

**ADDENDUM ONE – CONTRACT #C110005
LOTTERY INSTANT TICKET DESIGN,
DEVELOPMENT AND PRODUCTION SERVICES –
ALTERNATE CONTRACTOR**

This Addendum (the “Addendum”) made as of this 26th day of May, 2011, by and between the NEW YORK STATE DIVISION OF THE LOTTERY, an executive agency of the State of New York having an office at One Broadway Center, Post Office Box 7500, Schenectady, New York 12301-7500, and POLLARD BANKNOTE LIMITED having an office at 1499 Buffalo Place, Winnipeg, Manitoba CANADA R3T 1L7 (the “Contractor”).

WHEREAS, the Lottery and the Contractor desire to amend the provisions of Agreement #C110005 (the “Agreement”);

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises hereinafter set forth, the parties hereto agree to amend the Agreement as follows:

1. The contract number for the Agreement is amended to read #C110005, and the title of the Agreement is amended to read LOTTERY INSTANT TICKET DESIGN, DEVELOPMENT AND PRODUCTION SERVICES – ALTERNATE CONTRACTOR.

2. Section 1 of the Agreement is amended to read as follows:

1. Scope of Services. The Contractor agrees to furnish the Lottery with professional services to manage design, development and production components of the Lottery’s Instant ticket business as an alternate contractor, as more fully set forth in the RFP and the Proposal. Both the RFP and the Proposal are hereby incorporated into this Agreement with the same force and effect as

if they were fully set forth herein. Contractor shall exercise professional skill, care, and diligence in the performance of its obligations as an alternate contractor under this Agreement. Contractor hereby accepts such engagement upon the provisions of the RFP and the Proposal except as modified by this Agreement.

3. Section 3 of the Agreement is amended to read as follows:

3. Compensation. In full consideration for all goods and services to be provided by an alternate contractor as specified in the RFP and the Proposal, the Lottery agrees to pay, and the Contractor agrees to accept, compensation based on printing pricing as defined in the Contractor's Proposal. No minimum amount is guaranteed by this Agreement and the Contractor shall not have any right to make a claim therefor.

4. All other provisions of the Agreement, as amended, remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum as of the day and year first above written.

NYS Agency Contract No. C110005

In addition to the acceptance of this Addendum, my signature below certifies that copies of this signature page will be attached to all other exact copies of this contract.

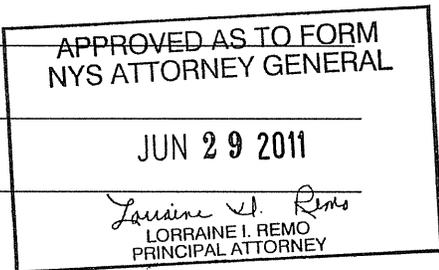
POLLARD BANKNOTE LIMITED

By: *[Signature]*
Title: Co Chief Executive Officer
Date: June 2, 2011

NEW YORK STATE
DIVISION OF THE LOTTERY

By: *[Signature]*
Title: Director
Date: 6/20/11

ATTORNEY GENERAL

By: _____
Title: _____
Date: _____


COMPTROLLER
Thomas P. DiNapoli

By: *[Signature]*
Title: Asst. Director
Date: 8.24.11

CITY OF Winnipeg)
) ss.:
PROVINCE OF Manitoba)

On this 2 day of JUNE, 2011, before me personally came Douglas E. Pollard, to me known, who being duly sworn, did depose and say that he or she resides in 316 Montrose Street, Winnipeg MB R3M 3M8 (if the place of residence is in a city, include the house and street number), that he or she is the Co-Chief Executive Officer [title] of Pollard Banknote Limited, the entity which executed this addendum, and that he or she was authorized to execute this addendum on behalf of said entity.



Notary Public

LOTTERY INSTANT TICKET DESIGN,
DEVELOPMENT AND PRODUCTION SERVICES
CONTRACT # C110001

THIS AGREEMENT made this 4th day of April, 2011 by and between the NEW YORK STATE DIVISION OF THE LOTTERY, an executive agency of the State of New York having an office at One Broadway Center, Post Office Box 7500, Schenectady, New York 12301-7500 (the "Lottery"), and ~~[name of company]~~ ^{Pollard Banknote Limited} ~~[address of company]~~ ^{Winnipeg, Canada} (the "Contractor").

WHEREAS the Lottery issued a Request for Proposals on February 14, 2011 soliciting proposals from qualified firms for instant ticket design, development, and production services, and clarified the requirements of the Request for Proposals with a list of Questions and Answers issued March 7, 2011 and March 18, 2011 (collectively, the "RFP"); and

WHEREAS the Contractor submitted a Technical Proposal and a Financial Proposal dated April [4], 2011 (collectively, the "Proposal"), which are deemed acceptable to the Lottery;

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises hereinafter set forth, the parties hereto agree as follows:

1. Scope of Services. The Contractor agrees to furnish the Lottery with professional services to manage the design, development and production components of the Lottery's Instant ticket business, as more fully set forth in the RFP and the Proposal. Both the RFP and the Proposal are hereby incorporated into this Agreement with the same force and effect as if they were fully set forth herein. Contractor shall exercise professional skill, care, and diligence in the performance of its obligations under this Agreement. Contractor hereby accepts such engagement upon the provisions of the RFP and the Proposal except as modified by this Agreement.

2. Term. This Agreement shall be for a term of seven (7) years commencing as of the date of approval by the State Comptroller.

3. Compensation.

In full consideration for all goods and services specified in the RFP and the Proposal, the Lottery agrees to pay, and the Contractor agrees to accept, compensation in accordance with the prices set forth in the Proposal. No minimum amount is guaranteed by this Agreement and the Contractor shall not have any right to make a claim therefor.

4. Approvals Required. This Agreement, and any extension of the term of this Agreement or any amendment of the provisions of this Agreement, shall not be effective and binding upon the Lottery, the State of New York, or the Contractor unless and until approved by the Attorney General and the State Comptroller. The Lottery agrees to exercise its best efforts to obtain such approval.

5. Mutual Cooperation. The parties agree to cooperate fully in good faith and to assist each other, to the extent reasonably practicable, in order to accomplish that objectives described in the RFP.

6. Termination.

(a) The Lottery shall have the right to terminate this Agreement for any of the following causes:

- (i) a material breach by the Contractor of any of the provisions of this Agreement;
- (ii) a determination by a court of competent jurisdiction that the Contractor is bankrupt or insolvent;
- (iii) a good faith determination by the Lottery that continuation of the contract could place the integrity of the Lottery in jeopardy; or
- (iv) a conviction of the Contractor or any of its directors, officers, or employees of any criminal offense connected to the Contractor's business which, in the sole reasonable opinion of the Director of the Lottery, would be prejudicial to public confidence in the Lottery.

(b) In the event that the Lottery decides to exercise the right to terminate this Agreement for cause, the Lottery shall give the Contractor advance written Notice of Intention to Terminate for Cause ("Notice"). Such Notice shall state clearly and specifically the cause for which termination is sought, and the Contractor shall be entitled to a period of thirty (30) days from receipt of such Notice to correct or cure the cause so described to the reasonable satisfaction of the Lottery in which case such Notice shall be deemed withdrawn and a nullity. If termination is sought because of a criminal conviction as described in subparagraph (iv) of Paragraph (a) of this section 6, the cause for termination shall be deemed to be cured if the Contractor causes or obtains the dismissal, resignation, retirement, or other removal of the person convicted of such offense during such thirty (30) day period.

(c) The Lottery reserves the right to terminate this Agreement in the event it is found that the certification filed by the Contractor in accordance with New York State Finance Law § 139-k was intentionally false or intentionally incomplete. Upon such finding, the Lottery may exercise its termination right by providing written notice to the Contractor in accordance with the written notice terms of this Agreement.

7. Force Majeure

(a) A Force Majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled and without the fault or negligence of the non-performing party. As herein used, Force Majeure includes, but is not limited to, fire, explosion, unusually severe action of the elements, strike or labor disturbance, rationing, war, terrorism, act of any governmental authority or agency, civil disturbance, governmental interference, or any other cause which is beyond the control of the party affected, and which, by the exercise of reasonable diligence, said party is unable to prevent delays arising as a result thereof or to predict and through advance planning avoid such delays.

(b) Except as otherwise provided in the contract, neither the Successful Vendor nor the Lottery shall be liable to the other for any delay in, or failure of performance of, any covenant contained herein nor shall any such delay or failure of performance constitute default hereunder, to the extent that such delay or failure is caused by Force Majeure. The existence of such causes of delay or failure shall extend the schedule for performance to such extent as may be necessary

to complete performance in the exercise of reasonable diligence after the causes of delay or failure have been removed.

(c) Any such delay in or failure of performance shall not in and of itself give rise to any liability for damages; however, the Lottery may elect to terminate the Contract for cause should its continuing operations, in its sole judgment, be materially threatened or harmed by reason of extended delay or failure of performance.

(d) During a period of non-performance due to Force Majeure, payments from the Lottery to the Successful Vendor will be suspended.

8. Confidentiality and Non-Disclosure.

(a) For the purposes of this section, "Confidential Information" means any information not generally known to the public, whether oral or written, that a disclosing party (the "Disclosing Party") identifies as confidential and discloses to the receiving party (the "Recipient") in connection with services to be provided to the Lottery pursuant to this Agreement. Subject to applicable law, Confidential Information may include, but is not limited to, operational and infrastructure information relating to: proposal documents, plans, drawings, specifications, reports, product information; business and security processes and procedures; personnel and organizational data, and financial statements; information system IP addresses, passwords, security controls, architectures and designs; and such other data, information and images that the Disclosing Party deems confidential. The Disclosing Party will identify written Confidential Information by marking it with the word "Confidential" and will identify oral Confidential Information as confidential at the time of disclosure to the Recipient.

(b) Confidential Information does not include information that, at the time of disclosure by the Disclosing Party to the Recipient:

- (i) is already in the public domain or becomes publicly known through no act of the Recipient;
- (ii) is already known by the Recipient free of any confidentially obligations;
- (iii) is information that the Disclosing Party has approved in writing for disclosure; or

(iv) is required to be disclosed by the Recipient pursuant to law so long as the Recipient provides the Disclosing Party with notice of such disclosure requirement and opportunity to defend prior to any such disclosure.

(c) The Recipient may use Confidential Information solely for the purposes of providing services to the Lottery pursuant to this Agreement. The Disclosing Party's disclosure of Confidential Information to the Recipient shall not convey to the Recipient any right to or interest in such Confidential Information, and the Disclosing Party shall retain all right and title to such Confidential Information at all times.

(d) The Recipient shall hold Confidential Information confidential to the maximum extent permitted by law. The Recipient shall safeguard Confidential Information with at least the same level of care and security, using all reasonable and necessary security measures, devices and procedures that the Recipient uses to maintain its own confidential information.

(e) Upon written request by the Disclosing Party, the Recipient shall return all written Confidential Information to the Disclosing Party.

9. Records Retention. Records required by this Agreement to be retained by the Contractor shall be retained for the periods specified in Appendix A, attached hereto. Such records may be retained in their original form or in any other reliable and readily retrievable format, at the option of the Contractor.

10. Notices. All notices required by this Agreement shall be sufficient if in writing and sent by certified mail return receipt requested and all other communications shall be sufficient if communicated in writing to the following addresses or to such other addresses as may be designated from time to time by the parties in writing:

(a) As to the Lottery:

Director of the Lottery

NYS Division of the Lottery

One Broadway Center

Post Office Box 7500

Schenectady NY 12301-7500

(b) As to the Contractor:

~~XXXXXXXXXXXXXXXXXXXX~~ Pollard Banknote Limited, 1499 Buffalo Place,
[Name and Address] Winnipeg, Manitoba CANADA R3T 1L7

11. Liability and Indemnification. The Contractor shall be responsible for all damages to life and property due to activities of the Contractor, as well as the subcontractors (if any), agents or employees of the Contractor in connection with performance of services under this agreement. The Contractor shall indemnify, defend, and save harmless the New York Lottery, the State of New York, and their officers, employees, agents, assigns and retailers from and against any and all third party claims, liabilities, losses, damages, costs, or expenses, including reasonable attorneys' fees, which may be incurred, suffered, or required in whole or in part by an actual or alleged act or omission of:

- (a) The Contractor, its officers, employees, agents, successors and assigns, and/or
- (b) A Subcontractor, its officers, employees, agents, successors and assigns.

12. Relationship. The relationship of the Contractor to the Lottery arising out of this Agreement shall be that of an independent contractor. The Contractor, in accordance with its status as an independent contractor, agrees that it will conduct itself consistent with such status, that it will neither hold itself out as, nor claim to be, an officer or employee of the Lottery or the State by reason hereof, and that it will not by reason hereof, make any claim, demand or application for any right or privilege applicable to an officer or employee of the Lottery or the State, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit. All personnel of the Contractor shall be within the employ of the Contractor only or shall be duly contracted subcontractors of the Contractor, which alone shall be responsible for their work, the direction thereof, and their compensation. Nothing in this Agreement shall impose any liability or duty on the Lottery or the State, on account of any acts, omissions, liabilities or obligations of the Contractor or any person, firm, company, agency, association, corporation, or organization engaged by the Contractor as expert, consultant, independent contractor, specialist, trainee, employee, servant or agent, for taxes of any nature, including, but not limited to, unemployment

insurance and workers' compensation, and the Contractor hereby agrees to indemnify and hold harmless the Lottery and the State against any such liabilities.

13. Documents Incorporated. Appendix A, "Standard Clauses for all New York State Contracts," the RFP, and the Proposal are hereby incorporated herein to the same force and effect as if set forth at length hereat.

14. Order of Precedence. Any conflict between the provisions of this Agreement and the documents incorporated herein shall be resolved according to the following order of precedence, from the highest to the lowest:

- (a) Appendix A – Standards Terms for New York State Contracts;
- (b) Any amendments to the Agreement;
- (c) Agreement;
- (d) Request for Proposal and any clarifying responses by the Lottery;
- (e) Vendor Proposal and any clarifying responses by the vendor.

15. Miscellaneous Provisions.

(a) A waiver of enforcement of any provision of this Agreement shall not constitute a waiver of any other provision of this Agreement nor shall it preclude the affected party from subsequently enforcing such provision.

(b) This instrument and the documents incorporated herein represent the entire agreement between the Lottery and the Contractor, and no modification thereof shall be binding unless the same is in writing and signed by the respective parties.

(c) The headings contained in this Agreement are intended for ease of reference only and shall not be interpreted to limit or modify any of the provisions of this Agreement.

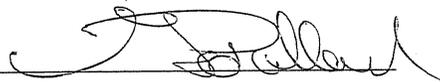
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

NYS Agency Contract No. C110001

In addition to the acceptance of this Agreement, my signature below certifies that copies of this signature page will be attached to all other exact copies of this contract.

POLLARD BANKNOTE LIMITED

[CONTRACTOR]

By: 

Title: Co-Chief Executive Officer

Date: April 04, 2011

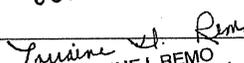
NEW YORK STATE
DIVISION OF THE LOTTERY

By: 

Title: Director

Date: 6/20/11

ATTORNEY GENERAL

By: 

Title: Lorraine I. Remo

Date: JUN 29 2011

**APPROVED AS TO FORM
NYS ATTORNEY GENERAL**

Lorraine I. Remo
LORRAINE I. REMO
PRINCIPAL ATTORNEY

COMPTROLLER
Thomas P. DiNapoli

By: 

Title: Asst Director

Date: 8.24.11

CITY

~~STATE OF~~ WINNIPEG)

PROVINCE) SS.:

~~COUNTY OF~~ MANITOBA)

On this 4 day of April, 2011, before me personally came Gordon O. Pollard, to me known, who being duly sworn, did depose and say that he or she resides in 580 Park Blvd West Winnipeg Manitoba Canada (if the place of residence is in a city, include the house and street number), that he or she is the Co-Chief Executive Officer [title] of Pollard Banknote Limited, the entity which executed this contract, and that he or she was authorized to execute this contract on behalf of said entity.



Notary Public in and for the Province of Manitoba
My commission does not expire

Appendix A

STANDARD CLAUSES FOR NYS CONTRACTS

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

1. **EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.
2. **NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.
3. **COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6.a).
4. **WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.
5. **NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or

Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay 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.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said

records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. All invoices or New York State standard invoices submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard invoice, must give the reason or reasons why the payee does not have such number or numbers.

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

(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

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

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

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

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be

afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

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

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

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

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

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

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165. (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
30 South Pearl St -- 7th Floor
Albany, New York 12245
Telephone: 518-292-5220
Fax: 518-292-5884
<http://www.empire.state.ny.us>

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
30 South Pearl St -- 2nd Floor
Albany, New York 12245
Telephone: 518-292-5250
Fax: 518-292-5803
<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

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

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise

obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. PURCHASES OF APPAREL. In accordance with State Finance Law 162 (4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.