid prevailing wage for building services rates, as defined in N.J.S.A. 34:11.56.59. The prevailing wage shall be adjusted annually during the term of the contract.

3.6 THE WORKER AND COMMUNITY RIGHT TO KNOW ACT

The provisions of N.J.S.A. 34:5A-1 et seq. which require the labeling of all containers of hazardous substances are applicable to this contract. Therefore, all goods offered for purchase to the State must be labeled by the contractor in compliance with the provisions of the statute.

3.7 SERVICE PERFORMANCE WITHIN U.S.

Under N.J.S.A. 52:34-13.2, all contracts primarily for services awarded by the Director shall be performed within the United States, except when the Director certifies in writing a finding that a required service cannot be provided by a contractor or subcontractor within the United States and the certification is approved by the State Treasurer.

A shift to performance of services outside the United States during the term of the contract shall be deemed a breach of contract. If, during the term of the contract, the contractor or subcontractor, proceeds to shift the performance of any of the services outside the United States, the contractor shall be deemed to be in breach of its contract, which contract shall be subject to termination for cause pursuant to Section 5.7(b) (1) of the Standard Terms and Conditions, unless previously approved by the Director and the Treasurer.

3.8 BUY AMERICAN

Pursuant to N.J.S.A. 52:32-1, if manufactured items or farm products will be provided under this contract to be used in a public work, they shall be manufactured or produced in the United States, whenever available, and the contractor shall be required to so certify.

3.9 DOMESTIC MATERIALS

Pursuant to N.J.S.A. 52:33-2 et seq., if the contract is for the construction, alteration or repair of any public work, the contractor and all subcontractors shall use only domestic materials in the performance of the work unless otherwise noted in the specifications.

3.10 DIANE B. ALLEN EQUAL PAY ACT

Pursuant to N.J.S.A. 34:11-56.14 and N.J.A.C. 12:10-1.1 et seq., a contractor performing "qualifying services" or "public work" to the State or any agency or instrumentality of the State shall provide the Commissioner of Labor and Workforce Development a report regarding the compensation and hours worked by employees categorized by gender, race, ethnicity, and job category. For more information and report templates see https://nj.gov/labor/equalpay/equalpay.html.

3.11 EMPLOYEE MISCLASSIFICATION

In accordance with Governor Murphy's Executive Order #25 and the Task Force's July 2019 Report, employers are required to properly classify their employees. Workers are presumed to be employees and not independent contractors, unless the employer can demonstrate all three factors of the "ABC Test" below:

A. Such individual has been and will continue to be free from control or direction of the performance of such service, but under his or her contract of service and in fact; and
B. Such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all places of business of the enterprise for which such service is performed; and
C. Such individual is customarily engaged in an independently established trade, occupation, profession or business.

This test has been adopted by New Jersey under its Wage & Hour, Wage Payment and Unemployment Insurance Laws to determine whether a worker is properly classified. Under N.J.S.A. 34:1A-1.17-1.19, the Department of Labor and Workforce Development has the authority to investigate potential violations of these laws and issue penalties and stop work order to employers found to be in violation of the laws.

3.12 CYBERSECURITY INCIDENT REPORTING REQUIREMENT

Pursuant to N.J.S.A. 52:17B-193.2 et seq. (P.L.2023, c.19), Contractors that have access to, or host the State's network(s), system(s), application(s), or information shall report Cybersecurity Incidents to the New Jersey Office of Homeland Security and Preparedness (NJ OHSP) at https://www.cyber.nj.gov/report/ within 72 hours of when the Contractor reasonably believes that a Cybersecurity Incident has occurred.

Consistent with N.J.S.A. 52:17B-193.2, "Cybersecurity Incident" means a malicious or suspicious event occurring on or conducted through a computer network that jeopardizes the integrity, confidentiality, or availability of an information system or the information the system processes, stores, or transmits.

Consistent with N.J.S.A. 52:17B-193.3(f), any Cybersecurity Incident notification submitted to the NJ OHSP shall be deemed confidential, non-public, and not subject to the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.), commonly known as the New Jersey Open Public Records Act, as amended and supplemented, and may not be discoverable in any civil or criminal action or subject to subpoena, unless the subpoena is issued by the New Jersey State Legislature and deemed necessary for the purposes of legislative oversight.

This reporting required by N.J.S.A. 52:17B-193.2 et seq. (P.L.2023, c.19) to NJ OHSP is in addition to the Contractor's responsibility to report Security Incidents as may be set forth in Contract Scope of Work or the Waivered Contracts Supplement to the State of New Jersey Terms and

Conditions. If the Waivered Contracts Supplement is not made part of the contract and a notification period is not specified in the Contract Scope of Work, the Contractor shall give notice of the Cybersecurity Incident to the Using Agency as soon as practicable, but no less than one business day, after the Contractor reasonably believes that a Cyber Security Incident has occurred.

4.0 INDEMNIFICATION AND INSURANCE

4.1 INDEMNIFICATION

The contractor's liability to the State and its employees in third party suits shall be as follows:

A. Indemnification for Third Party Claims - The contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend, and save harmless the State of New Jersey and its employees from and against any and all claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith which shall arise from or result directly or indirectly from the work and/or materials supplied under this contract, including liability of any nature or kind for or on account of the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this contract;

B. The contractor's indemnification and liability under subsection (A) is not limited by, but is in addition to the insurance obligations contained in Section 4.2 of these Terms and Conditions; and

C. In the event of a patent and copyright claim or suit, the contractor, at its option, may: (1) procure for the State of New Jersey the legal right to continue the use of the product; (2) replace or modify the product to provide a non-infringing product that is the functional equivalent; or (3) refund the purchase price less a reasonable allowance for use that is agreed to by both parties.

4.2 INSURANCE

The contractor shall secure and maintain in force for the term of the contract insurance as provided herein. All required insurance shall be provided by insurance companies with an A-VIII or better rating by A.M. Best & Company. All policies must be endorsed to provide 30 days' written notice of cancellation or material change to the State of New Jersey at the address shown below. If the contractor's insurer cannot provide 30 days written notice, then it will become the obligation of the contractor to provide the same. The contractor shall provide the State with current certificates of insurance for all coverages and renewals thereof. Renewal certificates shall be provided within 30 days of the expiration of the insurance. The contractor shall not begin to provide services or goods to the State until evidence of the required insurance is provided. The certificates of insurance shall indicate the contract number or purchase order number and title of the contract in the Description of Operations box and shall list the State of New Jersey, Department of the Treasury, Division of Purchase & Property, Contract Compliance & Audit Unit, P.O. Box 236, Trenton, New Jersey 08625 in the Certificate Holder box. The certificates and any notice of cancelation shall be emailed to the State at: ccau.certificate@treas.nj.gov

The insurance to be provided by the contractor shall be as follows:

A. Occurrence Form Commercial General Liability Insurance or its equivalent: The minimum limit of liability shall be $1,000,000 per occurrence as a combined single limit for bodily injury and property damage. The above required Commercial General Liability Insurance policy or its equivalent shall name the State, its officers, and employees as "Additional Insureds" and include the blanket additional insured endorsement or its equivalent. The coverage to be provided under these policies shall be at least as broad as that provided by the standard basic Commercial General Liability Insurance occurrence coverage forms or its equivalent currently in use in the State of New Jersey, which shall not be circumscribed by any endorsement limiting the breadth of coverage;

B. Automobile Liability Insurance which shall be written to cover any automobile used by the insured. Limits of liability for bodily injury and property damage shall not be less than $1,000,000 per occurrence as a combined single limit. The State must be named as an "Additional Insured" and a blanket additional insured endorsement or its equivalent must be provided when the services being procured involve vehicle use on the State's behalf or on State controlled property;

C. Worker's Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than:

1. $1,000,000 BODILY INJURY, EACH OCCURRENCE;
2. $1,000,000 DISEASE EACH EMPLOYEE; and
3. $1,000,000 DISEASE AGGREGATE LIMIT.

This $1,000,000 amount may be raised when deemed necessary by the Director;

In the case of a contract entered into pursuant to N.J.S.A. 52:32-17 et seq., (small business set asides) the minimum amount of insurance coverage in subsections A, B, and B. above may be amended for certain commodities when deemed in the best interests of the State by the Director.

5.0 TERMS GOVERNING ALL CONTRACTS

5.1 CONTRACTOR IS INDEPENDENT CONTRACTOR

The contractor's status shall be that of any independent contractor and not as an employee of the State.

5.2 FORCE MAJEURE

Neither party will be liable to the other for any delay or inability to perform its obligations if such delay or inability arises from any act of God, fire,

natural disaster, act of war (declared or undeclared), act of terrorism (domestic or international), riot, civil disturbance, pandemic or other public health crisis (arising during the term of the contract) In the event of such a delay or inability to perform, the time for performance will be extended by an amount reasonable under the specific circumstances and mutually agreed-upon date sufficient to allow Vendor to perform the work delayed by the force majeure.

5.3 CONTRACT TERM AND EXTENSION OPTION

If, in the opinion of the Director, it is in the best interest of the State to extend a contract, the contractor shall be so notified of the Director's Intent at least 30 days prior to the expiration date of the existing contract. The contractor shall have 15 calendar days to respond to the Director's request to extend the term and period of performance of the contract. If the contractor agrees to the extension, all terms and conditions of the original contract shall apply unless more favorable terms for the State have been negotiated.

5.4 STATE'S OPTION TO REDUCE SCOPE OF WORK

The State has the option, in its sole discretion, to reduce the scope of work for any deliverable, task or subtask called for under this contract. In such an event, the Director shall provide to the contractor advance written notice of the change in scope of work and what the Director believes should be the corresponding adjusted contract price. Within five (5) business days of receipt of such written notice, if either is applicable:

A. If the contractor does not agree with the Director's proposed adjusted contract price, the contractor shall submit to the Director any additional information that the contractor believes impacts the adjusted contract price with a request that the Director reconsider the proposed adjusted contract price. The parties shall negotiate the adjusted contract price. If the parties are unable to agree on an adjusted contract price, the Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the final adjusted contract price; and

B. If the contractor has undertaken any work effort toward a deliverable, task or subtask that is being changed or eliminated such that it would not be compensated under the adjusted contract, the contractor shall be compensated for such work effort according to the applicable portions of its price schedule and the contractor shall submit to the Director an itemization of the work effort already completed by deliverable, task or subtask within the scope of work, and any additional information the Director may request. The Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the compensation to be paid for such work effort.

Any changes or modifications to the terms of this Contract shall be valid only when they have been reduced to writing and signed by the Contractor and the Director.

5.5 CHANGE IN LAW

If, after award, a change in applicable law or regulation occurs which affects the Contract, the parties may amend the Contract, whether including new work required by the change in law or to eliminate work no longer required by the change in law along with a commensurate price change. The parties shall negotiate the terms of the change in good faith, however if agreement is not possible after reasonable efforts, the Director shall make a prompt decision taking all relevant information into account, and shall notify the Contractor of the final adjusted scope of work and contract price.

5.6 SUSPENSION OF WORK

The State may, for valid reason, issue a stop order directing the contractor to suspend work under the contract for a specific time. The contractor shall be paid for goods ordered, goods delivered, or services requested and performed until the effective date of the stop order. The contractor shall resume work upon the date specified in the stop order, or upon such other date as the State Contract Manager may thereafter direct in writing. The period of suspension shall be deemed added to the contractor's approved schedule of performance.

5.7 TERMINATION OF CONTRACT

A. For Convenience:
Notwithstanding any provision or language in this contract to the contrary, the Director may terminate this contract at any time, in whole or in part, for the convenience of the State, upon no less than 30 days written notice to the contractor;

B. For Cause:
   1. Where a contractor fails to perform or comply with a contract or a portion thereof, and/or fails to comply with the complaints procedure in N.J.A.C. 17:12-4.2 et seq., the Director may terminate the contract, in whole or in part, upon ten (10) days' notice to the contractor with an opportunity to respond; and
   2. Where in the reasonable opinion of the Director, a contractor continues to perform a contract poorly as demonstrated by e.g., formal complaints, late delivery, poor performance of service, short-shipping, so that the Director is required to use the complaints procedure in N.J.A.C. 17:12-4.2 et seq., and there has been a failure on the part of the contractor to make progress towards ameliorating the issue(s) or problem(s) set forth in the complaint, the Director may terminate the contract, in whole or in part, upon ten (10) days' notice to the contractor with an opportunity to respond.

C. In cases of emergency the Director may shorten the time periods of notification and may dispense with an opportunity to respond; and

D. In the event of termination under this section, the contractor shall be compensated for work performed in accordance with the contract, up to the date of termination. Such compensation may be subject to adjustments.

5.8 SUBCONTRACTING

The Contractor may not subcontract other than as identified in the contractor's proposal without the prior written consent of the Director. Such

consent, if granted in part, shall not relieve the contractor of any of his/her responsibilities under the contract, nor shall it create privity of contract between the State and any subcontractor. If the contractor uses a subcontractor to fulfill any of its obligations, the contractor shall be responsible for the subcontractor's: (a) performance; (b) compliance with all of the terms and conditions of the contract; and (c) compliance with the requirements of all applicable laws. Nothing contained in any of the contract documents, shall be construed as creating any contractual relationship between any subcontractor and the State.

5.9 RESERVED

5.10 MERGERS, ACQUISITIONS AND ASSIGNMENTS

If, during the term of this contract, the contractor shall merge with or be acquired by another firm, the contractor shall give notice to the Director as soon as practicable and in no event longer than 30 days after said merger or acquisition. The contractor shall provide such documents as may be requested by the Director, which may include but need not be limited to the following: corporate resolutions prepared by the awarded contractor and new entity ratifying acceptance of the original contract, terms, conditions and prices; updated information including ownership disclosure and Federal Employer Identification Number. The documents must be submitted within 30 days of the request. Failure to do so may result in termination of the contract for cause.

If, at any time during the term of the contract, the contractor's partnership, limited liability company, limited liability partnership, professional corporation, or corporation shall dissolve, the Director must be so notified. All responsible parties of the dissolved business entity must submit to the Director in writing, the names of the parties proposed to perform the contract, and the names of the parties to whom payment should be made. No payment shall be made until all parties to the dissolved business entity submit the required documents to the Director.

The contractor may not assign its responsibilities under the contract, in whole or in part, without the prior written consent of the Director.

5.11 PERFORMANCE GUARANTEE OF CONTRACTOR

The contractor hereby certifies that:

A. The equipment offered is standard new equipment, and is the manufacturer's latest model in production, with parts regularly used for the type of equipment offered; that such parts are all in production and not likely to be discontinued; and that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice;
B. All equipment supplied to the State and operated by electrical current is UL listed where applicable;
C. All new machines are to be guaranteed as fully operational for the period stated in the contract from time of written acceptance by the State. The contractor shall render prompt service without charge, regardless of geographic location;
D. Sufficient quantities of parts necessary for proper service to equipment shall be maintained at distribution points and service headquarters;
E. Trained mechanics are regularly employed to make necessary repairs to equipment in the territory from which the service request might emanate within a 48-hour period or within the time accepted as industry practice;
F. During the warranty period the contractor shall replace immediately any material which is rejected for failure to meet the requirements of the contract; and
G. All services rendered to the State shall be performed in strict and full accordance with the specifications stated in the contract. The contract shall not be considered complete until final approval by the State's using agency is rendered.

5.12 DELIVERY REQUIREMENTS

A. Deliveries shall be made at such time and in such quantities as ordered in strict accordance with conditions contained in the contract;
B. The contractor shall be responsible for the delivery of material in first class condition to the State's using agency or the purchaser under this contract and in accordance with good commercial practice;
C. Items delivered must be strictly in accordance with the contract; and
D. In the event delivery of goods or services is not made within the number of days stipulated or under the schedule defined in the contract, the using agency shall be authorized to obtain the material or service from any available source, the difference in price, if any, to be paid by the contractor.

5.13 APPLICABLE LAW AND JURISDICTION

This contract and any and all litigation arising therefrom or related thereto shall be governed by the applicable laws, regulations and rules of evidence of the State of New Jersey without reference to conflict of laws principles and shall be filed in the appropriate Division of the New Jersey Superior Court.

5.14 CONTRACT AMENDMENT

Except as provided herein, the contract may only be amended by written agreement of the State and the contractor.

5.15 MAINTENANCE OF RECORDS AND AUDITS

A. Pursuant to N.J.A.C. 17:44-2.2, the contractor shall maintain all documentation related to products, transactions or services under this contract for a period of five (5) years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.
B. The State may request, receive, review, and audit copies of any and all records and documents related to a State contract at any time. The Contractor shall make a good faith effort to cooperate with the request and upon receipt of the request, the Contractor shall promptly provide

the requested records and documents free of charge in the time, place, and manner specified. Failure of the contractor to comply with the request or the audit may be used by the State to establish contract non-compliance, to take any action, or seek any remedy available under the contract, at law, or in equity.

5.16 ASSIGNMENT OF ANTITRUST CLAIM(S)

The contractor recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser. Therefore, and as consideration for executing this contract, the contractor, acting herein by and through its duly authorized agent, hereby conveys, sells, assigns, and transfers to the State of New Jersey, for itself and on behalf of its political subdivisions and public agencies, all right, title and interest to all claims and causes of action it may now or hereafter acquire under the antitrust laws of the United States or the State of New Jersey, relating to the particular goods and services purchased or acquired by the State of New Jersey or any of its political subdivisions or public agencies pursuant to this contract.

In connection with this assignment, the following are the express obligations of the contractor:

A. It shall take no action that will in any way diminish the value of the rights conveyed or assigned hereunder;
B. It shall advise the Attorney General of New Jersey:
    1. In advance of its intention to commence any action on its own behalf regarding any such claim or cause(s) of action; and
    2. Immediately upon becoming aware of the fact that an action has been commenced on its behalf by some other person(s) of the pendency of such action.
C. It shall notify the defendants in any antitrust suit of the within assignment at the earliest practicable opportunity after the contractor has initiated an action on its own behalf or becomes aware that such an action has been filed on its behalf by another person. A copy of such notice shall be sent to the Attorney General of New Jersey; and
D. It is understood and agreed that in the event any payment under any such claim or cause of action is made to the contractor, it shall promptly pay over to the State of New Jersey the allotted share thereof, if any, assigned to the State hereunder.

5.17 NEWS RELEASES

The Contractor is not permitted to issue news releases pertaining to any aspect of the services being provided under this Contract without the prior written consent of the Director.

5.18 ADVERTISING

The Contractor shall not use the State's name, seal, or logos as a part of any commercial advertising without first obtaining the prior written consent of the New Jersey Secretary of State. The Contractor shall not use a Department or Using Agency's name, seal, logos, images, or any data or results arising from this Contract as a part of any commercial advertising without first obtaining the prior written consent of the Department.

5.19 ORGAN DONATION

As required by N.J.S.A. 52:32-33.1, the State encourages the contractor to disseminate information relative to organ donation and to notify its employees, through information and materials or through an organ and tissue awareness program, of organ donation options. The information provided to employees should be prepared in collaboration with the organ procurement organizations designated pursuant to 42 U.S.C. 1320b-8 to serve in this State.

5.20 LICENSES AND PERMITS

The Contractor shall obtain and maintain in full force and effect all required licenses, permits, and authorizations necessary to perform this Contract. Notwithstanding the requirements of the Bid Solicitation, the Contractor shall supply the State Contract Manager with evidence of all such licenses, permits and authorizations. This evidence shall be submitted subsequent to this Contract award. All costs associated with any such licenses, permits, and authorizations must be considered by the Contractor in its Quote.

5.21 CLAIMS AND REMEDIES

A. All claims asserted against the State by the Contractor shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq., and/or the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq.
B. Nothing in this Contract shall be construed to be a waiver by the State of any warranty, expressed or implied, of any remedy at law or equity, except as specifically and expressly stated in a writing executed by the Director.
C. In the event that the Contractor fails to comply with any material Contract requirements, the Director may take steps to terminate this Contract in accordance with the SSTC, authorize the delivery of Contract items by any available means, with the difference between the price paid and the defaulting Contractor's price either being deducted from any monies due the defaulting Contractor or being an obligation owed the State by the defaulting Contractor, as provided for in the State administrative code, or take any other action or seek any other remedies available at law or in equity.

5.22 ACCESSIBILITY COMPLIANCE

The Contractor acknowledges that the State may be required to comply with the accessibility standards of Section 508 of the Rehabilitation Act, 29 U.S.C. §794. The Contractor agrees that any information that it provides to the State in the form of a Voluntary Product Accessibility Template (VPAT) about the accessibility of the Software is accurate to a commercially reasonable standard and the Contractor agrees to provide the State with technical information available to support such VPAT documentation in the event that the State relied on any of Contractor's VPAT information to comply with the accessibility standards of Section 508 of the Rehabilitation Act, 29 U.S.C. §794. In addition, Contractor shall defend any claims

against the State that the Software does not meet the accessibility standards set forth in the VPAT provided by Provider in order to comply with the accessibility standards of Section 508 of the Rehabilitation Act, 29 U.S.C. §794 and will indemnify the State with regard to any claim made against the State with regard to any judgment or settlement resulting from those claims to the extent the Provider's Software provided under this Contract was not accessible in the same manner as or to the degree set forth in the Contractor's statements or information about accessibility as set forth in the then-current version of an applicable VPAT.

5.23 CONFIDENTIALITY

A. The obligations of the State under this provision are subject to the New Jersey Open Public Records Act ("OPRA"), N.J.S.A. 47:1A-1 et seq., the New Jersey common law right to know, and any other lawful document request or subpoena;

B. By virtue of this Contract, the parties may have access to information that is confidential to one another. The parties agree to disclose to each other only information that is required for the performance of their obligations under this Contract. Contractor's Confidential Information, to the extent not expressly prohibited by law, shall consist of all information clearly identified as confidential at the time of disclosure Vendor Intellectual Property ("Contractor Confidential Information"). Notwithstanding the previous sentence, the terms and pricing of this Contract are subject to disclosure under OPRA, the common law right to know, and any other lawful document request or subpoena;

C. The State's Confidential Information shall consist of all information or data contained in documents supplied by the State, any information or data gathered by the Contractor in fulfillment of the Contract and any analysis thereof (whether in fulfillment of the Contract or not);

D. A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party, except that if the information is personally identifying to a person or entity regardless of whether it has become part of the public domain through other means, the other party must maintain full efforts under the Contract to keep it confidential; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party;

E. The State agrees to hold Contractor's Confidential Information in confidence, using at least the same degree of care used to protect its own Confidential Information;

F. In the event that the State receives a request for Contractor Confidential Information related to this Contract pursuant to a court order, subpoena, or other operation of law, the State agrees, if permitted by law, to provide Contractor with as much notice, in writing, as is reasonably practicable and the State's intended response to such order of law. Contractor shall take any action it deems appropriate to protect its documents and/or information;

G. In addition, in the event Contractor receives a request for State Confidential Information pursuant to a court order, subpoena, or other operation of law, Contractor shall, if permitted by law, provide the State with as much notice, in writing, as is reasonably practicable and Contractor's intended response to such order of law. The State shall take any action it deems appropriate to protect its documents and/or information; and

H. Notwithstanding the requirements of nondisclosure described in this Section, either party may release the other party's Confidential Information:
   (i) if directed to do so by a court or arbitrator of competent jurisdiction; or
   (ii) pursuant to a lawfully issued subpoena or other lawful document request:
      (a) in the case of the State, if the State determines the documents or information are subject to disclosure and Contractor does not exercise its rights as described in Section 5.23(F), or if Contractor is unsuccessful in defending its rights as described in Section 5.23(F); or
      (b) in the case of Contractor, if Contractor determines the documents or information are subject to disclosure and the State does not exercise its rights described in Section 5.23(G), or if the State is unsuccessful in defending its rights as described in Section 5.23(G).

6.0 TERMS RELATING TO PRICE AND PAYMENT

6.1 PRICE FLUCTUATION DURING CONTRACT

Unless otherwise agreed to in writing by the State, all prices quoted shall be firm through issuance of contract or purchase order and shall not be subject to increase during the period of the contract. In the event of a manufacturer's or contractor's price decrease during the contract period, the State shall receive the full benefit of such price reduction on any undelivered purchase order and on any subsequent order placed during the contract period. The Director must be notified, in writing, of any price reduction within five (5) days of the effective date. Failure to report price reductions may result in cancellation of contract for cause, pursuant to provision 5.7(b)1.

In an exceptional situation the State may consider a price adjustment. Requests for price adjustments must include justification and documentation.

6.2 TAX CHARGES

The State of New Jersey is exempt from State sales or use taxes and Federal excise taxes. Therefore, price quotations must not include such taxes. The State's Federal Excise Tax Exemption number is 22-75-0050K.

6.3 PAYMENT TO VENDORS

A. The using agency(ies) is (are) authorized to order and the contractor is authorized to ship only those items covered by the contract

resulting from the RFP. If a review of orders placed by the using agency(ies) reveals that goods and/or services other than that covered by the contract have been ordered and delivered, such delivery shall be a violation of the terms of the contract and may be considered by the Director as a basis to terminate the contract and/or not award the contractor a subsequent contract. The Director may take such steps as are necessary to have the items returned by the agency, regardless of the time between the date of delivery and discovery of the violation. In such event, the contractor shall reimburse the State the full purchase price;

B. The contractor must submit invoices to the using agency with supporting documentation evidencing that work or goods for which payment is sought has been satisfactorily completed or delivered. For commodity contracts, the invoice, together with the Bill of Lading, and/or other documentation to confirm shipment and receipt of contracted goods must be received by the using agency prior to payment. For contracts featuring services, invoices must reference the tasks or subtasks detailed in the Scope of Work and must be in strict accordance with the firm, fixed prices submitted for each task or subtask. When applicable, invoices should reference the appropriate task or subtask or price line number from the contractor's proposal. All invoices must be approved by the State Contract Manager or using agency before payment will be authorized;

C. In all time and materials contracts, the State Contract Manager or designee shall monitor and approve the hours of work and the work accomplished by contractor and shall document both the work and the approval. Payment shall not be made without such documentation. A form of timekeeping record that should be adapted as appropriate for the Scope of Work being performed can be found at www.nj.gov/treasury/purchase/forms/Vendor_Timesheet.xls; and

D. The contractor shall provide, on a monthly and cumulative basis, a breakdown in accordance with the budget submitted, of all monies paid to any small business, minority or woman-owned subcontractor(s). This breakdown shall be sent to the Office of Diversity and Inclusion.

E. The Contractor shall have sole responsibility for all payments due any Subcontractor

6.4 OPTIONAL PAYMENT METHOD: P-CARD

The State offers contractors the opportunity to be paid through the MasterCard procurement card (p-card). A contractor's acceptance and a State agency's use of the p-card are optional. P-card transactions do not require the submission of a contractor invoice; purchasing transactions using the p-card will usually result in payment to a contractor in three (3) days. A contractor should take note that there will be a transaction-processing fee for each p-card transaction. To participate, a contractor must be capable of accepting the MasterCard. Additional information can be obtained from banks or merchant service companies.

6.5 NEW JERSEY PROMPT PAYMENT ACT

The New Jersey Prompt Payment Act, N.J.S.A. 52:32-32 et seq., requires state agencies to pay for goods and services within 60 days of the agency's receipt of a properly executed State Payment Voucher or within 60 days of receipt and acceptance of goods and services, whichever is later. Properly executed performance security, when required, must be received by the State prior to processing any payments for goods and services accepted by state agencies. Interest will be paid on delinquent accounts at a rate established by the State Treasurer. Interest shall not be paid until it exceeds $5.00 per properly executed invoice. Cash discounts and other payment terms included as part of the original agreement are not affected by the Prompt Payment Act.

6.6 AVAILABILITY OF FUNDS

The State's obligation to make payment under this contract is contingent upon the availability of appropriated funds and receipt of revenues from which payment for contract purposes can be made. No legal liability on the part of the State for payment of any money shall arise unless and until funds are appropriated each fiscal year to the using agency by the State Legislature and made available through receipt of revenue.

7.0 TERMS RELATING TO ALL CONTRACTS FUNDED, IN WHOLE OR IN PART, BY FEDERAL FUNDS

The provisions set forth in this Section of the Standard Terms and Conditions apply to all contracts funded, in whole or in part, by Federal funds as required by 2 CFR 200.317.

7.1 CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS.

Pursuant to 2 CFR 200.321, the State must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Accordingly, if subawards are to be made the Contractor shall:

(1) Include qualified small and minority businesses and women's business enterprises on solicitation lists;
(2) Assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
(3) Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
(4) Establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and,
(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

7.2 DOMESTIC PREFERENCE FOR PROCUREMENTS

Pursuant to 2 CFR 200.322, where appropriate, the State has a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). If subawards are to be made the Contractor shall include a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United

States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of nonferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

7.3 PROCUREMENT OF RECOVERED MATERIALS

Where applicable, in the performance of contract, pursuant to 2 CFR 200.323, the contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $ 10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

To the extent that the scope of work or specifications in the contract requires the contractor to provide recovered materials the scope of work or specifications are modified to require that as follows.

i. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
   1. Competitively within a timeframe providing for compliance with the contract performance schedule;
   2. Meeting contract performance requirements; or
   3. At a reasonable price.

ii. Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, https://www.epa.gov/smm/comprehensive- procurement-guideline-cpg-program.

iii. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

7.4 EQUAL EMPLOYMENT OPPORTUNITY

Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." See, 2 CFR Part 200, Appendix II, para. C.

During the performance of this contract, the contractor agrees as follows:

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

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

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules,

regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

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

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

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

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

7.5 DAVIS-BACON ACT, 40 U.S.C. 3141-3148, AS AMENDED

When required by Federal program legislation, all prime construction contracts in excess of $ 2,000 shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. Additionally, contractors are required to pay wages not less than once a week.

7.6 COPELAND ANTI-KICK-BACK ACT

Where applicable, the Contractor must comply with Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States").

a. Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into the OGS centralized contract.

b. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

c. Breach. A breach of the clauses above may be grounds for termination of the OGS centralized contract, and for debarment as a Contractor and subcontractor as provided in 29 C.F.R. § 5.12.

7.7 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT, 40 U.S.C. 3701-3708

Where applicable, all contracts awarded by the non-Federal entity in excess of $ 100,000 that involve the employment of mechanics or laborers must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

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

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The unauthorized user shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

7.8 RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

7.9 CLEAN AIR ACT, 42 U.S.C. 7401-7671Q, AND THE FEDERAL WATER POLLUTION CONTROL ACT, 33 U.S.C. 1251-1387, AS AMENDED

Where applicable, Contract and subgrants of amounts in excess of $150,000, must comply with the following:

Clean Air Act

7.9.1.1 The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

7.9.1.2 The contractor agrees to report each violation to the Division of Purchase and Property and understands and agrees that the Division of Purchase and Property will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

7.9.1.3 The contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The contractor agrees to report each violation to the Division of Purchase and Property and understands and agrees that the Division of Purchase and Property will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA.

7.10 DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689)

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by the State or authorized user. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State or authorized user, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

7.11 BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. 1352

Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee

of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

7.12 PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in *Public Law 115–232*, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

EXHIBIT A - GOODS, GENERAL SERVICE AND PROFESSIONAL SERVICES CONTRACTS

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE
N.J.S.A. 10:5-31 et seq. (P.L. 1975, c. 127)
N.J.A.C. 17:27 et seq.

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the contractor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

- Letter of Federal Affirmative Action Plan Approval;
- Certificate of Employee Information Report; or
- Employee Information Report Form AA302 (electronically provided by the Division and distributed to the public agency through the Division's website at http://www.state.nj.us/treasury/contract_compliance).

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Purchase an Property, CCAU, EEO Monitoring Program as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Purchase an Property, CCAU, EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1 et seq.

EXHIBIT B - CONSTRUCTION CONTRACTS

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE
N.J.S.A. 10:5-31 et seq. (P.L. 1975, c. 127)
N.J.S.A. 10:5-39 et seq. (P.L. 1983, c. 197)
N.J.A.C. 17:27-1.1 et seq.

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, up grading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

N.J.S.A. 10:5-39 et seq. requires contractors, subcontractors, and permitted assignees performing construction, alteration, or repair of any building or public work in excess of $250,000 to guarantee equal employment opportunity to veterans.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer, pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

When hiring or scheduling workers in each construction trade, the contractor or subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the targeted employment goal prescribed by N.J.A.C. 17:27-7.2; provided, however, that the Dept. of LWD, Construction EEO Monitoring Program may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by the following provisions, A, B and C, as long as the Dept. of LWD, Construction EEO Monitoring Program is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Dept. of LWD, Construction EEO Monitoring Program, that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the targeted employment goal established in accordance with N.J.A.C. 17:27-7.2. The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

(A) If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et. seq., as supplemented and amended from time to time and the Americans with Disabilities Act. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the contractor or subcontractor agrees to afford equal employment opportunities minority and women workers directly, consistent with this chapter. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with affording equal employment opportunities as specified in this chapter, the contractor or subcontractor agrees to be prepared to provide such opportunities to minority and women workers directly, consistent with this chapter, by complying with the hiring or scheduling procedures prescribed under (B) below; and the contractor or subcontractor further agrees to take said action immediately if it determines that the union is not referring minority and women workers consistent with the equal employment opportunity goals set forth in this chapter.

(B) If good faith efforts to meet targeted employment goals have not or cannot be met for each construction trade by adhering to the procedures of (A) above, or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions:
   (1) To notify the public agency compliance officer, the Dept. of LWD, Construction EEO Monitoring Program, and minority and women referral organizations listed by the Division pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers;

(2) To notify any minority and women workers who have been listed with it as awaiting available vacancies;
(3) Prior to commencement of work, to request that the local construction trade union refer minority and women workers to fill job openings, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade;
(4) To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area;
(5) If it is necessary to lay off some of the workers in a given trade on the construction site, layoffs shall be conducted in compliance with the equal employment opportunity and non- discrimination standards set forth in this regulation, as well as with applicable Federal and State court decisions;
(6) To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:
    (i) The contactor or subcontractor shall interview the referred minority or women worker.
    (ii) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the contractor or subcontractor shall in good faith determine the qualifications of such individuals. The contractor or subcontractor shall hire or schedule those individuals who satisfy appropriate qualification standards in conformity with the equal employment opportunity and non-discrimination principles set forth in this chapter. However, a contractor or subcontractor shall determine that the individual at least possesses the requisite skills, and experience recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Dept. of LWD, Construction EEO Monitoring Program. If necessary, the contractor or subcontractor shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of the requirements, however, are limited by the provisions of (C) below.
    (iii) The name of any interested women or minority individual shall be maintained on a waiting list, and shall be considered for employment as described in (i) above, whenever vacancies occur. At the request of the Dept. of LWD, Construction EEO Monitoring Program, the contractor or subcontractor shall provide evidence of its good faith efforts to employ women and minorities from the list to fill vacancies.
    (iv) If, for any reason, said contractor or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the public agency compliance officer and to the Dept. of LWD, Construction EEO Monitoring Program.
(7) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Dept. of LWD, Construction EEO Monitoring Program and submitted promptly to the Dept. of LWD, Construction EEO Monitoring Program upon request.

(C) The contractor or subcontractor agrees that nothing contained in (B) above shall preclude the contractor or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement. However, where the practices of a union or apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the targeted county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to (B) above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ women and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of (B) above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.

After notification of award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the Dept. of LWD, Construction EEO Monitoring Program an initial project workforce report (Form AA-201) electronically provided to the public agency by the Dept. of LWD, Construction EEO Monitoring Program, through its website, for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27-7.

The contractor also agrees to submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this contract to the Dept. of LWD, Construction EEO Monitoring Program and to the public agency compliance officer.

The contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on the job and/or off the job programs for outreach and training of minorities and women.

(D) The contractor and its subcontractors shall furnish such reports or other documents to the Dept. of LWD, Construction EEO Monitoring Program as may be requested by the Dept. of LWD, Construction EEO Monitoring Program from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Dept. of LWD, Construction EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1.1 et seq.

EXHIBIT C - EXECUTIVE ORDER NO. 151 REQUIREMENTS

It is the policy of the Division of Purchase and Property that its contracts should create a workforce that reflects the diversity of the State of New Jersey. Therefore, contractors engaged by the Division of Purchase and Property to perform under a construction contract shall put forth a good faith effort to engage in recruitment and employment practices that further the goal of fostering equal opportunities to minorities and women.

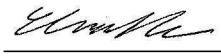
The contractor must demonstrate to the Division of Purchase and Property's satisfaction that a good faith effort was made to ensure that minorities and women have been afforded equal opportunity to gain employment under the Division of Purchase and Property's contract with the contractor. Payment may be withheld from a contractor's contract for failure to comply with these provisions.

Evidence of a "good faith effort" includes, but is not limited to:

1. The Contractor shall recruit prospective employees through the State Job bank website, managed by the Department of Labor and Workforce Development, available online at https://newjersey.usnlx.com/;
2. The Contractor shall keep specific records of its efforts, including records of all individuals interviewed and hired, including the specific numbers of minorities and women;
3. The Contractor shall actively solicit and shall provide the Division of Purchase and Property with proof of solicitations for employment, including but not limited to advertisements in general circulation media, professional service publications and electronic media; and
4. The Contractor shall provide evidence of efforts described at 2 above to the Division of Purchase and Property no less frequently than once every 12 months.
5. The Contractor shall comply with the requirements set forth at N.J.A.C. 17:27.

This language is in addition to and does not replace good faith efforts requirements for construction contracts required by N.J.A.C. 17:27-3.6, 3.7 and 3.8, also known as Exhibit B.

I HEREBY ACCEPT THE TERMS AND CONDITIONS OF THIS CONTRACT



Signature

7/14/2023

Date

Elmer Ma, Government Contracts Specialist

Print Name and Title

Cepheid

Print Name of Contractor

WAIVERED CONTRACTS SUPPLEMENT TO THE STATE OF NEW JERSEY STANDARD TERMS AND CONDITIONS

(Revised January 11, 2022)

STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY - DIVISION OF PURCHASE AND PROPERTY
33 WEST STATE STREET, P.O. BOX 230 TRENTON, NEW JERSEY 08625-0230

This Supplement to the State of New Jersey Standard Terms and Conditions ("Supplement") shall apply to all contracts or purchase agreements made with the State of New Jersey ("State") under N.J.S.A. 52:34-9 or -10 ("Waivered Contracts"). The terms in this Supplement are in addition to, or modify the State of New Jersey Standard Terms and Conditions (SSTCs) as applicable and noted below.

I. ADDITIONS TO THE STANDARD TERMS AND CONDITIONS FOR ALL WAIVERED CONTRACTS

A. ORDER OF PRECEDENCE

The "Contract" shall consist of the following documents: (1) this Supplement; (2) the State of New Jersey Standard Terms and Conditions; (3) the agency's scope of work; and, (4) the Contractor's proposal including any attachments or documents incorporated by reference. In the event of a conflict in the terms and conditions among the documents comprising this Contract, the order of precedence, for purposes of interpretation thereof, listed from highest ranking to lowest ranking as noted above.

B. NO ARBITRATION

Notwithstanding anything to the contrary in Contractor's Standard Form Agreement ("SFA") or Scope of Work ("SOW"), the State does not agree to binding arbitration.

C. NO AUTO-RENEWAL

Notwithstanding anything to the contrary in Contractor's SFA or SOW, the State does not agree to auto-renewal of any services, standard software maintenance, technical support or service fees.

II. ADDITIONS TO THE STANDARD TERMS AND CONDITIONS FOR WAIVERED CONTRACTS, AS APPLICABLE

A. STATE'S RIGHT TO INSPECT CONTRACTOR'S FACILITIES

The State reserves the right to inspect the contractor's establishment before making an award, for the purposes of ascertaining whether the contractor has the necessary facilities for performing the Contract. The State may also consult with clients of the contractor to assist the State in making a contract award that is most advantageous to the State.

B. STATE'S RIGHT TO REQUEST FURTHER INFORMATION

The Director reserves the right to request all information which may assist him or her in making a contract award, including factors necessary to evaluate the contractor's financial capabilities to perform the Contract. Further, the Director reserves the right to request a contractor to explain, in detail, how the proposal price was determined.

C. DELIVERY TIME AND COSTS

Unless otherwise noted elsewhere in the scope of work, all delivery times are 30 calendar days after receipt of order (ARO) and prices for items in proposals shall be submitted Freight On Board (F.O.B.) Destination (30 calendar days ARO/F.O.B.). The contractor shall assume all costs, liability and responsibility for the delivery of merchandise in good condition to the State's Using Agency or designated purchaser. Thirty calendar days ARO/F.O.B. does not cover "spotting" but does include delivery on the receiving platform of the Using Agency at any destination in the State of New Jersey unless otherwise specified. No additional charges will be allowed for any additional transportation costs resulting from partial shipments made at the contractor's convenience when a single shipment is ordered. The weights and measures of the State's Using Agency receiving the shipment shall govern.

D. COLLECT ON DELIVERY (C.O.D) TERMS

C.O.D. terms will not be accepted.

E. CASH DISCOUNTS

The contractor is encouraged to offer cash discounts based on expedited payment by the State. The State will make efforts to take advantage of discounts. Should the contractor choose to offer cash discounts the following shall apply:

1. Discount periods shall be calculated starting from the next business day after the Using Agency has accepted the goods or services, received a properly signed and executed invoice and, when required, a properly executed performance security, whichever is latest; and
2. The date on the check issued by the State in payment of that invoice shall be deemed the date of the State's response to that invoice.

F. PERFORMANCE SECURITY

If performance security is required, such security must be submitted with the bid in the amount listed in the scope of work. N.J.A.C. 17:12-2.5. Acceptable forms of performance security are as follows:

1. A properly executed individual or annual performance bond issued by an insurance or security company authorized to do business in the State of New Jersey,

2. A certified or cashier's check drawn to the order of "Treasurer, State of New Jersey," or
3. An irrevocable letter of credit issued by a federally insured financial institution and naming "Treasurer, State of New Jersey," as beneficiary.

The Performance Security must be submitted to the State within 30 days of the effective date of the Contract award and cover the period of the Contract and any extensions thereof. Failure to submit performance security may result in cancellation of the Contract for cause and nonpayment for work performed.

Although the performance bond is required for the full term of the Contract, the Director recognizes that the industry practice of sureties is to issue a one (1) year performance bond for goods and services contracts. Thus, the contractor is permitted to submit a one (1) year performance bond for the amount required under the Contract and, on each succeeding anniversary date of the Contract, provide a continuation or renewal certificate to evidence that the bond is in effect for the next year of the Contract. This procedure will remain in place for each year of the Contract thereafter until the termination of the Contract. Failure to provide such proof on the anniversary date of the Contract shall result in suspension of the Contract, and possibly, termination of the Contract.

For performance bonds based on a percentage of the total estimated Contract price. On each anniversary of the effective date of the Contract, the amount of the required performance bond, unless otherwise noted, is calculated by applying the established RFQ performance bond percentage to the outstanding balance of the estimated amount of the Contract price to be paid to the contractor.

In the event that the Contract price is increased by a Contract Amendment, the contractor may be required to provide, within 30 calendar days of the effective date of the Contract Amendment, performance bond coverage for the increase in Contract price. The required increase in the performance bond amount is calculated by applying the established bond percentage set forth above to the increase in Contract price. Failure to provide such proof to the Director of this required coverage may result in the suspension of payment to the contractor until such time the contractor complies with this requirement.

G. RETAINAGE

If retainage is required on the Contract as stated in the scope of work, the state and/or agency will retain the stated percentage or retainage from each invoice. Payment of retainage will be authorized after satisfactory completion and submission of all services, deliverables or work products by the contractor and acceptance by the agency of all services, deliverables or work products required by the Contract.

For ongoing contracts, the agency will retain the stated percentage of each invoice submitted. At the end of the three (3) month period after payment of each invoice, the agency will review the contractor's performance and if performance has been satisfactory, the agency will release the retainage for the preceding three (3) month period. Following the expiration of the Contract, retained fees will be released to the contractor after certification by the agency's project manager, if any, that all services have been satisfactorily performed.

H. AUDIT NOTICE AND DISPUTE RESOLUTION

To the extent the contractor's proposal or Standard Form Agreement permits the contractor to conduct periodic audits of the State's usage of the Contractor Intellectual Property provided thereunder, such provision is amended to include the following audit notice and dispute resolution process:

1. AUDIT NOTICE – Notwithstanding anything to the contrary in the contractor's proposal or Standard Form Agreement, in the event that the contractor seeks to exercise a right in its proposal or Standard Form Agreement to audit the State's use of Contractor Intellectual Property, the contractor shall deliver simultaneous written notice, no less than thirty days in advance of the audit start date (unless the contractor's notice provides a longer notice period), to the: Agency requesting the waiver contract.
2. The notice shall reference the specific audit provision(s) in the contractor's proposal or Standard Form Agreement being exercised and include copies of same, specify the means by which the contractor will conduct the audit, and shall require the audit to be conducted in accordance with generally accepted standards in the field of such audits.
3. AUDIT DISPUTE RESOLUTION -- If the State, in good faith, provides the contractor with written notice of an alleged error in the amount of underpaid fees due the contractor as a result of an audit (the "dispute"), then the parties will endeavor to resolve the dispute in accordance with this paragraph. Each party will appoint a Vice President, Assistant Director, or the equivalent (hereinafter referred to as "Representative") to discuss the dispute and no formal proceedings for the judicial resolution of such dispute, except for the seeking of equitable relief or those required to avoid non-compliance with the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., may begin until either such Representative concludes, after a good faith effort to resolve the dispute, that resolution through continued discussion is unlikely. In addition, the parties shall refrain from exercising any termination right related to the dispute being considered under this paragraph and shall continue to perform their respective obligations under the Contract while they endeavor to resolve the dispute under this paragraph.
4. STATE NOT LIABLE FOR AUDIT COSTS -- Notwithstanding anything to the contrary in the contractor's proposal or Standard Form Agreement, the State will not reimburse the contractor for any costs related to an audit.
5. NO AUDIT RIGHT CREATED -- In the event that the contractor's proposal or Standard Form Agreement does not permit audits of the State's usage of Contractor Intellectual Property, Section 5.19 of this Supplement shall not be interpreted to provide such an audit right.

III. ADDITIONS TO THE STANDARD TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES CONTRACTS

A. INSURANCE FOR PROFESSIONAL SERVICES CONTRACTS

Section 4.2 Insurance of the SSTC is supplemented with the following:

Professional Liability Insurance

The Contractor shall carry Errors and Omissions, Professional Liability Insurance, and/or Professional Liability Malpractice Insurance sufficient to protect the Contractor from any liability arising out the professional obligations performed pursuant to the requirements of this Contract. The insurance shall be in the amount of not less than $1,000,000 and in such policy forms as shall be approved by the State. If the Contractor has claims-made coverage and subsequently changes carriers during the term of this Contract, it shall obtain from its new Errors and Omissions, Professional Liability Insurance, and/or Professional Malpractice Insurance carrier an endorsement for retroactive coverage.

B. LIMITATION OF LIABILITY FOR PROFESSIONAL SERVICES CONTRACTS

Section 4.0 Indemnification and Insurance of the SSTC is supplemented with the following:

4.3 LIMITATION OF LIABILITY

The Contractor's liability to the State for actual, direct damages resulting from the Contractor's performance or non-performance of, or in any manner related to this Contract, for any and all claims, shall be limited in the aggregate to 200% of the total value of this Contract. This limitation of liability shall not apply to the following:

A. The Contractor's obligation to indemnify the State of New Jersey and its employees from and against any claim, demand, loss, damage, or expense relating to bodily injury or the death of any person or damage to real property or tangible personal property, incurred from the work or materials supplied by the Contractor under this Contract caused by negligence or willful misconduct of the Contractor;
B. The Contractor's breach of its obligations of confidentiality; and
C. The Contractor's liability with respect to copyright indemnification.

The Contractor's indemnification obligation is not limited by but is in addition to the insurance obligations.

The Contractor shall not be liable for special, consequential, or incidental damages.

IV. ADDITIONS TO THE STANDARD TERMS AND CONDITIONS FOR ALL INFORMATION TECHNOLOGY CONTRACTS

A. DEFINITIONS

The following definitions shall apply to information technology contracts:

1. The term "Acceptance" means the written confirmation by an Agency that the contractor has completed a Deliverable according to the specified requirements.
2. As defined by N.J.S.A. 56:8-161, the term "Breach of Security" means unauthorized access to electronic files, media, or data containing Personal Data that compromises the security, confidentiality, or integrity of Personal Data when access to the Personal Data has not been secured by encryption or by any other method or technology that renders the Personal Data unreadable or unusable. Good faith acquisition of Personal Data by an employee or agent of the Provider for a legitimate business purpose is not a Breach of Security, provided that the Personal Data is not used for a purposes unrelated to the business or subject to further unauthorized disclosure.
3. The term "Contractor Intellectual Property" means any intellectual property that is owned by the contractor and contained in or necessary for the use of the Deliverables or which the contractor makes available for the State to use as part of the work under the Contract. Contractor Intellectual Property includes COTS or Customized Software owned by the contractor, the contractor's technical documentation, and derivative works and compilations of any Contractor Intellectual Property.
4. The term Commercial Off the Shelf Software ("COTS") means Software provided by the contractor that is intended for general use.
5. The term "Custom Software" means Software and Work Product that is developed by the contractor at the request of the Agency to meet the specific requirements of the Agency and is intended for its use.
6. The term "Customized Software" means COTS that is adapted by the contractor to meet specific requirements of the Agency that differ from the standard requirements of the base product.
7. The term "Deliverable" means the goods, products, Services and Work Product that the contractor is required to deliver to the State under the Contract;
8. The term "End User" means the user of the Provider's solution.
9. The terms "goods" and "products" shall be deemed to include, without limitation, Software and Hardware.
10. The term "Hardware" shall be deemed to include computer equipment and any Software provided with the Hardware that is necessary for the Hardware to operate.
11. The term "Information Technology Contract" shall mean, notwithstanding any definition in New Jersey Statutes, a Contract for one or more of the following: Hardware, Software, Services, telecommunication goods and services, and all related goods.
12. The term "Mobile Device" means any device used by Provider that can move or transmit data, including but not limited to laptops, hard drives, and flash drives.
13. The term "Non-Public Data" means data, other than Personal Data, that is not subject to distribution to the public as public information. Non-Public Data is data that is identified by the State as non-public information or otherwise deemed to be sensitive and confidential by

the State because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information.

14. The term "Personal Data" means:
    a. "Personal Information" as defined in N.J.S.A. 56:8-161, means an individual's first name or first initial and last name linked with any one or more of the following data elements: (1) Social Security number, (2) driver's license number or State identification card number or (3) account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account. Dissociated data that, if linked would constitute Personal Information is Personal Information if the means to link the dissociated were accessed in connection with access to the dissociated data. Personal Information shall not include publicly available information that is lawfully made available to the general public from federal, state or local government records, or widely distributed media.
    b. data, either alone or in combination with other data, that includes information relating to an individual that identifies the person or entity by name, identifying number, mark or description that can be readily associated with a particular individual and which is not a public record, including but not limited to, Personally Identifiable Information (PII); government-issued identification numbers (e.g., Social Security, driver's license, passport); Protected Health Information (PHI) as that term is defined in the regulations adopted pursuant to the Health Insurance Portability and Accountability Act of 1996, P.L. No. 104-191 (1996) and found in 45 CFR Parts 160 to 164 and defined below; and Education Records, as that term is defined in the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g.
15. The term "Personally Identifiable Information" or "PII," as defined by the U.S. Department of Commerce, National Institute of Standards and Technology, means any information about an individual maintained by an agency, including (1) any information that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information,
16. The term "Protected Health Information" or "PHI," has the same meaning as the term is defined in the regulations adopted pursuant to the Health Insurance Portability and Accountability Act of 1996, P.L. No. 104-191 (1996) and found in 45 CFR Parts 160 to 164 means Individually Identifiable Health Information (as defined below) transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium. PHI excludes education records covered by the Family Educational Rights and Privacy Act (FERPA), as amended, 20 U.S.C. 1232g, records described at 20 U.S.C. 1232g(a)(4)(B)(iv) and employment records held by a covered entity in its role as employer. The term "Individually Identifiable Health Information" has the same meaning as the term is defined in the regulations adopted pursuant to the Health Insurance Portability and Accountability Act of 1996, P.L. No. 104-191 (1996) and found in 45 CFR Parts 160 to 164 and means information that is a subset of Protected Health Information, including demographic information collected from an individual, and (1) is created or received by a health care provider, health plan, employer or health care clearinghouse; and (2) relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (a) that identifies the individual; or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
17. The term "Recovery Time Objective" or "RTO," means the maximum tolerable length of time that the Provider's solution may be unavailable after a failure or disaster occurs.
18. The term "Security Incident" means the potential access by non-authorized person(s) to Personal Data or Non-Public Data that the Provider believes could reasonably result in the use, disclosure, or access or theft of State's unencrypted Personal Data or Non-Public Data within the possession or control of the Provider. A Security Incident may or may not turn into a Breach of Security.
19. The term "Service Level Agreement" or "SLA," means the document that is part of the Provider's SFA that typically includes (1) the technical service level performance promises, (i.e. metrics for performance and intervals for measure), (2) description of service quality, (3) identification of roles and responsibilities, (4) security responsibilities and notice requirements, (5) how disputes are discovered and addressed, and (6) any remedies for performance failures.
20. The terms "Services" shall be deemed to include, without limitation (i) Information Technology ("IT") professional services; (ii) Software and Hardware-related services, including without limitation, installation, configuration, and training and (iii) Software and Hardware maintenance and support and/or Software and Hardware technical support services.
21. The term "Software" means, without limitation, computer programs, source codes, routines, or subroutines supplied by the contractor, including operating software, programming aids, application programs, application programming interfaces and software products, and includes COTS, Customized Software and Custom Software, unless the context indicates otherwise.
22. The term "State Data" means all data and metadata created or in any way originating with the State, and all data that is the output of computer processing of or other electronic manipulation of any data that was created by or in any way originated with the State, whether such data or output is stored on the State's hardware, the Provider's hardware or exists in any system owned, maintained or otherwise controlled by the State or by the Provider. State Data includes Personal Data and Non-Public Data.
23. The term "State Intellectual Property" means any intellectual property that is owned by the State. State Intellectual Property includes any derivative works and compilations of any State Intellectual Property.
24. The term "Third Party Intellectual Property" means any intellectual property owned by parties other than the State or the contractor and contained in or necessary for the use of the Deliverables. Third Party Intellectual Property includes COTS owned by Third Parties, and derivative works and compilations of any Third Party Intellectual Property.
25. The term "Work Product" means every invention, modification, discovery, design, development, customization, configuration, improvement, process, Software program, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by the

contractor or the contractor's subcontractors or a third party engaged by the contractor or its subcontractor pursuant to the Contract. Notwithstanding anything to the contrary in the preceding sentence, Work Product does not include State Intellectual Property, Contractor Intellectual Property or Third Party Intellectual Property.

B. INDEMNIFICATION FOR STANDARD TECHNOLOGY CONTRACTS

Section 4.1 Indemnification of the SSTC is deleted in its entirety and replaced with the following:

4.1 INDEMNIFICATION

The Contractor's liability to the State and its employees in third party suits shall be as follows:

A. The Contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend, and save harmless the State and its officers, agents, servants and employees, from and against any and all third party claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith:
   1. For or on account of the loss of life, property or injury or damage to the person, body or property of any person or persons whatsoever, which shall arise from or result directly or indirectly from the work and/or products supplied under this Contract or the order; and
   2. For or on account of the use of any patent, copyright, trademark, trade secret or other proprietary right of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance ("Intellectual Property Rights") furnished or used in the performance of this Contract; and
   3. The Contractor's indemnification and liability under subsection (A) is not limited by, but is in addition to the insurance obligations.

B. In the event of a claim or suit involving third-party Intellectual Property Rights, the Contractor, at its option, may:
   1. procure for the State the legal right to continue the use of the product;
   2. replace or modify the product to provide a non-infringing product that is the functional equivalent; or
   3. in the event that the Contractor cannot do (1) or (2) refund the purchase price less a reasonable allowance for use that is agreed to by both parties.

C. The State will:
   1. promptly notify Contractor in writing of the claim or suit;
   2. give Contractor shall have control of the defense and settlement of any claim that is subject to Section 4.1(a); provided; however, that the State must approve any settlement of the alleged claim, which approval shall not be unreasonably withheld. The State may observe the proceedings relating to the alleged claim and confer with the Contractor at its expense.

D. Notwithstanding the foregoing, Contractor has no obligation or liability for any claim or suit concerning third-party Intellectual Property Rights arising from:
   1. the State's unauthorized combination, operation, or use of a product supplied under this Contract with any product, device, or Software not supplied by Contractor;
   2. the State's unauthorized alteration or modification of any product supplied under this Contract;
   3. the Contractor's compliance with the State's designs, specifications, requests, or instructions, provided that if the State provides Contractor with such designs, specifications, requests, or instructions, Contractor reviews same and advises that such designs, specifications, requests or instructions present potential issues of patent or copyright infringement and the State nonetheless directs the Contractor to proceed with one (1) or more designs, specifications, requests or instructions that present potential issues of patent or copyright infringement; or
   4. the State's failure to promptly implement a required update or modification to the product provided by Contractor after the Contractor has given written notice to the State of a need for such an update or modification.

E. Contractor will be relieved of its responsibilities under Subsection 4.1(a)(i) and (ii) for any claims made by an unaffiliated third party that arise solely from the actions or omissions of the State, its officers, employees or agents.

F. Subject to the New Jersey Tort Claims Act (N.J.S.A. 59:1-1 et seq.), the New Jersey Contractual Liability Act (N.J.S.A. 59:13-1 et seq.) and the appropriation and availability of funds, the State will be responsible for any cost or damage arising out of actions or inactions of the State, its employees or agents under Subsection 4.1(a)(i) and (ii) which results in an unaffiliated third party claim. This is Contractor's exclusive remedy for these claims;

G. This section states the entire obligation of Contractor and its suppliers, and the exclusive remedy of the State, in respect of any infringement or alleged infringement of any Intellectual Property Rights. This indemnity obligation and remedy are given to the State solely for its benefit and in lieu of, and Contractor disclaims, all warranties, conditions and other terms of non-infringement or title with respect to any product; and

H. Furthermore, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of the State of New Jersey or any Authorized Purchaser, nor purport to act as legal representative of the State of New Jersey or any Authorized Purchaser, without having provided notice to the Director of the Division of Law in the Department of Law and Public Safety and to the Director of the Division of Purchase and Property. The State of New Jersey may, at its election and expense, assume its own defense and settlement; and

I. The State of New Jersey will not indemnify, defend, pay or reimburse for claims or take similar actions on behalf of the Contractor.

C. INSURANCE FOR STANDARD TECHNOLOGY CONTRACTS

Section 4.2 Insurance of the SSTC is supplemented with the following:

Professional Liability Insurance

The Contractor shall carry Errors and Omissions, Professional Liability Insurance, and/or Professional Liability Malpractice Insurance sufficient to protect the Contractor from any liability arising out the professional obligations performed pursuant to the requirements of this Contract. The insurance shall be in the amount of not less than $1,000,000 and in such policy forms as shall be approved by the State. If the Contractor has claims-made coverage and subsequently changes carriers during the term of this Contract, it shall obtain from its new Errors and Omissions, Professional Liability Insurance, and/or Professional Malpractice Insurance carrier an endorsement for retroactive coverage.

D. LIMITATION OF LIABILITY FOR STANDARD TECHNOLOGY CONTRACTS

Section 4.0 Indemnification and Insurance of the SSTC is supplemented with the following:

4.3 LIMITATION OF LIABILITY

The Contractor's liability to the State for actual, direct damages resulting from the Contractor's performance or non-performance of, or in any manner related to this Contract, for any and all claims, shall be limited in the aggregate to 200% of the total value of this Contract. This limitation of liability shall not apply to the following:

A. The Contractor's obligation to indemnify the State of New Jersey and its employees from and against any claim, demand, loss, damage, or expense relating to bodily injury or the death of any person or damage to real property or tangible personal property, incurred from the work or materials supplied by the Contractor under this Contract caused by negligence or willful misconduct of the Contractor;

B. The Contractor's breach of its obligations of confidentiality; and

C. The Contractor's liability with respect to copyright indemnification.

The Contractor's indemnification obligation is not limited by but is in addition to the insurance obligations.

The Contractor shall not be liable for special, consequential, or incidental damages.

E. PERFORMANCE GUARANTEE OF THE CONTRACTOR

Section 5.11 Performance Guarantee of the Contractor of the SSTC is supplemented with the following:

1. COTS and Customized Software
   a. Unless the Contractor Standard Form Agreement provides greater coverage as determined by the State, in its sole discretion, the contractor warrants that COTS and Customized Software products licensed to the State shall operate in all material respects as described in the Solicitation and/or contractor technical documentation for ninety (90) days after Acceptance. The State shall notify the contractor of any COTS or Customized Software product deficiency within ninety (90) days after Acceptance. For a Contract requiring the delivery of COTS or Customized Software and Custom Software, a notice within one hundred eighty (180) days that describes a deficiency in functional terms without specifying whether the deficiency is with COTS, Customized Software or Custom Software shall be deemed a notice that triggers the warranty provisions in both Section 5.11(a) and 5.11(b) of this Supplement.
   b. Except for the portion of the contractor's COTS or Customized Software product that intentionally contains one or more of the following for the purpose of anti-virus protection, the contractor warrants that, at the time of delivery and installation of the COTS or Customized Software provided pursuant to the Contract, its product shall be free of what are commonly defined as viruses, backdoors, worms, spyware, malware and other malicious code that will hamper performance of the COTS or Customized Software, collect unlawful personally identifiable information on users, or prevent the COTS or Customized Software from performing as required under the Contract.
   c. In the event of any breach of this warranty, the contractor shall correct the product errors that caused the breach of warranty, or if the contractor cannot substantially correct such breach in a commercially reasonable manner, the State may end its usage and recover the fees paid to the contractor for the license and any unused, prepaid, technical support fees paid. Under no circumstances does this warranty provision limit the contractor's obligation in the event of a breach of confidentiality.
   d. The contractor does not warrant that COTS or Customized Software is error-free or that it will operate uninterrupted.
2. Custom Software
   a. Unless the Contractor Standard Form Agreement provides greater coverage, as determined by the State, in its sole discretion, the contractor warrants that Custom Software Deliverables shall operate in all material respects as described in the applicable specification documentation for one hundred and eighty (180) days after Acceptance. The State shall notify the contractor of any Custom Software deficiency within one hundred and eighty (180) days after Acceptance of the Custom Software Deliverable (the "Notice Period"). Where the contractor is providing multiple Custom Software Deliverables over the term of the Contract, the Notice Period shall begin to run after the Acceptance of the final Custom Software Deliverable under the Contract. At that time, the State may assert defect claims relating to any and all of the Custom Software Deliverables provided under the Contract; however, the State may also assert claims earlier, in its discretion, without waiving the Notice Period.
   b. For a Contract requiring the delivery of COTS or Customized Software and Custom Software, a notice within one hundred eighty (180) days that describes a deficiency in functional terms without specifying whether the deficiency is with COTS, Customized

Software or Custom Software shall be deemed a notice that triggers the warranty provisions in both Section 5.11(a) and 5.11(b) of this Supplement.

c. The contractor warrants that, at the time of Acceptance of the Custom Software Deliverable provided pursuant to the Contract, its product shall be free of what are commonly defined as viruses, backdoors, worms, spyware, malware and other malicious code that will hamper performance of the Custom Software, collect unlawful personally identifiable information on users, or prevent the Custom Software from performing as required under the Contract. Under no circumstances does this warranty provision limit the contractor's obligation in the event of a breach of confidentiality.

d. In the event of any breach of this warranty, the contractor shall correct the Custom Software errors that caused the breach of warranty, or if the contractor cannot substantially correct such breach in a commercially reasonable manner, the State may recover a portion of the fees paid to the contractor for the Custom Software with the uncorrected defect or in the event that the Custom Software is still deemed, by the State in its sole discretion, to be usable by the State even with the uncorrected defect, the State may recover a portion of the fees paid to the contractor for the Custom Software (up to the total amount of such charges for such Custom Software) to reflect any reduction in the value of the Custom Software Deliverable as a result of the uncorrected defect. Under no circumstances does this warranty provision limit the contractor's obligations in the event of a breach of confidentiality.

e. The contractor does not warrant that Custom Software is error-free or that it will operate uninterrupted.

3. IT Services

a. Unless the Contractor Standard Form Agreement provides greater coverage, as determined by the State, in its sole discretion, the contractor warrants that all Services will be provided in a professional manner consistent with industry standards. The State shall notify the contractor of any Services warranty deficiencies within ninety (90) days from performance of the deficient Services.

b. In the event of any breach of this warranty, the contractor shall re-perform the deficient Services, or if the contractor cannot substantially correct a breach in a commercially reasonable manner, the State may end the relevant Services and recover the fees paid to the contractor for the deficient Services.

4. Hardware

a. Unless the Contractor Standard Form Agreement provides greater coverage, as determined by the State, in its sole discretion, the contractor warrants that the equipment offered is standard new equipment, and is the manufacturer's latest model in production, with parts regularly used for the type of equipment offered; that such parts are all in production and not likely to be discontinued; and that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice.

b. The contractor warrants that all equipment supplied to the State and operated by electrical current is UL listed where applicable.

c. The contractor warrants that all new machines are to be guaranteed as fully operational for one (1) year from time of Acceptance by the State. For the avoidance of doubt, Acceptance with respect to Hardware in this subsection (d) shall occur no later than sixty (60) days after delivery, as evidenced by a signed delivery receipt. The contractor shall render prompt service without charge, regardless of geographic location.

d. The contractor warrants that sufficient quantities of parts necessary for proper service to equipment shall be maintained at distribution points and service headquarters.

e. The contractor warrants that trained mechanics are regularly employed to make necessary repairs to equipment in the territory from which the service request might emanate within a 48-hour period or within the time accepted as industry practice.

f. The contractor warrants that all Software included with the Hardware shall perform substantially in accordance with specifications, for one (1) year from the time of Acceptance. The contractor warrants that Software media will be free from material defects in materials and workmanship for a period of one (1) year from the date of Acceptance.

g. In the event of any breach of this warranty, the contractor shall promptly repair, replace or refund the purchase price of product rejected for failure to conform with the contractor's product specifications.

5. THE WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, AND THE CONTRACTOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

V. ADDITIONS TO THE STANDARD TERMS AND CONDITIONS FOR ALL INFORMATION TECHNOLOGY CONTRACTS WHICH INCLUDE SOFTWARE AS A SERVICE (SAAS)/CLOUD SOLUTION

A. ADDITIONAL TERMS FOR A CONTRACTOR'S DATA PROTECTION OBLIGATIONS

1. Data Ownership: The State will own all right, title and interest in its State Data that is related to the services provided by this contract. The Provider shall not use or access State user accounts or State Data, except (i) in the course of data center operations, (ii) in response to service or technical issues, (iii) as required by the express terms of this contract, or (iv) at the State's written request.

   Provider shall not collect, access, or use State Data except as strictly necessary to provide its solution to the State. No information regarding the State's use of the solution may be disclosed, provided, rented or sold to any third party for any reason unless required by law or regulation or by an order of a court of competent jurisdiction. This obligation shall survive and extend beyond the term of this contract.

2. Data Protection: Protection of personal privacy and data shall be an integral part of the business activities of the Provider to ensure that there is no inappropriate or unauthorized use of State Data at any time. To this end, the Provider shall safeguard the confidentiality, integrity, and availability of State Data and comply with the following conditions:

a. The Provider shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of Personal Data and Non-Public Data. Such security measures shall be in accordance with recognized good industry practice and not less stringent than the measures the Provider applies to its own Personal Data and Non-Public Data of similar kind.
b. All Personal Data shall be encrypted at rest and in transit with controlled access. Provider is responsible for encryption of the Personal Data. The level of protection and encryption for all Personal Data shall be identified and made a part of this contract.
c. Provider shall encrypt all Non-Public Data at rest and in transit. The level of protection and encryption for all Non-Public Data shall be identified and made a part of this contract.
d. Personal Data shall not be stored on Mobile Devices. Where Mobile Devices are required for Provider to accomplish the work, the Provider shall ensure the Mobile Device is hard drive encrypted consistent with validated cryptography standards as referenced in FIPS 140-2, Security Requirements for Cryptographic Modules for all Personal Data.
e. At no time shall any data or processes, which either belongs to or are intended for the use of State or its officers, agents, or employees, be copied, disclosed, or retained by the Provider or any party related to the Provider for subsequent use in any capacity that does not include the State.

3. Data Location: Provider shall provide its services to State and its End Users solely from data centers in the U.S. Storage of State Data at rest shall be located solely in data centers in the U.S. Provider shall not allow its personnel or contractors to store State Data on Mobile Devices, including personal computers, except for devices that are used and kept within the physical structure of its U.S. data centers. Provider shall permit its personnel and contractors to access State Data remotely only as required to provide technical support or upon prior notice and approval. The Provider may provide technical user support on a seven-day by 24-hour basis, unless otherwise prohibited in this contract.

4. Security Incident and Breach of Security Responsibilities.
   a. Security Incident Reporting Requirements: Once Provider reasonably determines that a Security Incident occurred, the Provider shall report a Security Incident to the appropriate State identified contact within 24 hours by the agreed upon method as defined in the contract. Provider will provide the State regular updates and all available relevant information including a description of the incident and those measures taken by Provider in response to the Security Incident.
   b. Breach of Security Reporting Requirements: If the Provider confirms or reasonably believes that there has been a Breach of Security, the Provider shall (1) immediately notify the appropriate State identified contact by the agreed upon method within 24 hours, unless a shorter time is required by applicable law, (2) take commercially reasonable measures to address and investigate the Breach of Security in a timely manner and (3) cooperate with the State as reasonably requested by the State and/or law enforcement to investigate and resolve the Breach of Security. Provider will provide the State regular updates and all available information to assist the State with notification to law enforcement and third parties as required by applicable law, including a description of the Breach of Security and those measures taken by Provider in response to the Breach of Security.
   c. Incident Response: When commercially reasonable to do so, Provider may communicate with outside parties regarding a Security Incident, which may include contacting law enforcement, fielding media inquiries (subject to preapproval by the State if Provider specifically identifies the State or State Data), and seeking external expertise as mutually agreed at the time, defined by law, or contained in the SLA. Discussing Security Incidents with the State should be handled on an urgent as needed basis, as part of Provider communication and mitigation processes as mutually agreed at the time, defined by law, or contained in the SLA.
   d. Following a Security Incident or Breach of Security, Provider shall promptly implement necessary remedial measures, if necessary, and document responsive actions taken related to the Security Incident or Breach of Security, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.

5. Termination and Suspension of Service:
   a. In the event of termination of the contract, the Provider shall implement an orderly return of State Data in a mutually agreeable format and the subsequent secure disposal of State Data remaining in Provider's possession.
   b. Suspension of services: During any period of suspension, the Provider shall not take any action to intentionally erase any State Data.
   c. Unless otherwise stipulated, in the event of termination of any services, SLA, or this contract in its entirety, the Provider shall not take any action to intentionally erase any State Data for a period of:
      1) 10 business days after the effective date of termination, if the termination is in accordance with the expiration of the defined contract term;
      2) 30 business days after the effective date of termination, if the termination is for convenience; or
      3) 60 business days after the effective date of termination, if the termination is for cause.

      After such period, the Provider shall have no obligation to maintain or provide any State Data and shall thereafter, unless legally prohibited, delete all State Data in its systems or otherwise in its possession or under its control in accordance with subsection (e) below.

   d. Post-Termination Assistance: The State shall be entitled to any post-termination assistance with respect to the services unless a unique data retrieval arrangement has been established as part of the contract.

   e. Secure Data Disposal: When requested by the State, the provider shall destroy all requested data in all of its forms, including but not limited to: disk, CD/DVD, backup tape, and paper. Data shall be permanently deleted and shall not be

recoverable, according to National Institute of Standards and Technology (NIST) approved methods and certificates of destruction shall be provided to the State.

6. Background Checks: The Provider shall conduct criminal background checks and not utilize any staff, including sub-contractors, to fulfill the obligations of the contract who has been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or any misdemeanor offense for which incarceration for up to 1 year is an authorized penalty. The Provider shall promote and maintain an awareness of the importance of securing the State's Data among the Provider's employees and agents.

7. Access to security logs and other reports: The Provider shall provide logs and reports to the State in a format as specified in the contract and agreed to by both the Provider and the State. Reports shall include latency statistics, user access, user access IP address, user access history and security logs for all State Data related to this contract, including but not limited to data, file management, transactions, or tools used to provide, manage, secure, or analyze the State's Data. The Provider shall maintain the reports and logs for the contract term and for two (2) years after the conclusion of the term, and shall provide them to the State in the course of a State audit or upon written request from the State.

8. Service Level Audit: The Provider shall allow the State to audit conformance to the contract terms. The State may perform this audit or contract with a third party at its discretion, at the State's expense.

9. Data Center Audit: The Provider shall have an independent third party audit of its data center(s) performed at least annually at their own expense, and provide the audit report to the State upon request.

10. Change Control and Advance Notice: The Provider shall give advance notice to the State of any upgrades (e.g. major upgrades, minor upgrades, system changes) that may impact service availability and performance. Said notice shall be provided at least thirty days in advance of the upgrade, unless otherwise agreed in the SLA.

11. Security: The Provider shall disclose its non-proprietary security processes and technical limitations to the State by completing the State's Security Controls Checklist or equivalent system security document, available upon request from the Office of Information Technology, as updated from time to time, such that adequate protection and flexibility can be attained between the State and the Provider.

12. Non-disclosure and Separation of Duties: The Provider shall enforce separation of job duties, require commercially reasonable non-disclosure agreements, and limit staff knowledge of State Data to that which is absolutely needed to perform job duties.

13. Import and Export of Data: The State shall have the ability to import or export data in piecemeal or in entirety at its discretion without interference from the Provider. This includes the ability for the State to import or export data to/from other Providers.

14. Responsibilities and Uptime Guarantee: The Provider shall be responsible for the acquisition and operation of all hardware, software, and network support related to the services being provided. The technical and professional activities required for establishing, managing, and maintaining the environment are the responsibilities of the Provider. The system shall be available 24 hours per day, 365 days per year (with agreed-upon maintenance downtime), and Provider shall provide service to the State as defined in the Service Level Agreement.

15. Right to Remove Individuals: The State shall have the right at any time to require that the Provider remove from interaction with the State any Provider representative who the State believes is detrimental to its working relationship with the Provider. The State will provide the Provider with notice of its determination, and the reasons it requests the removal. If the State signifies that a potential security violation exists with respect to the request, the Provider shall immediately remove such individual. The Provider shall not assign the person to any aspect of the contract or future work orders without the State's consent.

    Business Continuity and Disaster Recovery: The Provider shall provide a business continuity and disaster recovery plan upon request and ensure that the State's Recovery Time Objective (RTO) is met. The RTO shall be defined in the SLA.

B. INDEMNIFICATION FOR SAAS

Section 4.1 Indemnification of the SSTC is deleted in its entirety and replaced with the following;

4.1 INDEMNIFICATION

A. CONTRACTOR RESPONSIBILITIES - The Contractor's liability to the State and its employees in third party suits shall be as follows:

1. The Contractor shall indemnify, defend, and save harmless the State and its officers, agents, servants and employees, from and against any and all third party claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith:

    i. For or on account of the loss of life, tangible property (not including lost or damaged data) or injury or damage to the person, body or property (not including lost or damaged data) of any person or persons whatsoever, which shall arise from or result directly or indirectly from the work and/or products supplied under this Contract; and

ii. For or on account of the use of any patent, copyright, trademark, trade secret or other proprietary right of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance ("Intellectual Property Rights") furnished or used in the performance of the contract; and

iii. For or on account of a Breach of Security resulting from Contractor's breach of its obligation to encrypt Personal Data or otherwise prevent its release or misuse; and

iv. The Contractor's indemnification and liability under Section 4.1(A)(1) is not limited by, but is in addition to the insurance obligations contained in Section 4.2 of the State Standard Terms and Conditions.

2. In the event of a claim or suit involving third-party Intellectual Property Rights, the Contractor, at its option, may: (1) procure for the State the legal right to continue the use of the product; (2) replace or modify the product to provide a non-infringing product that is the functional equivalent; or (3) refund the purchase price less a reasonable allowance for use that is agreed to by both parties. The State will: (1) promptly notify Contractor in writing of the claim or suit; (2) Contractor shall have control of the defense and settlement of any claim that is subject to Section 4.1(A)(1); provided, however, that the State must approve any settlement of the alleged claim, which approval shall not be unreasonably withheld. The State may observe the proceedings relating to the alleged claim and confer with the Contractor at its expense. Furthermore, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of the State of New Jersey, nor purport to act as legal representative of the State of New Jersey, without having provided notice to the Director of the Division of Law in the Department of Law and Public Safety and to the Director of DPP. The State of New Jersey may, at its election and expense, assume its own defense and settlement.
3. Notwithstanding the foregoing, Contractor has no obligation or liability for any claim or suit concerning third-party Intellectual Property Rights arising from: (1) the State's unauthorized combination, operation, or use of a product supplied under this contract with any product, device, or software not supplied by Contractor; (2) the State's unauthorized alteration or modification of any product supplied under this contract; (3) the Contractor's compliance with the State's designs, specifications, requests, or instructions, provided that if the State provides Contractor with such designs, specifications, requests, or instructions, Contractor shall review same and advise if such designs, specifications, requests or instructions present potential issues of patent or copyright infringement and the State nonetheless directs the Contractor to proceed with one or more designs, specifications, requests or instructions that present potential issues of patent or copyright infringement; or (4) the State's failure to promptly implement a required update, use a new version of the product, or to make a change or modification to the product if requested in writing by Contractor.
4. Contractor will be relieved of its responsibilities under Subsection 4.1(A)(1)(i), (ii), and (iii) for any claims made by an unaffiliated third party that arise solely from the actions or omissions of the State, its officers, employees or agents.
5. This section states the entire obligation of Contractor and the exclusive remedy of the State, in respect of any infringement or alleged infringement of any Intellectual Property Rights. This indemnity obligation and remedy are given to the State solely for its benefit and in lieu of, and Contractor disclaims, all warranties, conditions and other terms of non-infringement or title with respect to any product.
6. The provisions of this indemnification clause shall in no way limit the Contractor's obligations assumed in the Contract, nor shall they be construed to relieve the Contractor from any liability, nor preclude the State from taking any other actions available to it under any other provisions of the contract or otherwise at law or equity.
7. The Contractor agrees that any approval by the State of the work performed and/or reports, plans or specifications provided by the Contractor shall not operate to limit the obligations of the Contractor assumed in the Contract.
8. The State of New Jersey will not indemnify, defend or hold harmless the Contractor. The State will not pay or reimburse for claims absent compliance with Section 4.1(B) below and a determination by the State to pay the claim or a final order of a court of competent jurisdiction.

B. STATE RESPONSIBILITIES - Subject to the New Jersey Tort Claims Act (N.J.S.A. 59:1-1 et seq.), the New Jersey Contractual Liability Act (N.J.S.A. 59:13-1 et seq.) and the appropriation and availability of funds, the State will be responsible for any cost or damage arising out of actions or inactions of the State, its employees or agents under Section 4.1(A)(1)(i), (ii), and (iii) which results in an unaffiliated third party claim. This is Contractor's exclusive remedy for these claims.

B. INSURANCE FOR SAAS

Section 4.2 Insurance of the SSTC is supplemented with the following:

1. Professional Liability Insurance

   The Contractor shall carry Errors and Omissions, Professional Liability Insurance, and/or Professional Liability Malpractice Insurance sufficient to protect the Contractor from any liability arising out the professional obligations performed pursuant to the requirements of this Contract. The insurance shall be in the amount of not less than $1,000,000 and in such policy forms as shall be approved by the State. If the Contractor has claims-made coverage and subsequently changes carriers during the term of this Contract, it shall obtain from its new Errors and Omissions, Professional Liability Insurance, and/or Professional Malpractice Insurance carrier an endorsement for retroactive coverage.

2. Cyber Breach Insurance

   The Contractor shall carry Cyber Breach Insurance in sufficient to protect the Contractor from any liability arising out of its performance pursuant to the requirements of this Contract. The insurance shall be in an amount of not less than $2,000,000 in such policy forms as shall be approved by the State. The insurance shall at a minimum cover the following: Data loss, ransomware and similar breaches to computers, servers and software; Protection against third-party claims; cost of notifying affected parties; cost of providing credit

monitoring to affected parties; forensics; cost of public relations consultants; regulatory compliance costs; costs to pursue indemnity rights; costs to Data Breach and Credit Monitoring Services analyze the insured's legal response obligations; costs of defending lawsuits; judgments and settlements; regulatory response costs; costs of responding to regulatory investigations; and costs of settling regulatory claims.

C. LIMITATION OF LIABILITY FOR SAAS

Section 4.0 Indemnification and Insurance of the SSTC is supplemented with the following:

4.3 LIMITATION OF LIABILITY

A. The Contractor's liability for actual, direct damages resulting from the Contractor's performance or non-performance of, or in any manner related to, the Contract for any and all third party claims, shall be limited in the aggregate to 200% of the fees paid by the State during the previous twelve months to Contractor for the products or services giving rise to such damages. Notwithstanding the preceding sentence, in no event shall the limit of liability be less than $1,000,000. This limitation of liability shall not apply to the following:
   i. The Contractor's indemnification obligations as described in Section 4.1; and
   ii. The Contractor's breach of its obligations of confidentiality described in this Bid Solicitation.

A. Notwithstanding the foregoing exclusions, where a Breach of Security is a direct result of Contractor's breach of its contractual obligation to encrypt Personal Data pursuant to this Bid Solicitation or otherwise prevent its release as reasonably determined by the State, the Contractor shall bear the costs associated with (1) the investigation and resolution of the Breach of Security; (2) notifications to individuals, regulators, or others required by federal and state laws or as otherwise agreed to; (3) a credit monitoring service required by state or federal law or as otherwise agreed to; (4) a website or a toll-free number and call center for affected individuals required by federal and state laws — all not to exceed the average per record, per person cost calculated for data breaches in the United States in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute for the public sector at the time of the Breach of Security; and (5) completing all corrective actions as reasonably determined by Contractor based on root cause of the Breach of Security.

B. The Contractor shall not be liable for punitive, special, indirect, incidental, or consequential damages.

I HEREBY ACCEPT THE TERMS AND CONDITIONS OF THIS CONTRACT



Signature

7/14/2023

Date

Elmer Ma, Government Contracts Specliast

Print Name and Title

Cepheid

Print Name of Contractor