

NOTICE TO PROPOSERS

NOTICE IS HEREBY GIVEN, that the Undersigned, on behalf of the Essex County Board of Supervisors, will accept sealed proposals until Tuesday, December 29, 2009 for Pharmaceutical Services at the Essex County Horace Nye Nursing Home in Elizabethtown, NY.

Proposals are due by 2:00 P.M. on Tuesday, December 29, 2009. All proposals must be in writing and submitted in a sealed envelope marked "SEALED PROPOSAL - PHARMACEUTICAL" clearly on the outside of the envelope. Every proposal must include a Non-Collusive Bidding Certificate signed by the proposer or one of its officers as required by the General Municipal Law, Sec 103d.

Essex County reserves the right to reject any or all proposals or part thereof, not considered to be in the best interest of Essex County, and to waive any technical or formal defect in the proposals which is considered by Essex County to be merely irregular, immaterial, or unsubstantial.

PLEASE TAKE FURTHER NOTICE that Essex County affirmatively states that in regard to any contract entered into pursuant to this notice, without regard to race, color, sex, religion, age, national origin, disability, sexual preference or Vietnam Era veteran status, disadvantaged and minority or women-owned business enterprises will be afforded equal opportunity to submit proposals in response hereto.

Dated: December 9, 2009

Linda M. Wolf, CPA
Purchasing Agent
Essex County Government Center
Elizabethtown, New York 12932
(518) 873-3330

**SPECIFICATIONS FOR PHARMACEUTICAL SERVICES
AT THE ESSEX COUNTY HORACE NYE NURSING HOME**

INTENT: It is the intent of these specifications to obtain pharmaceutical services required by the Horace Nye Nursing Home, Elizabethtown, NY (FACILITY). These services would provide a thirty day supply unit of use method of pharmaceutical dispensing.

A written proposal is requested for a contract effective the receipt of proposal through December 31, 2010, this contract could be annually renewed by the County for up to an additional two (2) years on the same terms and conditions.

SIZE: Horace Nye Nursing Home has a maximum capacity of 100 residents.

A. PHARMACY SERVICES

The following list is intended to provide minimum requirements for the FACILITY. Any additional services which will be provided by vendor must be explained in proposal.

I. General Requirements

1. The Proposer shall describe in detail the type of medication and administration system it is proposing to the nursing home and the benefits and possible drawbacks of such a system.
2. The Proposer shall provide modern, professional, resident/patient care oriented pharmacy services that shall include but not be limited to, a unit dose or similar type dispensing system.
3. The Proposer shall provide medications on a daily basis, as needed for the residents of the nursing home, with twenty-four (24) hour service availability.
4. The Proposer shall provide In-Service training to all staff to the unit of use system as well as on-going in-service education regarding medications' side effect, interaction with other drugs, and all other pertinent information.
5. The Proposer shall maintain a computerized medication profile on each resident. Each resident profile shall be readily retrievable at the reasonable request of the Nursing Home. All resident profiles will be maintained and reviewed prior to dispensing each medication by means of an appropriate computerized prescription program. Monthly computerized listing of all purchases and returns and other credits listing individual's name and location, prescription number, date of original prescription and each refill, name and strength of each medication, quantity dispensed and returned, physician's name, itemized list of credits for returned medications.
6. The Proposer shall maintain Computerized Medication Administration Record Sheets (MARS) and Treatment Records, acceptable to the nursing home, pre-printed, listing each medication for the month and the physician orders for each resident each month, will be supplied to the nursing home no later than 10 days prior to the beginning of each month at no charge to the Nursing Home. An example of the proposed MARS and Treatment Records must accompany the bid and be acceptable to the nursing home.
7. Medication Administration Records shall be computer generated, with the most current resident information and will include at a minimum, clinical screening for allergies, drug dosing, drug interactions, and duplicated therapies

8. Usage Trends & Cost Containment Reports by resident, physician, and/or other breakdown acceptable to the nursing home will also be provided monthly.
9. Prescription Delivery manifests will be provided and include at a minimum, the dispensing date, name, strength, and quantity of drug dispensed, RX number, and resident name.
10. Treatment notebooks shall be provided.
11. The proposer shall provide Medication Carts for the Nursing Home's use at no additional charge. The medication carts must be acceptable to the nursing home. It will be the responsibility of the proposer for repair and maintenance due to normal wear and use.

II. Billing

1. Payments to the contractor will be on a monthly basis.
2. Prescribed medications should be provided at no greater than average wholesale prices.
3. Transportation costs should be included.
4. No interest or late fees are to be included.
5. Early payment discounts are allowed.
6. Return credit for medications not used which remain sealed in blister packs.
7. Price list of over-the-counter stock drugs, such as Motrin, Tylenol, Tylenol Sinus, Sudafed, Robitussin, Benadryl, etc., or equal, shall be included.
8. Prescriptions will be billed to the nursing home on an acceptable billing format which, at a minimum, will include:
 - a) Generic Name/Brand Name
 - b) Dispensing Date
 - c) Name, strength, quantity of drug and medication NDC#
 - d) RX number and resident name
 - e) Prescribing Physician
 - f) New or refill.
9. A separate invoice or breakout will be provided for all Private Pay Residents.
10. The Proposer, upon notification by the nursing home, will bill all third party prescription drug coverage for residents having such coverage.
11. The Proposer will identify and bill directly to Medicaid any medications outside the nursing home's per diem Medicaid rate.

III. Medications

1. All medications shall be packaged in accordance with State and Federal regulations and shall include the following information:
 - a) Name of item
 - b) Strength/Dose
 - c) Manufacturer
 - d) Lot Number
 - e) Expiration Date
2. All medications shall be labeled in accordance with State and Federal Regulations, to include the Federal Food, Drug and Cosmetic Act. Each label shall contain, at a minimum, the following information:
 - a) Prescription Number
 - b) Pharmacist's name and initials
 - c) Physician's name
 - d) Instructions for administration

- e) Date medication is filled
 - f) Original date the order/prescription is filled
 - g) Name and strength of generic and/or trade name of medication
 - h) Name of resident
 - i) Room # of resident
3. All liquid medication must be filled in plastic or glass containers in sizes required by the dosage ordered by the prescribed, unless otherwise required by the manufacturer.
 4. A modified unit dose type system will be utilized to dispense medications with
 - a) Hermetically sealed unit dose or similar packaging
 - b) Unit dose packaging must meet USP specifications for tight, light specifications
 - c) Unit dose packaging must meet USP Class A or Class B specifications
 5. Medications will be dispensed in quantities sufficient for not more than thirty (30) days or as requested by the prescribed. Automatic stop dates for potentially hazardous medications will be established by the Consulting Pharmacist, Medical Director, Quality Assurance and/or Pharmacy and therapeutic Committee, when applicable.
 6. All Medications will be dispensed in accordance to a Drug Formulary approved by the nursing home, and in accordance with New York State and Federal Regulations. All medications dispensed shall meet or exceed all New York State and Federal regulations and be FDA approved. The Horace Nye Nursing Home recognizes that some third party formulary restrictions may prevail.
 7. Unless otherwise prescribed, generic drugs and pharmaceuticals shall be dispensed and recommended by the consulting and dispensing pharmacists with the exception of selected drugs with a narrow therapeutic index with documented generic problems.
 8. All medications must have a maximum expiration date.
 9. Four Emergency Boxes and one Emergency Narcotic Box will be provided and supplied with the contents of boxes replenished as the contents are used and /or requested to do so by the nursing home or as needed by a monthly check.

B. PHARMACY CONSULTANT SERVICES- HORACE NYE HOME

Horace Nye Home (Facility) is engaged in the operation of a nursing facility, for which it requires pharmacy consulting services in accordance with applicable local, state and federal laws and regulations. The following is intended to provide the minimum requirements for the consulting service. Any addition services which will be provided by vendor must be explained in the proposal.

The Consulting Pharmacist must be duly licensed and registered in New York State. A copy of the license of the Consultant Pharmacist that will be assigned to the nursing home must be included in the RFP as well as a resume of current and past experience. The Consulting Pharmacist must comply with the Facility's credentialing requirements.

Services to be provided:

1. Provide general supervision of the FACILITY'S procedures for the control and accountability of all drugs, intravenous solutions, biologicals and supplies throughout

- the FACILITY and ensure that the FACILITY'S policies and procedures are in compliance with applicable local, state and federal laws and regulations;
2. Review the records for receipt and disposition of controlled drugs and the maintenance of such records in sufficient detail so as to allow an accurate reconciliation. This should be accomplished on a quarterly basis or as needed;
 3. Review the drug regimen of each resident in the FACILITY and report in writing any irregularity to the FACILITY'S administrator, Medical Director, the resident's physician and the Director of Nursing Services;
 4. Consult with attending physicians and nurses to ensure compliance with accepted Geriatric Pharmaceutical Care Guidelines;
 5. Work with the FACILITY staff to ensure that inspections are done of each nursing station, its related drug storage area, and resident health records, and that findings are documented in the Consultant's report;
 6. Supervision of the labeling of all drugs and biologicals to insure that such labeling is based on currently accepted professional principles and includes the appropriate accessory and cautionary instructions as well as the expiration date when applicable;
 7. Recommendations, plans for implementation, and continuing assessment through dated, signed reports, which are given to and retained by the Administrator/Director of Nursing for follow-up action and evaluation of performance.
 8. Recommendations and guidance on formulary management and cost-effectiveness.
 9. Provide written reports to the Administrator, Quality Assurance Committee, or Director of Nursing Services regarding the status of the FACILITY'S pharmaceutical services and staff performance on a mutually agreed upon basis;
 10. Provide the FACILITY with the following reports:
 - i. Antibiotic Usage Report
 - ii. Psychoactive Usage Report
 - iii. Psychotropic Usage Report
 - iv. Antidepressant
 - v. H2 Blockers
 - vi. Summary of recommendations from Drug Regimen Reviews
 - vii. Listing of Prescriptions exceeding a set dollar amount
 - viii. Monthly recommendations to physicians on irregularities in orders
 11. Participate in meetings of the Pharmaceutical Services Committee, Quality Assurance Committee, Infectious Control Committee and/or any other committee meetings, with reasonable prior notice and during regularly scheduled visits to the FACILITY;
 12. Assist in the development of, and/or conduct, when requested by the FACILITY Administrator and as mutually agreed to by the PHARMACY and the FACILITY, programs for in-service education on subjects related to the pharmaceutical services rendered; such in-service education to be conducted by the CONSULTANT or his/her designee;
 13. Perform all other responsibilities required of a pharmacy consultant as set forth by applicable local, state or federal laws and regulations; and
 14. Assist in developing the FACILITY'S policies and procedures for routine and emergency/disaster drug control.
 15. The Consultant Pharmacist shall agree that it will be his/her responsibility to provide continuous services to the facility during the term of this agreement and, in accordance therewith, the Consultant Pharmacist shall arrange to provide the services of another pharmacist as his/her agent during any absence, vacation, period of illness, or limited period when the Consultant Pharmacist is not available. The Consulting Pharmacist must inform the Administrator and Director of Nursing of any change in coverage, monthly visit times, or personnel.
 16. The Consultant Pharmacist shall devote a sufficient number of hours, based upon the needs of the facility, to carry out the above responsibilities.
 17. The Consultant Pharmacist shall not discriminate against the treatment of any resident at the facility because of race, creed, color, national origin, sex, age, sexual

- orientation, handicap or source of payment.
18. The Consultant Pharmacist shall not discriminate against the treatment of any resident at the facility because of race, creed, color, national origin, sex, age, sexual orientation, handicap or source of payment.
 19. The Consultant shall make recommendations with respect to the pharmaceutical services at the Nursing Home, as well as plans for implementation and continuing assessment of those recommendations. Such continuing assessment shall be made through dated, signed reports, which are delivered to, and retained by, the Administrator of the nursing Home/Director of Nursing for follow-up action and evaluation by the nursing home.
 20. The Consultant Pharmacist will check the medication carts and medication rooms monthly for inappropriate storage of medications, out-dated medications, or other inappropriate deviation from standard practice. Items identified during this review must be addressed immediately with the Head Nurse, Director of Nursing, and/or Administrator.
 21. Notwithstanding any other provision in this contract, the nursing home remains responsible for ensuring that any service provided pursuant to this contract complies with all pertinent provisions of Federal, State, or Health Department Rules and Regulations.

C. Cost of Goods/Services

Define billing on RFP response as it relates to:

1. Average wholesale price (AWP) and/or Capitation* as described below:
 - a) Include any applicable discounts: i.e.
 - AWP minus percentage
 - Federal upper limit (FUL)
 - Credit Procedures for unused RX's
 - Capitation
2. State if the Proposer will accept a discount for prompt payment when the County pays its monthly bill, following verification, within a specified time period.
3. Provide, at least twice a year, a list of the current AWP's of all medications dispensed to the County in an electronic format.

Using Attachment HNH-DU, please detail the current charge for each medication listed by NDC Code (dose and form) based upon the bid pricing proposed in #1.

GENERAL CONDITIONS FOR SUBMITTING PROPOSALS

Award or Rejection - All qualified proposals will be evaluated and the award shall be made to that firm who offers the services at the lowest guaranteed cost as is determined by the Board of Supervisors and deemed to be in the best interest of the County. The County reserves the unqualified right to reject any or all proposals if the County so determines the same to be in its best interest.

Declination to Submit Proposal - Any firm which receives a copy of this RFP but which declines to submit a proposal is requested to notify the County by phone or in writing of such declination.

Cost for Proposal Preparation - Any costs incurred by a firm in preparing or submitting proposals are the proposer's sole responsibility. The County will not reimburse any proposer for any costs incurred prior to award.

Elaborate Proposals - Elaborate proposals in the form of brochures or other presentations beyond that necessary to present a complete and effective proposal are not required or desired.

Reference to Other Data - Only information which is received in response to this RFP will be evaluated.

Titles - Titles and headings in this RFP and any subsequent contract are for convenience only and shall have no binding force or effect.

Time and Acceptance - Each proposal must state that it is a firm proposal which may be accepted within a period of sixty (60) days. Although the contract is expected to be awarded prior to that time, the sixty (60) day period is requested in order to allow for unforeseen delay.

Safeguarding of "Confidential" Information - Any trade secrets or other data which the proposer does not wish disclosed to other than County personnel involved in the evaluation or contract administration will be kept confidential if identified as follows:

- (a) each page shall be identified in boldface at the top and bottom as "Confidential"; and
- (b) any section of the proposal which is to remain confidential should, in addition, be so marked in boldface **on the title page** of that section. Net cost information may not be deemed confidential.

Form of Proposal - Each proposal should be submitted in a form which, at the option of the County, may be incorporated verbatim into a contract.

Exceptions - Any exceptions to terms, conditions, or other requirements in any part of the RFP must be clearly pointed out in a distinct section of the appropriate cost proposal or technical proposal. Otherwise, the County will consider that all items proposed are in

strict compliance with the RFP, and the successful proposer will be responsible for compliance.

Advertising - In submitting its proposal, the proposer agrees not to use the results there from as a part of any news release or commercial advertising without written approval of the County.

Confidentiality of Proposals - In submitting a proposal, the proposer agrees not to discuss or otherwise reveal his technical or cost information to any other sources, government or private, until after the award of the contract. Proposers not in compliance with this provision may be disqualified, at the option of the County, from contract award. Only discussions authorized by the County are exempt from this provision.

Right to Submitted Materials - All responses, inquiries, or correspondence relating to or in reference to this RFP, and all other reports, charts, display, schedules, exhibits and other documentation submitted by the proposers, will become the property of the County when received.

Legal Compliance - Under penalty of perjury, the signer of any proposal submitted in response to this RFP thereby certifies that this proposal has not been arrived at collusively or otherwise in violation of any Federal or State laws, rules or regulations. All proposals must include a non-collusive bidding certificate in compliance with the requirements of General Municipal Law Section 103-d.

Proposer's Representatives - Proposers shall submit the name, address, and telephone number of the person(s) with the authority to bind the firm and answer questions or provide clarification concerning the firm's proposal.

Requests for Information/Clarification - All inquiries regarding the proposal requirements should be submitted in writing and directed to the following: James E. Pierce, Purchasing Agent, Essex County Government Center, 7551 Court Street, P.O. Box 217, Elizabethtown, New York 12932, (518) 873-3331.

EVALUATION CRITERIA

1. Mandatory Requirements

- 1.1 Licensed and registered in NYS
- 1.2 Does the Proposer have experience in providing modern, professional, resident/patient care oriented pharmacy services that includes unit dose or a similar type dispensing system
- 1.3 Does the Proposer provide 24 hour service availability

2. Firm's Experience and Background: (50 Points)

- 2.1 Does the Proposer provide In-Service Training to the unit of use system as well as on-going in-service education regarding medications side effect, interaction with other drugs, and all other pertinent information
- 2.2 Does the Proposer maintain a computerized medication profile on each resident readily retrievable at reasonable request.
- 2.3 Availability of drugs (lead time)
- 2.4 Does the Proposer have experience at Essex County

3. Personnel Experience: (30 Points)

- 3.1 Availability and qualifications of professionals
- 3.2 Quality of References

4. Cost of the Proposal (Maximum 20 Points):

- 4.1 Cost of proposal is a consideration.

$$\frac{\text{Average Bid}}{\text{Your Bid}} = \% \text{ (not to exceed 100\%)}$$

$$\% \times 20 = \text{points earned}$$

Total maximum points 100 points

APPENDIX C
INSURANCE REQUIREMENTS - PROFESSIONAL SERVICE PROVIDERS

I. The Contractor shall procure and maintain during the entire term of the contract the following required insurance:

- = **Workers' Compensation**
Statutory Workers' Compensation and Employers' Liability Insurance for all employees, *except that in the event the Contractor has no employees and is exempt by law from having such insurance coverage the Contractor may provide an exemption statement.*
- = **Professional Liability Insurance**
\$1,000,000 per occurrence / \$2,000,000 aggregate for the negligent or wrongful professional acts of the Contractor.
- = **Commercial General Liability Insurance**
\$1,000,000 per occurrence/ \$2,000,000 aggregate.

II. Notwithstanding any terms, conditions or provisions, in any other writing between the parties, the Contractor hereby agrees (except as to workers' compensation insurance coverage) to either effectuate

- (a) the naming of the County as an "additional insured as funding source for contract services" on the contractor's insurance policies, or
- (b) the inclusion of a contractual liability endorsement covering the Contractor's contract with the County.

III. The policy/policies of insurance furnished by the Contractor shall:

- = be from an A.M. Best rated "A" New York State licensed insurer;
- = contain a 30-day notice of cancellation;

IV. In the event that the Contractor is unable to furnish professional liability insurance other than on a "claims made" basis, the Contractor shall procure and maintain a separate "tail" policy of such insurance providing the required coverage, or furnish proof of continuous coverage under the existing policy, for a period of one year and ninety days following the termination date of this contract.

V. The contractor agrees to indemnify the County for any applicable deductibles.

VI. Contractor acknowledges that failure to obtain such insurance on behalf of the County constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to the County. Prior to the commencement of work or use of facilities the Contractor shall provide to the County proof that such requirements have been met by furnishing certificate(s) of such insurance and the declarations pages from the policies of such insurance. The failure of the County to object to the contents of the certificate(s) and/or declarations pages, or the absence of same, shall not be deemed a waiver of any and all rights held by the County.

VI. All certificates of insurance will provide 30 days notice to the county of cancellation or non-renewal.

VII. Contractor and subcontractor waives all rights of subrogation against the owner and will have the General Liability, Umbrella Liability Workers' Compensation policies endorsed setting forth this Waiver of Subrogation.

APPENDIX D - STANDARD CLAUSES FOR ESSEX COUNTY CONTRACTS

1. Independent Contractor Status

The parties each acknowledge, covenant and agree that the relationship of the Contractor to the County shall be that of an independent contractor. The Contractor, in accordance with its status as an independent contractor, further covenants and agrees that it:

- (a) will conduct itself in accordance with its status as an independent contractor;
- (b) will neither hold itself out as nor claim to be an officer or employee of the County; and
- (c) will not make any claim, demand or application for any right or privilege applicable to an officer or employee of the County, including but not limited to workers' compensation benefits, unemployment insurance benefits, social security coverage or retirement membership or credits.

2. Contractor To Comply With Laws/Regulations

The Contractor shall at all times comply with all applicable state and federal laws, rules and regulations governing the performance and rendition of the services to be furnished under this agreement.

3. Licenses, Permits, Etc.

The Contractor shall, during the term of this agreement, obtain and keep in full force and effect any and all licenses, permits and certificates required by any governmental authority having jurisdiction over the rendition and performance of the services to be furnished by the Contractor under this agreement.

4. Termination

This agreement may be terminated without cause by either party upon 30 days prior written notice, and upon such termination neither party shall have any claim or cause of action against the other except for services actually performed and mileage expenses actually incurred prior to such termination. Notwithstanding the foregoing, this agreement may be immediately terminated by the County:

- (a) for the Contractor's breach of this agreement, by serving written notice of such termination stating the nature of the breach upon the Contractor by personal delivery or by certified mail, return receipt requested, and upon such termination either party shall have such rights and remedies against the other as provided by law; or
- (b) upon the reduction or discontinuance of funding by the State or Federal governments to be used in furnishing some or all of the work, labor and/or services provided for under this agreement, and upon such termination neither party shall have any claim or cause of action against the other except for services actually performed and expenses (if the same are to be paid under this agreement) actually incurred prior to such termination.

5. Defense & Indemnification

The Contractor shall defend, indemnify and hold harmless the County to the fullest extent allowed by law from and against any and all liability, suits, judgments, orders, causes of action, and claims, including but not limited to those for bodily injury, property damage, death, and reasonable attorney's fees, arising out of or in connection with the Contractor's negligence and/or its performance or failure to perform this

agreement

6. **Discrimination Prohibited**

The services to be furnished and rendered under this agreement by the Contractor shall be available to any and all residents of Essex County without regard to race, color, creed, sex, religion, national or ethnic origin, handicap, or source of payment; and under no circumstances shall a resident's financial ability to pay for the services provided be considered unless such consideration is allowed by State and/or Federal law, rule or regulation.

7. **Non-Discrimination In Employment**

The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. In the event that this is a contract to be performed in whole or in part within the State of New York for (a) the construction, alteration or repair of any public building or public work, (b) for the manufacture, sale or distribution of materials, equipment or supplies, (c) for building service, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin:

- (1) discriminate in hiring against any citizen who is qualified and available to perform the work; or
- (2) discriminate against or intimidate any employee hired for the performance of work under this contract.

The Contractor agrees to be subject to fines of \$50.00 per person per day for any violation of this paragraph, as well as to possible termination of this contract or forfeiture of all moneys due hereunder for a second or subsequent violation.

8. **Damage/Injury To Persons & Property**

The Contractor shall promptly advise the County of all damages to property of the County or of others, or of injuries incurred by persons other than employees of the Contractor, in any manner relating, either directly or indirectly, to the performance of this agreement.

9. **Records**

The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter collectively "the Records") in accordance with the following requirements:

- (a) the Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter;
- (b) the County Auditor, State Comptroller, the Attorney General or 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 County 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 County official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified and designation of said records as exempt under the statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the County's right to discovery in any pending or future litigation.

10. **Claims For Payment**

All invoices or claims for which payment is sought from the County must be submitted in accordance with the following:

- (a) each claim for payment must include
 - (1) an invoice detailing the claim,
 - (2) copies of all documentation supporting the claim,
 - (3) a properly completed County standard voucher, which includes
 - (i) the County contract number under which payment is being claimed, **AND**
 - (ii) 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 will prevent and preclude payment by the County; except that where the payee does not have such number or numbers, the payee, on the invoice or County voucher, must give the reason or reasons why the payee does not have such number or numbers and such reasons constitute a valid excuse under law.]*
- (b) Unless otherwise provided in this agreement, each claim for payment must be submitted to the County no later than 30 days after the work, labor, materials, and/or services for which payment is claimed were rendered or furnished.
- (c) Notwithstanding any other provision of this agreement, no claim for payment shall be valid, and the County shall not be liable for payment thereof, unless it is submitted to the County within 30 days of the close of the calendar year in which the work, labor, materials, and/or services for which payment is claimed were rendered or furnished.
- (d) Unless otherwise provided in this agreement, the requirements of this paragraph 10, and/or of any other provisions of this agreement which supersede the same, shall constitute conditions precedent to the County's payment obligation, and failure to comply with any or all of said requirements shall entitle the County to deny payment.
- (e) As a further condition of payment, each claim of payment shall be accompanied by a Contractor and Sub-Contractor Progress Payment Waiver, Release and Discharge, and each Final Payment shall be accompanied by a Contractor and Sub-Contractor Final Payment, Waiver and Release form. As well as a

Contractor Affidavit relative to Final Payment. Copies of these forms are attached and made a part hereof.

11. **Consent**

In the event that State or Federal law requires the recipient of services to be furnished and rendered under this agreement to give his/her prior consent thereto, the contractor shall obtain such person's consent and furnish proof thereof to the County.

12. **Executory Clause**

The County shall have no liability under this contract to the Contractor or to anyone else beyond the funds appropriated and available for this contract.

13. **Public Work & Building Service Contract Requirements**

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:

- (a) neither the 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; and
- (b) the Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

14. **Public Work Contracts – Hazardous Substances**

If this is a contract for public work, the Contractor agrees as follows:

- (a) the Contractor acknowledges that the County uses and/or produces various substances which may be classified as hazardous under OSHA's Hazard Communication Standard;
- (b) the Contractor recognizes the use of said substances by the County and acknowledges that the County has provided, or upon request will provide, the Contractor with a description of such substances which may be present in the area of the County's facility/facilities to which the Contractor may have accessed during the performance of this contract;
- (c) the Contractor acknowledges that the County has provided, or upon request will provide, suggestions for appropriate protective measures which should be observed when the Contractor is in the area of any such hazardous substances;
- (d) the Contractor agrees to be solely responsible for providing training and information to its employees regarding any such hazardous substances, as well as of any protective measures suggested by the County;
- (e) the Contractor agrees to be solely responsible to ensure that the Contractor's employees observe protective measures during the performance of their duties in the performance of the contract, and that all such protective measures will be at least as stringent as those suggested or which would have been suggested by

- the County;
- (f) in the event that the Contractor's performance of the work under this contract requires the use of any hazardous substances, the Contractor shall notify the County in advance of bringing in and/or using such substances in or upon County property and suggest to the County appropriate measures to be observed by the County, its officers and employees, and/or the public; and
 - (g) in the event the Contractor fails in whole or in part to comply with the terms of this paragraph, the County shall have the right to interrupt the Contractor's work and/or terminate this contract, and the Contractor shall be prohibited from renewing such work until all applicable safety and health procedures and practices are implemented by the Contractor.

15. **Disputes**

Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration, but must, instead, be heard in a court of competent jurisdiction within the State of New York.

16. **Non-Assignment**

This agreement may not be assigned, subcontracted, transferred, conveyed, sublet or otherwise disposed of in whole or in part, by the Contractor, without the prior written consent of the County, and any attempts to assign the contract without the County's written consent are null and void.

17. **No Collusion**

If this contract was awarded based upon the submission of bids, the Contractor warrants, under penalty of perjury, that:

- (a) its bid was arrived at independently and without collusion aimed at restricting competition; and
- (b) at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the County a non-collusive bidding certification on Contractor's behalf.

18. **International Boycott**

In accordance with Section 220-f of the Labor Law, if this contract exceeds \$5,000.00, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation, has participated, is participating, or shall participate in an International boycott in violation of the federal Export Administration Act of 1979, 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 County Manager within five (5) business days of such conviction, determination or disposition of appeal.

19. **County's Rights of Set-Off**

The County shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the County's option to withhold for the purposes of set-off any moneys due to the Contractor under this agreement up to any amounts due and owing to the County with regard to this contract, any other contract with any County 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 County for any other reason, including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The County shall exercise its set-off rights in accordance with normal County practices, including, in cases of set-off pursuant to an audit, the acceptance of such audit by the County Board of Supervisors or its designated representative.

20. **Contractor Defined**

Whenever the term "Contractor" is used in this agreement, such term shall include and apply to all employees, all officers, directors and agents, if any, of the Contractor.

21. **Amendment**

This agreement may not be amended, modified or renewed except by written agreement signed by the Contractor and the County.

22. **Ownership Of Work Products**

All final and written or tangible work products completed by the Contractor shall belong to the County. In the event of premature discontinuance of performance, the Contractor agrees to deliver all existing products and data files to the County.

23. **Executive Order Debarment/Suspension**

In the event that this contract involves the Contractor furnishing goods and services in excess of \$100,000.00, or constitutes a subaward to subrecipients, under any Federal program, grant or other funding source, then by executing this agreement the Contractor certifies that neither it nor any of its principals are suspended or debarred within the scope or meaning of Executive Orders 12549 and 12689, any Federal or State regulation implementing or codifying the same, or any other Federal or State law, rule or regulation.

24. **Health Insurance Portability and Accountability Act of 1996 (HIPAA)**

In the event that this contract involves the use or disclosure of protected health information within the meaning or application of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the regulations thereunder, the following provisions of this paragraph shall apply.

- (a) **Definitions.** The terms used, but not otherwise defined, in this Agreement shall have the same meaning as given such terms in 45 CFR §160.103 and §164.501,

as the same may be amended from time to time, including but not limited to the following.

- (1) "Business Associate" shall mean the Contractor, its officers, employees, agents and subcontractors.
- (2) "Covered Entity" shall mean Essex County (the "County"), its departments, agencies, officers and employees.
- (3) "Individual" shall have the same meaning as given such term in 45 CFR §164.501 and shall also include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- (4) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, subparts A and E.
- (5) "Protected Health Information" shall have the same meaning as given such term in 45 CFR §164.501, limited to the information created or received by Contractor from or on behalf of the County.
- (6) "Required by law" shall have the same meaning as given such term in 45 CFR §164.501.
- (7) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.

(b) Obligations and Activities of Contractor. Contractor agrees to:

- (1) not use or disclose Protected Health Information other than as permitted or required by this Agreement or as required by law;
- (2) use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement;
- (3) mitigate, to the extent practicable, any harmful effect that is known, should have been known, and/or discovered to/by Contractor of a use or disclosure of Protected Health Information by Contractor in violation of the requirements of this Agreement;
- (4) report to the County any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware;
- (5) ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Contractor on behalf of the County agrees to the same restrictions and conditions that apply through this Agreement to Contractor with respect to such information;
- (6) provide access, at the request of the County, and in the time and manner designated by the County or the Secretary, to Protected Health Information in a Designated Record Set, to the County or, as directed by the County, to an Individual in order to meet the requirements under 45 CFR §164.524;
- (7) make any amendment(s) to Protected Health Information in a Designated Record Set that the County directs or agrees to pursuant to 45 CFR §164.526 at the request of the County or an Individual, and in the time and manner designated by the County or the Secretary;
- (8) make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure

of Protected Health Information received from, or created or received by Contractor on behalf of, the County available to the County, and/or to the Secretary, in a time and manner designated by the County or by the Secretary, for purposes of the Secretary determining the County's compliance with the Privacy Rule;

(9) document such disclosures of Protected Health Information and information related to such disclosures as would be required for the County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528;

(10) provide to the County or an Individual, in time and manner designated by the County or the Secretary, information collected in accordance with the above subparagraph (b)(9) of this Agreement, to permit the County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528.

(c) Permitted Uses and Disclosures by Contractor.

Except as otherwise limited in this Agreement, Contractor may use or disclose Protected Health Information on behalf of, or to provide services to, the persons entitled to services under this Agreement:

(1) solely for the purposes of performing Contractor's obligations under this Agreement, if such use or disclosure of Protected Health Information would not violate the Privacy Rule if done by the County or the minimum necessary policies and procedures of the County; or

(2) provided that such use or disclosures are required by law; or

(3) Contractor

(A) obtains written authorization(s) from the individual to which the information pertains permitting the specific uses or disclosures of such information to third persons,

(B) represents and agrees in writing with such individual that the information to be used and/or disclosed will remain confidential and used or further disclosed only as required by law or for the purposes specified in the written authorization(s), and

(C) such third persons agree in writing to notify the County as soon as practicable and in writing of any instances of which such third person(s) is/are aware in which the confidentiality of the information has been breached; or

(4) provide Data Aggregation services to the County as permitted by 42 CFR §164.504(e)(2)(i)(B); or

(5) report violations of law to appropriate Federal and State authorities, consistent with §164.502(j)(1).

(d) County To Inform Contractor of Privacy Practices and Restrictions.

The County agrees to notify the Contractor of any

(1) limitation(s) in its notice of privacy practices of the County in accordance with 45 CFR §164.520, to the extent that such limitation may affect the

Contractor's use or disclosure of Protected Health Information;

(2) changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect the Contractor's use or disclosure of Protected Health Information; and/or

(3) restriction to the use or disclosure of Protected Health Information that the County has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Contractor's use or disclosure of Protected Health Information.

(e) Permissible Requests by County.

The County shall not request Contractor to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by the County; except that in the event that the services to be furnished by the Contractor under this Agreement requires data aggregation by the Contractor, the Contractor may use or disclose protected health information for such data aggregation or management and administrative activities of Contractor.

(f) Survival of Provisions.

The obligations of the Contractor under this paragraph 24 shall survive the expiration of the term of this Agreement and/or the termination of this Agreement, and said obligations shall remain effective and shall not terminate until all of the Protected Health Information provided by the County to Contractor, or created or received by Contractor on behalf of the County, is destroyed or returned to the County, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in subparagraph (g) below.

(g) Return or Destruction of Protected Health Information.

Except as otherwise provided below, upon termination of this Agreement for any reason, Contractor shall return or destroy all Protected Health Information received from the County, or created or received by Contractor on behalf of the County. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Contractor. Contractor shall retain no copies of the Protected Health Information.

In the event that Contractor determines that returning or destroying the Protected Health Information is infeasible, Contractor shall provide to the County notification of the conditions that make return or destruction infeasible. Upon determination by the County that return or destruction of Protected Health Information is infeasible, Contractor shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Contractor maintains such Protected Health Information.

(h) Termination for Cause.

Upon the County's knowledge of a material breach of this paragraph by

Contractor, the County shall:

- (1) either: (A) provide an opportunity for Contractor to cure the breach or end the violation and terminate this Agreement within the time specified by the County, or
(B) immediately terminate this Agreement if cure is not possible; and
- (2) report the violation to the Secretary.

(l) Miscellaneous.

(1) **Regulatory References.** A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.

(2) **Amendment.** The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the County to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

(3) **Survival.** The respective rights and obligations of Contractor under this paragraph 24 of this Agreement shall survive the termination of this Agreement.

(4) **Interpretation.** Any ambiguity in this Agreement shall be resolved to permit the County to comply with the Privacy Rule.

25. **Severability**

If any term or provision of this agreement or the application thereof to any person or circumstance shall to any extent be held invalid or unenforceable, the remainder of this agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and every other term and provision of this agreement shall be valid and be enforced to the fullest extent permitted by law.

26. **Entire Agreement**

This agreement is the entire agreement between the parties, and the same shall be construed in accordance with the laws of the State of New York.

CONTRACTOR PROGRESS PAYMENT WAIVER, RELEASE AND DISCHARGE

PROJECT:

OWNER: ESSEX COUNTY

CONTRACTOR:

WITNESSETH:

The above-named Contractor, hereinafter referred to as the "Releasor", does, for and on behalf of itself, its' successors, assigns and all parties claiming any interest or right through the Releasor, hereby warrant, covenant and agree as follows:

1. Releasor is/was a Contractor relative to the above-referenced Project pursuant to a contract or other relationship for the performing and/or furnishing of work, labor, services, materials and/or equipment at the Project site or to be incorporated in said Project.

2 Whenever the term "Releasor" is used in this instrument such term shall mean: (a) the above-named Contractor, its, successors and assigns; (b) any and all sureties and all other guarantors of the Releasor on any payment, performance, labor and/or material bond or other undertaking; (c) all parties claiming any interest or right through the Releasor, including but not limited to subcontractors and suppliers; and (d) the respective officers, directors, principals, shareholders, agents, employees and attorneys of (a), (b) and (c).

3. Whenever the term "Releasees" is used in this instrument such term shall mean: (a) the above-named Owner, its' successors and assigns; (b) the Project Architect/Engineer; and (c) the respective officers, directors, principals, shareholders, agents, employees and attorneys of (a) and (b).

4. For and in consideration of the sum of \$ _____, and other good and valuable consideration, which sum is acknowledged as being the full and total amount due or allegedly due or owing from the Releasees to the Releasor as of the date hereof, and the receipt of such payment being hereby acknowledged, the Releasor does waive, release and discharge the Releasees from any and all causes of action, suits, debts, claims, liens, accounts, bonds, contracts, damages, encumbrances, judgments and demands whatsoever and of every kind and nature, in law or in equity, which against the Releasees, jointly and/or severally, the Releasor ever had, now has, or might hereafter have, relating directly or indirectly to the work, labor, services, materials and/or equipment furnished and/or performed at the Project site, or incorporated or to be incorporated in said Project, as of the date hereof, including but not in any manner limited to the right of the Releasor to assert, file or claim any lien or other security interest in or upon the real and/or personal property of the Releasees.

CONTRACTOR FINAL PAYMENT WAIVER, RELEASE AND DISCHARGE

PROJECT:

OWNER: Essex County

CONTRACTOR:

WITNESSETH:

The above-named Contractor, hereinafter referred to as the "Releasor", does, for and on behalf of itself, its' successors, assigns and all parties claiming any interest or right through the Releasor, hereby warrants, covenants and agrees as follows:

1. Releasor is/was a Contractor relative to the above-referenced Project pursuant to a contract or other relationship for the performing and/or furnishing of work, labor, services, materials and/or equipment at the Project site or to be incorporated in said Project.

2 Whenever the term "Releasor" is used in this instrument such term shall mean: (a) the above-named Contractor, its, successors and assigns; (b) any and all sureties and all other guarantors of the Releasor on any payment, performance, labor and/or material bond or other undertaking; (c) all parties claiming any interest or right through the Releasor, including but not limited to subcontractors and suppliers; and (d) the respective officers, directors, principals, shareholders, agents, employees and attorneys of (a), (b) and (c).

3. Whenever the term "Releasees" is used in this instrument such term shall mean: (a) the above-named Owner, its' successors and assigns; (b) Essex County, its agencies and departments (including but not limited to its Office for the Aging); and (c) the respective officers, directors, principals, shareholders, agents, employees and attorneys of (a) and (b).

4. For and in consideration of the sum of \$_____, and other good and valuable consideration, which sum is acknowledged as being the full, final and total amount due or allegedly due or owing from the Releasees to the Releasor as of the date hereof, and the receipt of such payment being hereby acknowledged, the Releasor does waive, release and discharge the Releasees from any and all causes of action, suits, debts, claims, liens, accounts, bonds, contracts, damages, encumbrances, judgments and demands whatsoever and of every kind and nature, in law or in equity, which against the Releasees, jointly and/or severally, the Releasor ever had, now has, or might hereafter have, relating directly or indirectly to the work, labor, services, materials and/or equipment furnished and/or performed at the Project site, or incorporated or to be incorporated in said Project, as of the date hereof, including but not in any manner limited to the right of the Releasor to assert, file or claim any lien or other security interest in or upon the real and/or personal property of the Releasees.

5. The Releasor hereby agree to defend, indemnify, and hold harmless the Releasees from any and all damages, costs, expenses, demands, suits, liens and legal fees, directly or indirectly relating to any claim for compensation by any other party for work, labor, services, materials and/or equipment furnished and/or performed at the Project site, or which should have been so furnished or performed, or incorporated or to be incorporated in said Project, as of the date hereof, by the Releasor or by any other party claiming any interest or right through the Releasor.

6. The Releasor hereby certifies and warrants that it has fully paid for all work, labor, services, materials and/or equipment provided to it in connection with the Project and/or any contract relating thereto.

7. The Releasor hereby grants to the Releasees the right to review and audit any and books and records of the Releasor at any time for verification.

IN WITNESS WHEREOF this instrument has been executed this ____ day of _____, 20__.

By _____

STATE OF NEW YORK, COUNTY OF ESSEX)ss:

I, _____, being duly sworn, depose and say that: I reside at _____, _____, and I hereby sign this instrument under penalty of perjury; I am the of the Releasor identified herein; I am fully authorized to execute this instrument on behalf of the Releasor; and I hereby affirm that the statements contained in this instrument are true and correct.

Sworn to before me this ____
day of _____, 20__.

Notary Public

CONTRACTORS AFFIDAVIT RELATIVE TO FINAL PAYMENT

PROJECT:

OWNER: Essex County

CONTRACTOR:

WITNESSETH:

The herein below designated representative of the Contractor being duly sworn deposes and states:

1. He is duly authorized to sign this Affidavit on behalf of the Contractor.
2. That all payrolls, bills for materials and equipment, and other indebtedness connection with the work for which the County or the County's property might be responsible or encumbered have been paid or otherwise satisfied and there remain no further indebtedness or bills outstanding.
3. Attached hereto and made a part hereof is a valid certificate of insurance evidencing that insurance required by the contract documents will remain in full force after final payment is currently in effect and will not be cancelled or allowed to expire until at least 30 days prior written notice has been given to the owner.
4. Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the contract documents.
5. Attached hereto and made a part hereof at Schedule B is a detailed list of all sub-contractors and material suppliers.
6. Contractor warrants and represents that all sub-contractors, material suppliers and fringe benefit trust funds for employees of contractor and sub-contractors on the portion of the project encompassed by the work, as well as all workers and persons employed in connection therewith have been paid in full for all labor and work and materials furnished.
7. Contractor releases and waives any and all public improvement lien rights which contractor has against the County.

IN WITNESS WHEREOF, deponent has executed this document on ____ day of _____, _____.

Contractor

By: _____

(Print Name)

(Title)

STATE OF NEW YORK)
) SS:
COUNTY OF _____)

I, _____, being duly sworn, depose and say that: I reside at _____
_____, and I hereby sign this instrument under penalty of perjury; I am
the of the Releasor identified herein; I am fully authorized to execute this instrument on behalf of
the Releasor; and I hereby affirm that the statements contained in this instrument are true and
correct.

Sworn to before me this ____
day of _____, 20__.

Notary Public

SUBCONTRACTOR/SUPPLIER PROGRESS PAYMENT
WAIVER, RELEASE AND DISCHARGE

PROJECT:

OWNER: ESSEX COUNTY

CONTRACTOR:

SUBCONTRACTOR/SUPPLIER:

W I T N E S S E T H :

The above-named Subcontractor/Supplier, hereinafter referred to as the "Releasor", does, for and on behalf of itself, its, successors, assigns and all parties claiming any interest or right through the Releasor, hereby warrants, covenants and agrees as follows:

1. Releasor is/was a subcontractor/supplier to the Contractor above-named relative to the above-referenced Project pursuant to a contract or other relationship for the performing and/or furnishing of work, labor, services, materials and/or equipment at the Project site or to be incorporated in said Project.
2. Whenever the term "Releasor" is used in this instrument such term shall mean: (a) the above-named Subcontractor/Supplier, its' successors and assigns; (b) any and all sureties and all other guarantors of the Releasor on any payment, performance, labor and/or material bond or other undertaking; (c) all parties claiming any interest or right through the Releasor; and (d) the respective officers, directors, principals, shareholders, agents, employees and attorneys of (a), (b) and (c).
3. Whenever the term "Releasees" is used in this instrument such term shall mean: (a) the above-named Contractor and all of its, sureties and other guarantors on any payment, performance, labor and/or material bond or other undertaking; (b) the abovenamed Owner, its, successors and assigns; (c) the Project Architect/Engineer; and (d) the respective officers, directors, principals, shareholders, agents, employees and attorneys of (a), (b) and (c).
4. For and in consideration of the sum of \$_____, and other good and valuable consideration, which sum is acknowledged as being the full and total amount due or allegedly due or owing from the Releasees to the Releasor as of the date hereof, and the receipt of such payment being hereby acknowledged, the Releasor does waive, release and discharge the Releasees from any and all causes of action, suits, debts, claims, liens, accounts, bonds, contracts, damages, encumbrances, judgments and demands whatsoever and of every kind and nature, in law or in equity, which against the Releasees, jointly and/or severally, the Releasor ever had, now has, or might hereafter have, relating directly or indirectly to the work, labor, services, materials and/or equipment furnished and/or performed at the Project site, or incorporated or to be incorporated in said Project, as of the date hereof, including but not in any manner limited to the right of the Releasor to assert, file or claim any lien or other security interest in or upon the real and/or personal property of the Releasees.
5. The Releasor hereby agree to defend, indemnify, and hold harmless the Releasees from any and all damages, costs, expenses, demands, suits, liens and legal fees, directly or indirectly

SUBCONTRACTOR/SUPPLIER FINAL WAIVER, RELEASE AND DISCHARGE

PROJECT:

OWNER: _____

CONTRACTOR:

SUBCONTRACTOR/SUPPLIER:

W I T N E S S E T H :

The above-named Subcontractor/Supplier, hereinafter referred to as the "Releasor", does, for and on behalf of itself, its, successors, assigns and all parties claiming any interest or right through the Releasor, hereby warrants, covenants and agrees as follows:

1. Releasor is/was a subcontractor/supplier to the Contractor above-named relative to the above-referenced Project pursuant to a contract or other relationship for the performing and/or furnishing of work, labor, services, materials and/or equipment at the Project site or to be incorporated in said Project.

2. Whenever the term "Releasor" is used in this instrument such term shall mean: (a) the above-named Subcontractor/Supplier, its' successors and assigns; (b) any and all sureties and all other guarantors of the Releasor on any payment, performance, labor and/or material bond or other undertaking; (c) all parties claiming any interest or right through the Releasor; and (d) the respective officers, directors, principals, shareholders, agents, employees and attorneys of (a), (b) and (c).

3. Whenever the term "Releasees" is used in this instrument such term shall mean: (a) the above-named Contractor and all of its, sureties and other guarantors on any payment, performance, labor and/or material bond or other undertaking; (b) the abovenamed Owner, its, successors and assigns; (c) the Project Architect/Engineer; and (d) the respective officers, directors, principals, shareholders, agents, employees and attorneys of (a), (b) and (c).

4. For and in consideration of the sum of \$_____, and other good and valuable consideration, which sum is acknowledged as being the full, final and total amount due or allegedly due or owing from the Releasees to the Releasor as of the date hereof, and the receipt of such payment being hereby acknowledged, the Releasor does waive, release and discharge the Releasees from any and all causes of action, suits, debts, claims, liens, accounts, bonds, contracts, damages, encumbrances, judgments and demands whatsoever and of every kind and nature, in law or in equity, which against the Releasees, jointly and/or severally, the Releasor ever had, now has, or might hereafter have, relating directly or indirectly to the work, labor, services, materials and/or equipment furnished and/or performed at the Project site, or incorporated or to be incorporated in said Project, as of the date hereof, including but not in any manner limited to the right of the Releasor to assert, file or claim any lien or other security interest in or upon the real and/or personal property of the Releasees.

5. The Releasor hereby agree to defend, indemnify, and hold harmless the Releasees from any and all damages, costs, expenses, demands, suits, liens and legal fees, directly or indirectly relating to any claim for compensation by any other party for work, labor, services, materials and/or equipment furnished and/or performed at the Project site, or which should have been so furnished or performed, or incorporated or to be incorporated in said Project, as of the date hereof, by the Releasor or by any other party claiming any interest or right through the Releasor.

6. The Releasor hereby certifies and warrants that it has fully paid for all work, labor, services, materials and/or equipment provided to it in connection with the Project and/or any contract relating thereto.

7. The Releasor hereby grants to the Releasees the right to review and audit any and books and records of the Releasor at any time for verification.

IN WITNESS WHEREOF this instrument has been executed this ____ day of _____, _____.

Releasor

By: _____

(Print Name)

(Title)

STATE OF NEW YORK)
) SS:
COUNTY OF _____)

I, _____, being duly sworn, depose and say that: I reside at _____, _____, and I hereby sign this instrument under penalty of perjury; I am the of the Releasor identified herein; I am fully authorized to execute this instrument on behalf of the Releasor; and I hereby affirm that the statements contained in this instrument are true and correct.

Sworn to before me this _____
day of _____, 20__.

Notary Public



ESSEX COUNTY

Office of the Purchasing Agent

100 Court Street, P.O. Box 217
Elizabethtown, NY 12932
518-873-3330/Fax 518-873-3339

GENERAL SPECIFICATIONS FOR PROCUREMENT CONTRACTS

Adopted May 20, 1999.

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PART I
General Provisions

1. APPLICABILITY The terms and conditions set forth herein are expressly incorporated in and applicable to all procurements and resulting procurement contracts let by the Office of the Essex County Purchasing Agent where incorporated by reference in its Bid Documents. The provisions herein shall govern such procurement or contract unless expressly modified or amended by the terms of a Bid Specifications, or a negotiated Contract/Clarification document, if any. Captions are intended as descriptive and are not intended to limit or otherwise restrict the terms and conditions set forth herein.

2. GOVERNING LAW The laws of the State of New York shall govern and apply to the procurement, any resulting contract and for determinations in a court of competent jurisdiction in New York of any and all disputes, litigation or interpretations arising from or connected with the procurement or contract, except where expressly superseded in a specific contract letting or where the Federal supremacy clause requires otherwise. These specifications are modeled after and upon the specifications developed and used by the New York State Office of General Services for procurements by New York State.

3. APPENDIX A / INSURANCE The mandatory terms for all Essex County contracts are expressly incorporated herein and in all bid documents and/or resulting contracts, such terms being set forth in Appendix A (*Standard Clauses for Essex County Contracts*). Insurance requirements are also attached and incorporated herein.

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

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

- (a) **Appendix A** (*Standard Clauses for Essex County Contracts*)
- (b) **Contract/Clarification Documents** Writing(s) setting forth the final agreements, clarifications, terms, statement of work and/or modifications between the Bid Documents and Contractors Bid or Mini-bid.
- (c) **Bid Documents** - Bid Specifications prepared by Essex County
- (d) **Contractors Bid or Proposal**

6. DEFINITIONS

Terms used in this document shall have the following meanings:

AGENCY OR AGENCIES Essex County, New York, acting by or through one or more departments, boards, commissions, offices or institutions of Essex County.

ANCILLARY PRODUCT: Product which is purchased or licensed on a restricted use basis in conjunction with the principal manufacturers Product being acquired (e.g. may be used only in combination, or by educational institutions for research use).

AUTHORIZED USER(S) Agencies, or any other entity authorized by Essex County to participate in Essex County procurement contracts (including but not limited to political subdivisions, public authorities, school districts and public benefit corporations), provided that each such Agency or other entity shall be held solely responsible for liabilities or payments due as a result of its participation. The term "Authorized User" shall include "Licensees."

BID OR BID PROPOSAL An offer or proposal submitted by a Bidder to furnish a described product or a solution or means of achieving a practical end, at a stated price for the stated contract term.

BIDDER Any individual or other legal entity, (including but not limited to partnership, firm or corporation) which submits a bid in response to a Bid Solicitation. The term Bidder shall also include "offeror" and/or "contractor".

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

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

BID SPECIFICATION A written description drafted by Essex County or an authorized user setting forth the specific terms of the intended procurement, which may include: physical or functional characteristics, the nature of a commodity or construction item, any description of the work to be performed, Products to be provided, the necessary qualifications of the Bidder, the capacity and capability of the Bidder to successfully carry out the proposed contract, or the process for achieving specific results and/or anticipated outcomes or any other requirement necessary to perform work. Where these *General Specifications* are incorporated in negotiated contracts which have not been

competitively bid, the term "Bid Specifications" shall be deemed to refer to the terms and conditions set forth in the negotiated contract.

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

CONTRACT AWARD NOTIFICATION An announcement to Authorized Users that a contract has been established.

CONTRACTOR Any successful Bidder(s) to whom a contract has been awarded by the Purchasing Agent. The term "Contractor" includes Licensors.

COUNTY Essex County, New York.

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

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

GROUP A classification of Product (commodities, services or technology).

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

LATE BID For purposes of bid openings held and conducted by the Essex County Purchasing Agent, a bid not received in such place as may be designated on the Bid Specifications or in the Office of the Essex County Purchasing Agent, at or before the date and time established in the Bid Specifications for the bid opening.

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

LICENSED SOFTWARE Software transferred upon the terms and conditions set forth in the Contract. "Licensed Software" includes ancillary products, error corrections, upgrades, enhancements or new releases, and any deliverables due under a maintenance or service contract (e.g. patches, fixes, PTFs, programs, code or data conversion, or custom programming).

LICENSEE The County, or one or more Agencies or Authorized Users who acquire

Product from Contractor by execution of a license in accordance with the terms and conditions of the Contract; provided that, for purposes of compliance with an individual license, the term "Licensee" shall be deemed to refer separately to the individual Authorized User(s) on whose behalf the license was executed who took receipt of the Product, and who shall be solely responsible for performance and liabilities incurred.

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

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

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

PROCUREMENT RECORD Documentation by the Essex County Purchasing Agent of the decisions made and approach taken during the procurement process.

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

PURCHASE ORDER The County's fiscal form or format which is used when making a purchase.

REQUEST FOR PROPOSALS (RFP) A type of Bid Document which is used for procurements where factors in addition to cost are considered and weighted in awarding the contract and where the method of award is "best value", as defined by the County's Procurement Policy and New York Law.

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

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

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

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

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

Bid Submission

7. BID LANGUAGE & CURRENCY All offers (tenders), and all information and Product documentation required by the solicitation or provided as explanation thereof, shall be submitted in English. All prices shall be expressed, and all payments shall be made, in United States Dollars (\$ US). Any offers (tenders) submitted which do not meet the above criteria will be rejected.

8. BID OPENING Bids may, as applicable, be opened publicly. The Purchasing Agent reserves the right at any time to postpone or cancel a scheduled bid opening.

9. BID SUBMISSION The submission of a bid will be construed to mean that the bidder is fully informed as to the extent and character of the supplies, material, or equipment required and a representation that the bidder can furnish the supplies, materials, or equipment satisfactorily in complete compliance with the specifications.

All bids shall comply with the following:

(a) Bids are to be packaged, sealed and submitted to the location stated in the Bid Specifications. Bidders are solely responsible for timely delivery of their bids to the location set forth in the Bid Specifications prior to the stated bid opening date/time.

(b) A bid return envelope, if provided with the Bid Specifications, should be used with the bid sealed inside. If the bid response does not fit into the envelope, the bid envelope should be taped onto the outside of the sealed box or package with the bid inside. If using a commercial delivery company which requires use of their shipping package or envelope, Bidders sealed bid, labeled as detailed below, should be placed within the shippers sealed envelope to ensure that the bid is not prematurely opened. All bids must have a label on the outside of the package or shipping container outlining the following information:

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

In the event that a Bidder fails to provide such information on the return bid envelope or shipping material, the County reserves the right to open the shipping

package or envelope to determine the proper bid number or Product group, and the date and time of bid opening. Bidder shall have no claim against the receiving entity arising from such opening and such opening shall not affect the validity of the bid or the procurement. Notwithstanding the County's right to open a bid to ascertain the foregoing information, Bidder assumes all risk of late delivery associated with the bid not being identified, packaged or labeled in accordance with the foregoing requirements.

10. FACSIMILE SUBMISSIONS Unless specifically authorized by the terms of the Bid Specifications, facsimile bids ARE PROHIBITED AND SHALL NOT BE ACCEPTED. Where the bid specifications are silent as to the submission of bids by facsimile, no fax bids shall be permitted or accepted. Where specifically authorized, the following rules and conditions apply:

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

11. AUTHENTICATION OF FACSIMILE BIDS The act of submitting a bid by facsimile transmission, when, as and if specifically authorized, including an executed signature page, shall be deemed a confirming act by Bidder which authenticates the signing of the bid.

12. LATE BIDS Any bid received at the specified location after the time specified will be considered a late bid. A late bid shall not be considered for award unless acceptance of the late bid is in the best interests of Essex County and either (a) no timely bids meeting the requirements of the Bid Documents are received, or (b) in the case of a multiple award, an insufficient number of timely bids were received to satisfy the multiple award. Delays in United States mail deliveries or any other means of transmittal, including couriers or agents of Essex County, shall not excuse late bid submissions. Otherwise, all late bids will not be considered and will be returned unopened to the bidder. The bidder assumes the risk of any delay in the mail or in the handling of the mail by employees of the County. Whether sent by mail or by means of personal delivery, the bidder assumes responsibility for having his bid deposited on time at the place specified.

13. BID CONTENTS Bids must be complete and legible. All bids must be signed. All information required by the Bid Specifications must be supplied by the Bidder on the forms or in the format specified in the Bid Specifications. No alteration, erasure or addition is to be made to the Bid Documents. Changes may be ignored by the Purchasing Agent or may be grounds for rejection of the bid. Changes, corrections and/or use of white-out in the bid or Bidders response portion of the Bid Document must be initialed by an authorized representative of the Bidder. Bidders are cautioned to verify their bids before submission, as amendments to bids or requests for withdrawal of bids received by the Purchasing Agent after the time specified for the bid opening, may not be considered. All lines must have an indication of bidders response whether it be "o", "N/A" or a dollar figure. All lines must be filled in to indicate bidder acknowledgment of the request. Bids that do not have all applicable lines filled in on bid sheet may be disqualified as a non-responsive bid. The Purchasing Agent shall not assume there is "no charge" when lines are left empty.

Bidders must submit with bid detailed specifications, circulars, warranties and all necessary data on items he proposes to furnish. This information must show clearly that the item offered meets all detailed specifications herein. The Purchasing Agent reserves the right to reject any bid if its compliance with the specifications is not clearly evident. If item offered differs from the provisions contained in these specifications such differences must be explained in detail, and bid will receive careful consideration if such deviations do not depart from the intent of these specifications and are to the best interests of Essex County as interpreted by the Purchasing Agent of Essex County.

It is the responsibility of the bidder to offer a product that meets the specifications of the manufacturer model as listed.

All stock electrical items must be listed and approved by Underwriters' Laboratories, Inc.

14. EXTRANEIOUS TERMS Bids must conform to the terms set forth in the Bid Documents, as extraneous terms or material deviations (including additional, inconsistent, conflicting or alternative terms) may render the bid non-responsive and may result in rejection of the bid.

Extraneous term(s) submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, license agreements, contracts or other documents) which are attached or referenced with the submission shall not be considered part of the bid, but shall be deemed included for informational or promotional purposes only.

Only those extraneous terms which meet all the following requirements will be considered as having been submitted as part of the Bid:

- a. Each proposed extraneous term (addition, counter-offer, deviation, or modification) must be specifically enumerated in a writing which is not part of a

- pre-printed form; and
- b. The writing must identify the particular specification requirement (if any) which Bidder rejects or proposes to modify by inclusion of the extraneous term; and
 - c. The Bidder shall enumerate the proposed addition, counter offer, modification or deviation from the Bid Document, and the reasons therefore.

No extraneous term(s), whether or not deemed "material," shall be incorporated into a contract unless the Purchasing Agent expressly accepts each such term(s) in writing. Acceptance and/or processing of the Bid shall not constitute such written acceptance of Extraneous Term(s).

15. CONFIDENTIAL / TRADE SECRET MATERIALS Confidential, trade secret or proprietary materials as defined by the laws of the State of New York must be clearly marked and identified as such upon submission. Bidders/Contractors intending to seek an exemption from disclosure of these materials under the *Freedom of Information Law* must request the exemption in writing, setting forth the reasons for the claimed exemption, at the time of submission. Acceptance of the claimed materials does not constitute a determination on the exemption request, which determination will be made in accordance with statutory procedures.

16. PREVAILING WAGE RATES - Public Works and Building Services Contracts

If any portion of work being bid is subject to the prevailing wage rate provisions of Labor Law, the following shall apply:

a. "Public Works" and "Building Services" - Definitions

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

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

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

applicable prevailing wage rates as established by the New York State Department of Labor. **Bids which fail to comply with this requirement will be disqualified.**

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

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

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

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

iii. Submission of Certified Payroll Transcripts for Public Works Contracts Only Contractors and sub-contractors on public works projects must submit monthly payroll transcripts to Essex County which has prepared or directs the preparation of the plans and specifications for a public works project, as set forth in the Bid Specifications. For mini-bid solicitations, the payroll records must be submitted to the entity preparing the agency mini-bid project specification. For "agency specific" bids, the payroll records should be submitted to the entity issuing the purchase order. For all other Essex County procurement contracts, such records should be submitted to the individual agency issuing the purchase order(s) for the work. Upon mutual agreement of the Contractor and Essex County, the form of submission may be submitted in a specified disk format acceptable to the Department of Labor so long as: 1) the contractor/subcontractor retains the original records; and, (2) an original signed letter by a duly authorized individual of the contractor or subcontractor attesting to the truth and accuracy of the records accompanies the disk. **This provision does not apply to building services contracts.**

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

e. Days Labor - Defined for Article 8, Public Works (For Purposes of

Article 8 of the Labor Law) No laborer, worker or mechanic in the employ of the contractor, subcontractor or other person doing or contracting to do all or part of the work contemplated by the contract shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week except in cases of extraordinary emergency including fire, flood or danger to life or property. "Extraordinary emergency" shall be deemed to include situations in which sufficient laborers, workers and mechanics cannot be employed to carry on public work expeditiously as a result of such restrictions upon the number of hours and days of labor and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the Essex County Purchasing Agent for the preservation of the contract site or for the protection of the life and limb of the persons using the contract site.

17. TAXES

- a. Unless otherwise specified in the Bid Specifications or set forth in this clause, the quoted bid price includes all taxes applicable to the transaction.
- b. Purchases made by Essex County and certain non-County Authorized Users are exempt from New York State and local sales taxes and, with certain exceptions, federal excise taxes. To satisfy the requirements of the New York State Sales tax exemption, either the Purchase Order issued by a County Agency or the invoice forwarded to authorize payment for such items will be sufficient evidence that the sale by the Contractor was made to the County, an exempt organization under Section 1116 (a) (1) of the *Tax Law*. Non-County Authorized Users must offer their own proof of exemption where required. No person, firm or corporation is, however, exempt from paying the State Truck Mileage and Unemployment Insurance or Federal Social Security taxes, which remain the sole responsibility of the Bidder/Contractor. For tax free transactions under the Internal Revenue Code, the Essex County Registration Number is 14 6002889.
- c. Purchases by Authorized Users other than Essex County may be subject to such taxes, and in those instances the tax should be computed based on the bid price and added to the invoice submitted to such entity for payment.

18. EXPENSES PRIOR TO AWARD Essex County is not liable for any costs incurred by a Bidder in the preparation and production of a bid or for any work performed prior to contract award and/or issuance of an approved Purchase Order.

19. ADVERTISING BID RESULTS A Bidder in submitting a bid agrees not to use the results therefrom as a part of any commercial advertising without the prior written approval of the Purchasing Agent. In addition to any other sanctions or remedies available to it in law or equity, the Purchasing Agent may suspend from bidding on its requirements or terminate a contract of any Bidder/Contractor who violates the terms of this clause.

20. PRODUCT REFERENCES

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

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

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

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

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

23. PRICING

- a. **Unit Pricing** If required by the Bid Specifications, the Bidder should insert the price per unit specified and the price extensions in decimals, not to exceed four places for each item, in the bid. In the event of a discrepancy between the unit price and the extension, the unit price shall govern unless, in the sole judgment of the Purchasing Agent, such unit pricing is obviously erroneous.
- b. **Net Pricing** Prices must be net, including transportation, customs, tariff, delivery and other charges fully prepaid by the Contractor to the destination(s) indicated in the Bid Specifications, subject only to the cash discount. If the award is to be made on another basis, transportation and other charges must be prepaid by the Contractor and added to the invoice as a separate item, unless otherwise

required in the Bid Specifications.

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

If a price is written in numbers and alpha, the alpha will govern.

Prices shall be net FOB any point in Essex County, New York. Price quoted shall include all delivery costs. Prices shall be net, including transportation and delivery charges fully prepaid by the successful bidder to destination indicated in the proposal. If award is made on any other basis, transportation charges must be prepaid by the successful bidder and added to the invoice as a separate item. In any case, title shall not pass until items have been delivered and accepted by the County.

24. DRAWINGS

- a. **Drawings Submitted With Bid** When the Bid Specifications require the Bidder to furnish drawings and/or plans, such drawings and/or plans shall conform to the mandates of the Bid Documents and shall, when approved by the Purchasing Agent, be considered a part of the bid and of any resulting contract. All symbols and other representations appearing on the drawings shall be considered a part of the drawing.
- b. **Drawings Submitted During the Contract Term** Where required by the Bid Specifications to develop, maintain and deliver diagrams or other technical schematics regarding the scope of work, Contractor shall be required to develop, maintain, deliver and update such drawings on an ongoing basis at no additional charge. Contractor shall be responsible for updating drawings and plans during the contract term to reflect additions, alterations, and deletions. Such drawings and diagrams shall be delivered to the Authorized Users representative as required by the Bid Specifications. Where required, Contractor shall furnish to Authorized User in a timely manner the required drawings representing the then current, "as modified" condition of all product included in the scope of work.
- c. **Accuracy of Drawings Submitted** All drawings shall be neat and professional in manner and shall be clearly labeled as to locations and type of product, connections and components. Drawings and diagrams are to be in compliance with accepted drafting standards. Acceptance or approval of such plans shall not relieve the Contractor from responsibility for design or other errors of any sort in the drawings or plans, or from its responsibility for performing as required, furnishing product, services or installation, or carrying out any other requirements of the intended scope of work.

25. SITE INSPECTION Where Bidder is required by the Bid Specifications to deliver or install Product, or to service installed product(s) or equipment, Bidder shall be given an opportunity and shall be required to inspect the site prior to submission of the Bid, including environmental or other conditions or pre-existing deficiencies in the installed product, equipment or environment, which may affect Bidders ability to deliver, install or

otherwise provide the required product. All inquiries regarding such conditions may only be made in writing. Bidder shall be deemed to have knowledge of any deficiencies or conditions which such inspection or inquiry might have disclosed, and to have included the costs of repair in its bid. Bidder must provide a detailed explanation of work intended to be performed under this clause. Bidder shall be required to remedy any pre-existing deficiencies or conditions at the commencement of the contract term. Reimbursement for the cost of repairing the conditions or deficiencies shall be separately enumerated in the bid.

26. SAMPLES

- a. Standard Samples** Bid Specifications may indicate that the Product to be purchased must be equal to a standard sample on display in a place designated by the Purchasing Agent and such sample will be made available to the Bidder for examination prior to the opening date. Failure by the Bidder to examine such sample shall not entitle the Bidder to any relief from the conditions imposed by the Bid Documents.
- b. Bidder Supplied Samples** The Purchasing Agent reserves the right to request from the Bidder/Contractor a representative sample(s) of the Product offered at any time prior to or after award of a contract. Unless otherwise instructed, samples shall be furnished within the time specified in the request. Untimely submission of a sample may constitute grounds for rejection of bid or cancellation of the Contract. Samples must be submitted free of charge and be accompanied by the Bidders name and address, any descriptive literature relating to the Product and a statement indicating how and where the sample is to be returned. Where applicable, samples must be properly labeled with the appropriate bid or Essex County contract reference.

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

- c. Enhanced Samples** When an approved sample exceeds the minimum specifications, all Product delivered must be of the same enhanced quality and identity as the sample. Thereafter, in the event of a Contractors default, the Purchasing Agent may procure a commodity substantially equal to the enhanced sample from other sources, charging the Contractor for any additional costs incurred.
- d. Conformance with Sample(s)** Submission of a sample (whether or not such sample is tested by, or for, the Purchasing Agent) and approval thereof shall not

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

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

27. ADDENDA / INTERPRETATION No verbal interpretation of the intent of any of the specifications or other Contract Documents will be made before receipt of bids. Requests for interpretations prior to receipt of bids must be presented, in writing, to the Purchasing Agent, 100 Court Street, P.O. Box 217, Elizabethtown, NY 12932, and to be given consideration must be received by the Purchasing Agent at least seven (7) days prior to the date set for the opening of bids.

Any interpretation, and any additional information or instruction will, if issued, be in the form of a written Addendum or Addenda sent to all holders of Contract Documents at the addresses furnished therefor, at least five (5) days prior to the date of the opening of bids.

Failure of any bidder to receive any Addenda shall not relieve such bidder from any obligation under this bid as submitted. All Addenda so issued shall become a part of the Contract Documents.

Bid Evaluation

28. BID EVALUATION The Purchasing Agent reserves the right to accept or reject any and all bids, or separable portions of offers, and waive technicalities, irregularities, and omissions if the Purchasing Agent determines the best interests of the County will be served. The Purchasing Agent, in his/her sole discretion, may accept or reject illegible, incomplete or vague bids and his/her decision shall be final. A conditional or revocable bid which clearly communicates the terms or limitations of acceptance may be considered and contract award may be made in compliance with the Bidders conditional or revocable terms in the offer.

Where a bidder is requested to submit a bid on individual items and/or on a total sum or sums, the right is reserved to award bids on individual items or on total sums. The County reserves the right to award in whole or in part based on the lowest responsible bid.

The following three items will automatically render a bid unacceptable to Essex County:

- a. Failure to sign bid proposal page.
- b. Failure to include necessary bid deposit (as required).
- c. Failure to sign and submit non-collusive bidding certificate.

It shall be fully understood that any deviations from the inclusion of the above items will be grounds to see the bid as non-compliant and will not be considered for award.

The Purchasing Agent reserves the right to reject such bids, as in his opinion, are incomplete, conditional, obscure, or which contain irregularities of any kind including unbalanced bids. One in which the amount bid for one or more separate items is substantially out of line with the current market prices for the materials and/or work covered thereby.

29. CONDITIONAL BID Unless the Bid Specifications provides otherwise, a bid is not rendered non-responsive if the Bidder specifies that the award will be accepted only on all or a specified group of items or Product included in the specification. It is understood that nothing herein shall be deemed to change or alter the method of award contained in the Bid Documents.

30. CLARIFICATIONS / REVISIONS Prior to award, the Purchasing Agent reserves the right to seek clarifications, request bid revisions, or to request any information deemed necessary for proper evaluation of bids from all Bidders deemed to be eligible for contract award. Failure to provide requested information may result in rejection of the bid.

31. PROMPT PAYMENT DISCOUNTS While prompt payment discounts will not be considered in determining the low bid, the Purchasing Agent may consider any prompt payment discount in resolving bids which are otherwise tied. However, any notation indicating that the price is net, (e.g. net 30 days), shall be understood to mean only that no prompt payment discount is offered by the Bidder. The imposition of service, interest, or other charges, except pursuant to the provisions of Article 11_A of the *State Finance Law*, which are applicable in any case, may render the bid non-responsive and may be cause for its rejection.

32. EQUIVALENT OR IDENTICAL BIDS In the event two offers are found to be substantially equivalent, price shall be the basis for determining the award recipient. If two or more Bidders submit substantially equivalent bids as to pricing or other factors, the decision of the Purchasing Agent to award a contract to one or more of such Bidders shall be final.

33. PERFORMANCE QUALIFICATIONS The Purchasing Agent reserves the right to investigate or inspect at any time whether or not the Product, qualifications or facilities offered by the Bidder/Contractor meet the requirements set forth in the Bid Documents. Contractor shall at all times during the contract term remain responsible and responsive. A Bidder/Contractor must be prepared, if requested by the Purchasing Agent, to present

evidence of experience, ability and financial standing, as well as a statement as to plant, machinery and capacity of the manufacturer for the production, distribution and servicing of the Product bid. If the Purchasing Agent determines that the conditions and terms of the Bid Documents or Contract are not complied with, or that items or Product proposed to be furnished do not meet the specified requirements, or that the qualifications, financial standing or facilities are not satisfactory, or that performance is untimely, the Purchasing Agent may reject such bid or terminate the contract. Nothing in the foregoing shall mean or imply that it is obligatory upon the Purchasing Agent to make an investigation either before or after award of a contract, but should such investigation be made, it in no way relieves the Bidder/Contractor from fulfilling all requirements and conditions of the contract.

34. DISQUALIFICATION FOR PAST PERFORMANCE Bidder may be disqualified from receiving awards if Bidder, or anyone in Bidders employment, has previously failed to perform satisfactorily in connection with public bidding or contracts.

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

36. RELEASE OF BID EVALUATION MATERIALS Requests concerning the evaluation of bids may be submitted under the *Freedom of Information Law*. Information, other than the Bid Tabulation, shall be released as required by law after contract award. Written requests should be directed to the Purchasing Agent.

37. TIME FRAME FOR OFFERS The Purchasing Agent reserves the right to make awards within sixty (60) days after the date of the bid opening, during which period, bids must remain firm and cannot be withdrawn. If, however, an award is not made within the sixty (60) day period, bids shall remain firm until such later time as either a contract is awarded or the Bidder delivers to the Purchasing Agent written notice of the withdrawal of its bid. Any bid which expressly states therein that acceptance must be made within a shorter specified time, may at the sole discretion of the Purchasing Agent, be accepted or rejected.

TERMS & CONDITIONS

38. CONTRACT CREATION / EXECUTION Except as may be otherwise provided by law or by the Purchasing Agent, upon receipt of all required approvals a Contract shall be deemed executed and created with the successful Bidder(s) upon the Purchasing Agent's mailing or electronic communication to the address on the bid of (a) a Letter of Acceptance, (b) a fully executed contract, or (c) a Purchase Order authorized by the

Purchasing Agent.

39. COMPLIANCE WITH LAWS, ETC. The Bidder shall comply with all the provisions of the laws of the State of New York and of the United States of America which affect municipalities and municipal contracts, and any and all State and Federal rules and regulation, and of amendments and additions thereto, insofar as the same shall be applicable to any contract awarded hereunder with the same force and effect as if set forth at length herein. The Bidder's special attention is called to the following laws: *General Municipal Law* Section 103-d, *State Finance Law* Section 167-b prohibiting the purchase of tropical hardwood products, and the New York State Public Employee Safety & Health Act of 1980.

40. MODIFICATION OF TERMS The terms and conditions set forth in the Contract shall govern all transactions by Authorized User(s) under this Contract. The Contract may only be modified or amended upon mutual written agreement of the Purchasing Agent and Contractor.

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

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

41. SCOPE CHANGES The Purchasing Agent reserves the right, unilaterally, to require, by written order, changes by altering, adding to or deducting from the contract specifications, such changes to be within the general scope of the contract. The Purchasing Agent may make an equitable adjustment in the contract price or delivery date if the change affects the cost or time of performance.

With respect to any specific quantity stated in the contract, the Purchasing Agent reserves the right after award to order up to 20% more or less (rounded to the next highest whole number) than the specific quantities called for in the contract. Notwithstanding the foregoing, the Purchasing Agent may purchase greater or lesser percentages of contract quantities should the Purchasing Agent and Contractor so agree.

42. ESTIMATED QUANTITY CONTRACTS Estimated quantity contracts are expressly

agreed and understood to be made for only the quantities, if any, actually ordered during the contract term. No guarantee of any estimated quantity(s) is implied or given. Unless otherwise set forth in the Bid Specifications, contracts for services and technology are completely voluntary as to use, and therefore no quantities are guaranteed.

43. BEST PRICING OFFER During the contract term, if substantially the same or a smaller quantity of a Product is sold by the Contractor outside of this contract vehicle upon the same or similar terms and conditions as that of this contract at a lower price, the price under this contract shall be immediately reduced to the lower price.

44. PURCHASE ORDERS Unless otherwise authorized in writing by the Purchasing Agent, no Products are to be delivered or furnished by Contractor until transmittal of an official Purchase Order from the Authorized User requiring the Product. Unless terminated or canceled pursuant to the authority vested in the Purchasing Agent, Purchase Orders shall be effective and binding upon the Contractor when placed in the mail or electronically transmitted prior to the termination of the contract period, addressed to the Contractor at the address set forth in the Contract for receipt of orders, or in the Contract Award Notification.

All Purchase Orders issued pursuant to contracts let by the Purchasing Agent must bear the appropriate contract number and, if necessary, required State approvals. Unless otherwise specified, all Purchase Orders against centralized contracts will be placed by Authorized Users directly with the Contractor and any discrepancy between the terms stated on the vendors order form, confirmation or acknowledgment, and the contract terms shall be resolved in favor of the terms most favorable to the Authorized User.

If, with respect to an agency specific contract, a Purchase Order is not received within two weeks after the issuance of a Contract Award Notification, it is the responsibility of the Contractor to request in writing that the appropriate Authorized User forward a Purchase Order. If, thereafter, a Purchase Order is not received within a reasonable period of time, the Contractor shall promptly notify the appropriate purchasing officer in Essex County. Failure to timely notify such officer may, in the discretion of the Purchasing Agent and without cost to the State, result in the canceling of such requirement by the Purchasing Agent with, at the Purchasing Agents discretion, a corresponding reduction in the contract quantity and price.

45. PRODUCT DELIVERY It shall be understood that with respect to contract deliveries, time is of the essence. Delivery must be made as ordered and in accordance with the terms of the contract. Unless otherwise specified in the Bid Specifications, delivery shall be made within thirty calendar days after receipt of a purchase order by the Contractor. The decision of the Purchasing Agent as to compliance with delivery terms shall be final. The burden of proof for delay in receipt of Purchase Order shall rest with the Contractor. In all instances of a potential or actual delay in delivery, the Contractor shall immediately notify the Purchasing Agent and the Authorized User, and confirm in writing the explanation of the delay, and take appropriate action to avoid any subsequent late deliveries. Any extension of the time for delivery must be requested in

writing by the Contractor and approved in writing by the Purchasing Agent. Failure to meet such time schedule may be grounds for cancellation of the order or, in the Purchasing Agents discretion, the Contract.

The County must be notified twenty-four (24) hours in advance of delivery. The County reserves the right to deny acceptance of delivery if this notice is not given, at no cost to the County.

The successful bidder shall be responsible for delivery of items in good condition at point of destination, and shall file with the carrier all claims for breakage, imperfections, and other losses, which will be deducted from invoices. The Purchasing Agent will note for the benefit of successful bidder when packages are not received in good condition. Carton shall be labeled with purchase order or contract number, successful bidders name and general statement of contents. Failure to comply with this condition shall be considered sufficient reason for refusal to accept the goods.

Unless otherwise stated in the specifications, all items must be delivered into and placed at a point within the building as directed by the shipping instructions or the Purchasing Agent. The successful bidder will be required to furnish proof of delivery in every instance.

Unloading and placing of equipment and furniture is the responsibility of the successful bidder, and the County accepts no responsibility for unloading and placing of equipment Any costs incurred due to the failure of the successful bidder to comply with this requirement will be charged to him. No help for unloading will be provided by the County, and suppliers should notify their truckers accordingly.

All deliveries shall be accompanied by delivery tickets or packing slips. Ticket shall contain the following information for each item delivered:

Contract Number and/or Purchase Order Number
Name of Article
Item Number (if applicable)
Quantity
Name of the Successful Bidder

46. SATURDAY & HOLIDAY DELIVERIES Unless otherwise specified in the Bid Specifications or by an Authorized User, deliveries will not be scheduled for Saturdays, Sundays or legal holidays observed by the State of New York except of Product for daily consumption or where an emergency exists or the delivery is a replacement or is late, in which event the convenience of the Authorized User shall govern.

47. SHIPPING / RECEIPT OF PRODUCT

- a. **Packaging** Tangible Product shall be securely and properly packed for shipment, storage and stocking in appropriate, clearly labeled shipping containers and according to accepted commercial practice, without extra charge for packing materials, cases or other types of containers. The container shall become and remain the property of the receiving entity unless otherwise specified in the contract documents.
- b. **Shipping Charges** Contractor shall be responsible for insuring that the Bill of

Lading states "charges prepaid" for all shipments. Unless otherwise stated in the Bid Specifications, all deliveries shall be deemed to be FOB Destination tailgate delivery at the dock of the Authorized User. Unless otherwise agreed, items purchased at a price F.O.B. Shipping point plus transportation charges are understood to not relieve the contractor from responsibility for safe and proper delivery notwithstanding the Authorized Users payment of transportation charges.

- c. **Receipt of Product** The Contractor shall be solely responsible for assuring that deliveries are made to personnel authorized to accept delivery on behalf of the Authorized User. Any losses resulting from the Contractors failure to deliver Product to authorized personnel shall be borne exclusively by the Contractor.

48. TITLE AND RISK OF LOSS Notwithstanding the form of shipment, title and risk of loss shall not pass from the Contractor to the Authorized User until the Products have been received, inspected and accepted by the receiving entity. Acceptance shall occur within a reasonable time or in accordance with such other defined acceptance period as may be specified in the Bid Specifications. Mere acknowledgment by Authorized User personnel of the delivery or receipt of goods (e.g. signed bill of lading) shall not be deemed or construed as acceptance of the Products received. Any delivery of Product which is substandard or does not comply with the Contract terms, may be rejected or accepted on an adjusted price basis, as determined by the Purchasing Agent.

49. RE_WEIGHING PRODUCT Deliveries are subject to re-weighing at the point of destination by the receiving entity. If shrinkage occurs which exceeds that normally allowable in the trade, the receiving entity shall have the option to require delivery of the difference in quantity, or to reduce the payment accordingly .

50. PRODUCT SUBSTITUTION In the event a specified manufacturers Product listed in the Contractors Bid becomes unavailable or cannot be supplied by the Contractor for any reason (except as provided for in the Force Majeure Clause below) a Product deemed by the Purchasing Agent to be the equal or better of the specified commodity or service must be substituted by the Contractor at no additional cost or expense to the Authorized User. Unless otherwise specified, any substitution of Product prior to the Purchasing Agents approval may be cause for cancellation of contract.

51. REJECTED PRODUCT When Products are rejected, they must be removed by the Contractor from the premises of the receiving entity within ten days of notification of rejection by Authorized User. Upon rejection notification, risk of loss of rejected or non-conforming Product shall remain on Contractor. Rejected items not removed by the Contractor within ten days of notification shall be regarded as abandoned by the Contractor, and the Authorized User shall have the right to dispose of the items as its own property. The Contractor shall promptly reimburse the Authorized User for any and all costs and expenses incurred in storage or effecting removal or disposition.

52. INSTALLATION Where installation is required, Bidder shall be responsible for

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

53. REPAIRED OR REPLACED PRODUCT / COMPONENTS Where the Contractor is required to repair, replace or substitute Product or components under the Contract, the repaired, replaced or substituted Product shall be subject to all terms and conditions for new Product set forth in the contract, including product warranties.

54. ON_SITE STORAGE Materials, equipment or supplies may be stored at the County's or Authorized User's site at the Contractor's sole risk and only with the approval of, as the case may be, the County or the Authorized User.

55. EMPLOYEES / SUBCONTRACTORS / AGENTS All employees, subcontractors or agents performing work under the contract must be trained technicians who meet or exceed the technical and training qualifications set forth in the Bid Specifications or the Bid, whichever is greater, and must comply with all rules and requirements of the Contract. The Purchasing Agent reserves the right to conduct a security background check or otherwise approve any employee or agent furnished by Contractor and to refuse access to or require replacement of any personnel for cause, including but not limited to, technical or training qualifications, quality of work or change in security status or non-compliance with Authorized Users security or other requirements. Such approval shall not relieve the Contractor of the obligation to perform all work in compliance with the contract terms. The Purchasing Agent reserves the right to reject and/or bar from the facility for cause any employee, subcontractor, or agents of the Contractor.

56. ASSIGNMENT / SUBCONTRACTORS The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the contract or its right, title or interest therein, or its power to execute such contract to any other person, company, firm or corporation in performance of the contract, other than the assignment of the right to receive moneys due, without the prior written consent of Essex County. Prior to an assignment of the right to receive moneys becoming effective, Contractor shall file a written notice of such assignment simultaneously with Essex County and participating Authorized User(s).

The Purchasing Agent reserves the right to reject any proposed subcontractor, assignee or supplier for bona fide business reasons, which may include, but are not limited to: that the proposed transferee is on the Department of Labors list of companies with which New York State cannot do business; the Purchasing Agent determines that the company is not qualified; unsatisfactory contract performance or service has been previously provided; or attempts were not made to solicit minority and womens business enterprises (M/WBE) bidders for the subcontract.

57. PERFORMANCE / BID BOND Essex County reserves the right to require the Bidder/Contractor to furnish without additional cost, a performance, payment or bid bond or negotiable irrevocable letter of credit or other form of security for the faithful performance of the contract, whenever the Purchasing Agent in his/her sole discretion deems such bond or security to be in Essex County's best interest. Where required, such bond or other security shall be in the form prescribed by the Purchasing Agent.

58. STOP / SUSPENSION OF WORK

- a. **Stop Work Order** The Purchasing Agent reserves the right to stop the work covered by this contract at any time that the successful Contractor becomes unable or incapable of performing the work or meeting any requirements or qualifications set forth in the contract. In the event of such stopping, the Purchasing Agent shall have the right to arrange for the completion of the work in such manner as it may deem advisable and if the cost thereof exceeds the amount of the bid, the successful Contractor shall be liable for any such cost on account thereof.
- b. **Suspension of Work Order** The Purchasing Agent, in his/her sole discretion, reserves the right to suspend any or all activities under this contract, at any time, in the best interests of the State or Issuing Entity. In the event of such suspension, the contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a budget freeze on County spending, declaration of emergency, or other such circumstances. Upon issuance of such suspension of work, the Contractor is not to accept any purchase orders, as specified in the Suspension Order. Activity may resume at such time as the Purchasing Agent issues a formal written notice authorizing a resumption of work.

59. CANCELLATION A contract may be canceled by the Purchasing Agent, and/or an Authorized User may cancel its participation, license or service order under the contract, at the Contractors expense upon non-performance, or upon a determination that Contractor is non-responsive, or non-responsible.

60. FORCE MAJEURE The Contractor shall not be responsible for delay resulting from its failure to perform if neither the fault nor negligence of the Contractor, its officers, employees or agents contributed to such delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires or floods, or other similar cause beyond the control of the Contractor, or for any of the foregoing which affect subcontractors or suppliers and no alternate source of supply is available to the Contractor. In such event,

Contractor shall notify the Purchasing Agent, by certified or registered mail, of the delay or potential delay and the cause(s) thereof either (a) within ten (10) calendar days after the cause which creates or will create the delay first arose if the Contractor could reasonably foresee that a delay could occur by reason thereof, or (b), if delay is not reasonably foreseeable, within five (5) calendar days after the date the Contractor first had reason to believe a delay could result. The foregoing shall constitute the Contractor's sole remedy or excuse with respect to such delay. In the event performance is suspended or delayed, in whole or in part, by reason of any of the aforesaid causes or occurrences and proper notification is given the Purchasing Agent, any performance so suspended or delayed shall be performed by the Contractor at no increased cost, promptly after such disabilities have ceased to exist unless it is determined in the sole discretion of the Purchasing Agent that the delay will significantly impair the value of the contract to the County or to Authorized Users, whereupon the Purchasing Agent may:

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

61. CONTRACT BILLINGS Contractor shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Billings for Agencies must contain all information required by the County Treasurer and/or Auditor. The County Treasurer shall render payment for Agency purchases, and such payment shall be made in accordance with ordinary County procedures and practices. Payment of contract purchases made by Authorized Users other than Agencies shall be billed directly by Contractor on invoices/vouchers, together with complete and accurate supporting documentation as required by the Authorized User.

Submission of an invoice and payment thereof shall not preclude the Purchasing Agent from reimbursement or demanding a price adjustment in any case where the Product delivered is found to deviate from the terms and conditions of the bid and award documents.

62. DEFAULT - AUTHORIZED USER An Authorized Users breach shall not be deemed a breach of the centralized contract. In the event a participating Authorized User fails to make payment to the Contractor for Products delivered, accepted and properly invoiced, within 60 days of such delivery and acceptance, the Contractor may, upon 10 days advance written notice to both the Purchasing Agent and the Authorized Users purchasing official, suspend additional shipments of Product or provision of

services to such entity until such time as reasonable arrangements have been made and assurances given by such entity for current and future contract payments.

Notwithstanding the foregoing, the Contractor shall, at least 10 days prior to declaring a breach of contract by any Authorized User, by certified or registered mail, notify both the Purchasing Agent and the purchasing official of the breaching Authorized User of the specific facts, circumstances and grounds upon which a breach will be declared. It is understood, however, that if the Contractor's basis for declaring a breach is insufficient, the Contractor's declaration of breach and failure to service an Authorized User shall constitute a breach of its contract and the County or Authorized User may thereafter utilize any remedy available at law or equity.

63. INTEREST ON LATE PAYMENTS

- a. **County Agencies** The payment of interest on certain payments due and owed by a County agency may be made in accordance with Section 3-a of the *General Municipal Law* at the rate of three percent (3%) per annum.
- b. **By Non-County Agencies** The terms of Article 11_A apply only to procurements by and the consequent payment obligations of the County. Neither expressly nor by any implication is the County responsible for payments on any purchases made by a Non-County Agency Authorized User.
- c. **By Contractor** Should the Contractor be liable for any payments to the County hereunder, interest, late payment charges and collection fee charges will be determined and assessed pursuant to Section 18 of the *State Finance Law* to the same extent as though the contract was with the State of New York rather than the County.

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

- a. **Cover / Substitute Performance** Upon the failure of the Contractor to properly perform within the time specified, failure to provide acceptable service, to make immediate replacement of rejected Product when so requested, or upon the revocation of the Contract by the Purchasing Agent for cause, or upon repudiation of the contract by the Contractor, the Purchasing Agent may, with or without formally bidding same:
 - i. purchase from other sources to replace the Product rejected, revoked, not timely delivered or repudiated; or
 - ii. If after making reasonable attempts, under the circumstances then existing, to timely provide acceptable service or acquire replacement product of equal or comparable quality, the Purchasing Agent is unsuccessful, the Purchasing Agent may acquire acceptable service or replacement product of lesser or greater quality.

Such purchases may, in the discretion of the Purchasing Agent, be deducted from the contract quantity.

- b. Withhold Payment** In any case where a question of non-performance by Contractor arises, payment may be withheld in whole or in part at the discretion of the Purchasing Agent. Should the amount withheld be finally paid, a cash discount originally offered may be taken as if no delay in payment had occurred.
- c. Reimbursement of Costs Incurred** The Contractor agrees to reimburse the County and/or Authorized User promptly for any and all additional costs and expenses incurred for acquiring acceptable services, and/or replacement Product. Should the cost of cover be less than the contract price, the Contractor shall have no claim to the difference. The Contractor covenants and agrees that in the event suit is successfully prosecuted for any default on the part of the Contractor, all costs and expenses expended or incurred by the County or Authorized User in connection therewith, including reasonable attorneys fees, shall be paid by the Contractor.

Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the contract, the Purchasing Agent may authorize an ordering Authorized User to rent substitute equipment temporarily. Any sums expended for such rental shall, upon demand, be reimbursed to the Authorized User promptly by the Contractor or deducted by the Authorized User from payments due or to become due the Contractor on the same or another transaction.

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

65. ASSIGNMENT OF CLAIM Contractor hereby assigns to the County any and all its claims for overcharges associated with this contract which may arise under the antitrust laws of the United States, 15 U.S.C. Section 1, *et seq.* and the antitrust laws of the State of New York, *General Business Law* Section 340, *et seq.*

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

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

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

68. SECURITY / CONFIDENTIALITY Contractor warrants, covenants and represents that it will comply fully with all security procedures of the County and any Authorized User(s) in performance of the Contract.

Contractor further warrants, covenants and represents that any confidential information obtained by Contractor, its agents, subcontractors, officers, or employees in the course of performing its obligations, including without limitation, security procedures, business operations information, or commercial proprietary information in the possession of the County or any Authorized User hereunder or received from another third party, will not be divulged to any third parties. Contractor shall not be required to keep confidential any such confidential material which is publicly available through no fault of Contractor, independently developed by Contractor without reliance on confidential information of the County or Authorized User, or otherwise obtained under the Freedom of Information Act or other applicable New York State Laws and Regulations. This warranty shall survive termination of this Contract for a period of five (5) years. Contractor further agrees to take appropriate steps to instruct its personnel, agents, officers and any subcontractors regarding the obligations arising under this clause to insure such confidentiality.

69. COOPERATION WITH THIRD PARTIES The Contractor shall be responsible for fully cooperating with any third party agents, including but not limited to subcontractors of the Authorized User, relating to delivery of product or coordination of services.

70. CONTRACT TERM - EXTENSION In addition to any stated renewal periods in the Contract, any contract or unit portion thereof let by the Purchasing Agent may be extended by the Purchasing Agent for an additional period(s) of up to one year (cumulatively) with the written concurrence of the Contractor.

71. WARRANTIES & GUARANTEES Contractor hereby warrants and guarantees:

- a. To fully defend, indemnify and save harmless the County, Authorized Users and their respective officers, agents and employees from suits, actions, damages and costs of every name and description arising out of the acts or omissions of Contractor, its officers, employees, subcontractors, partners, or agents, in any

performance under this contract including: i) personal injury, damage to real or personal tangible or intangible property, without limitation; ii) negligence, either active or passive, without limitation, or iii) infringement of any law or of a United States Letter Patent with respect to the Products furnished, or of any copyright, trademark, trade secret or other third party intellectual proprietary rights, without limitation, provided that the County or Authorized User shall give Contractor: (a) prompt written notice of any action, claim or threat of infringement suit, or other suit, promptness of which shall be established by Authorized User upon the furnishing of written notice and verified receipt, (b) the opportunity to take over, settle or defend such action, claim or suit at Bidders sole expense, and (c) assistance in the defense of any such action at the expense of Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the County or Authorized User may require Bidder/Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Purchasing Agent shall require.

- b.** Contractor warrants full ownership, clear title free of all liens, or perpetual license rights to any Products transferred to Authorized User under this Contract, and Contractor shall be solely liable for any costs of acquisition associated therewith without limitation. Contractor warrants that Authorized User will have undisturbed, peaceful use of the Products, including, without limitation, software, object or source codes, custom programming or third party intellectual property rights incorporated or embedded therein, and training modules or Documentation. Contractor fully indemnifies the County and Authorized User for any loss, damages or actions arising from a breach of said warranty without limitation.
- c.** To pay, at its sole expense, all applicable permits, licenses, tariffs, tolls and fees and give all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the contract.
- d.** Unless recycled or recovered materials are available in accordance with the "Recycled & Recovered Materials" clause, Product offered shall be standard new equipment, current model of regular stock product with all parts regularly used with the type of equipment offered; and no attachment or part has been substituted or applied contrary to the manufacturers recommendations and standard practice. Every Product, including any substituted or replacement unit delivered, must be guaranteed against faulty material and workmanship for a period of one year from and after the date the unit is accepted unless otherwise specified by the County or Authorized User. Notwithstanding the foregoing, when the manufacturers standard guarantee for Product or any component thereof exceeds one year, the longer guarantee period shall apply to such unit or component thereof delivered under this contract. Furthermore, the Contractor agrees to extend its warranty period with regard to any Product delivered by the cumulative periods of time, after notification, during which the Product requires

servicing or replacement (down time) or is in the possession of the Contractor, its agents, officers or employees. If during the regular or extended warranty periods faults develop, the Contractor shall promptly repair or, upon demand, replace the defective unit or component part affected. All costs for labor and material and transportation incurred to repair or replace defective goods during the warranty periods shall be borne solely by the Contractor, and the County or Authorized User shall in no event be liable or responsible therefor. This warranty shall survive any termination of the contract in accordance with the warranty term.

- e. Where the provision of services requires the replacement or repair of Product, any replaced or repaired component, part or Product shall be new and shall, if available, be replaced by the original manufacturers component, part or Product. All proposed substitutes for the original manufacturers installed Product must be approved by the Authorized User before installation. The Product or part shall be equal to or of better quality than the original Product being replaced. Any Product replaced by the Contractor under the contract shall be guaranteed for one (1) year from the date of replacement and replaced at no cost to the Authorized User if found defective during that time.

- f. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of the Purchasing Agent that it meets or exceeds all requirements of the bid and any applicable laws, including but not limited to, permits, insurance coverage, licensing, proof of coverage for workman's compensation, and shall provide such proof as required by the Purchasing Agent. Failure to do so may constitute grounds for the County to cancel or suspend this contract, in whole or in part, or to take any other action deemed necessary by the Purchasing Agent.

The Contractor further warrants and guarantees:

- (a) His/Her/Its products against defective material or workmanship and to repair or replace any damages or marring occasioned in transit
- (b) To furnish adequate protection from damage for all work and repair damages of any kind for which he or his workmen are responsible, to the building or equipment, to his own work, or to the work of other successful bidders.
- (c) To carry adequate insurance to protect the County from loss in case of accident, fire, theft, etc.
- (d) That all deliveries will be equal to the accepted bid sample.
- (e) That the equipment delivered is standard, new, latest model of regular stock product or as required by the specifications; also that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice. Every unit delivered must be guaranteed against faulty material and workmanship for a period of at least one year from date of delivery. If during this period such faults develop, the successful bidder agrees to replace the unit or the part affected without cost to the County. Any merchandise provided under the contract which is or becomes defective during the guarantee period shall be replaced by the successful bidder free of charge with the specific understanding that all replacements

shall carry the same guarantee as the original equipment. The successful bidder shall make any such replacement immediately upon receiving notice from the County.

(f) That all manufacturers product warranties and guarantees shall be furnished to the County, and that the County's rights thereunder shall not be in any way impaired or limited.

72. YEAR 2000 WARRANTY The following Year 2000 warranty applies to procurements of:

- A) Product**, including: i) equipment incorporating embedded software or other technology (e.g. copiers, elevators, security systems), ii) software, or iii) other technology; or
- B) Services** including: i) consulting, integration, code or data conversion ii) maintenance or support services, iii) data entry or processing, or iv) contract administration services (e.g. billing, invoicing, claim processing).

This Year 2000 Warranty shall survive beyond termination or expiration of the Contract through: a) one year, b) December 31, 2000, or c) the Contractor or Third Party Manufacturers stated Year 2000 warranty term, whichever is longer. Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under this Contract for breach of warranty.

- a. Definitions** For purposes of this warranty, the following definitions shall apply:
 - i. "Product"** shall include, without limitation: any piece or component of equipment, hardware, firmware, middleware, custom or commercial software, or internal components or subroutines therein which perform any date/time data recognition function, calculation, comparing or sequencing. Where services are furnished (e.g., maintenance, consulting, systems integration, code or data conversion, data entry) the term "Product" shall include resulting deliverables.
 - ii. "Contractors Product"** shall include all Product delivered under this Contract by Contractor other than Third Party Products.
 - iii. "Third Party Product"** shall include product manufactured or developed by a corporate entity independent from Contractor and provided by Contractor on a non-exclusive licensing or other distribution agreement with the third party manufacturer. "Third Party Product" does not include product where Contractor is: (a) a corporate subsidiary or affiliate of the third party manufacturer/developer; and/or (b) the exclusive re-seller or distributor of product manufactured or developed by said corporate entity.
- b. Warranty Disclosure** At the time of bid for individual or agency specific contracts, or at the time of ordering Product or Product quote for Essex County centralized contracts, Contractor must disclose in writing to Authorized User:
 - i. For Contractor Product and Products (including, but not limited to, Contractor and/or Third Party Products and/or Authorized Users**

Installed Products) which have been specified to perform as a system: Compliance or non-compliance of the Products individually and as a system with the Warranty set forth below; and

- ii. **For Third Party Product not specified to perform as part of a system:** compliance on the grounds that the Contractor has passed-through the third party manufacturer Year 2000 Warranty or non-compliance based upon the fact that a) Contractor indicates that they can not pass through the third party manufacturers Year 2000 Warranty or b) there is no third party manufacturers Year 2000 Warranty to pass through.

NOTE: AN ABSENCE OR FAILURE TO FURNISH THE REQUIRED WRITTEN WARRANTY DISCLOSURE SHALL BE DEEMED A STATEMENT OF COMPLIANCE BY THE CONTRACTOR OF THE PRODUCT(S) OR SYSTEM(S) IN QUESTION WITH THE YEAR 2000 WARRANTY STATEMENT SET FORTH BELOW.

- c. **Year 2000 Warranty** Year 2000 Warranty "compliance" shall be defined in accordance with the following warranty statement:

Warranty Statement: Contractor warrants that Product(s) furnished pursuant to this Contract shall, when used in accordance with the Product documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000, including leap year calculations. Where a purchase requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.

In the event of any breach of this warranty, Contractor shall restore the Product to the same level of performance as warranted herein, or repair or replace the Product with conforming Product so as to minimize interruption to Authorized Users ongoing business processes, time being of the essence, at Contractors sole cost and expense. This warranty does not extend to correction of Authorized Users errors in data entry or data conversion.

- d. **YEAR 2000 Warranty on Services** Where Contractor is providing ongoing services, including but not limited to: i) consulting, integration, code or data conversion ii) maintenance or support services, iii) data entry or processing, or iv) contract administration services (e.g. billing, invoicing, claim processing), in addition to the foregoing Year 2000 warranty on service deliverables, Contractor warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to the inaccuracy of Contractors business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000, including leap year calculations. Contractor shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including but not limited to the failure or untimely performance of such services.

GENERAL

73. APPLICABILITY In addition to the terms contained in **Part I** (*General - All Procurements*), the terms contained in **Part II** (***Software & Technology Procurements***) apply to software and technology procurements.

74. DEFINITIONS - Part II

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

ENTERPRISE The business operations in the United States of a Licensee or Enterprise Participant, without regard to geographic location where such operations are performed or the entity actually performing such operations on behalf of Licensee or Enterprise Participant. For the County of New York, "business operations" shall be defined as the business operations of all Agencies, as defined in Part I.

ENTERPRISE LICENSE A contract which grants Enterprise Participants unlimited license rights to access, use and/or execute Product within the Enterprise.

ENTERPRISE PARTICIPANTS One or more Licensees, as defined in Part I, participating in an Enterprise License.

LICENSE EFFECTIVE DATE The date Product is delivered to an Authorized User. Where a License involves Licensees right to copy a previously licensed and delivered Master Copy of a Program, the license effective date for additional copies shall be deemed to be the date on which the Purchase Order is executed.

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

OBJECT CODE The machine executable code that can be directly executed by a computers central processing unit(s).

PHYSICAL PARTITION A subset of the processing power within a CEC which has been derived through hardware means so as to limit the total processing power accessible by an operating system image by individual users or individual Products.

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

SOURCE CODE The programming statements or instructions written and expressed in any language understandable by a human being skilled in the art which are translated

by a language compiler to produce executable machine Object Code.

TERMS OF LICENSE The terms and conditions set forth in the Contract which are in effect and applicable to a Product order at the time of order placement, and only such additional terms as are consistent therewith or more advantageous to the Authorized User as are set forth on the individual Product order form executed and approved by both Authorized User and Contractor.

VIRUS Any computer code, whether or not written or conceived by Contractor, which disrupts, disables, harms, or otherwise impedes in any manner the operation of the Product, or any other associated software, firmware, hardware, or computer system (such as local area or wide-area networks), including aesthetic disruptions or distortions, but does not include security keys or other such devices installed by Product manufacturer.

TERMS AND CONDITIONS

75. SOFTWARE LICENSE GRANT *Unless otherwise set forth in the Bid Specifications or Contract, where Product is acquired on a licensed based the following shall constitute the license grant:*

- a. **License Scope** Licensee is granted a non-exclusive, perpetual license to use, execute, reproduce, display, perform, or merge the Product with other product within its business enterprise in the United States. Licensee shall have the right to use and distribute modifications or customizations of the Product to and for use by any Authorized Users otherwise licensed to use the product, provided that any modifications, however extensive, shall not diminish manufacturers proprietary title or interest. No license, right or interest in any trademark, trade name, or service mark is granted hereunder.
- b. **License Term** The license term shall commence upon the License Effective Date. Where the terms of license permit licensing on a non-perpetual basis, the license term stated in the Contract shall be extended by the time periods allowed for testing and acceptance.
- c. **Licensed Documentation** Contractor hereby grants to Licensee a perpetual license right to make, reproduce (including downloading electronic copies of the Product) and distribute, either electronically or otherwise, copies of Product Documentation as necessary to enjoy full use of the Product. If commercially available, Licensee shall have the option to require the Contractor to deliver, at Contractors expense: a) One (1) hard copy and One (1) Master Electronic Copy of the Documentation in diskette or CD-ROM format; or b) hard copies of the Product Documentation by type of license in the following amounts, unless otherwise mutually agreed:
 - Individual/Named User License _ 1 copy per License
 - Concurrent Users _ 8 copies per site
 - Processing Capacity _ 8 copies per site

- d. **Product Use** Product may be accessed, used, executed, reproduced, displayed, performed by Licensee to service all Authorized Users of the machine on which Product is installed, up to the capacity measured by the applicable licensing unit stated in the terms of license (i.e. payroll size, number of employees, CPU, MIPS, MSU, concurrent user, workstation).
- e. **Permitted License Transfers** As Licensee's business operations may be altered, expanded or diminished, licenses granted hereunder may be transferred or combined for use at an alternative or consolidated Authorized User site not originally specified in the license, including transfers between Agencies ("permitted license transfers"). Licensee(s) do not have to obtain the approval of Contractor for permitted license transfers, but must give thirty (30) days prior written notice to Contractor of such move(s) and certify in writing that the Product is not in use at the prior site. There shall be no additional license or other transfer fees due Contractor, provided that: i) the maximum capacity of the consolidated machine is equal to the combined individual license capacity of all licenses running at the consolidated or transferred site. (e.g., named users, seats, or MIPS); and ii) that, if the maximum capacity of the consolidated machine is greater than the individual license capacity being transferred, a logical or physical partition or other means of restricting access will be maintained within the computer system so as to restrict use and access to the Product to that unit of licensed capacity solely dedicated to beneficial use for Licensee.
- f. **Restricted Use By Outsourcers / Facilities Management, Service Bureaus / or Other Third Parties** Outsourcers, facilities management or service bureaus retained by Licensee shall have the right to use the Product to maintain Licensee's business operations, including data processing, for the time period that they are engaged in such activities, provided that: 1) Licensee gives notice to Contractor of such party, site of intended use of the Product, and means of access; and 2) such party has executed, or agrees to execute, the Product manufacturers standard nondisclosure or restricted use agreement which executed agreement shall be accepted by the Contractor ("Non-Disclosure Agreement"); and 3) if such party is engaged in the business of facility management, outsourcing, service bureau or other services, such third party will maintain a logical or physical partition within its computer system so as to restrict use and access to the program to that portion solely dedicated to beneficial use for Licensee. In no event shall Licensee assume any liability for third parties compliance with the terms of the Non-Disclosure Agreement, nor shall the Non-Disclosure Agreement create or impose any liabilities on the County or Licensee. Any third party with whom a Licensee has a relationship for a state function or business operation, shall have the temporary right to use Product (using, for example, but not limited to, JAVA Applets), provided that such use shall be limited to the time period during which the third party is using the Product for the stated function or business activity.
- g. **Archival Back-Up and Disaster Recovery** Licensee may use and copy the Product and related Documentation in connection with: 1) reproducing a reasonable number of copies of the Product for archival backup and disaster recovery procedures in the event of destruction or corruption of the Product or

disasters or emergencies which require Licensee to restore backup(s) or to initiate disaster recovery procedures for its platform or operating systems; 2) reproducing a reasonable number of copies of the Product and related documentation for cold site storage. "Cold Site" storage shall be defined as a restorable back-up copy of the Product not to be installed until and after the declaration by the Licensee of a disaster; 3) reproducing a back-up copy of the Product to run for a reasonable period of time in conjunction with a documented consolidation or transfer otherwise allowed under paragraph (F) above. "Disaster Recovery" shall be defined as the installation and storage of Product in ready-to-execute, back-up computer systems prior to disaster or breakdown which is not used for active production or development.

- h. Confidentiality Restrictions** The Product is a trade secret and proprietary product. Licensee and its employees will keep the Product strictly confidential, and Licensee will not disclose or otherwise distribute or reproduce any Product to anyone other than as authorized under the terms of license. Licensee will not remove or destroy any proprietary markings of Contractor.
- i. Restricted Use by Licensee** Except as expressly authorized by the terms of license, Licensee shall not:
 - a. Copy the Product;
 - b. Cause or permit reverse compilation or reverse assembly of all or any portion of the Product;
 - c. Distribute, disclose, market, rent, lease or transfer to any third party any portion of the Product or the Documentation, or use the Product or Documentation in any service bureau arrangement;
 - d. Disclose the results of Product performance benchmarks to any third party who is not an Authorized User without prior notice to Contractor;
 - e. Export the Licensed Software in violation of any U.S. Department of Commerce export administration regulations.

76. ENTERPRISE LICENSE OPTION FOR SOFTWARE Multiple Authorized Users may license any Product offered under the Contract on behalf of their collective business operations. An Enterprise License shall incorporate the terms set forth in this Part II and the pricing set forth in the Contract, and additionally the following terms:

- a. Enterprise _ Defined** Any Authorized User may be an Enterprise Participant. Enterprise Participants will be enumerated in the Enterprise License, including: i) contact name, ship to and main billing address of each Enterprise Participant, ii) street address of the included End User sites of each Enterprise Participant. The originally defined Enterprise may be modified at any time thereafter, including deletion or addition of Enterprise Participants, sites or "ship to" locations, provided that Contractor is given written notice and that any additional capacity required by such addition is licensed in accordance with the Enterprise License terms.
- b. Product Use** Product licensed under this Enterprise Option shall be licensed with the rights set forth in this Part II, without reference to a specific designated system or Licensee, up to the maximum licensed capacity. Product may be used

and freely transferable anywhere within the defined Enterprise, including higher or lower performance machines, and Enterprise Participants will not incur an increase in license, support or other charges provided that the aggregate utilization of the Product does not exceed the aggregate Enterprise Licensed capacity.

- c. **Submission of Orders, Billing and Usage Reporting** An Enterprise may be established for order placement and billing as either a "single" or "multiple" point of contact, at Licensees option. Where designated as a "single", one Enterprise Participant shall be designated as the lead agency and central point for submission of Purchase Orders, usage reporting and billing. Where designated as "multiple" point of contact, each designated Enterprise Participant shall be responsible for submission of Purchase Orders, reporting and billing with regard to its use of Enterprise Licensed Product. For either single or multiple point of contact Enterprises, a) Contractor agrees to hold each Enterprise Participant solely responsible for payment and performance; and b) Contractor shall be responsible for furnishing an annual report to each designated point of contact summarizing overall Enterprise License activity for the preceding twelve months.
- d. **Shipping / Delivery** Contractor shall be responsible for delivery of Master Copies of Enterprise Licensed Product and documentation to Enterprise Participants. Within either "Single" or "Multiple" Enterprise Licenses, shipping and delivery of Master Copies of Product and Documentation shall be the responsibility of Contractor to each "ship to" location specified on the Purchase Order(s). Distribution and installation of Enterprise Licensed Product to End Users at a site shall be the responsibility of the Licensee.
- e. **Enterprise Operating Systems** Unless otherwise specified by the parties, up to ten (10) hardware/operating system combinations for Product shall be included at no additional charge. The initial ten hardware/operating systems may be specified at any time within five (5) years of the Enterprise License effective date. Additional hardware/operating systems beyond the initial ten (10) may be specified at any time by the Enterprise, however if additional copies of Product are required for hardware/operating systems beyond the initial ten, the cost for such systems will be as mutually agreed between the parties.
- f. **Product Acceptance** Each Enterprise Participant shall have a right of acceptance, as set forth above in this Part II, only for the first copy of Product for its site(s).
- g. **Enterprise Fees** Enterprise License Fees shall be set forth in the Contract. Notwithstanding the foregoing, the Product license fees for additional copies or units of capacity for Enterprise licensed Product shall not increase by more than six percent (6%) annually each year during the Enterprise License term. Contractor may offer additional discounts/incentives for Enterprise Participants as may be mutually agreed between the parties. Enterprise Participants shall be entitled to aggregate the volume of all Enterprise Participants for purposes of establishing any applicable discounts under the Contract, and Enterprise Licensed Volume shall be aggregated with volume of non-Enterprise Licensed Product otherwise purchased under the centralized Contract. Upon termination of the Enterprise, Enterprise Participants have the right to acquire additional

capacity or users at the Enterprise License price for twelve months after the termination of the Enterprise License.

- h. Technical Support** Unless otherwise mutually agreed, technical support is optional and may be elected individually by Product by each Enterprise Participant. Where an Enterprise Participant is under a current maintenance or technical support contract, such Enterprise Participant shall be entitled to credit any support paid covering any portion of the Enterprise License Term to the fees due under the Enterprise license.

Enterprise Participants shall have the right to partially or wholly de-support a subset of unused Enterprise licensed capacity upon written notice to Contractor at the end of any then-current technical support term without penalty or charge. The capacity for a Program license which has been de-supported must remain inactive and may not be used within the Enterprise unless technical support for such capacity has been reinstated. In the event of de-support, Contractor reserves the right to reasonably determine compatibility of future releases or new programs prior to shipment.

- i. Merger of Two or More Enterprises** Two or more Enterprises may be merged to form a larger Enterprise for the purpose of sharing and exchanging data at no additional license fee provided that participants give Contractor notice of such merger and that the combined capacity does not exceed the maximum capacity of the individual licenses.
- j. "Nested" Enterprises** Individual Enterprise License participant(s) may license additional capacity or products for the specific use of a subset of the larger enterprise. Said participant(s) must certify in writing to Contractor that such use is only by the enumerated subset of participants.
- k. Default** A default by any Enterprise Participant shall entitle the Contractor to the remedies against such participant under the Contract, but shall not be deemed a default by the remaining non-defaulting Enterprise Participants.

77. PRODUCT ACCEPTANCE Unless otherwise provided in the Bid Specifications, the County and/or Authorized User(s) shall have sixty (60) days from delivery to accept Product. Failure to provide notice of acceptance or rejection by the end of the period provided for under this clause would constitute acceptance by the County or Authorized User(s) as of the expiration of that period.

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

In the event that the documented installation test cannot be completed successfully within sixty (60) days from delivery, and the Contractor or Product is responsible for the delay, The County or Authorized User shall have the option to cancel

the order in whole or in part, or to extend the testing period for another sixty (60) day increment. The County or Authorized User shall notify Contractor of acceptance upon successful completion of the documented installation test. Such cancellation shall not give rise to any cause of action against the County or Authorized User for damages, loss of profits, expenses, or other remuneration of any kind.

Costs and liabilities associated with a failure of the Product to perform in accordance with the functionality tests or product specifications during the acceptance period shall be borne fully by Contractor to the extent that said costs or liabilities shall not have been caused by negligent or willful acts or omissions of the The County or Authorized Users agents or employees. Said costs shall be limited to fees paid to Contractor, if any, or any liability for costs incurred at the direction or recommendation of Contractor.

78. AUDIT OF LICENSED PRODUCT USAGE Contractor shall have the right to periodically audit, at its expense, use of licensed Product at any site where a copy of the Product resides provided that: i) Contractor gives Licensee or Enterprise Participants at least thirty (30) days advance notice, ii) such audit is conducted during such party's normal business hours iii) each Licensee or Enterprise Participant is entitled to designate a representative who shall be entitled to participant and simultaneously review all information obtained by the audit, and shall be entitled to copies of all reports, data or information obtained by the Contractor; and iv) if the audit shows that such party is not in compliance such party shall be liable for the unlicensed capacity and shall be required to purchase the additional units or rights necessary to bring it into compliance.

79. OWNERSHIP / TITLE TO CUSTOM PRODUCTS OR PROGRAMMING Where contract deliverables include custom products or programming, title, rights and interests to such Product(s) shall be determined as follows:

a. Definitions

Product For purposes of this section, the term "Product" shall have the meaning set forth in Part I of these *General Specifications*, which includes, but is not limited to: software applications or programming, programming tools, documentation (including user or training manuals), modules, interfaces, templates, and other elements such as utilities, subroutines, algorithms, formulas, source code, object code, reports, drawings, or data.

"Existing Product" is defined as any proprietary material(s) existing or developed independently and not at the expense of Licensee.

"Custom Product" is defined as any material(s), exclusive of Existing Product, created, prepared, written, compiled or developed by Contractor, or anyone acting on his behalf for The County or Authorized User pursuant to the Contract.

b. Contractor or Third Party Manufacturers Title To Existing Product Title to Existing Product(s) does not transfer. With respect to such Existing Product(s), whether

embedded in or operating in conjunction with Custom Product, Contractor warrants: a) all right, title and interest in Contractors Existing Product(s); or b) all license rights, title and interest in third party Existing Product(s), which include the right to grant to The County or Authorized User an irrevocable, non-exclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute Existing Product(s). Contractor hereby grants a irrevocable, non-exclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute Existing Product(s) embedded in or transferred for use in conjunction with Custom Product(s). The Licensee agrees to reproduce the copyright notice and any other legend of ownership on any copies made under the license granted under this paragraph prior to distribution or use.

c. Title To Custom Product Title to Custom Product(s), excluding Existing Product, shall be deemed the sole and exclusive property of the County or Authorized User, who shall have all right, title and interest (including ownership and copyrights). For the purposes of the federal copyright law, execution of this contract shall constitute an assignment of all right, title and interest in the Custom Product(s) by Contractor to the County or Authorized User. The County or Authorized User, in its sole discretion, reserves the right to sell Custom Product or to license them on an exclusive or non-exclusive basis to Contractor or other Third Parties. Contractor hereby agrees to take all necessary and appropriate steps to ensure that Custom Product is protected against unauthorized use, execution, reproduction, display, performance, or distribution by or through Contractor, its partners or agents. Notwithstanding this reservation of title, Contractor shall not be precluded from using the related or underlying general knowledge, skills and experience developed in the course of providing the Custom Product in the course of Contractor's business.

d. Acquisitions Funded By Tax Exempt Financing In addition to the foregoing rights under a, b and c, the sale or licensing of Custom Product or rights therein shall not occur until such Product or rights are or become useable, and shall be at fair market value which shall be determined at the time of sale or licensing. Any such transfer shall be pursuant to a separate written agreement. If the Contract deliverables are to be funded through tax exempt financing, the County or Authorized User may assign to a Trustee or other entity for security purposes County or Authorized Users ownership and license rights in Custom and Existing Products. Contractor will cooperate with the County or Authorized User to execute such other documents as may be appropriate to achieve the objectives of this paragraph.

e. Other Acquisitions (Not Funded by Tax Exempt Financing) In addition to the rights set forth above (paragraphs "a", "b" and "c"), the County or Authorized User reserves the right to transfer any or all rights to Custom Materials on an exclusive or non-exclusive basis. Where such transfer (sale or licensing) is provided in the Bid Specifications, Contractor shall include a purchase price for the such rights in its bid. Such price shall be offered as a deduction from Contractor's overall Bid or Project Bid price, and shall be weighted as set forth in the bid evaluation criteria, if any. Such rights shall transfer to the successful Bidder/Contractor upon successful completion and acceptance by the County or Authorized User of all contract deliverables. Contractor will

cooperate with the County or Authorized User to execute such other documents as may be appropriate to achieve the objectives of this paragraph.

80. PROOF OF LICENSE The Contractor must provide to each Licensee who places a Product order either: a) the Product manufacturer's certified License Confirmation Certificates in the name of each such Licensee; or b) a written confirmation from the Product manufacturer accepting Contractors Product invoice as proof of license. Bidder or Contractor shall submit a sample manufacturers certificate, or alternatively such written confirmation from the manufacturer, with the Bid or Contract. Such certificates must be in a form acceptable to the Licensee.

81. PRODUCT VERSION Product orders shall be deemed to reference Manufacturers most recently released model or version of the Product at time of delivery, unless an earlier model or version is specifically requested in writing by the County or Authorized User and Contractor is willing to provide such version.

82. MIGRATION TO CENTRALIZED CONTRACT The County or Authorized User may obtain additional Product authorized under this contract, (e.g., licensed capacity upgrades, new releases, documentation, maintenance, consulting or training) whether or not Product was initially obtained independently of this contract. The County or Authorized Users election to obtain additional Product shall not operate to diminish, alter or extinguish rights previously granted.

83. NOTICE OF PRODUCT DISCONTINUANCE In the event that a Product manufacturer proposes to discontinue maintenance or support for Product, Contractor shall (1) notify the County and each Authorized User in writing of the intended discontinuance, and (2) continue to provide maintenance and support for the greater of: a) the best terms offered by Contractor to any other customer, or b) not less than eighteen (18) months from the date of notice, and (3) at The County or Authorized Users option, either: a) provided that the County or Authorized User is under maintenance, provide the County or Authorized User with either a Product replacement with equivalent functionality at no additional charge, or b) provide County or Authorized User with the source code for Licensed Product at no additional charge to enable it to continue use and maintenance of the Product.

84. REINSTATEMENT OF MAINTENANCE The County or Authorized User shall not be required to purchase maintenance for use of Product, and may discontinue maintenance at the end of any current maintenance term upon written notice to Contractor. In the event that The County or Authorized User discontinues maintenance of licensed Product, it may, at any time thereafter, reinstate maintenance for Product without any additional penalties or other charges, by paying Contractor at rates which would have been due under the contract for the period of time that such maintenance had lapsed, or for twelve months, whichever is less.

85. NO HARDSTOP / PASSIVE LICENSE MONITORING Contractor hereby represents, warrants and covenants that the Product and all Upgrades do not and will

not contain any computer code that would disable the Product or Upgrades or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as "time bombs", "time locks", or "drop dead" devices) or that would permit Contractor to access the Product to cause such disablement or impairment (sometimes referred to as a "trap door" device). Contractor agrees that in the event of a breach or alleged breach of this provision that The County or Authorized User shall not have an adequate remedy at law, including monetary damages, and that The County or Authorized User shall consequently be entitled to seek a temporary restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any and all remedies to which The County or Authorized User shall be entitled.

86. ADDITIONAL WARRANTIES / GUARANTEES Where Contractor or Product manufacturer offers additional or more advantageous warranties than set forth herein, Contractor shall offer or pass through any additional or more advantageous warranties to The County or Authorized Users. In addition to the "Warranties/Guarantees" set forth in Part I, Contractor makes the following warranties.

- a. **Product Performance Warranty** Contractor represents and warrants that the Products delivered pursuant to this contract conform to the manufacturers specifications, performance standards, and documentation and that the documentation fully describes the proper procedure for using the Products in an efficient manner. Contractor does not warrant that software is error-free.

In the event that Contractor does not remedy a substantial breach of this warranty within the cure period, Licensee shall also have the right to terminate any payments due Contractor, with a refund of the any fees prospectively paid from the date of breach.

- b. **Year 2000 Warranty** For all procurements of Product, Contractor must furnish a warranty statement in accordance with the NYS Standard Year 2000 Warranty Compliance Statement set forth in Part I at the time of bid for agency specific contracts or product order for centralized contracts.
- c. **Virus Warranty** Contractor represents and warrants that Licensed Software contains no known viruses. Bidder is not responsible for viruses introduced at Licensees site. For purposes of this provision, "Virus" shall have the meaning set forth in Part II, "Definitions".

A breach of any of the foregoing shall be deemed a material breach of the Contract or any License granted thereunder. The defaulting party shall be given written notice of a warranty breach under this section and shall have a thirty (30) day period to cure such breach.

87. INDEMINIFICATION THE WARRANTIES SET FORTH IN THESE GENERAL

SPECIFICATIONS (PARTS I and II) ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Contractor shall defend, indemnify and save harmless the County and Authorized Users from suits, actions, claims, damages and costs arising under or connected to Contractor's actions, and except where express loss limitations set forth elsewhere in the Contract provide for a higher loss limitation liability than as set forth in this paragraph, or where such express provisions impose Contractor liability on "without limitation", the total liability of Contractor for such claim(s), regardless of the nature and basis for the claim, shall not exceed two (2) times the fees paid for the applicable Product. For any suit, action, claim, damages or costs arising under or are connected to personal injury or property damage, or breach of the title, patent and copyright warranties, Contractor shall be fully liable without limitation.

The County or Authorized User may retain such moneys from the amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like asserted by or against the County or Authorized User, provided however, that Contractor shall not indemnify each such entity to the extent that any claim, loss or damages arising hereunder is caused by the negligence act or failure to act of said entity.

88. SOURCE CODE ESCROW FOR LICENSED PRODUCTS If source code or source code escrow is offered by either Contractor or Product manufacturer/developer to any other commercial customers, Contractor either: i) will provide Licensee with the Source Code for the Product; or ii) place the Source Code in a third party escrow arrangement with a designated escrow agent who shall be named and identified to the County, and who shall be directed to release the deposited Source Code in accordance with a standard escrow agreement acceptable to the County; or iii) will certify to the County that the Product manufacturer/developer has named the County, and the Licensee, as a named beneficiary of an established escrow arrangement with its designated escrow agent who shall be named and identified to the County and Licensee, and who shall be directed to release the deposited Source Code in accordance with the terms of escrow. Source Code, as well as any corrections or enhancements to such source code, shall be updated for each new release of the Product in the same manner as provided above. Contractor shall identify the escrow agent upon commencement of the contract term and shall certify annually that the escrow remains in effect in compliance with the terms of this paragraph.

The County may release the Source Code to Licensees under this Contract who have licensed Product or obtained services, who may use such copy of the Source Code to maintain the Product.

HORACE NYE NURSING HOME
REQUEST FOR PROPOSALS FOR PHARMACEUTICAL SERVICES
DATE: TUESDAY, DECEMBER 29, 2009
TIME: 2:00 P.M.

PROPOSAL CONSULTANT PHARMACIST SERVICES

Price per hour for consultant Pharmacist Services

\$ _____ / hour (required)

In figures

\$ _____ / hour

In words

PROPOSAL CONSULTANT NURSING SERVICES

Price per hour for consultant Nursing Services

\$ _____ / hour (required)

In figures

\$ _____ / hour

In words

Additional Position(s) if required

Price per hour for _____

\$ _____ / hour (required)

In figures

\$ _____ / hour

In words

PRICE LIST PROPOSAL

Please provide a price list for Drugs Formularies and Over the Counter for Thirty (30) Day Supply blister packs or unit of use.

Total as per attached Price List (In words)

Total as per attached Price List (In figures)

Attachment Horace Nye Home Drug List

Medication	Quantity	Price
Abilify 5mg	60	
Actonel 35mg	8	
Actos 30mg	30	
Actos45mg	30	
Advair Diskus 100-50 mcg	60	
Advair Diskus 250-50 mcg	300	
Advair Diskus 500-50	180	
Aggrenox 25-200	120	
Albuterol Sulfate 25's U-D 0.83mg/1 ml	150	
Allegra 60mg	60	
Allopurinol 100mg	30	
Alphagan P 0.15% Drops	25ml	
Alprazolam 0.25mg	30	
Altace 10 mg	180	
Amaryl 1mg	14	
Amaryl 2mg	30	
Amaryl 4mg	90	
Ambien 10mg	120	
Ambien 5mg	90	
Amiodarone HCL 200mg	180	
Amitriptyline HCL 10mg	90	
Amoxicillin 500mg	5	
Amoxicillin 250mg	6	
Aricept 10mg	840	
Aricept 5mg	47	
Arimidex 1mg.	60	
Arthrotec 50 50-0.2mg	120	
Aspirin Chewable 81mg	510	
Atacand 16mg	30	
Atenolol 25mg	273	
Atenolol 50mg	30	
Atropine Sulfate 1% Drops	10 ml	
Avandia8mg	30	
Avodart Softgel 0.5mg Capsule	30	
Baclofen 10mg	90	
Bisacodyl 5mg	30	
Brimonidine Tartrate 0.2% Drops	5 ml	
Bupropion SA 100mg	30	
Bupropion SA 150mg	120	
Buspirone HCL 5mg	37	
Calcium Antacid Assorted 500mg	3	
Calcium Carb 600mg	60	
Calcium Carb 600mg w/ VitD 600-200	210	
Calmoseptine Ointment	6554gm	
Caltrate Plus Chewable	120	
Carbamazepine 200mg	60	
Carbamazepine Chew 100mg	240	

Medication	Quantity	Price
Carbidopa/Levodopa 25-1 00	600	
Carbidopa/Levodopa 25-250	180	
Celluvisc Opth 1% Drops	30 ml	
Cephalexin 250mg	35	
Cephalexin 500mg	21	
Cetaphil Cream	453 gm	
Cholestyramine 4gm packet	30	
C-Hydrocort2% in Eucerin Lotion	960m1	
C-Hydrocort 2% in Hydrocerin Cream	240gm	
C-Hydrocort 2% / Minerin Lot 240m1	1920m1	
Citalopram 10mg/5ml Solution	240m1	
Citalopram 10mg	30	
Clarinex 5mg	30	
Clindamycin HCL 150mg Capsule	180	
Clindamycin HCL 300mg Capsule	-29	
Clobetasol Propionate 0.05% Cream	45gm	
Clonidine 0.2mg	30	
Clotrimazole 1% Cream	225gm	
Combivent Inhaler	73.5gm	
Cosopt Plus 2-0.5% Drops	30 ml	
Cozaar 100 mg	30	
Cozaar 50mg	60	
Cyanocobalamin 1000mcg/ml	6m1	
Daily Vitamin Liquid	473m1	
Daily Vitamin Tablet	150	
Deep Sea 0.65% Spray	45 ml	
Depakote 250 mg	60	
Depakote ER 250mg	210	
Depakote ER 500mg	120	
Depakote Spinkle 125mg	180	
Detrol LA 4mg	180	
Dibucaine 1% Ointment	240gm	
Digoxin 0.125mg	230	
Digoxin 0.25mg	60	
Dilantin Infatab 50mg	60	
Diltiazem CD 180mg	60	
Diltiazem HCL 120mg SR Cap	60	
Diovan 80mg	30	
Ditropan XL 5mg	90	
Docu Liquid 150mg/5ml Liquid	473 ml	
Doxazosin 8 mg	30	
Doxazosin 8mg	30	
Duoneb U-D 3m1 2.5-0.5/3 Solution	2880 ml	
Effexor XR 37.5mg	30	
Effexor XR 75mg	30	
Enalapril Maleate 10mg	30	
Enalapril Maleate 2.5mg	60	
Enalapril Maleate 5mg	30	
Enteric Coated Aspirin 81mg	300	
Enulose (Lactulose)10 gm/15 ml Syrup	2838 ml	
Erythromycin Opth 5mg/gm Ointment	3.5gm	

Medication	Quantity	Price
Evista 60 mg	60	
Exelon 3mg	120	
Exelon 6mg	120	
Famotidine 20mg	60	
Fentanyl 100mcg/Hr Patch	30	
Fentanyl 25mcg/Hr Patch	35	
Fentanyl 50 mcg/Hr Patch	24	
Fentanyl 75mcg/Hr Patch	12	
Ferrous Gluconate 325 mg	30	
Ferrous Sulfate 325 mg	6	
Fiber Lax 500mg	180	
Flomax 0.4mg	270	
Flovent 220mcg	36 gm	
Fluocinonide 0.05% cream	180 gm	
Folic Acid 1 mg	270	
Fosamax 70mg	4	
Fosinopril Sodium 20 mg	30	
Furosemide 80mg	150	
Furosemide 20mg	627	
Furosemide 40mg	417	
Gabapentin 100mg Capsule	120	
Gabapentin 100mg Tablet	459	
Gabapentin 300 mg Tablet	183	
Gabapentin 600mg Tablet	90	
Gas-X Softgel 125mg Capsule	150	
Gentamicin Sulfate 0.3% Drops	10 ml	
Geodon 20mg	100	
Glipizide ER 2.5mg	30	
Glucosamine Sulfate Capsule	90	
Glyburide 2.5mg	90	
Glyburide 5mg	30	
Glycolax 17gms Packet	-9	
Haloperidol 2mg	90	
Haloperidol 0.5mg	60	
Haloperidol 1mg	30	
Haloperidol 5mg	-24	
Haloperidol Lactate 5mg/ml	1 ml	
H-Carbamazepine 100mg Half Tab	30	
H-Carbidopa/Levodopa 25-100 Half Tab	180	
H-Citalopram 20mg Half Tab	90	
H-Citalopram 40mg Half Tab	30	
H-Lexapro 10mg Half Tab	60	
H-Lexapro 20mg Half Tab	330	
H-Lipitor 20mg Half Tab	105	
H-Lorazepam 0.5mg Half Tab	200	
H-Metoprolol 25mg Half Tab	60	
H-Paroxetine 10mg Half Tab	30	
H-Paroxetine 40mg Half Tab	30	
H-Theophylline 100mg Half Tab	60	
h-Toprol XL 50mg Half Tab	30	
H-Toprol XL 100mg Half Tab	30	

Medication	Quantity	Price
H-Toprol XL 25mg	120	
H-Trazodone 150mg Half Tab	10	
Humalog Mix 75/25	70ml	
Hydrochlorothiazide 50mg	30	
Hydroxychloroquine Sulfate 200mg	60	
Hydroxyzine 25mg	60	
Hydroxyzine 50mg	30	
Hydroxyzine Pamoate 25mg	30	
H-Zoloft 25mg Half Tab	90	
H-Zoloft 100 mg Half Tab	90	
H-Zoloft 50mg Half Tab	300	
H-Zyprexa 2.5mg Half Tab	102	
Inderal LA 120mg	30	
Ipratropium Bromide 2lmcg Spray	30	
Isoniazid 300mg Tablet	30	
Isosorbide Mono 120mg	30	
Isosorbide Mono 30mg	60	
Isosorbide Mono 60mg	30	
Keppra 500mg	60	
Keppra 750mg	60	
Kior-Con 20meq Tab	40	
Klor-Con 10meq Tab	60	
Ku-Zyme HP 30-8-30	180	
Lactase Dietary Caplet	120	
Lamictal 150mg Tablet	120	
Lantus 100U/ml	30m1	
Levaquin 250mg	3	
Levaquin 500mg	17	
Levothyroxine Sodium 125mcg	30	
Levothyroxine Sodium 150 mcg	60	
Levothyroxine Sodium 175mcg	30	
Levothyroxine Sodium 25mcg	90	
Levothyroxine Sodium 50mcg	30	
Lexapro 10mg	349	
Lexapro 20mg	180	
Lexapro 5mg	30	
Lidocaine 10mg/ml Vial	30m1	
Lidocaine-Prilocaine 2.5-2.5% Cream	60gm	
Lipitor 10mg	165	
Lipitor 20 mg	60	
Lipitor 40 mg	60	
Lipitor 80mg	30	
Lisinopril 10mg	240	
Lisinopril 20mg	210	
Lisinopril 40mg	30	
Lisinopril 5mg	270	
Lithium Carbonate CR 450mg	30	
Loratadine 10mg	63	
Lorazepam 0.5mg	240	
Lorazepam 2mg/1 ml Vial	20 ml	
Lorazepam 1mg	60	

Medication	Quantity	Price
Lubrifax PM Opth Ointment	3.75gm	
Lumigan 0.03% Drops	5 ml	
Magnesium Oxide 250mg	60	
Magnesium Oxide 400mg	60	
Meclizine 12.5mg	120	
Medroxyprogesterone 10mg	24	
Megestrol Acetate 40mg/1ml Susp	480m1	
Metformin 1000mg	120	
Metformin 500mg	210	
Methadone 5mg	89	
Metoclopramide 5mg	120	
Metoclopramide 10 mg	120	
Metoprolol 25mg	300	
Metoprolol 100mg	60	
Metoprolol 50mg	240	
Metrogel 0.75% Gel	45gm	
Metronidazole 500mg	90	
Miacalcin 3.7 ml/30 Spray	22.2m1	
Mirtazapine 30mg	30	
Mirtazapine 45 mg	33	
Mometasone Furoate 0.1% Cream	30gm	
Monistat 3 w/ applicator	50gm	
Morphine Oral SLN 20mg/ml Solution	135 ml	
Morphine SO4 Inj 10mg/1ml Vial	10 ml	
Morphine Syringe Usage Fee	90	
Mucinex ER 600mg	120	
Namenda 10mg	71	
Namenda 5mg	60	
Nasonex 50 mcg Spray	17gm	
NephroVite OTC	120	
Niacin 250mg SA	30	
Nifedipine ER (CC) 60mg	30	
Nifedipine ER (XL) 60mg	30	
Nitrofurantoin Macrocrystal 50mg	60	
Nitrofurantoin Macro 100mg	90	
Nitroquick 0.4mg	25	
Nitroquick 4x25 0.4mg	25	
Norvasc 10mg	30	
Norvasc 2.5mg	60	
Norvascsmg	150	
Novolin 70/30	70 ml	
Novolin N	30 ml	
Novolin R	60 ml	
Nystatin/Triam 1000000-0.1 Cream	420gm	
Omeprazole 20mg	120	
Optichamber	1	
Orajel 10% Gel	5.3gm	
Oxycodone w/Apap 5/325mg	120	
Oyst-Cal 500mg	150	
Osy-Cal-D 250	30	
Oyster Shell Calcium w/ Vit 0 500-200	330	

Medication	Quantity	Price
Paroxetine 10mg	60	
Paroxetine 20mg	180	
Paroxetine 30 mg	30	
Phenobarbital 60mg	60	
Phenytoin Sodium 100mg	345	
Plavix 75mg	120	
Poly-Iron 150 Forte Capsule	240	
Polysaccharide Iron 150mg Capsule	300	
Potassium Chloride 10 meg Capsule	1080	
Prednisone 10mg	30	
Prednisone 1mg	60	
Prednisone 2.5mg	120	
Prednisone 20mg	30	
Prednisone 5mg	30	
Prevacid 30mg	120	
Prevacid Solutab 30mg	60	
Prilosec OTC 20mg	608	
Prochlorperazine 25mg Supp	24	
Procrit 2,000u/ml SDV	4 ml	
Procrit 3000u/ml SDV	4 ml	
Procrit 10,000u/ml MDV	2 ml	
Procrit 10,000u SDV	5 ml	
Porpoxyphene Nap/Apap 100/650	150	
Proscar 5mg	47	
Protonix 40mg	82	
Prozac20mg	30	
Quinine Sulf 325mg	60	
Ranitidine 150mg Tablet	150	
Ranitidine 150mg Capsule	330	
Razadyne 12mg	60	
Renagel 800mg	200	
Risperdal 0.25mg	240	
Risperdal 0.5mg	300	
Risperdal 1mg	120	
Risperdal 2mg	30	
Rocephin 1gm	3	
Senna-S	6	
Serevent Diskus Somcg	60	
Seroquel 100mg	150	
Seroquel 200mg	30	
Seroquel 25mg	360	
Seroquel 300mg	30	
Simethicone 80mg	100	
Singular 10mg	108	
SMZ/TMP DS 800/160	6	
SMZ/TMP SS 400/80	61	
Spiriva w/ Handihaler l8mcg Cap	150	
Spironolactone 50mg	30	
Spironolactone 25mg	180	
SSD 1% Cream	400gm	
Stalevo 150 Entacapone 200mg, F/C 37.5-150mg	120	

Medication	Quantity	Price
Sucralfate 1gm	120	
Sulfasalazine 500mg	60	
Synthroid 112 mcg	30	
Synthroid 175mcg	30	
Synthroid 25mcg	60	
Synthroid 50 mcg .	90	
Synthroid 75mcg	60	
Synthroid 100mcg	30	
Synthroid 125mcg	14	
Synthroid 150mcg	21	
Terazosin 10mg	-15	
Terazosin 2mg	90	
Terazosin 5mg	60	
Theophylline 100mg	60	
Therapeutic M	30	
Thioridazine 10mg	60	
Timolol Maleate 0.5% Drops	10 ml	
Toprol XL 25mg	60	
Toprol XL 100mg	240	
Toprol XL 200mg	30	
Toprol XL 50mg	90	
Tramadol 50mg	120	
Tramadol 50mg	30	
Tramadol 50mg	753	
Travatan Droptainer 0.004% Drops	2.5 ml	
Trazodone 100mg	30	
Trazodone 50mg	127	
Triamterene w/ HCTZ 37.5-25	30	
Tricor 145mg	46	
Unicomplex-M	1380	
Vaiproic Acid 250mg	30	
Verapamil SR 240mg	30	
Vitamin B-1 Thiamine 100mg	30	
Vitamin C 250mg	300	
Vitamin C 500mg	210	
Vitamin D 400 Units	60	
Vitamin E 2001U Capsule	90	
Vitamin E400IU Capsule	150	
Warfarin 1mg	90	
Warfarin 2mg	22	
Warfarin 3mg	115	
Warfarin 4mg	210	
Warfarin 5mg	90	
Warfarin 6mg	6	
Xalatan Ophth 0.005% Solution	5 ml	
Xopenex 24x3m1 0.63mg/2m1 Solution	288 ml	
Zocor 40 mg	30	
Zocor 80 mg	30	
Zoloft 100mg	120	
Zoloft 50mg	75	
Zyprexa 2.5mg	240	

Medication	Quantity	Price
Zyprexa 5 mg	603	
Zyprexa 7.5 mg	30	
Zyrtec 10 mg	150	

CERTIFICATION OF EXPERIENCE

I _____ HEREBY CERTIFY THAT (COMPANY _____
_____ HAS PERFORMED THE FOLLOWING WORK WITHIN THE LAST
THREE YEARS:

NAME OF BUSINESS: _____ CONTACT NAME : _____
ADDRESS: _____
AMOUNT OF CONTRACT: _____ TELEPHONE NO.: _____
TYPE OF WORK: _____ FAX NO.: _____

NAME OF BUSINESS: _____ CONTACT NAME : _____
ADDRESS: _____
AMOUNT OF CONTRACT: _____ TELEPHONE NO.: _____
TYPE OF WORK: _____ FAX NO.: _____

NAME OF BUSINESS: _____ CONTACT NAME : _____
ADDRESS: _____
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TYPE OF WORK: _____ FAX NO.: _____

NAME OF BUSINESS: _____ CONTACT NAME : _____
ADDRESS: _____
AMOUNT OF CONTRACT: _____ TELEPHONE NO.: _____
TYPE OF WORK: _____ FAX NO.: _____

NON-COLLUSIVE BIDDING CERTIFICATION

1. By submission of this bid, the undersigned bidder and each person signing on behalf of such bidder certifies – and in the case of a joint bid each party thereto certifies as to its own organization – UNDER PENALTY OF PERJURY, that to the best of the undersigned’s knowledge and belief:

- (a) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
- (b) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and
- (c) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

2. The undersigned acknowledges and agrees that a bid shall not be considered for award nor shall any award be made where any of the above have not been complied with; provided however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefor. Where one or more of the above has/have not been complied with, the bid shall not be considered for award nor shall any award be made unless the political subdivision, public department, agency or official thereof to which the bid is made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

3. The undersigned also acknowledges and agrees that the fact that a bidder (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of paragraph 1 above.

4. The undersigned further acknowledges and agrees that any bid hereafter made to any political subdivision of the state or any public department, agency or official thereof by a bidder which is a corporation or a limited liability company for work or services performed or to be performed or goods sold or to be sold, where competitive bidding is required by statute, rule, regulation, or local law, and where such bid contains the certification referred to in paragraph 1 of this certificate, shall be deemed to have been authorized by the board of directors of the bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation or limited liability company.

Name of Bidder: _____
(print full legal name)

Date Signed: _____

Signature: _____

Name of Person Signing Certificate: _____
(print full legal name of signer)

- Bidder is (check one): an individual
 a limited liability partnership
 a limited liability company
 other entity (specify): _____

CONTRACTOR'S ACKNOWLEDGEMENT

(If a Corporation)

STATE OF NEW YORK)
COUNTY OF)

On this _____ day of _____, 20____, before me personally came _____
to me known, and known to me to be the _____ of _____
_____, the Corporation described in and which executed the within instrument, who being duly sworn by
me and did depose and say that the said _____ resides at _____
_____ and that he is the _____ of said corporation; that
the seal affixed to the within instrument is such corporate seal and that it was so affixed by order of the
Board of Directors of said Corporation, and that he signed his name hereto by like order.

Notary Public

CONTRACTOR'S ACKNOWLEDGEMENT

(If an Individual)

STATE OF NEW YORK)
COUNTY OF)

On this _____ day of _____, 20____, before my personally came _____
_____ to me known, and known to me to be the same person described in and who executed the within
instrument and he duly acknowledged to me that he executed the same for the purpose herein mentioned
and, if operating under any trade name, that the certificate required by the New York State Penal Law,
Section 440 and 440-b has been filed with the County Clerk of Essex County.

Notary Public

CONTRACTOR'S ACKNOWLEDGEMENT

(If a Co-Partnership)

STATE OF NEW YORK)
COUNTY OF)

On this _____ day of _____, 20 ____, before me personally came _____
_____ to me known, and known to me to be a member of the firm of _____
and the person described in, and who executed the within instrument on behalf of said firm, and he
acknowledged to me that he executed the same on behalf of, and as the act of said firm for the purposes
herein mentioned and that the certificate required by the New York State Penal Law, Section 440 and 440-
b has been filed with the County Clerk of Essex County.

Notary Public