

UCS

AGREEMENT

CM00740

NEW YORK STATE UNIFIED COURT SYSTEM

AND

EASTERN TERMINALS & COMMUNICATIONS, INC.

This Agreement, between the **NEW YORK STATE UNIFIED COURT SYSTEM**, 25 Beaver Street, New York, New York 10004 (hereinafter "UCS"), and **EASTERN TERMINALS & COMMUNICATIONS, INC.**, 166C Fairview Avenue Westwood, New Jersey 07675 (hereinafter "Contractor"), is for the purpose of providing maintenance services for "Tally" printers in UCS courts, court-related agencies and administrative offices in New York State.

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In consideration of the mutual promises herein contained, the parties agree that:

I. TERM OF AGREEMENT

When signed by the parties and approved by all necessary government agencies, this Agreement shall be effective from December 13, 2004 and shall terminate on December 12, 2006, unless terminated earlier or extended pursuant to its terms.

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II. RENEWAL, EXTENSION AND TERMINATION

A. This Agreement may be renewed for one additional term of twelve (12) months, from December 13, 2006 through December 12, 2007, upon the same terms and conditions, including pricing, upon written notice by UCS to Contractor. Any such renewal shall be in writing and shall be subject to approval by the Office of the New York State Comptroller ("OSC").

B. Upon the expiration of the initial or renewal term, UCS may extend the term of this Agreement for a period not to exceed 180 days, on the same terms and conditions, including pricing, upon written notification to Contractor. Any such extension shall be in writing and shall be subject to approval by OSC.

C. Contractor may terminate this Agreement with cause upon sixty (60) days' written notice to UCS. UCS may terminate this Agreement with or without cause upon thirty (30) days' written notice to Contractor. In the event of termination pursuant to this paragraph or to any other provision of this Agreement, UCS shall be liable only for those services actually performed by Contractor up to and including the effective date of termination. UCS shall be entitled to pro-rata refunds from Contractor of any moneys already paid to Contractor by UCS for the period from the effective date of termination to the end of the term of this Agreement.

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III. ADMINISTRATION

This Agreement shall be administered by the courts, court-related agencies and administrative offices in each Region covered by the Agreement, as defined in Section IV(B) below. Said administration shall include but shall not be limited to requesting service calls, providing initial inventories, making addition or deletions or other changes in inventories, billing, payment and problem resolution. Contractor will interface directly with designated UCS personnel in the each participating court, court-related agency and administrative office. The UCS Contract & Procurement Administration (“C&PA”) shall assist the Contractor and the participating courts, court-related agencies and administrative offices concerning all matters necessary for the proper performance and administration of this Agreement and otherwise set forth in this Agreement.

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IV. SCOPE OF SERVICES

A. Contractor shall provide on-site, full service maintenance, including on-call remedial maintenance, to “Tally” printers (hereinafter “Printers”) located in participating courts, court-related agencies and administrative offices in UCS Regions 1 through 8, as defined in Paragraph B below. Contractor shall obtain a copy of the inventory and specific site data from each participating court, court-related agency and administrative office in each Region. The actual number and location of Printers in a Region may vary from time to time in accordance with Paragraphs H and I below.

B. The counties of New York State which comprise Regions 1 through 8 are as listed below. Subject to Paragraph D below, a list of the specific courts, court-related agencies and administrative offices within Regions 1 through 8 that shall receive services under this Agreement shall be provided to Contractor together with the inventories for each participating court, court-related agency and administrative office.

- Region 1 New York City (five counties), Nassau and Suffolk Counties
- Region 2 Dutchess, Orange, Putnam, Rockland and Westchester Counties
- Region 3 Albany, Columbia, Greene, Rensselaer, Schorarie, Sullivan and Ulster Counties
- Region 4 Clinton, Essex, Franklin, Fulton, Hamilton, Montgomery, St Lawrence, Saratoga, Schenectady, Warren and Washington Counties
- Region 5 Herkimer, Jefferson, Lewis, Oneida, Onondaga and Oswego Counties
- Region 6 Broome, Chemung, Chenango, Cortland, Delaware, Madison, Otsego, Schuyler, Tioga and Tompkins Counties
- Region 7 Cayuga, Livingston, Monroe, Ontario, Seneca, Steuben, Wayne and Yates Counties
- Region 8 Allegany, Cattaraugus, Chautauqua, Erie, Genessee, Niagara, Orleans and Wyoming Counties

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C. The model numbers of the Printers to be serviced in each Region and the estimated number of Printers of each model in each Region as of the effective date of this Agreement are as follows:

REGION	MODEL NUMBER	ESTIMATED NUMBER OF UNITS
1	T6141	8
2	T6141	4
3	T6141	7
4	T6141 T6090	9 1
5	T6141	5
6	T6141	3
7	T6141	1
8	T6141 T6090	7 1

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D. Throughout the term of this Agreement and any renewal or extension thereof, UCS reserves the right to increase the number of courts, court-related agencies and administrative offices in Regions 1 through 8 that shall be covered by this Agreement. Upon their inclusion under this Agreement, Printers in all such participating locations shall be eligible to receive maintenance services by Contractor pursuant to the terms and conditions, including pricing, of this Agreement.

E. Requests for on-site maintenance service shall originate from the court, court-related agency or administrative office. All such requests shall be made by

telephone and shall include the model, serial number and location of the Printer requiring service.

F. Contractor shall provide on-site maintenance services during court business hours, from 9:00 AM to 5:00 PM, Monday through Friday, excluding court holidays. A list of court holidays shall be provided to Contractor.

G. Contractor shall provide any and all replacement parts necessary to maintain the Printers in a proper working condition. All such replacement parts shall be of equal or better quality than the original parts, shall be wholly compatible with the Printer model being maintained and shall not in any manner be contrary to the manufacturer's specifications for said model Printer.

H. UCS shall have the right to add additional Printers acquired during the term of this Agreement and any renewal or extension thereof to the inventory of Printers eligible for service under this Agreement. A court, court-related agency or administrative office shall notify Contractor, in writing, whenever a Printer is added to its inventory and any such Printer thereafter shall be incorporated by reference into the respective inventory and shall henceforth be covered by this Agreement. Each notice shall include the model, serial number and initial location of the additional Printer.

I. During the term of this Agreement and any extension or renewal thereof, UCS shall also have the right to remove from operation any Printer subject to this

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Agreement. A court, court-related agency or administrative office shall notify Contractor, in writing, whenever a Printer has been removed from operation and shall no longer be covered by this Agreement. Each notice shall include the model, serial number and location of the Printer removed from operation and no longer covered by this Agreement.

J. A court, court-related agency or administrative office shall notify Contractor, in writing, whenever any Printer covered by this Agreement is moved to a new location. Each notice shall indicate the date the Printer was moved and shall include the model, serial number and new location of such Printer. Printers that are relocated in accordance with this Paragraph shall continue to be serviced by Contractor in accordance with the terms and conditions, including pricing, of this Agreement.

K. At all times during the term of this Agreement or any renewal or extension thereof, Contractor shall maintain adequate resources, including but not limited to adequate service facilities, trained personnel and parts, for the provision of all services required under to this Agreement, so that it shall always be capable of providing timely service to all UCS locations and Printers covered by this Agreement.

L. Contractor shall provide such status reports as may be requested from time to time by UCS or any court, court-related agency or administrative office in each Region.

M. In the event that replacement parts for any Printer serviced pursuant to this Agreement become unavailable, Contractor shall continue to service such Printer for the duration of the initial two-year term of this Agreement. Upon ninety (90) days' written

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notice by Contractor to the court, court-related agency or administrative office where such Printer is located, and with the mutual written agreement of the affected court, court-related agency or administrative office and C&PA, any Printer for which replacement parts are no longer available shall cease to be subject to the terms of this Agreement during the remaining portion of any renewal or extension term of this Agreement.

V. QUANTITIES

All quantities stated herein are estimates only. UCS does not guarantee that any specific number of locations or Printers will be covered by this Agreement. The actual number of Printers to be maintained by Contractor shall be that listed on the inventory provided from time to time to Contractor by the appropriate court, court-related agency or administrative office of UCS.

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VI. COMPENSATION AND PAYMENT

A. The annual per unit charges for all maintenance services to be provided by Contractor pursuant to Section IV above shall be \$840.00 per year for each Model T6141 Printer and \$870.00 per year for each Model T6090 Printer. These charges shall be net, shall include all maintenance services specified in this Agreement, including travel, non-consumable parts and labor, and shall remain firm throughout the term of this Agreement and any renewal or extension thereof.

B. The billing format for each locality shall be agreed upon by the respective court, court-related agency or administrative office and Contractor, but in any event shall be in compliance with the rules of OSC.

C. Charges for maintenance services provided in accordance with Section IV above for Printers added to the inventory pursuant to Section IV(H) above or removed from operation pursuant to Section IV(I) above shall be based on the annual per unit charges specified in Paragraph A above and shall be pro-rated commencing on the date of written notification required by Sections IV(H) and (I).

VII. SUBCONTRACTING; ASSIGNMENT

The rights and obligations of Contractor under this Agreement may not be assigned, transferred or subcontracted to any other person or organization without the prior express written approval of C&PA. In the event any such subcontracting is approved by C&PA, Contractor shall remain wholly responsible for the provision of all services under this Agreement by said approved subcontractor.

VIII. STATUS OF CONTRACTOR

It is expressly understood and agreed as follows:

- A. Contractor's status hereunder is that of an independent contractor.
- B. No employee of Contractor is an employee of UCS. Contractor alone is

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responsible for the work, direction, compensation and personal conduct of its employees while they are employed by Contractor.

C. Nothing included in this Section or in any other provision of this Agreement shall impose any liability or duty upon UCS relating to the employment of persons, firms or corporations employed or engaged by Contractor as Contractor's experts or independent contractors or in any other capacity whatsoever, or engaged as employees, servants, or agents of Contractor, or shall make UCS liable for the acts, omissions, liabilities, obligations or taxes of whatsoever nature, including unemployment insurance and workers compensation, of Contractor or its subcontractors, experts, employees, servants, agents or independent contractors.

IX. INDEMNIFICATION; HOLD HARMLESS; LIABILITY

A. Contractor shall indemnify UCS against and hold UCS harmless from any and all claims, actions, proceedings, expenses, liabilities or damages to persons or property, including reasonable counsel fees, arising from the acts or omissions of Contractor and its agents and employees in connection with the performance or breach of this Agreement.

B. Neither party shall be liable for lost profits or for indirect or consequential damages.

C. Contractor shall hold harmless the State of New York, UCS and all courts, court-related agencies and administrative offices of UCS with respect to any injuries

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sustained by Contractor's employees, agents or subcontractors or other persons under the direction and control of Contractor during the initial term of this Agreement and any renewal or extension thereof.

D. Contractor assumes all responsibility for any damages to the facilities, furnishings or equipment of the UCS courts, court-related agencies and administrative offices caused by the negligent or abusive acts of Contractor's employees or subcontractors. Should any such damage occur, Contractor shall, at Contractor's sole expense, repair any such damage or replace any such damaged facility, furnishing or equipment to the satisfaction of the C&PA and the respective court, court-related agency or administrative office of the Region in which the damage occurs.

X. AMENDMENT; MODIFICATION

No amendment or modification of this Agreement shall be valid unless in writing and signed by both parties.

XI. SURVIVAL

The terms, provisions and representations contained in this Agreement shall survive the completion of all services by Contractor and the payment in full of compensation to Contractor.

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XII. NOTICES

All notices to be given under this Agreement shall be made in writing and delivered either personally or by regular mail to Contractor at its address as set forth above and to UCS at the following address:

New York State Unified Court System
Contract & Procurement Administration
42 Karner Road
Albany, New York 12205
Attn: Glenn Harrison

or to such other address or person as either party may provide in writing from time to time. Any such notice shall be deemed to have been given when delivered, if by personal delivery or by telegram, or five (5) days subsequent to mailing.

XIII. FORCE MAJEURE

Neither party shall be responsible for delays or failures in performance resulting from acts beyond the control of the party. Such acts shall include, but shall not be limited to, acts of God, lockouts, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, earthquakes or other disasters.

XIV. CONSENT TO BREACH NOT WAIVER

No term or provision hereof shall be deemed waived and no breach excused

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unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute a consent to, waiver of, or excuse for any other different or subsequent breach.

XV. ENTIRE AGREEMENT; PARTIAL INVALIDITY

This Agreement, together with the Appendices annexed hereto, constitutes the entire Agreement between the parties. Any provision of this Agreement found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Agreement. Subject to the specific provisions of this Agreement, this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

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XVI. BUSINESS TERMINATION

In the event that Contractor shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets, or shall avail itself of or become subject to any proceeding under the Federal Bankruptcy Act or any other federal or state statute relating to insolvency or the protection of the rights of creditors, Contractor shall notify UCS in writing promptly of such occurrence. If any such occurrence remains extant

for sixty (60) days after its commencement, then, at UCS's sole option, this Agreement may be terminated and will be of no further force or effect. In the event of such termination, UCS shall be liable only for work actually performed by Contractor prior to such termination.

XVII. OTHER TERMS AND CONDITIONS

A. The obligations of UCS under this Agreement shall be limited to the extent that moneys are appropriated and lawfully available therefor.

B. Appendix A, containing standard terms for New York State contracts, is attached hereto and made a part hereof.

C. The terms and conditions of this Agreement represent the full understanding of the parties and supersede all prior oral or written agreements between the parties.

D. This Agreement shall be governed by its terms and by the laws of the State of New York.

E. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all together shall constitute but one and the same Agreement.

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F. All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

NYS CONTRACT NUMBER _____

UCS CERTIFICATION

UCS certifies that an original or photocopy of this signature page will be attached to every exact copy of this Agreement.

FOR: EASTERN TERMINALS & COMMUNICATIONS, INC.

FOR: UNIFIED COURT SYSTEM OF THE STATE OF NEW YORK



Name Howard J. Roman
Title PRESIDENT

Ronald P. Younkins
Chief of Operations

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Dated: 08/10/04

Dated: 8/16/04

Approved:

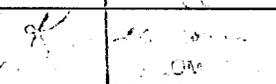
Alan G. Hevesi
Comptroller

APPROVED AS TO FORM
NYS ATTORNEY GENERAL

SEP 07 2004


PETER FAVRETTO
ASSOCIATE ATTORNEY

By: **APPROVED**
DEPT. OF AUDIT & CONTROL

Date: **OCT 04 2004**


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ACKNOWLEDGMENT

STATE OF)
NEW JERSEY) ss.:
COUNTY OF BERGEN)

On the 10th day of August 2004, personally came
HOWARD J. RADOW, to me known, who, being by me duly sworn did
depose and say that he/she resides in WOODCLIFF LAKE NJ
he/she is the PRESIDENT of EASTERN TERMINALS & COMMUNICATIONS INC.
corporation described in and which executed the above instrument; and that he/she is
authorized to execute the above instrument on behalf of said corporation.

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Felicia Parisi
NOTARY PUBLIC

FELICIA PARISI
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES APRIL 25, 2007

New York State Unified Court System
Standard Clauses for all Contracts

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

1. **EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.
2. **NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.
3. **COMPTROLLER'S APPROVAL.** In accordance with Section 112.2 (Chapter 95- Laws of 2000) of the State Finance Law, if this contract exceeds \$15,000.00, or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office.
4. **WORKER'S COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.
5. **NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex, or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.
6. **WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.
7. **NON-COLLUSIVE BIDDING REQUIREMENT.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.
8. **INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000.00, the Contractor agrees, as material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export

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Administration Act of 1979 (50 UCS APP. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition or appeal (2 NYCRR 105.4).

9. **SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any reason including, without limitation, tax delinquencies, fee delinquencies, or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.
10. **RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified, and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. **IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.**

(a) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER

All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on his invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(b) PRIVACY NOTIFICATION.

(1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of State Accounts, Office of State Comptroller, AESOB, Albany, New York 12236.

12. **EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or

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renovation or real property and improvements thereon for such projects, then:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, sex, national origin, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, up-gradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

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

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

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

13. **CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.
14. **GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.
15. **LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article XI-A of the State Finance Law to the extent required by law.
16. **NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized) but must, instead, be heard in a court of competent jurisdiction of the State of New York.
17. **SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.
18. **PURCHASES OF APPAREL.** In accordance with State Finance Law Section 162 (4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that:
- (i) Such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hour laws and workplace safety laws; and
- (ii) Vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized for this contract by the bidder.

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