



Division of the Budget

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BUDGET BULLETIN	H-0501 (Revised)	April 17, 2020
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TO: ALL DEPARTMENT AND AGENCY HEADS

FROM: Robert F. Mujica Jr. 

SUBJECT: Coronavirus Diseases 2019 Emergency Preparedness and Related Expenditures

This item provides guidance for State agencies (including State departments and State authorities) related to special emergency preparedness and response expenditures. The process outlined here is intended to be used for the outbreak of coronavirus disease 2019 (COVID-19), for which a Major Disaster Declaration for the State has been granted by the Federal Emergency Management Agency (FEMA).

A. Revisions

Revisions to this bulletin since the April 10, 2020 release include:

- Clarification on direction for agencies using Federal grant project IDs.
- Direction to use quantity based purchase orders and require receiving.
- Clarification on including ASCA request numbers in SFS transactions.
- Includes the name of the SFS Purchase Order Query.
- Additional procurement information on required contract clauses.
- Procurement Record documentation guidance.

Revisions to this bulletin since the March 8, 2020 release include:

- SFS contacts for technical assistance
- Clarification on Project Costing Business Unit (PCBU) for applicable SFS transactions.
- A new Activity ID in SFS
- Direction for agencies that already use Federal grant project IDs
- SFS category code guidance
- Using Agency Spending Control Application (ASCA) request numbers in SFS guidance.
- Procurement card reconciliation guidance
- Employee and non-employee travel expenses guidance

- Reporting functions in SFS
- Updated LATS guidance and guidance for agencies that do not utilize LATS
- Clarification on the weekly agency reporting requirements
- Extra service guidance
- Updated guidance on Executive Order No. 202

B. Statewide Financial System Procedures

1. Initiation of Process

It is critical that agencies track COVID-19 related spending with attention to detail. The Division of the Budget (DOB) created a unique Project ID and Activity IDs for use in the State Financial Management System (SFS) to identify costs specific to the COVID-19 response effort.

Agencies should continue charging COVID-19 related expenditures against their agency appropriations, unless specifically given alternate instructions by DOB. Agencies are **required** to include both the Project ID and an Activity ID on any transaction entered in SFS for the COVID-19 costs.

For any COVID-19 spending that occurred prior to the designation of a Project ID, agencies must immediately update the transactions to the appropriate Project and Activity IDs as listed below.

Agencies should work with their DOB examiners to modify or establish a KK Financial Plan budget pursuant to Budget Bulletin B-1216, as appropriate.

A list of [SFS Coronavirus 2019 \(COVID-19\) frequently asked questions](#) is available.

For technical assistance, agencies should reach out to SFS at: HelpDesk@sfs.ny.gov or (518) 457-7737.

2. Project ID

Agencies are **required** to use the COVID-19 Project ID in SFS in order to facilitate the tracking of non-personal spending and to potentially receive Federal reimbursement for emergency related disbursements. The Department of Health (DOH01) Project ID "COVID-19" should be used for all agency activities, services and expenses in response to the outbreak of COVID-19. DOH01 should be entered as the Project Costing Business Unit (PCBU) for transactions using the COVID-19 Project ID.

3. Activity IDs

Unique Activity IDs have been created in SFS to capture non-personal service costs associated with specific areas of spending concerning the COVID-19 outbreak. These Activity IDs are subject to change in order to be compliant with Federal guidance.

Please see below the list of activities currently set up in SFS to track the costs associated with DOH01 Project ID COVID-19:

Cleaning supplies and equipment	COVID_CLN_SPPS
Other supplies and equipment	COVID_OTH_SPPS
IT and telecommunication equipment	COVID_IT_TLCOM
Public relations and educational materials	COVID_PUB_REL
Testing/monitoring	COVID_TESTING
Transportation/escort duties/travel	COVID_TRANSP
Quarantine facilities and associated activities (not including PS)	COVID_QRNT_FAC
Local assistance	COVID_LOC_ASST
Emergency Response Coordination Efforts	COVID_EMER_RESP

4. Direction for Agencies that Already use Federal Grant Project IDs

Agencies currently utilizing project and activity ID chart fields for Federal reimbursement purposes should continue to use the Federal project and activity ID codes for Federal reimbursement purposes. The expenses that are related to COVID-19 and to an existing Federal grant must still be tracked in SFS using the Federal project and activity ID codes and chart field 1, 2, or 3. If using chart field 1, 2, or 3, please request the first 10 characters of the appropriate activity ID as shown above, i.e. COVID_CLN. Please submit your request for these values by submitting the COA Change Request Form to the SFS Help Desk at helpdesk@sfs.ny.gov. Once the chart of account values that your agency requested for COVID-19 has been established by SFS, please use these values on transactions for COVID-19 costs related to federal projects. If there is a federal/state split for costs, use the federal project ID on the federal portion of the transaction along with the COVID-19 chart field 1, 2, or 3 values that were established for tracking. For the state portion of the transaction also use the COVID-19 chart field 1, 2, or 3 values that were established for tracking. Do not use the Department of Health COVID-19 project ID for costs on either the federal or state portion of the transaction.

5. Category Codes

Critical supplies necessary for the State's response to COVID-19 have been identified and mapped to specific Category Codes. The [Critical Supply Category Codes List](#) can be found [here](#). Additional items will be added to this list as they are identified. For all items included in the Critical Supply Category Codes List, agencies must enter the Category Code associated with the item on all COVID-19 transactions. For those items not specifically identified in the list, agencies must enter a Category Code that is appropriate for the item(s) being purchased. Further, the Item Description field must contain a detailed description of the item(s) being purchased.

6. Purchase Orders and Receiving

To the greatest extent practicable, agencies should use quantity based purchase orders, as opposed to amount based purchase orders, for COVID-19 purchases. Agencies are also reminded that receiving is a critical part of the procure-to-pay process. Timely receiving ensures immediate visibility into the delivery and acceptance of purchased goods and services and supports efficient processing of payments. Agencies must require receiving on all COVID-19 related purchase orders. It is imperative that agencies enter receipts in SFS at the time goods or services are received.

7. Agency Spending Control Application (ASCA) Request Number in SFS

For all COVID-19 related transactions that are associated with an approved ASCA (B-1184) Spending Request, including those COVID-19 related transactions that were completed before this guidance was released, agencies must enter the ASCA request number in the appropriate field in SFS. For expense reports, the ASCA request number must be entered in the B-1184 field. For purchase orders and vouchers, the ASCA request number must be entered in the DOB Approval Code field. For purchase orders staged from a contract, agencies will need to process a change order after the purchase order has been dispatched to enter the applicable ASCA request number in the DOB Approval Code field.

8. Procurement Card Reconciliation

Agencies must reconcile Procurement Card (P-Card) transactions in SFS by COB every Tuesday. As part of this weekly reconciliation, agencies must enter the COVID-19 Project ID and applicable Activity ID codes for all COVID-19 related transactions. Agencies must also enter a purchase order (PO) for P-Card transactions of \$10,000 or more and associate this PO with the relevant transaction when the charge is reconciled.

9. Employee and Non-Employee Travel Expenses

Employees and Non-Employees must submit COVID-19 related travel expense reports on a weekly basis in SFS. Users must enter the COVID-19 Project ID and applicable Activity ID codes for all COVID-19 related transactions. Enter the B-1184 reference number in the field labeled B-1184.

10. Reporting

A new General Ledger report has been created in SFS Analytics, DW114 - COVID-19 Tracking, to facilitate the tracking and reporting needs related to COVID-19. This report provides insight into financial transactions at varying points of the purchasing process.

SFS has created a new query that can be used to view real-time Purchase Order (PO) data related to the COVID-19 project ID at the PO line level of detail. The PO_DETAIL_BY_PROJECT query is available in Query Manager or Query Viewer in SFS Reporting Tools to all users with any reporting role.

C. Leave Accrual Tracking System (LATS-NY) System for Charging Time Worked

The following codes have been made available in the LATS-NY application for Business Services Center (BSC) customer agency employees to track time worked on COVID-19 activities:

COVID-19 Regular Hours
COVID-19 Overtime Hours

Allocating time spent related to COVID-19 should only be considered when the activities are directly related to COVID-19 preparedness and response. Adjustments in LATS can be made retrospectively by returning the timesheet for updates, as appropriate.

For other agencies using the LATS-NY application, that are not BSC customer agencies, the codes provided above should be established in LATS-NY to track time worked on COVID-19 activities.

For further guidance, BSC customer agencies may contact the BSC at (518) 457-4272, and other agencies may contact DOB at (518) 474-0429.

Agencies that do not utilize LATS must track time designated for COVID-19 preparation and response and related spending in a manner sufficient to comply with the weekly reporting requirement listed in Section D.

D. Agency Reporting Requirements on Year to Date Disbursements

It is critical that DOB be able to track and report on year-to-date disbursements associated with COVID-19 preparation and response activities at a meaningful level of detail. To track the COVID-19 related spending consistently across agencies, a template (Attachment A) has been created to enable agencies to indicate year-to-date disbursements by financial plan category. For financial categories other than non-personal service, agencies are also expected to supply a description of activities associated with year-to-date spending from the list of SFS activities defined above. Costs for all agency personal services allocated to activities associated with COVID-19 must be tracked by category of personal service (i.e., regular, overtime) and total personal service costs must be accompanied by a description of the associated COVID-19 activity from the list of SFS activities defined above (i.e., personal services for quarantine activities, personal services for COVID-19 testing). For the purposes of this tracker, Fringe and Indirect Charges should not be included, DOB will account for these expenses centrally.

Each week, on or before noon on Thursday, agencies should submit their weekly updates to the tracker, providing detailed year-to-date spending results (through the

prior business day) associated with COVID-19 activities. Weekly updates to the spending tracker should be submitted to NYSDOB@budget.ny.gov. Each subsequent week, the actual spending within a given month should be used to overwrite the previous weekly update until the results for that month are final. If the agency has nothing to report, they must send an email to NYSDOB@budget.ny.gov stating they have no cash disbursements related to COVID-19 to report.

E. Agency Spending Controls Procedures

Until further notice, all agencies making B-1184 spending requests in the Agency Spending Control Application (ASCA) related to COVID-19 should notify: (1) their DOB Unit Chief, (2) the Deputy Secretary, and (3) dob.sm.ASCA@budget.ny.gov that the request has been made and should receive expedited attention.

When sending the email, agencies should include the B-1184 tracking number as well as the primary agency contact able to respond to questions regarding the request.

If an agency does not receive approval or acknowledgment within one hour, they should call their DOB Unit Chief or take other proactive follow-up measures.

F. Overtime Compensation for Overtime Ineligible Employees

Blanket overtime authorization is granted for staff in Grade 27/M-2 and below positions who work in excess of 47.5 hours per work week, provided that such overtime is both essential and directly related to activities associated with the State's preparation and response to COVID-19. Agency heads will be responsible for determining which overtime requests fulfill the "essential and directly related" criteria. The granting of overtime for otherwise ineligible employees should only be considered when directly related to COVID-19 preparedness and response and only if no other alternatives exist.

Staff authorized to incur overtime shall be paid at a rate equal to one and one half times the regular hourly rate for time worked in excess of 47.5 hours per week. Authorized payments for otherwise overtime ineligible staff in Grade 27/M-2 and below positions which are submitted to the State Comptroller shall be considered pre-approved by DOB.

Extraordinary overtime compensation requests for staff in positions above Grade 27/M-2 shall be reviewed and approved by DOB on a case-by-case basis. A formal request for a Waiver of Overtime Compensation Rules (Attachment B) will be necessary to demonstrate that such extraordinary overtime is critical to activities associated with the State's preparation and response to COVID-19.

Agencies are expected to maintain an accurate accounting of all extraordinary overtime expenditures associated with COVID-19 and DOB will monitor bi-weekly agency overtime reports to track increased hours and compensation.

Questions regarding overtime compensation for overtime ineligible employees should be directed to Joseph Conroy, Chief Budget Examiner at DOB.

G. Extra Service Compensation for Overtime Ineligible Employees

Overtime ineligible employees performing extra service directly related to the State's COVID-19 preparation and response in a position different from their regular position may receive additional compensation for hours worked beyond 47.5 hours per week in the aggregate of both positions. The agency of the employee's regular position is responsible for aggregating this time, whether it is in the employee's regular agency or a different agency.

Compensation for such extra service will be provided at the overtime rate of the extra service position, calculated as follows:

- If the extra service position is allocated to the same grade as the employee's regular position, the employee will be compensated at the rate of one and one-half times the regular hourly rate of compensation of their regular position.
- If the extra service position is allocated to a salary grade lower than the employee's regular position, the employee will be compensated at the rate of one and one-half times the regular hourly rate of pay of the maximum salary of the lower grade position plus longevity increments in such lower grade position, but not in excess of one and one-half times the regular hourly rate of pay of the employee's regular position.
- If the extra service position is allocated to a higher salary grade than the employee's regular position, the employee will be compensated at the rate of one and one-half times the regular hourly rate of compensation the employee would be entitled if permanently promoted to the higher position.

H. Business Procedures

1. Fair Pricing

Agencies should contact the OGS Buy Desk to ensure fair pricing and protect against price gouging as prohibited by New York State's General Business Law § 396-r. The Buy Desk can be reached at: OGSBuyDesk@ogs.ny.gov or by calling the Business Services Center (BSC) at (518) 457-4272 and asking for the Buy Desk. If agencies are receiving prices drastically different from similar products and services on contract, please reach out to OGS Procurement Services prior to purchase. Agencies can contact OGS Procurement Services at Customer.Services@ogs.ny.gov or (518) 474-6717 for assistance.

2. Procurement Card Usage

Agencies should be mindful of the spending limit of their Procurement Cards (P-Card).

BSC customer agencies that require an increase in their P-Card limit may contact the BSC at bscfinance@ogs.ny.gov or (518) 457-4272 from 8:00 am to 5:00 pm on weekdays to get their limit increased. Customers who require increases in P-Card limits outside those hours should contact their agency P-Card program administrator

for help. All other agencies who need to adjust their P-Card limits should contact their agency P-Card program administrator for help.

3. Requisitions

Requisitions for high demand products may increase during an emergency. In order to ensure that requisitions are processed in a timely manner, agencies should submit their requisitions as early as possible. Be mindful that many vendors are only available to process requisitions on standard business days. OGS Procurement Services and the BSC Buy Desk are watching for trends and large quantity purchases for COVID-19 supplies across agencies. OGS will coordinate with the emergency chain of command for priority purchase and distribution.

4. Use of Preferred Sources and OGS Centralized Contracts

Agencies are reminded to purchase commodities and services in the order of precedence in accordance with State Finance Law § 163 for all products and services that fit the “form, function and utility” of the agency’s need, with Preferred Source offerings in first priority followed by OGS Centralized Contracts. Agencies may contact OGS Procurement Services at Customer.Services@ogs.ny.gov or (518) 474-6717 for assistance.

5. Executive Order No. 202

Governor Cuomo issued Executive Order No. 202 (EO 202) (Attachment C), which temporarily suspends certain laws, including: State Finance Law § 112 to eliminate OSC review and approval of certain contracts; Article 4-C of the Economic Development Law; and State Finance Law § 163 to allow the purchase of commodities, services, and technology without following standard notice and procurement processes.

Under EO 202, reasonableness of cost/price is still required. Documentation must include the rationale and need of the purchase. Purchasing requirements should still be followed, such as confirming item(s) not available on preferred source or OGS centralized contracts, so procurement moves to open market. Quotes from other vendors (or a notation that other vendors have no stock of the item) shall be recorded in the procurement record to support reasonableness of cost/price requirement. Note that if an item is needed to protect public safety and health, a cost/price can be reasonable even when inflated due to market scarcity and/or only available from a single vendor.

6. Required Contract Clauses

In addition to the Appendix A – Standard Clauses for New York State Contracts, agencies must also incorporate Appendix B – Additional Standard Terms (COVID-19 Related Transactions) into all COVID-19 related purchases. All purchase orders for COVID-19 related purchases must be revised to make reference to Appendix B – Additional Standard Terms (COVID-19 Related Transactions). Further, agencies must amend any existing contract that will be used for COVID-19 activities to include Appendix B – Additional Standard Terms (COVID-19 Related Transactions). A copy of

Appendix B – Additional Standard Terms (COVID-19 Related Transactions) is attached to this Bulletin as Attachment D.

7. Procurement Records

To support the State's efforts to obtain reimbursement from the Federal government on all eligible COVID-19 related purchases, agencies must ensure they keep adequate documentation and records. While agencies should continue to follow existing practices and maintain comprehensive procurement records in accordance with appropriate agency practice and the New York State Procurement Guidelines, agencies should also note that Federal reimbursement guidelines may include additional requirements for information and documentation. To best position the State for reimbursement, agency procurement records must document the pertinent decisions made, approach used to complete the procurement, information justifying cost, and all other relevant information that supports the overall purchase, including the following as may be applicable:

- Documentation of need/request (if possible, who is requesting: agency's program name or individual);
- Type of commodities, equipment, supplies or services and quantities used;
- Dates used; type of work performed;
- Receipt for replacement items or local rate;
- Receipts or invoices with proof of payment;
- Description of equipment and attachments used, including year, make, and model Size/capacity (e.g., horsepower, wattage);
- Locations, days, and hours used with equipment/usage logs;
- Operator name, time used, work performed (will be cross-referenced against labor records);
- Federal cost codes or local rates – schedule of rates, including rate components; and
- Rental or lease agreements with procurement, invoices, receipts and days used.

Agencies must ensure that any COVID-19 related purchase is documented and coded in accordance with this Bulletin.

I. Further Federal Guidance

The State anticipates that additional instructions pertaining to federally reimbursable activities is forthcoming from FEMA and the Federal Department of Health and Human Services (HHS). Revisions to Budget Bulletin H-0501 may be issued at that time.

Attachment, Budget Bulletin H - 0501

**EXTRAORDINARY WAIVER OF OVERTIME COMPENSATION RULES
EMPLOYEES MAY ONLY BE COMPENSATED FOR WORK PERFORMED IN EXCESS OF 47.5 HOURS PER WORK WEEK.**

**COVID-19 PREPARATION / RESPONSE
(GRADE 28/M-3 AND ABOVE)**

TO: DIRECTOR OF PAYROLL AUDIT
DEPARTMENT OF AUDIT AND CONTROL

FROM: DIVISION OF THE BUDGET

DATE:

PURSUANT TO PART 135.12 OF TITLE 9 OF THE "OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK," AND BUDGET BULLETINS G-1024 AND H-0501, PROVISIONS OF PART 135 OVERTIME COMPENSATION AND BUDGET BULLETIN G-1024 ARE HEREBY WAIVED BY THE DIRECTOR OF THE BUDGET TO ACCOMPLISH THE ACTION INDICATED BELOW FOR THE PERIOD AND POSITIONS DESCRIBED:

AGENCY / <u>1</u>	LINE NO. / <u>2</u>	TITLE / <u>3</u>	TITLE CODE/ LOCATION SALARY GRADE / <u>3</u>	SPECIAL RATE / <u>4</u>	INCLUSIVE DATES / <u>5</u> BEGINNING ENDING
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1 Indicate the name and 5-digit code of the employing agency(ies).

2 Indicate the specific item numbers of the positions covered by the waiver.

3 Indicate the title, title code, location code and salary grade for each position covered by the waiver.

4 Indicate the overtime rate.

5 Indicate the specific time period of the waiver and the maximum number of authorized overtime hours per week, per position.



State of New York

Executive Chamber

No. 202

EXECUTIVE ORDER

Declaring a Disaster Emergency in the State of New York

WHEREAS, on January 30, 2020, the World Health Organization designated the novel coronavirus, COVID-19, outbreak as a Public Health Emergency of International Concern;

WHEREAS, on January 31, 2020, United States Health and Human Services Secretary Alex M. Azar II declared a public health emergency for the entire United States to aid the nation's healthcare community in responding to COVID-19;

WHEREAS, both travel-related cases and community contact transmission of COVID-19 have been documented in New York State and more are expected to continue; and

WHEREAS, New York State is addressing the threat that COVID-19 poses to the health and welfare of its residents and visitors.

NOW, THEREFORE, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and the Laws of the State of New York, hereby find, pursuant to Section 28 of Article 2-B of the Executive Law, that a disaster is impending in New York State, for which the affected local governments are unable to respond adequately, and I do hereby declare a State disaster emergency for the entire State of New York. This Executive Order shall be in effect until September 7, 2020; and

IN ADDITION, this declaration satisfies the requirements of 49 C.F.R. 390.23(a)(1)(A), which provides relief from Parts 390 through 399 of the Federal Motor Carrier Safety Regulations (FMCSR). Such relief from the FMCSR is necessary to ensure that crews are available as needed.

FURTHER, pursuant to Section 29 of Article 2-B of the Executive Law, I direct the implementation of the State Comprehensive Emergency Management Plan and authorize all necessary State agencies to take appropriate action to assist local governments and individuals in containing, preparing for, responding to and recovering from this state disaster emergency, to protect state and local property, and to provide such other assistance as is necessary to protect public health, welfare, and safety.

IN ADDITION, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to temporarily suspend or modify any statute, local law, ordinance, order, rule, or regulation, or parts thereof, of any agency during a State disaster emergency, if compliance with such statute, local law, ordinance, order, rule, or regulation would prevent, hinder, or delay action necessary to cope with the disaster emergency or if necessary to assist or aid in coping with such disaster, I hereby temporarily suspend or modify, for the period from the date of this Executive Order through April 6, 2020 the following:

Section 112 of the State Finance Law, to the extent consistent with Article V, Section 1 of the State Constitution, and to the extent necessary to add additional work, sites, and time to State contracts or to award emergency contracts, including but not limited to emergency contracts or leases for relocation and support of State operations under Section 3 of the Public Buildings Law; or emergency contracts under Section 9 of the Public Buildings Law; or emergency contracts for professional services under Section 136-a of the State Finance Law; or emergency contracts for commodities, services, and technology under Section 163 of the State Finance Law; or design-build or best value contracts under and Part F of Chapter 60 of the Laws of 2015 and Part RRR of Chapter 59 of the Laws of 2017; or emergency contracts for purchases of commodities, services, and technology through any federal GSA schedules, federal 1122 programs, or other state, regional, local, multi-jurisdictional, or cooperative contract vehicles;

Section 163 of the State Finance Law and Article 4-C of the Economic Development Law, to the extent necessary to allow the purchase of necessary commodities, services, technology, and materials without following the standard notice and procurement processes;

Section 97-G of the State Finance Law, to the extent necessary to purchase food, supplies, services, and equipment or furnish or provide various centralized services, including but not limited to, building design and construction services to assist affected local governments, individuals, and other non-State entities in responding to and recovering from the disaster emergency;

Section 359-a, Section 2879, and 2879-a of the Public Authorities Law to the extent necessary to purchase necessary goods and services without following the standard procurement processes;

Sections 375, 385 and 401 of the Vehicle and Traffic Law to the extent that exemption for vehicles validly registered in other jurisdictions from vehicle registration, equipment and dimension requirements is necessary to assist in preparedness and response to the COVID-19 outbreak;

Sections 6521 and 6902 of the Education Law, to the extent necessary to permit unlicensed individuals, upon completion of training deemed adequate by the Commissioner of Health, to collect throat or nasopharyngeal swab specimens from individuals suspected of being infected by COVID-19, for purposes of testing; and to the extent necessary to permit non-nursing staff, upon completion of training deemed adequate by the Commissioner of Health, to perform tasks, under the supervision of a nurse, otherwise limited to the scope of practice of a licensed or registered nurse;

Subdivision 6 of section 25 10 and section 25 11 of the Public Health Law, to the extent necessary to waive or revise eligibility criteria, documentation requirements, or premium contributions; modify covered health care services or the scope and level of such services set forth in contracts; increase subsidy payments to approved organizations, including the maximum dollar amount set forth in contracts; or provide extensions for required reports due by approved organizations in accordance with contracts;

Section 224-b and subdivision 4 of section 225 of the Public Health Law, to the extent necessary to permit the Commissioner of Health to promulgate emergency regulations and to amend the State Sanitary Code;

Subdivision 2 of section 2803 of the Public Health Law, to the extent necessary to permit the Commissioner to promulgate emergency regulations concerning the facilities licensed pursuant to Article 28 of the Public Health Law, including but not limited to the operation of general hospitals;

Subdivision 3 of section 273 of the Public Health Law and subdivisions 25 and 25-a of section 364-j of the Social Services Law, to the extent necessary to allow patients to receive prescribed drugs without delay;

Section 400.9 and paragraph 7 of subdivision f of section 405.9 of Title 10 of the NYCRR, to the extent necessary to permit general hospitals and nursing homes licensed pursuant to Article 28 of the Public Health Law ("Article 28 facilities") that are treating patients during the disaster emergency to rapidly discharge, transfer, or receive such patients, as authorized by the Commissioner of Health, provided such facilities take all reasonable measures to protect the health and safety of such patients and residents, including safe transfer and discharge practices, and to comply with the Emergency Medical Treatment and Active Labor Act (42 U.S.C. section 1395dd) and any associated regulations;

Section 400.11 of Title 10 of the NYCRR, to the extent necessary to permit Article 28 facilities receiving patients as a result of the disaster emergency to complete patient review instruments as soon as practicable;

Section 405 of Title 10 of the NYCRR, to the extent necessary to maintain the public health with respect to treatment or containment of individuals with or suspected to have COVID-19;

Subdivision d and u of section 800.3 of Title 10 of the NYCRR, to the extent necessary to permit emergency medical service personnel to provide community paramedicine, transportation to destinations other than hospitals or health care facilities, telemedicine to facilitate treatment of patients in place, and such other services as may be approved by the Commissioner of Health;

Paragraph 3 of subdivision f of section 505.14 of Title 18 of the NYCRR, to the extent necessary to permit nursing supervision visits for personal care services provided to individuals affected by the disaster emergency be made as soon as practicable;

Sections 8602 and 8603 of the Education Law, and section 58-1.5 of Title 10 of the NYCRR, to the extent necessary to permit individuals who meet the federal requirements for high complexity testing to perform testing for the detection of SARS-CoV-2 in specimens collected from individuals suspected of suffering from a COVID-19 infection;

Subdivision 4 of section 6909 of the Public Health Law, subdivision 6 of section 6527 of the Education Law, and section 64.7 of Title 8 of the NYCRR, to the extent necessary to permit physicians and certified nurse practitioners to issue a non-patient specific regimen to nurses or any such other persons authorized by law or by this executive order to collect throat or nasopharyngeal swab specimens from individuals suspected of suffering from a COVID-19 infection, for purposes of testing, or to perform such other tasks as may be necessary to provide care for individuals diagnosed or suspected of suffering from a COVID-19 infection;

Section 596 of Title 14 of the NYCRR to the extent necessary to allow for rapid approval of the use of the telemental health services, including the requirements for in-person initial assessment prior to the delivery of telemental health services, limitations on who can deliver telemental health services, requirements for who must be present while telemental health services are delivered, and a recipient's right to refuse telemental health services;

Section 409-i of the Education Law, section 163-b of the State Finance Law with associated OGS guidance, and Executive Order No. 2 are suspended to the extent necessary to allow elementary and secondary schools to procure and use cleaning and maintenance products in schools; and sections 103 and 104-b of the General Municipal Law are suspended to the extent necessary to allow schools to do so without the usual advertising for bids and offers and compliance with existing procurement policies and procedures;

Article 7 of the Public Officers Law, section 41 of the General Construction Law, and section 3002 of the Public Health Law, to the extent necessary to permit the Public Health and Health Planning Council and the State Emergency Medical Services Council to meet and take such actions as authorized by law, as may be necessary to respond to the COVID-19 outbreak, without meeting quorum requirements or permitting the public in-person access to meetings, provided that any such meetings must be webcast and means for effective public comment must be made available; and

FURTHER, I hereby temporarily modify, for the period from the date of this Executive Order through April 6, 2020, the following laws:

Section 24 of the Executive Law; Sections 104 and 346 of the Highway Law; Sections 1602, 1630, 1640, 1650, and 1660 of the Vehicle and Traffic Law; Section 14(16) of the Transportation Law; Sections 6-602 and 17-1706 of the Village Law; Section 20(32) of the General City Law; Section 91 of Second Class Cities Law; Section 19-107(ii) of the New York City Administrative Code; and Section 107.1 of Title 21 of the New York Codes, Rules and Regulations, to the extent necessary to provide the Governor with the authority to regulate traffic and the movement of vehicles on roads, highways, and streets.



BY THE GOVERNOR

G I V E N under my hand and the Privy Seal of the
State in the City of Albany this
seventh day of March in the year two
thousand twenty.

Secretary to the Governor

Appendix B – Additional Standard Terms (COVID-19 Related Transactions)

1. REPRESENTATIONS, WARRANTIES AND COVENANTS:

1.1. Products. The Seller represents, warrants and covenants to the Buyer that:

(a) All Products (i) are brand new, unused, made of qualified materials, and conform to all of specifications and performance capabilities and standards as stipulated in this Contract; (ii) satisfy all Product Standards and Specifications; (iii) shall be delivered to the Buyer free and clear of any and all liens and encumbrances; (iv) shall have all applicable FDA approvals and/or CE Mark certifications; and (v) shall be manufactured by manufacturers that have obtained and maintain all applicable FDA approvals or CE Mark certifications, and such FDA approvals and CE Mark certifications described in the foregoing clauses (iv) and (v) are valid and in full force and effect;

(b) Seller (i) has provided Buyer with proof of all relevant FDA, CE Mark and other certifications to Buyer's reasonable satisfaction prior to the signing of this Contract; and (ii) shall promptly provide the Buyer with all additional documentation, information, drawings, photos, samples and other materials that may be requested by Buyer;

(c) All quantities of the Products provided under this Contract (i) have been and shall be manufactured in accordance with, and conform to and satisfy, all Product Standards and Specifications; and (ii) have been and shall be manufactured and shall be exported, shipped and delivered in accordance with the terms and conditions of this Contract and all applicable industry standards, laws and regulations;

(d) All quantities of the Products shall be of the same standard, specifications, performance and quality as required under this Contract, including, without limitation, to the extent identified or embodied in corresponding purchase orders, invoices, as well as documentation, drawings, photos and samples approved by the Buyer in writing; and

(e) The Seller shall promptly provide the Buyer with all documentation that may be requested by Buyer, including without limitation: (i) signed commercial invoice in three (3) originals and three (3) copies, indicating contract number and shipping mark; (ii) certificate of quality issued by the Seller in one (1) original and two (2) copies; and (iii) Packing list/Weight Memo issued by the Seller in three (3) originals and three (3) copies, indicating name, weight, and measurement of the shipped goods.

1.2. Services.

(a) The Contractor warrants that it will perform all services in good faith, in a professional manner in accordance with

applicable professional standards, and that all services will conform in all material respects to the description of such services set forth in any accompanying statement of work, purchase order, or similar document. The Seller warrants that it will correct, at no charge the State, services which fail to meet applicable professional standards and which result in obvious or patent errors in the progression of its work.

(b) Contractor warrants and represents that all deliverables, as applicable, specified and furnished by or through Seller under any accompanying statement of work, purchase order, or similar document, shall meet the acceptance criteria set forth in such document and that services will be provided in a professional and workmanlike manner in accordance with the highest applicable industry standards. Failure to do so may result in the State finding that Seller is in default. For purposes of this agreement, "highest applicable industry standards" shall be defined as the degree of care, skill, efficiency, and diligence that a prudent person possessing technical expertise in the subject area and acting in a like capacity would exercise in similar circumstances.

1.2. Anti-Corruption and International Risk Compliance. The Seller further represents, warrants and covenants to the Buyer that:

(a) The Seller has not taken and will not take any action in connection with this Contract that would constitute a violation, or implicate the Buyer in a violation, of the U.S. Foreign Corrupt Practices Act, PRC Criminal Law, PRC Anti-Unfair Competition Act, or any other laws or regulations prohibiting public or private bribery and corruption applicable to the Seller (collectively, "Anti-Corruption Laws");

(b) None of the Seller's principals, owners, officers, directors, employees, or agents (including, to the Seller's knowledge based upon due inquiry, any Manufacturer or subcontractor) is a government official or an instrumentality of a government, except as previously disclosed to and approved by the Buyer. If, at any time during the term of this Contract, any of the Seller's principals, owners, officers, directors, employees, or agents, or to the Seller's knowledge, any Manufacturer or subcontractor, becomes a government official or instrumentality of the government, the Seller shall notify the Buyer immediately so that the Buyer may, and hereby reserves the right to, take whatever precautions and actions may be appropriate to assure compliance with Anti-Corruption Laws;

(c) In connection with the services and Products to be provided under this Contract, neither the Seller, nor any of its principals, owners, officers, directors, employees, or agents will provide, promise to provide, or will cause to be provide, and the Seller will use best efforts to ensure that

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no Manufacturer or any subcontractor will provide, promise to provide, or cause to be provided, directly or indirectly, anything of value to or for the use or benefit of (i) any government official; or (ii) any other person or entity; in each case with the intent to obtain or keep business or to secure some other improper advantage, or which provision of an item of value otherwise would violate Anti-Corruption Laws;

(d) Neither the Seller, nor any of its principals, owners, officers, directors, employees, or agents (including, to the Seller's knowledge based upon due inquiry, any Manufacturer or subcontractor) is the subject of a pending investigation, notice, or inquiry by any governmental authority with respect to a violation or potential violation of Anti-Corruption Laws, and to the Seller's knowledge, no such investigation, notice, or inquiry is threatened;

(e) The operations of the Seller have been conducted at all times in compliance with the requirements of Anti-Money Laundering Law of the PRC, and all money laundering-related laws and regulations of other jurisdictions where the Seller conducts business or owns assets; and

(f) Neither the Seller, nor any of its principals, owners, officers, directors, employees, or agents (including, to the Seller's knowledge based upon due inquiry, any Manufacturer or subcontractor), is subject to any sanction administered by the Office of Foreign Assets Control of the United States Department of Treasury ("U.S. Economic Sanctions") and, in connection with this Contract and the provision of the Products, the Seller will take no action with or for the benefit of, and will not use any amounts payable under the Contract for the purposes of financing the activities of, any persons, entities and countries that are subject to U.S. Economic Sanctions (including but not limited to any entity resident in or organized under the laws of any jurisdiction subject to comprehensive embargoes under U.S. Economic Sanctions, which as of the date of this Contract include Cuba, Iran, Syria, North Korea, and the Crimea region of Ukraine).

1.3. Other. The Seller further represents, warrants and covenants to the Buyer that:

(a) The Seller (i) is a company duly organized and incorporated and validly existing under the laws of its incorporation; (ii) has the power and authority and the legal right to own and operate its property and assets, to carry on its business as it is now being conducted; (iii) has the corporate power and authority and the legal right to enter into this Contract and to perform its obligations hereunder, without any violation of its certificate of incorporation or by-laws or any law or regulation; and (iv) has taken all necessary corporate action on its part to authorize the execution and delivery of this Contract and the performance of its obligations hereunder;

(b) This Contract has been duly executed and delivered on behalf of the Seller, and constitutes a legal, valid, binding obligation, enforceable against the Seller in accordance with its terms;

(c) All necessary consents, approvals and authorizations of all governmental authorities and other persons and entities required to be obtained by the Seller in connection with the execution and delivery of this Contract and the consummation of the transactions contemplated hereby and the performance of its obligations hereunder have been obtained;

(d) The execution and delivery of this Contract do not conflict with nor violate any requirement of applicable laws or regulations or any contractual obligation of the Seller, including, without limitation, any export or customs restrictions that may apply to any of the Products; and

(e) The Seller is in compliance with and shall comply with, and shall cause each Manufacturer to comply with, all applicable industry standards, laws and regulations in all applicable jurisdictions (including, without limitation, the United States and the PRC) relating to the Products to be supplied hereunder and the performance hereunder of Seller and each Manufacturer, including, without limitation, relating to (i) obtaining and maintaining all relevant licenses, permits, approvals and authorizations from applicable governmental authorities, and (ii) manufacturing, exportation, shipping and delivery of the Products.

2. EXPORTATION: The Seller shall be responsible for exportation of all quantities of the Products from the country in which the Manufacturer or any of the Products are located, and all customs clearance and related costs.

3. INSURANCE: The Seller shall obtain insurance of the Products for coverage during shipment until the Products are received in acceptable condition by the Buyer. Insurance coverage shall be in an amount of at least the sales price of the Products. Seller is responsible for all costs and expenses for obtaining insurance.

4. INSPECTION, ACCEPTANCE AND REJECTION:

4.1. Products. Prior to each shipment of a Product, the Seller shall make a precise and comprehensive inspection of the goods included in such shipment as regards their quality, specifications, performance and quantity and certify to the Buyer in writing that the goods are in strict compliance with the Product Standards and Specifications and this Contract.

The Buyer (and/or its designee) is entitled to inspect each Product prior to each shipment and delivery and/or after receipt of each Product. All quantities of the Product that have been or will be shipped or delivered shall remain the exact quality described in this Contract.

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Within fourteen (14) days after receiving a shipment of the Products, the Buyer may inspect and check the quantity, appearance, quality and attached documents and all other aspects of the Products, including, without limitation, regarding quality issues and conformance to the Product Standards and Specifications and this Contract. If the Buyer uncovers any quality issues or any non-conformance with the Product Standards and Specifications or this Contract, the Buyer will notify the Seller in writing. There shall be no deemed acceptance of any Product by the Buyer.

If the Buyer rejects any quantity of a Product, the Seller shall, within five (5) days after receipt of the Buyer's notice of rejection, at the Seller's sole cost and expense, replace the rejected Product with the same quantity of Product that satisfies with the quality requirements and conforms with the Product Standards and Specifications and this Contract. If the parties disagree on whether any quantity of the Product has any quality issues or any non-conformance with the Product Standards and Specifications or this Contract, the parties shall engage a third party quality inspection agency mutually agreed by the parties and located in the United States to inspect the Product. The decision of such quality inspection agency shall be final and binding on the parties.

4.2. Services. For deliverable based services, the Seller will complete and submit to the State all deliverables in accordance with the timeline as prescribed in any statement of work, purchase order, or similar document. The acceptance criteria for each deliverable shall be its substantial conformance, to be determined at the discretion of the State, to the requirements and descriptions set forth in any statement of work, purchase order, or similar document. Notwithstanding anything to the contrary as may be contained in any statement of work, purchase order, or similar document, the State shall accrue no liability for payment for any deliverable supplied to the State without affirmative written acceptance of such deliverable by the State, and without consideration for any time limitation for State acceptance.

5. PRICE AND TAXES: The price set forth in the Sales Contract includes, and the Seller shall be responsible for, all duties, customs, levies, charges, and sales, use, value-add, withholding and other taxes relating to the sale and purchase of the Products. The Buyer shall not be responsible for paying any amount in connection with any Product other than the purchase price set forth in the Sales Contract.

6. INDEMNIFICATION: The Seller shall indemnify, defend and hold harmless the Buyer and its affiliates, its and their officers, employees, contractors, consultants, customers, clients, agents and representatives, and users of any Product against all Losses arising out of or related to (i) any gross negligence, willful misconduct or fraud of the

Seller or any Manufacturer or subcontractors, (ii) any breach of this Contract by the Seller or any Manufacturer or subcontractors, (iii) any death of, or injury to, any person, or damage to any property, resulting from the use of the Product, or (iv) any infringement, misappropriation or other violation of any intellectual property or proprietary rights of any person or entity by the sale, use or other activities relating to any Product. The term "Loss" means any and all claims, losses, damages, liabilities, obligations, settlements, payments, awards, judgment, fines, penalties, deficiencies, costs and expenses, including, without limitation, all reasonable attorneys' fees, and costs and expenses incurred in connection with investigating, defending or asserting any claim, action, suit or proceeding incident to any matter indemnified against hereunder.

7. FORCE MAJEUR: The time for the performance of the Seller's obligations set forth in this Contract shall be extended for a period equal to the duration of any nonperformance caused directly by a Force Majeure Event; provided that the Seller uses best efforts to continue to perform in accordance with this Contract without delay. A "Force Majeure Event" means fire, flood, earthquake, typhoon, natural catastrophe, new publicly announced government orders that become effective after the effective date of this Contract, and any other circumstances, in each case, that (i) are beyond the Seller's reasonable control, (ii) could not have been prevented or circumvented by reasonable precautions, commercially accepted processes or use of substitute services, alternate sources, work-around plans or other means, and (iii) occurs during the process of manufacturing or in the course of loading or transit and prevents the Seller's performance of such obligations. The Seller so prevented for a Force Majeure Event shall (A) within forty-eight (48) hours upon the occurrence of such Force Majeure Event, inform the Buyer by email of the occurrence of such Force Majeure Event and (B) within fifteen (15) days upon the occurrence of such Force Majeure Event, provide the Buyer by mail with a relevant certificate issued by competent authorities as evidence thereof. If the nonperformance lasts for more than five (5) days, the parties shall immediately consult together in an effort to agree upon a revised contract basis. If the parties are unable to arrive at a mutually satisfactory solution within ten (10) days from the beginning of such consultation, then the Buyer may terminate the Contract in respect of the undelivered portion of any Product under this Contract by notifying the Seller in writing. Upon such termination, Buyer shall not be responsible for paying for any undelivered portion of the Products and the Seller shall refund the Buyer any overpayment in accordance with the second paragraph of Section 11 (Payment) below.

8. QUANTITY, RISKS: During the special period of the Novel Coronavirus, when the actual delivery quantity deviates from the contract quantity, the total amount of

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price for the Products shall be settled according to the actual delivery quantity that has been accepted by the Buyer in writing in accordance with this Contract. All of the risks associated with the Products are borne by the Seller until goods arrive at the location designated by the Buyer in writing.

9. TERMINATION: The State of New York reserves the right to terminate the agreement, in whole or in part, upon thirty (30) days written notice for any reason, or immediately for cause. Upon notice of termination, the Seller shall stop work immediately and complete only that specific work, if any, subsequently approved by the State of New York. In the event of termination other than for cause, the Seller shall be entitled to compensation for services performed or products delivered through the date of termination that are accepted by the State of New York, and for any subsequent services that are accepted by the State of New York, rendered in connection with any successor consultants and contractors, including transfer of records, briefing and any other services deemed necessary or desirable by the State of New York. The Seller agrees to cooperate to the fullest respect with any successor consultants and contractors. As it relates to the purchase of COVID-19 related medical equipment, personal protective equipment, or similar products and services, the State's right to terminate shall be upon 2 days written notice.

10. ASSIGNMENT AND SUBCONTRACTING: The Seller shall not assign or transfer any of its rights or obligations under this Contract to any person or entity without the Buyer's prior written approval. Other than subcontracting manufacturing of the Products to the Manufacture identified in the Sales Contract, the Seller shall not subcontract any of its obligations under this Contract to any person or entity without the Buyer's prior written approval. The Seller shall be responsible and liable for all obligations under this Contract, whether performed by Manufacturers or any other subcontractors, and for the acts and omission of the Manufacturers and any other subcontractors in connection with this Contract. The Seller shall cause Manufactures and subcontractors to comply with the terms and conditions of this Contract to the same extent the Seller would be responsible for its own compliance with the terms and conditions of this Contract. The Seller shall enforce all terms and conditions of all agreements with each Manufacturer and each subcontractor and shall monitor the activities of each Manufacturer and each subcontractors to ensure compliance with such agreements and the applicable terms and conditions of this Contract.

The Buyer may assign, transfer or subcontract, in whole or in part, any of its rights and obligations under this Contract to another entity.

11. PAYMENT AND REFUND: All payments and refunds shall be made in US Dollars.

Payments will be made pursuant the Department of Health Purchase Order process, as modified by certain Executive Orders of the Governor of the State of New York relative to the COVID-19 public health emergency (Executive Order 202 et seq.).

Notwithstanding anything that may be to the contrary, (i) the Buyer shall not be obligated to make any payment under this Contract unless the Seller has complied with all terms and conditions of this Contract, and (ii) in the event that the Seller fails to deliver any quantity of a Product on time or the Buyer rejects any quantity of a Product due to any quality issues or any non-conformance with the Product Standards and Specifications or otherwise under this Contract, the Buyer shall not be responsible for paying any amount for such quantity of the Product. To the extent the total amount of the Buyer's payments hereunder exceeds the price for the quantity of the Products delivered to and accepted by the Buyer, the Seller shall refund the Buyer such excess amount within five (5) days after request by the Buyer.

12. CONFIDENTIALITY: The Seller shall (i) keep all information provided by the Buyer, the terms of this Contract, and the existence of this Contract (collectively, "Confidential Information") in strict confidence, and (ii) not disclose any Confidential Information to any person or entity without the Buyer's prior written approval. Without limiting the generality of the foregoing, without the Buyer's prior written approval, the Seller shall not issue any press release or disclose to any person or entity that it has supplied or will supply any of the Products.

13. CHOICE OF LAW: This Contract shall be governed by and construed in accordance with the laws of the State of New York, the United States, except where Federal supremacy clause governs.

14. DISPUTE RESOLUTION: All disputes arising from the execution of or in connection with the Contract shall be settled through friendly consultation between both parties. If the parties are unable to settle the dispute within ten (10) days after a party notifies the other party of any dispute, such dispute shall be settled by arbitration, which shall be administered by the International Chamber of Commerce in accordance with the ICC Rules of Arbitration before a panel of three arbitrators. Each of the Buyer and the Seller shall designate one arbitrator, and the two arbitrators so appointed shall jointly designate the third arbitrator. The place of arbitration shall be New York, New York, the United States. All proceedings and communications shall be in English. Judgment upon any award rendered may be entered in any court having jurisdiction over the relevant party or its assets. Nothing in this Contract shall prohibit the Buyer from seeking injunctive or other equitable relief

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from any court of competent jurisdiction in the event of a breach or prospective breach of this Contract by the Seller.

15. MISCELLANEOUS:

15.1. Remedies Cumulative. All remedies provided for in this Contract will be cumulative and in addition to, and not in lieu of, any other remedies available to either party at law, in equity or otherwise.

15.2. No Waiver. Any failure of a party to exercise any right or to demand the performance by the other party of obligation hereunder shall not constitute a waiver of any rights or obligations provided for herein.

15.3. Obligations to Perform. The Seller shall have an unconditional and absolute obligations to continue to perform its obligations under this Contract, including, without limitation, during the pendency of any dispute.

15.4. Equitable Remedies. The Seller acknowledges and agrees that any breach of this Contract could give rise to irreparable harm for which monetary damages would not be an adequate remedy and accordingly, in addition to any other remedies, the Buyer shall be entitled to obtain specific performance, and preliminary, injunctive and other equitable relief without requirement to post any bond.

15.5. This Contract. This “Contract” means, collectively, the Sales Contract, together with (i) Appendix A, Standard Clauses for All New York State Contracts, a copy of which is available upon request or at <http://www.ogs.state.nv.us/procurecounc/pdfdoc/appendixa.pdf>, and (ii) this Appendix B. The Sales Contract shall be governed by Appendix A and this Appendix B, which are hereby incorporated into, and made a part of, the Sales Contract by reference. Upon signing the Sales Contract, the Seller shall be deemed to have accepted the terms and conditions of Appendix A and this Appendix B. In event of a conflict or ambiguity between or among the Sales Contract, Appendix A or this Appendix B, the order of precedence shall be as follows (from highest to lowest): (i) Appendix A, (ii) Appendix B and (iii) the Sales Contract; except that this Appendix B shall control with respect to provisions regarding dispute resolution. The terms and conditions included in any purchase orders or invoices shall not apply and shall not be deemed to be part of the Contract unless the Buyer has specifically agreed to such terms and conditions in writing.

15.6. Construction. All the terms and conditions of this Contract are accepted by both parties. Each party acknowledges and agrees that the parties have participated jointly in the negotiation and drafting of this Contract. In the event an ambiguity arises, this Contract shall be construed as drafted jointly by both parties and no presumption or burden of proof shall arise favoring or disfavoring a party by virtue of authorship of any of the provision of this Contract.

This Contract is executed in the English language and shall be deemed to comprise the language mutually chosen by the parties. As used in this Contract, the singular shall include the plural and vice versa. The terms “include” and “including” shall be deemed to be immediately followed by the phrase “without limitation.” The terms “herein” and “hereunder” and similar terms shall be interpreted to refer to this entire Contract.

15.7. Amendment. This Contract may not be amended except by an instrument in writing signed by duly authorized representatives of both parties.

15.8. Further Assurance. The parties shall execute and deliver such further documents and take such further actions as may be necessary or appropriate to effectuate more fully this Contract and to carry out the transaction contemplated by this Contract.

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) MANDATORY TERMS AND CONDITIONS

1. Remedies.

In the event that Seller fails to observe or perform any term or condition of the Agreement and such failure remains uncured after 15 calendar days following written notice by the Commissioner of Health (“Comissioner”), the Commissioner may exercise all rights and remedies available at law or in equity.

2. Termination for Cause and Convenience.

Termination rights of the parties shall be as prescribed in section 9 of this agreement.

3. Equal Employment Opportunity

During the performance of this Agreement, the Seller agrees as follows:

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

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

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

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

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

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

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

(7) In the event of the Seller's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Seller may be declared ineligible for further Government Agreements or federally assisted construction Agreements in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965,

or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

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

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

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

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

The applicant further agrees that it will refrain from entering into any Agreement or Agreement modification subject to Executive Order 11246 of September 24, 1965, with a Seller debarred from, or who has not demonstrated eligibility for, Government Agreements and federally assisted construction Agreements pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Sellers and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (Agreement, loan,

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insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

4. **Davis-Bacon Act.**

a. All transactions regarding this Agreement shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29

C.F.R. pt. 5 as may be applicable. The Seller shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.

b. Sellers are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

c. Additionally, Sellers are required to pay wages not less than once a week.

5. **Copeland Anti-Kickback Act.**

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

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

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

6. **Agreement Work Hours and Safety Standards Act.**

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

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set

forth in paragraph (b)(1) of this section the Seller and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Seller and subcontractor shall be liable to the United States (in the case of work done under Agreement for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

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

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

7. **Clean Air Act and The Federal Water Pollution Control Act.**

Clean Air Act

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

2. The Seller agrees to report each violation to the State of New York and understands and agrees that the State of New York will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

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

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Federal Water Pollution Control Act

1. The Seller agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33U.S.C. 1251 et seq.

2. The Seller agrees to report each violation to the State of New York and understands and agrees that the State of New York will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

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

8. Debarment and Suspension

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

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

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

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

9. Byrd Anti-Lobbying Amendment.

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal Agreement, grant, or any other award covered by

31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

a. Required Certification. If applicable, Sellers must sign and submit to the State of New York entity the attached certification - FEMA APPENDIX 1

10. Procurement of Recovered Materials.

(i) In the performance of this Agreement, the Seller shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

- Competitively within a timeframe providing for compliance with the Agreement performance schedule.
- Meeting Agreement performance requirements; or
- At a reasonable price.

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

(iii) The Seller also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.”

10. Access To Records.

(1) The Seller agrees to provide the State of New York, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Seller which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Seller agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The Seller agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the Agreement.

(4) In compliance with the Disaster Recovery Act of 2018, the State of New York and the Seller acknowledge and agree that no language in this Agreement is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

11. Changes.

Appendix B – Additional Standard Terms (COVID-19 Related Transactions)

a. Standard. To be eligible for FEMA assistance under the State of New York's FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope.

12. DHS Seal, Logo, and Flags.

The Seller shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

13. Compliance with Federal Law, Regulations, and Executive Orders.

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the Agreement. The Seller will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

14. No Obligation by Federal Government. The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-Federal entity, Seller, or any other party pertaining to any matter resulting from the Agreement.

15. Program Fraud and False or Fraudulent Statements or Related Acts.

The Seller acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Seller's actions pertaining to this Agreement.

Appendix B – Additional Standard Terms (COVID-19 Related Transactions)

FEMA APPENDIX I

44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

In accordance with 44 C.F.R. PART 18, the Seller further certifies to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Agreement, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal Agreement, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Agreement, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and Agreements under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Seller certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Seller understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Seller's Authorized Official

Name and Title of Seller's Authorized Official

Date: