

**RESOLUTION NO. - 2024**

**RESOLVED**, that this Board hold a public hearing pursuant to Section 209.141(4) of the Laws of Westchester County on Local Law Intro. No. 2024-\_\_\_\_\_ entitled “A LOCAL LAW authorizing the County of Westchester to enter into a lease agreement with the State of New York, acting by and through the Office of General Services (“OGS”), for a portion of a State-owned building located in Hawthorne, New York, for a period for a period of five (5) years with a County option to renew for one additional five (5) year term.” The public hearing will be held at \_\_\_m. on the \_\_\_ day of \_\_\_\_\_, 2024 in the Chambers of the Board of Legislators, 8th Floor, Michaelian Office Building, White Plains, New York. The Clerk of the Board shall cause notice of the time and date of such hearing to be published at least once in one or more newspapers published in the County of Westchester and selected by the Clerk of the Board for that purpose in the manner and time required by law.

**HONORABLE BOARD OF LEGISLATORS  
THE COUNTY OF WESTCHESTER, NEW YORK**

Your Committee is in receipt of a communication from the County Executive recommending approval of a Local Law which, if adopted by your Honorable Board, would authorize the County of Westchester (the "County") to continue in possession of its state of the art emergency operations center ("EOC") at 200 Bradhurst Avenue, Hawthorne, New York. The EOC is located within the secure building known as the Hudson Valley Transportation Management Center (the "HVTMC"), which is owned and operated by the State of New York, acting by and through its Office of General Services ("OGS"). Space will also continue to be provided for the County's backup data center and the County's Department of Emergency Services.

The EOC facility is critical to the emergency response of County government to major emergencies and disasters. The HVTMC also houses various State agencies, including the State Department of Transportation Management Center, the State Emergency Management Office and the State Police.

As you will recall, on November 10, 2014, your Honorable Board approved Local Law No. 2014-6, which authorized the County to enter into a lease with OGS for the above described premises for a period of five (5) years with a County option to renew for one additional five-year term. The lease commenced on January 1, 2015, was renewed in 2019, and expires this December 31, 2024.

In the event of a natural or man-made disaster here in Westchester County, County government would play a vital role in responding to the emergency situation. The ability to quickly and accurately assess the situation and to formulate effective strategies to deal with these emergencies is of the utmost importance. In addition, it is critical that there be seamless coordination among the Federal, State and local government agencies in their response to such disasters. The EOC is equipped with communication and computer equipment utilizing the latest technology, which enables the County to react in an effective manner should an emergency situation arise.

From an operational standpoint, the location of the EOC at the same site as the State Department of Transportation and State Police helps foster cooperation between the County and the State in dealing with any emergency that may arise. Resilient and redundant systems will be able to be shared and duplication of resources can be avoided.

The County will lease a total of approximately 10,176 square feet of space in the HVTMC. The EOC will occupy 8,048 square feet, the data center and offices for the Department of Emergency Services will take up the remaining 2,128 square feet.

Your Committee has been advised that pursuant to Section 104.11(5)(d) of the Laws of Westchester County, authorization of this lease agreement requires passage of a Local Law. Also attached is a Resolution authorizing a Public Hearing as required by §209.141(4) of the Laws of Westchester County.

The Planning Department has advised your Committee that based on its review the proposed lease may be classified as a "Type II" action pursuant to the State Environmental Quality Review Act and its implementing regulations 6 NYCRR Part 617 ("SEQR"). Therefore, no environmental review is required. Your Committee has reviewed the annexed SEQR documentation and concurs with this recommendation.

It should be noted that an affirmative vote of a majority of the voting strength of your Honorable Board is required in order to adopt the proposed Local Law . Based upon the foregoing, your Committee believes that the proposed lease agreement is in the best interest of the County. Therefore, your Committee recommends the favorable action of your Honorable Board on the annexed proposed legislation.

Dated: October 29<sup>th</sup>, 2024  
White Plains, New York

**COMMITTEE ON**

Kiran 10.15.24

Public safety

Budget & Appropriations  
November 12<sup>th</sup>, 2024

Dated: October 29th, 2024  
White Plains, New York

***The following members attended the meeting remotely and approved this item out of Committee with an affirmative vote. Their electronic signature was authorized and is below.***

**Public Safety**

*Colin J. [Signature]*

*Benjamin [Signature]*

*Margaret A. Cunzio*

Dated: November 12, 2024  
White Plains, New York

***The following members attended the meeting remotely and approved this item out of Committee with an affirmative vote. Their electronic signature was authorized and is below***

Committee(s) on:

**Budget & Appropriations**

Handwritten signature of Colin J. Smith in black ink.Handwritten signature of Jill Rein in black ink.Handwritten signature of Nancy E. Pan in black ink.

# FISCAL IMPACT STATEMENT

SUBJECT: EOC Lease  NO FISCAL IMPACT PROJECTED

## OPERATING BUDGET IMPACT

To Be Completed by Submitting Department and Reviewed by Budget

### SECTION A - FUND

GENERAL FUND  AIRPORT FUND  SPECIAL DISTRICTS FUND

### SECTION B - EXPENSES AND REVENUES

Total Current Year Expense \$ 400,000

Total Current Year Revenue \_\_\_\_\_

Source of Funds (check one):  Current Appropriations  Transfer of Existing Appropriations

Additional Appropriations  Other (explain)

Identify Accounts: Fund 101, Dept 46, Unit 3300, Object 4320

Potential Related Operating Budget Expenses: Annual Amount \$420,000

Describe: This is a 5 year lease (1/1/2025 - 12/31/2029) for the Department of Emergency Services Emergency Operations Center (EOC) at 200 Bradhurst Avenue, Hawthorne, New York.

Total 5 year impact \$2,320,765.

Potential Related Operating Budget Revenues: Annual Amount \_\_\_\_\_

Describe: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Anticipated Savings to County and/or Impact on Department Operations:

Current Year: \_\_\_\_\_

Next Four Years: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Prepared by: Christina Rampata

Title: Deputy Budget Director

Department: Budget


Date: October 18, 2024

Reviewed By: 

Budget Director

Date: 10/21/24

TO: Rachel Noe, Associate County Attorney  
Department of Law

FROM: David S. Kvinge, AICP, RLA, CFM   
Assistant Commissioner

DATE: September 30, 2024

SUBJECT: **STATE ENVIRONMENTAL QUALITY REVIEW FOR LEASE OF  
200 BRADHURST AVENUE, HAWTHORNE**

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**PROJECT/ACTION:** A new 5-year lease agreement, with an option to renew for an additional 5-year term, for approximately 10,176 square feet of building space located at 200 Bradhurst Avenue in the Town of Mount Pleasant for use by the County as an emergency operations center and backup data center. Known as the Hudson Valley Transportation Management Center, the building is owned and operated by the State of New York, acting by and through its Office of General Services. The County has been using this space for the aforementioned purposes since 2004 and the current lease is due to expire.

**With respect to the State Environmental Quality Review Act and its implementing regulations 6 NYCRR Part 617, the Planning Department recommends that no environmental review is required because the project/action may be classified as a TYPE II action pursuant to section(s):**

- **617.5(c)(32):** license, lease and permit renewals, or transfers of ownership thereof, where there will be no material change in permit conditions or the scope of permitted activities.
- 

**COMMENTS:** None.

DSK/cnm

cc: Andrew Ferris, Chief of Staff  
Paula Friedman, Assistant to the County Executive  
Tami Altschiller, Assistant Chief Deputy County Attorney  
Claudia Maxwell, Principal Environmental Planner



**LOCAL LAW INTRO NO. 2024-\_\_\_\_\_**

**A LOCAL LAW** authorizing the County of Westchester to enter into a lease agreement with the State of New York, acting by and through the Office of General Services (“OGS”), for a portion of a State-owned building located in Hawthorne, New York, for a period of five (5) years with the County having an option to renew for one additional five (5) year term.

**BE IT ENACTED** by the County Board of the County of Westchester as follows:

**Section 1.** The County of Westchester (the “County”) is hereby authorized to enter into a lease agreement with the State of New York, acting by and through its Office of General Services (“OGS”), for a portion of a State-owned building located in Hawthorne, New York, for a period of five (5) years, with the County having the option to renew for one additional five (5) year term.

**§2.** Pursuant to the terms of the lease, the County will lease a total of approximately 10,176 square feet of space in the Hudson Valley Transportation Management Center (“Leased Premises”). The County’s emergency operations center (the “EOC”) will occupy 8,048 square feet, and the data center and offices for the Department of Emergency Services will take up the remaining 2,128 square feet. The County will reimburse OGS for the County’s proportionate share of the operating expenses incurred in connection with the maintenance and repair of the Leased Premises.

**§3.** The County Executive or his authorized designee is hereby authorized and empowered to execute all instruments and to take all actions necessary and appropriate to effectuate the purposes hereof

**§4.** This Local Law shall take effect immediately.

STATE OF NEW YORK  
EXECUTIVE DEPARTMENT  
THE NEW YORK STATE OFFICE OF GENERAL SERVICES  
LEASE MANAGEMENT  
DIVISION OF REAL ESTATE  
LEASING SERVICES  
MAYOR ERASTUS CORNING 2<sup>ND</sup> TOWER - 40<sup>TH</sup> FLOOR  
THE GOVERNOR NELSON A. ROCKEFELLER EMPIRE STATE PLAZA  
ALBANY, NEW YORK 12242



COMMERCIAL LEASE AGREEMENT  
HUDSON VALLEY TRANSPORTATION MANAGEMENT CENTER  
200 BRADHURST AVENUE  
HAWTHORNE, NEW YORK 10532

THE COUNTY OF WESTCHESTER  
MICHAELIAN COUNTY OFFICE BUILDING  
148 MARTINE AVENUE  
WHITE PLAINS, NEW YORK 10601

Office of the New York State Comptroller's Lease No.:

Project No.: PN-66264  
SFS Project No.: 00000000066264

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**REF**

**STATE OF NEW YORK  
EXECUTIVE DEPARTMENT  
THE NEW YORK STATE OFFICE OF GENERAL SERVICES  
MAYOR ERASTUS CORNING 2ND TOWER - 40<sup>TH</sup> FLOOR  
The Governor Nelson A. Rockefeller Empire State Plaza  
Albany, New York 12242**

**LEASE AGREEMENT**

**THIS AGREEMENT** (the foregoing is hereinafter referred to as the “Lease,” the “Lease Agreement” or the “Agreement”) made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ by and between the People of the State of New York, acting by and through the Commissioner of General Services, pursuant to Section 3 (14) of the New York State Public Buildings Law, whose office is located at The Mayor Erastus Corning II Tower, 36<sup>th</sup> Floor, The Governor Nelson A. Rockefeller Empire State Plaza (GNARESP), Albany, New York, 12242 (the foregoing is hereinafter referred to as the “State” and/or the “Lessor”) and the County of Westchester (the foregoing is hereinafter referred to as the “Lessee”), whose principal place of business is located at the Michaelian County Office Building, 148 Martine Avenue, White Plains, New York 10601. The foregoing may be individually referred to as a “Party” and collectively referred to as the “Parties.”

**WITNESSETH**, that:

The State and the Lessee, for and in consideration of the rents, covenants and agreements hereinafter contained, mutually covenant, and agree as follows:

**SECTION 1. DEFINITIONS**

The following terms, when used in this Lease Agreement, shall have the respective meanings given below:

- (a) “Business Day” is defined as Mondays through Fridays, excluding State Legal Holidays. “State Legal Holidays” shall mean the calendar of legal holidays as established and maintained by the New York State Department of Civil Service. Annual updates of legal holidays are available at [http://www.cs.ny.gov/attendance\\_leave/index.cfm](http://www.cs.ny.gov/attendance_leave/index.cfm); once you are on the website, scroll down to *Calendar of Legal Holidays* and click on the applicable year.

Notwithstanding the foregoing, any day that is determined to be a floating holiday by the State shall not be considered to be a State Legal Holiday but shall be considered to be a normal workday for the Lessor and the Lessee, and the Lessee shall provide all services required to be provided by this Lease on such days.

- (b) “Minority- and Women-Owned Business Enterprise” (MWBE): Businesses certified as such by Empire State Development’s Division of Minority and Women’s Business Development. NOTE: Businesses eligible to participate in the program must be owned and operated by women and/or minority group members who are citizens of the United States or permanent resident aliens. Generally, they must have been in operation for at least one year.

- (cd) “Building” shall mean The Hudson Valley Transportation Management Center, 200 Bradhurst Avenue, Hawthorne, New York 10532.

- (de) “Utility, Mechanical, Electrical, Communication and Other Systems” shall mean and include (without limitation thereto) the following: machinery, engines, dynamos, boilers, elevators, escalators, incinerators and incinerator flues, systems for the supply of fuel, electricity, water, gas and steam, plumbing, heating, sewerage, drainage, ventilating, air conditioning, communications, fire-alarm, fire-protection, sprinkler, telephone, telegraph and other similar systems, fire hydrants, fire hoses, and their respective wires, mains, conduits, lines, tubes, pipes, equipment, motors, cables, fixtures and other equipment.

- (f) “Operating Expenses” shall mean the aggregate of those costs, expenses, disbursements, and expenditures, paid, or incurred by or on behalf of the State, whether directly or through independent contractors with respect to the operation, maintenance, repair, cleaning, and security of the Building and the Demised Premises. Operating Expenses shall be “net”

only, and for that purpose shall be reduced by the amounts of any insurance or other reimbursement, recovery, recoupment, payment, discount, credit, reduction, allowance or the like, received by the State in connection with such Operating Expenses.

## **SECTION 2. HEADINGS**

The section headings and the paragraph headings, if any, are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of any provision hereof.

## **SECTION 3. LETTING**

The State hereby lets to the Lessee and the Lessee hereby hires and takes from the State approximately Ten Thousand, One Hundred Seventy-Six (10,176) rentable square feet of space comprised of: (a) Eight Thousand, Forty-Eight (8,048) rentable square feet of space in the State Police wing of the basement; and (b) approximately Two Thousand, One Hundred Twenty-Eight (2,128) rentable square feet of space located in Rooms T218, T220 and T221 on the Second Floor in the Transportation Management Center Wing of the Building, as that term is defined in Section 1 (d) of this Lease (the foregoing is hereinafter referred to as the "Premises" or the "Demised Premises"). The foregoing is shown on the plan referred to as OGS Drawing No. SOB-B1234-66263, dated 3/27/24, which is annexed to this Lease and marked as Exhibit 1, together with the fixtures, improvements and other property of the State located or to be located in the Premises, and the non-exclusive use, in compliance with the terms of this Lease and all applicable laws, regulations and policies of the Lessor, of approximately 39,210 square feet of common area in the Building which includes, among other things: (a) two (2) kitchens (the foregoing is hereinafter referred to as the "Common Kitchens") located on the ground floor and second floor of the Building. Notwithstanding the foregoing, the square footage of the Common Kitchens is not included in the total square footage of the Demised Premises.

## **SECTION 4. RIGHTS OF USE BY THE LESSEE**

The Lessee shall have the right to use and occupy the Demised Premises for the purpose of operating an emergency operations center, backup data center and office space to be used by its various Departments only and for no other purpose whatsoever. The foregoing shall be referred to herein as the "Use." The Building and the Demised Premises shall operate on a twenty-four (24) hour, seven (7) day per week basis (the foregoing is hereinafter referred to as the "Normal Business Hours").

The Lessee shall be permitted to provide Wi-Fi at the Demised Premises, and request to install a security camera or cameras, in compliance with Section 23 of this Lease, upon the receipt of prior, written consent of the State, which shall not be unreasonably withheld, conditioned, or delayed.

The Lessee shall be permitted, at no additional cost, to make delivery of product to the Demised Premises at all times.

## **SECTION 5. TERM**

- (a) The term (the foregoing is hereinafter referred to as the "Term" or the "Lease Term") of this Lease Agreement shall commence at 12:01 a.m. on January 1, 2025 (the foregoing is hereinafter referred to as the "Commencement Date") and shall expire, unless sooner terminated, at 11:59 p.m. on the day before the fifth (5<sup>th</sup>) anniversary of the Commencement Date (the foregoing is hereinafter referred to as the "Expiration Date" or the "Termination Date") as the same may be modified pursuant to this section.
- (b) Effective as of the Expiration Date, Termination Date or the end of any extension or holdover of the Term of this Lease, or the Renewal Term, if applicable, the Parties (each hereinafter referred to as a "Releasing Party"), agree to enter into a mutual release agreement (the foregoing is hereinafter referred to as the "Mutual Release") whereby they shall confirm the date of the end of the tenancy and finalize their respective rights and obligations pertaining to the end of the tenancy on terms mutually agreeable to the parties. The Mutual Release shall be provided by the Lessor to the Lessee and the Lessee agrees to promptly execute and return the same to the Lessor, subject to the Lessee receiving all

necessary legal approvals. Notwithstanding the foregoing, the failure of the Parties to execute the Mutual Release shall not invalidate the termination or expiration of this Lease.

## **SECTION 6. RENT**

The Lessee operates out of the Hudson Valley Transportation Management Center in the Demised Premises in coordination with the New York State Division of State Police and the New York State Department of Transportation. The three entities use the Building as a center to better serve the public. Due to the importance of this collaboration, the Lessee shall not be obligated to pay Fixed Rent to the State during the Term, the Renewal Term, if applicable, or any extension or holdover thereof. Notwithstanding the foregoing, the Lessee shall be obligated to reimburse the State for Operating Expenses in accordance with Section 7 of this Lease.

## **SECTION 7. OPERATING EXPENSES**

- a. For purposes of this Lease, Operating Expenses, as that term is defined in Section 1 (f) of this Lease, shall include, but not be limited to:
  - i) Costs incurred in connection with the repair of the Demised Premises and Building and building equipment and installations, including, but not limited to, repairs, service and maintenance to the heating, ventilation and air conditioning systems (the foregoing shall hereinafter referred to as the "HVAC") systems and the costs of providing and replacing electric lamps in lighting fixtures in the Building and Demised Premises during the Term of this Agreement, the Renewal Term, if applicable, and any extension or holdover thereof;
  - ii) Payroll, taxes, wages and salaries of all persons engaged in the operation, repair, cleaning, security and maintenance of the Building and the Demised Premises through and including the Building Manager, and fringe benefits including social security taxes, unemployment taxes, workers' compensation premiums, coverage for disability benefits, contributions to any pension, hospitalization, welfare, or retirement plans or any other similar or like expense incurred under the provisions of any collective bargaining agreement and any other similar or like expense incurred to provide benefits for employees not covered by collective bargaining agreements who are engaged in the operation, repair, cleaning, security and maintenance of the Building and the Demised Premises;
  - iii) Water consumption and sewage charges;
  - iv) Costs of fuel consumed for the provision of heat and hot water in the common areas Building and the Demised Premises;
  - v) Costs of electric current consumed in Building and the Demised Premises;
  - vi) Costs of services in the Building and the Demised Premises for cleaning, including, but not limited to, janitorial and window cleaning and exterminating;
  - vii) Costs of service and maintenance contracts with independent contractors, including contracts for HVAC and elevators for the Building and Demised Premises;
  - viii) Cost of insurance coverage on the Building (excluding the cost of rent loss and plate glass insurance) and the costs of insurance required by this section and of this Lease;
  - ix) Costs of grounds maintenance, including, but not limited to, snow removal; and
  - x) Cost of supplies used in such operation, repair, cleaning, maintenance, and security of the Building and the Demised Premises.
- b. The Lessee shall reimburse the State for its proportionate share of Operating Expenses (the foregoing is hereinafter referred to as the "Operating Expense Payment"). The Lessee's proportionate share of Operating Expenses shall be Nineteen Percent (19%), which is determined through a fraction, the denominator of which is the rentable area of the Building (53,631 square feet) and the numerator of which is the rentable area of the Demised Premises (10,176 square feet).

During the Term, the Renewal Term, if applicable, and any extension or holdover thereof, the Lessee shall pay its Operating Expense Payment, on a quarterly basis, within thirty (30) days following receipt of bills.

Operating Expense Payments shall be made to the following address: The New York State Office of General Services, Financial Administration, Empire State Plaza, P.O. Box 2166, Albany, New York 12220. The Lessor shall receive a copy of all submissions made to The New York State Office of General Services, Financial Administration in compliance with this section at the following address: The New York State Office of General Services, Lease Management, Division of Real Estate, Leasing Services, The Governor Nelson A. Rockefeller Empire State Plaza, Corning Tower, 40<sup>th</sup> Floor, Albany, New York 12242. Notwithstanding the foregoing, or anything to the contrary contained in this Lease, all Operating Expense Payments made by the Lessee to the Lessor will be made by electronic funds transfer ("EFT") pursuant to the Lessee's Vendor Direct Program. The Lessor is enrolled in the Vendor Direct Program and agrees to immediately notify the Lessee's Finance Department in writing if the EFT Authorization Form on file must be changed and provide an updated version of the document. The EFT Authorization Form, Instructions and related information are annexed hereto as Schedule B. Payments will be automatically credited to the Lessor's designated bank account at the Lessor's financial institution. Payments are anticipated to be deposited within two Business Days, as that is defined in Section 1 (a) of this Lease, after the voucher/invoice is processed for payment. Saturdays, Sundays, and legal holidays are not considered Business Days. Under the Vendor Direct program, the Lessor will receive an e-mail notification two days prior to the day the payment will be credited to the designated account. The e-mail notification will come in the form of a remittance advice with the same information that currently appears on the Lessee's check stubs and will contain the date that the funds will be credited to the Lessor's account. All information received will be treated and handled as strictly confidential.

The Lessor acknowledges that from time to time the Lessee pays the Operating Expense Payment, as that is defined herein, with federal and State grant monies. The Lessor agree to cooperate with the Lessee in providing documentation and information needed for the Lessee to comply with reporting requirements associated with these grants.

## **SECTION 8. PERSONAL PROPERTY OF THE STATE AND THE LESSEE**

In no event shall the Lessee remove any restrooms, flooring, ceilings, or Utility, Mechanical, Electrical, Communication and Other Systems, as that term is defined in Section 1 (e) of this Lease without the prior written approval of the Lessor.

The Lessee may, however, at any time during the Lease Term, the Renewal Term, if applicable, and any extension or holdover thereof, remove from the Demised Premises, at its sole cost and expense, its personal property, trade fixtures and proprietary equipment, and all items and structural characteristics that are indicative of the Lessee's business, and otherwise "de-identify" the Demised Premises as the Lessee reasonably believes necessary or appropriate for the protection of the Lessee's interest in its trademarks, trade names, or copyrights. Notwithstanding the foregoing, the Lessee shall not be required to remove its business and trade fixtures, machinery, equipment, and cabinet work at the end of the Lease Term, the Renewal Term, if applicable, and any extension or holdover, thereof unless it so elects. All work done pursuant to this section shall be done in accordance with the provisions of Section 23 of this Lease.

In the event that the Lessee shall remove its business and trade fixtures, machinery, equipment and cabinet work, the Lessee shall procure and maintain commercial general liability insurance (subject to the right of the Lessee to self-insure as provided in Section 25), or, if the work is to be done by an independent contractor, the Lessee shall require such contractor to procure and maintain such insurance in the name of the contractor, in either case, in limits not lower than those set forth for such categories of insurance in Section 25 of this Lease, naming the People of the State of New York, the New York State Office of General Services and their officers, agents and employees as additional insureds, and if not so set forth, then as may be reasonably specified in advance by the State. Proof of compliance shall be submitted to The New York State Office of General Services, Division of Real Estate, Leasing Services, The Governor Nelson A. Rockefeller Empire State Plaza, Corning Tower, 40<sup>th</sup> Floor, Albany, New York 12242 prior to the commencement of the work. Any damage, including, but not limited to, the patching and filling of holes, caused by such removal, in the Demised Premises, or the Building, as that term is defined in Section 1 (d) of this Lease, shall be repaired by the Lessee, at its sole cost and expense. The Lessee agrees to repair any areas damaged by any removal, whether such damage is caused by the



Lessee or any of its contractors. All work, allowed or required by this section, shall be done in a good and workmanlike manner.

## **SECTION 9. GOVERNMENTAL REQUIREMENTS**

The Lessee, if applicable, shall pay all taxes, import duties, examination fees, excise and other charges that may be assessed, levied, exacted or imposed on its property, Use, as that term is defined in Section 4 of this Lease, or occupancy hereunder, or any property whatsoever that may be received at the Demised Premises, or on the gross revenues or income therefrom and shall make all applications, reports and returns required in connection therewith. If any bond or other undertaking shall be required by any governmental authority in connection with any of the Lessee's Use, as that term is defined in Section 4 of this Lease, or any property received or exhibited by the Lessee at the Demised Premises, the Lessee shall furnish the same and pay all other expenses in connection therewith.

## **SECTION 10. CONSTRUCTION AND APPLICATION OF TERMS**

- (a) Wherever in this Lease Agreement a third person singular, neuter pronoun or adjective is used referring to the Lessee, the same shall be taken and understood to refer to the Lessee, regardless of the actual gender or number thereof.
- (b) Whenever in this Lease Agreement the Lessee is placed under an obligation or covenants to do or to refrain from or is prohibited from doing, or is entitled or privileged to do, any act or thing, the following shall apply:
  - (1) If the Lessee is a corporation, its obligations shall be performed, or its rights or privileges shall be exercised only by its officers and employees; or
  - (2) If the Lessee is an unincorporated association or a business or "Massachusetts" trust, the obligation shall be that of its members or trustees, as well as of itself, and shall be performed only by its members or trustees, and officers and employees, and the right or privilege shall be exercised only by its members or trustees, and its officers and employees; or
  - (3) If the Lessee is a partnership, the obligation shall be that of its partners and shall be performed only by its partners and employees and the rights or privileges shall be exercised only by its partners and employees; or
  - (4) If the Lessee is an individual, the obligations shall be that of himself (or herself) and shall be performed only by himself (or herself) and his (or her) employees and the right or privilege shall be exercised only by himself (or herself) and his (or her) employees.
  - (5) None of the provisions of this paragraph (b) shall be taken to alter, amend or diminish any obligation of the Lessee assumed in relation to its invitees, customers, agents, representatives, contractors or other persons, firms or corporations doing business with it.
- (c) If more than one individual or other legal entity is the Lessee under this Lease Agreement, each and every obligation hereof shall be the joint and several obligation of each individual or other legal entity.
- (d) Unless otherwise stated in Section 4 of this Agreement entitled "Rights of Use by the Lessee," the rights of use herein granted to the Lessee with respect to the Demised Premises, shall be exercised by the Lessee only for its own account and, without limiting the generality of the foregoing, shall not be exercised as agent, representative, factor, broker, forwarder, bailee, or consignee without legal title to the subject matter of the consignment.
- (e) The Lessee's representative, set forth in Section 16 of this Lease Agreement (or such substitute as the Lessee may hereafter designate in writing), shall have full authority to act for the Lessee in connection with this Lease Agreement and any things done or to be done hereunder, and to execute on the Lessee's behalf any amendments or supplements to this

Lease Agreement or any extension thereof subject to receiving all necessary legal approvals.

- (f) This Lease Agreement does not constitute the Lessee as an agent or representative of the State for any purpose whatsoever. Neither a partnership nor any joint venture is hereby created.
- (g) All designations of time herein contained shall refer to the time system then officially in effect in the municipality wherein the Demised Premises are located.
- (h) No greater rights or privileges with respect to the Use, as that term is defined in Section 4 of this Lease, of the Demised Premises, or any part thereof, or with respect to the Building, as that term is defined in Section 1 (d) of this Lease, are granted or intended to be granted to the Lessee by this Lease Agreement, or by any provision thereof, than the rights and privileges expressly granted hereby.

## **SECTION 11. OPERATIONS**

The Lessee shall conduct a “first class” operation and will furnish and maintain all necessary or proper equipment, fixtures, improvements, personnel, supplies, materials, and replacements required to conduct and maintain a “first class” operation.

Without limiting the Lessor’s responsibilities under Sections 19, 20 and 57 of the Lease, the Lessee shall maintain the Demised Premises in an attractive, clean, safe, operable, sanitary, orderly, and inviting condition at all times. All goods and services offered must be in good taste and considered appropriate, proper and consistent with the State’s obligations and responsibilities to the patrons of the Building, as that term is defined in Section 1 (d) of this Lease. It is the intention of the State that all standards shall be diligently adhered to and carried out so as to reflect positively on the reputation of the State and the Lessee.

All services provided under this Lease shall be of high quality and standards; and must conform in all respects to federal, State and municipal laws, ordinances, rules and regulations. The Lessee shall obtain and maintain all necessary and applicable licenses, certificates, permits or other authorizations from all governmental authorities having jurisdiction over the Lessee’s Use, as that term is defined in Section 4 of this Lease, of the Demised Premises or the Building, as that term is defined in Section 1 (d) of this Lease, and, at the request of the State, shall provide for the inspection and review of such licenses, certificates, permits and authorizations by the State and any other persons authorized by law. The Lessee shall promptly observe, comply with and execute the provisions of any and all present and future governmental laws, rules and regulations, orders and directions, which may pertain or apply to the specific Use, as that term is defined in Section 4 of this Lease, of the Lessee at the Demised Premises or the Building, as that term is defined in Section 1 (d) of this Lease, or its specific occupancy of the Demised Premises. The Lessor shall, at the Lessee’s sole cost and expense, make any and all improvements, alterations or repairs of the Demised Premises that may be required at any time hereafter by any such present or future rules, regulations, legal requirements, Court or administrative orders or directions. The provisions of this section are not to be construed as a submission by the State to the application to itself of such laws, rules and regulations, legal requirements, Court or administrative orders or directions, or any of them. Notwithstanding the foregoing, the State shall be responsible, at its sole cost and expense, to comply with any current legal requirements and handicap accessibility requirements, including, but not limited to, the requirements of the Americans with Disabilities Act requirements relating to the physical condition of all parts of the Building, outside of the Demised Premises, as well as any change in applicable legal requirements pertaining to real estate generally, and not to the Demised Premises specifically.

The service provided by the Lessee shall at all times be prompt, clean, courteous and efficient. Service shall be provided to all patrons without discrimination.

The Lessee shall not, without the prior, express, written permission of the State, operate vending machines (including coin operated game and music machines) in the Demised Premises. Furthermore, the sale of Lottery chances, newspapers, periodicals, and books is prohibited without the prior, express, written permission of the State. Also, the sale of tobacco products is expressly prohibited. The specificity of the foregoing enumeration of disallowed items shall not be deemed to infer that any particular items not so enumerated are permitted under this Lease, and the State reserves the right to require the Lessee to immediately stop the sale of any

items that the State, in its sole discretion, deems to be inconsistent with this Lease, any applicable rules, regulations or policies or the State's obligations and responsibilities to the patrons of the Demised Premises and/or the Building, as that term is defined in Section 1 (d) of this Lease.

Notwithstanding anything in this Lease to the contrary, the Lessee shall have the right:

- i) to have vending machines in its Demised Premises provided no products are "sold";
- ii) to use and dispense bottled water as part of its emergency preparedness supplies;
- iii) to use plastic ware as it does not have dishes, dishwasher etc., and the plastic ware is provided by the caterers; and
- iv) to cater events in its space.

## **SECTION 12. QUIET ENJOYMENT**

The State covenants and agrees that the Lessee, upon paying all the Operating Expense Payment, as that term is defined in Section 7 of this Lease, due and owing hereunder and performing all the covenants, conditions and provisions of this Lease Agreement on its part to be performed, shall and may peaceably and quietly have, hold and enjoy the Demised Premises free of any act or acts of the State except as expressly permitted in this Lease Agreement.

## **SECTION 13. DEMISED PREMISES**

The Lessee acknowledges that it is has occupied the Premises for some time, and therefore, is leasing the same "as is" without any warranty or representation and that Lessor has not made, and is not hereby making, any warranties or representations pertaining to the physical condition of the Premises, any part thereof or any improvements thereon. Without limiting any obligation of the Lessee stated in this Lease Agreement, the Lessee agrees that no portion of the Demised Premises will be used initially or at any time during the Term of this Lease, the Renewal Term, if applicable, and any extension or holdover thereof, that is in a condition unsafe or improper for the conduct of the Lessee's Use, as that term is defined in Section 4 of this Lease, so that there is a likelihood of injury or damage to life or property. For all purposes of this Lease Agreement, the Demised Premises hereunder (notwithstanding any statement elsewhere in this Lease Agreement of any rule for the measurement of the area thereof) shall be deemed to include the Common Kitchens, as that is defined in Section 1 of this Lease, and the other common areas of the Building available to the Lessee for its Use.

## **SECTION 14. HOURS OF OPERATION**

INTENTIONALLY DELETED

## **SECTION 15. RESPONSIBILITIES OF THE LESSEE**

- (a) The Lessee's personnel shall have the experience and background generally acceptable in the field for the positions that they hold. The Lessee shall conduct its business in an orderly manner and so as not to annoy, disturb or be offensive to others at the Demised Premises or the Building, as that term is defined in Section 1 (d) of this Lease. The Lessee shall use all reasonable efforts to control the conduct, demeanor and appearance in the Demised Premises of its officers, members, employees, agents, representatives, contractors, customers, guests, invitees and those doing business with it and outside of the Demised Premises, but elsewhere in the Building, as that term is defined in Section 1 (d) of this Lease, of its officers, members, employees, representatives and contractors. The Lessee shall require employees to be clean, courteous, and neat in appearance at all times. The Lessee shall not employ any persons in its business who act in a loud, boisterous, or otherwise improper manner. The Lessee agrees to take prompt and appropriate action with regard to complaints about the conduct, demeanor or appearance of its officers, members, employees, agents, representatives, contractors, customers, guests, invitees and those doing business with it in relation to the Use, as that term is defined in Section 4 of this Lease, and that upon objection from the State concerning the same, the Lessee shall immediately take all reasonable steps necessary to remove the cause of the objection.
- (b) The Lessee, its officers, members, employees, agents, representatives, contractors, customers, guests, invitees and those doing business with the Lessee in relation to the Use, as that term is defined in Section 4 of this Lease, shall have access to the Demised Premises

and reasonable ingress and egress to common and public areas of the Building at all times reasonably necessary for the Use; provided, however, the Lessor by reasonable regulation may control such access for the comfort, convenience, safety and protection of all individuals utilizing the Building, or as needed for making repairs and alterations. The Lessee shall be responsible for providing access to the Demised Premises to the Lessee's officers, members, employees, agents, representatives, contractors, customers, guests, invitees and those doing business with the Lessee in relation to the Use, as that term is defined in Section 4 of this Lease, outside of Normal Business Hours, as that is defined in Section 4 of this Lease, but in no event shall the Lessee's Use and access to the Demised Premises compromise the security of the Building.

- (c) Promptly following the Commencement Date, as that term is defined in 5 (a) of this Lease, the Lessee shall provide the New York State Police with a list of the Lessee's employees in relation to the Use, as that term is defined in Section 4 of this Lease, that require access to the Building and the Demised Premises. The Lessee shall use all commercially reasonable efforts to notify the New York State Police within one (1) Business Day, as that term is defined in Section 1 (a) of this Lease, of any changes to the list.
- (d) Notwithstanding the foregoing, access to the Demised Premises may be conditioned in any manner deemed reasonably necessary by the Lessor to maintain order in the Building. At the Lessor's discretion such measures may include, but are not limited to, requiring verification of the identity of those seeking access, inspecting vehicles that enter the Building, and terminating the access of any individuals in accordance with agency policy, which shall be reasonable.
- (e) The Lessee is strongly encouraged, to the maximum extent practicable consistent with legal requirements, to utilize MWBE, as that term is defined in Section 1 (b) of this Lease, suppliers in the fulfillment of the terms of this Lease.
- (f) To the extent practicable, the Lessee will implement all reasonable programs, to the extent that the Lessee is reasonably able to do so, designed to reduce the public health and environmental impacts of its activities and operations in the Demised Premises, including but not limited to: reducing or eliminating the use and generation of toxic substances, pollution and waste; to the maximum extent practicable consistent with legal requirements reducing, reusing, recycling and composting solid waste; increasing energy efficiency; increasing the use of renewable energy sources; conserving water and other natural resources; and maximizing the use of environmentally preferable "green" commodities, services, and technology. In utilizing the Demised Premises and to the extent applicable, the Lessee will maintain complete compliance with State laws and regulations and all applicable Executive Orders mandating energy conservation, green procurement, and agency sustainability. The Lessee will cooperate with the State in the State complying with Governor Hochul's Executive Order No. 22 (the foregoing is hereinafter referred to as "EO-22"), which is attached hereto as Exhibit 2. In no case, shall polystyrene products be used in connection with the Use allowed pursuant to this Lease.
- (g) The Lessee shall not commit any nuisance in the Demised Premises or do or permit to be done anything that may result in the creation or commission of a nuisance in the Demised Premises, and the Lessee shall not cause or permit to be caused or produced upon the Demised Premises, or to permeate or emanate therefrom, any unusual, noxious or objectionable smokes, gases, vapors, odors, or objectionable noises. Notwithstanding the foregoing, the State acknowledges and agrees that typical odors associated with the Lessee's Use, as that term is defined in Section 4 of this Agreement, shall not be deemed objectionable.
- (h) The Lessee shall not keep, maintain, place or install in the Demised Premises any fixtures or equipment the use of which is not consistent with and required for the Lessee's Use, as that term is defined in Section 4 of this Agreement, and the Lessee shall not use or connect any equipment, or engage in any activity or operation in the Demised Premises that will cause or tend to cause an overloading of the capacity of any existing or future Utility, Mechanical, Electrical, Communication or Other Systems, as defined in Section 1 (e) of this Lease, or portions thereof in the Demised Premises or the Building, as that term is defined in Section 1 (d) of this Lease, nor shall the Lessee do or permit to be done anything that may interfere with the effectiveness or accessibility thereof. The State agrees that the Lessee's Use, as that term is defined in Section 4 of this Agreement, shall not violate the

provisions of this paragraph. The State's agreement, however, shall neither be deemed to be nor construed as constituting a waiver of any of its rights or remedies herein contained.

- (i) The Lessee shall not overload any floor, roadway, passageway, pavement or other surface or any wall, partition, column or other supporting member, or any elevator or other conveyance, in the Demised Premises or the Building, as that term is defined in Section 1 (d) of this Lease, and without limiting any other provision of this Lease, the Lessee shall repair, replace or rebuild any such damages caused by overloading. In the event, the Lessee fails to repair, replace or rebuild such damage, the State shall repair, replace or rebuild any such damage caused by such overloading, at the Lessee's sole cost and expense.
- (j) The Lessee shall not do or permit to be done any act or thing upon the Demised Premises, or the Building, as that term is defined in Section 1 (d) of this Lease, that will invalidate or conflict with any insurance policies covering the Demised Premises, or the Building, as that term is defined in Section 1 (d) of this Lease, or which, in the commercially reasonable opinion of the State, may constitute an extra hazardous condition, so as to increase the risks normally attendant upon the Use, as that term is defined in Section 4 of this Lease Agreement entitled "Rights of Use by the Lessee," and the Lessee shall promptly observe, comply with and execute the provisions of any and all present and future rules and regulations, requirements, orders and directions of the National Fire Protection Association and the New York Fire Insurance Rating Organization, and of any other board or organization exercising or which may exercise similar functions, which may pertain or apply to the Lessee's Use, as that term is defined in Section 4 of this Lease, in the Demised Premises. The Lessee shall, subject to and in accordance with the provision of Section 23 of this Lease Agreement, entitled "Construction, Finishing or Decorating" make any and all improvements, alteration or repairs to the Demised Premises that may be required any time hereafter by any such present or future rules, regulations, requirements, orders or direction, and if by reason of any failure on the part of the Lessee to comply with the provisions of this Lease Agreement any insurance rate on the Demised Premises or the Building, as that term is defined in Section 1 (d) of this Lease, or any part thereof, shall at any time be higher than it otherwise would be, then the Lessee shall pay to the State, as an item of additional rent, that part of all insurance premiums paid by the State that shall have been charged because of such violation or failure by the Lessee, but no such payment shall relieve the Lessee of its other obligations under this paragraph. Notwithstanding the foregoing, the State represents to the Lessee that, to the State's knowledge, the Lessee's permitted Use, as that term is defined in Section 4 of this Lease, hereunder shall not cause such an increase or invalidation of any insurance on the Building, as that term is defined in Section 1 (d) of this Lease.

## **SECTION 16. NOTICES**

- (a) Notices, requests, permissions, consents and approvals given or required to be given to or by either Party under this Lease Agreement, shall not be effective unless they are given in writing, and all such notices and requests shall be delivered to the Party or a duly designated officer or representative of such Party, via certified mail return receipt requested; via hand delivery; or via reputable overnight carrier such as Federal Express. Until further notice, the State hereby designates the Commissioner of General Services, and the Lessee designates the Director of Real Estate, County of Westchester, 148 Martine Avenue, 9<sup>th</sup> Floor, White Plains, New York 10601 and the Commissioner of Public Works & Transportation, County of Westchester, 148 Martine Avenue, 5<sup>th</sup> Floor, White Plains, New York 10601, as its respective officers or representatives upon whom notices and requests may be served, with a copy to the Commissioner of Emergency Services, County of Westchester, 4 Dana Road, Valhalla, New York 10532 and to the County Attorney, County of Westchester, 148 Martine Avenue, Room 600, White Plains, New York 10601 and the State designates its office at the New York State Office of General Services, Director Lease Management, Division of Real Estate, Leasing Services, Corning Tower, 40<sup>th</sup> Floor, GNARESP, Albany, New York 12242 as its respective office where notices and requests may be served. The Parties shall notify each other of all changes in the above-referenced address within ten (10) Business Days, as that is defined in Section 1 (a) of this Lease, of the effective date of such change.

- (b) If any notice is mailed or delivered, the giving of such notice shall be complete upon receipt, or, in the event of a refusal by the addressee, upon the first tender of the notice to the addressee or at the permitted address.

## **SECTION 17. RULES AND REGULATIONS**

The Lessee shall observe and obey (and compel its officers, members, employees, agents, representatives, contractors, guests, invitees and those doing business with it to observe and obey) all reasonable rules and regulations to be promulgated by the State to govern the conduct at the Building, as that term is defined in Section 1 (d) of this Lease, and all reasonable amendments and supplements to said rules and regulations, as may from time to time, and throughout the Term of this Lease, the Renewal Term, if applicable, and any extension or holdover thereof, be promulgated by the State for reasons of safety, health or preservation of property, or for the maintenance of the good and orderly appearance of the Demised Premises and the Building, as that term is defined in Section 1 (d) of this Lease, or for the safe and efficient operation of the Building, as that term is defined in Section 1 (d) of this Lease. The State agrees that such original rules and regulations governing the conduct of tenancies shall not be applicable or effective with relation to the Lessee until fifteen (15) calendar days after the same have been furnished to the Lessee, and that, except in cases of emergency, it will give notice to the Lessee of every such further rule or regulation adopted by it at least fifteen (15) calendar days before the Lessee shall be required to comply therewith. In the event of a conflict between any such rules and regulations and the provisions of this Lease, the provisions of this Lease shall prevail. No changes or amendments to the rules and regulations shall materially increase the Lessee's obligations hereunder or materially decrease the Lessee's rights hereunder.

## **SECTION 18. EQUIPMENT, FURNITURE, FIXTURES**

- (a) Any electrical appliance must be connected directly to an electrical outlet or fused power strip. Extension cords with multi plug adapters, splices or repairs are prohibited.
- (b) Any equipment that the Lessee introduces into the Demised Premises must be of commercial grade, installed in a workmanlike manner by licensed and insured contractors and shall be subject to inspection by the State and shall at the sole discretion of the State be removed by the Lessee, at its sole cost and expense, if the State reasonably determines that the same shall not be introduced into the Premises. Any electrical appliance must be connected directly to an electrical outlet or fused power strip. Extension cords with multi plug adapters, splices or repairs are prohibited.

## **SECTION 19. MAINTENANCE AND REPAIR**

- (a) The State's Responsibilities:

During the Term of this Lease, the Renewal Term, if applicable, and any extension or holdover thereof, the State shall, at its sole cost and expense, furnish, and/or contract for the following, in accordance with the requirements of Executive Order 22, which is annexed hereto as Exhibit 2, as applicable:

- (i) Pest control services for the Building and Demised Premises, as that term is defined in Section 1 (d) of this Lease, and the Demised Premises, when and as necessary that minimize the use of toxic pesticides, and provide for an on-going, practical, least-toxic approach to preventing and/or treating pest infestation and comply with the requirements set forth at: <https://www.ogs.ny.gov/greenny/pest-management-indoor-spaces> and <https://www.ogs.ny.gov/greenny/pest-management-outdoor-spaces>;
- (ii) Maintenance and repair of the existing and future Utility, Mechanical, Electrical, Communication and Other Systems, as that term is defined in Section 1 (e) of this Lease, in the Building and Demised Premises;
- (iii) Security guard and security services for the Building and Demised Premises, including a security guard at the main entrance of the Building on a 24 hour/7 day a week basis, and monitoring and patrolling of the Building; and
- (iv) Cleaning services, including, but not limited to, janitorial and window cleaning for the Building and Demised Premises. Janitorial services for the Building and Demised Premises, as that term is defined in Section 1 (d) of this Lease, in accordance with the requirements of EO-22, which is annexed hereto as Exhibit 2.

Governor Hochul's Executive Order 22 directs all State agencies and authorities to purchase green products and promote sustainability. EO-22, a copy of which is annexed to this Lease as Exhibit 2, directs State agencies and authorities to develop and implement specific projects, programs and policies designed to reduce the public health and environmental impacts of the activities and operations of the agency or authority, including: the reduction or elimination of the use and generation of toxic substances, pollution and waste; the reduction, reuse, recycling and composting of solid waste; and the maximization of the use of environmentally preferable or "green" commodities, services and technology. In an effort to assist State agencies and authorities in complying with these directives, approved specifications can be found at: <https://ogs.ny.gov/green-purchasing-requirements-and-tools>. In order to comply with these directives, The Lessor shall make careful selection of effective janitorial cleaning products and equipment that reduce or eliminate the health and environmental risks from the use or release of toxic substances and minimize the risks of discharge of pollutants into the environment. Information on these products can be found at: <https://ogs.ny.gov/green-cleaning>. In addition, EO-22 requires State agencies and authorities, to the maximum extent practicable, to purchase janitorial paper and other paper products that meet the specifications which can be found at: <https://ogs.ny.gov/green/janitorial-paper-products>. The Lessor shall meet these requirements by, to the maximum extent practicable, making careful selection of janitorial paper products, in order to use products that comply with the requirements of EO-22. EO-22 also requires State agencies and authorities, to reduce waste and increase recycling. Information on these requirements can be found at: <https://ogs.ny.gov/green/state-agency-waste-reduction-reuse-recycling>. Additional information on these requirements and EO-22 are available from the Lessor, upon request; and

- (v) Grounds maintenance, including, but not limited to, snow removal.
- (vi) Maintenance of the Building, Building equipment and installation, and the Demised Premises.

Compliance with local recycling laws enacted under New York State General Municipal Law §120-aa, requiring that solid waste be separated into recyclable, reusable or other components.

(b) The Lessee's Responsibilities:

During the Term of this Lease, the Renewal Term, if applicable, and any extension or holdover thereof, the Lessee shall, at its sole cost and expense, furnish, and/or contract for the following:

- (i) Telephone, cable and internet services for the Demised Premises;
- (ii) Cooperation, to the extent practicable, consistent with legal requirements, with the Lessor in the implementation of the requirements of Executive Order 22, which is annexed hereto as Exhibit 2, in the Demised Premises and the Building;
- (iii) Compliance with local recycling laws enacted under New York State General Municipal Law §120-aa, requiring that solid waste be separated into recyclable, reusable or other components; and
- (iv) Enforcement of a no smoking policy in the Demised Premises and adherence to State smoking policies in other areas of the Building, as that term is defined in Section 1 (d) of this Lease.

## SECTION 20. SERVICES AND UTILITIES

- (a) During the Term, the Renewal Term, if applicable, and any extension or holdover thereof, the Lessor shall be responsible for the provision of the following twenty-four (24) hours per day and seven (7) days a week:
  - (1) Conditioned airflow to provide suitable and comfortable levels of heating, air conditioning and ventilation pursuant to the standards adopted by the State for the Demised Premises and the Building, as that term is defined in Section 1(d) of this

Lease, from the Utility, Mechanical, Electrical, Communication and Other Systems, as that term is defined in Section 1 (e) of this Lease, serving the Demised Premises and the Building, as that term is defined in Section 1 (d) of this Lease.

- (2) Hot and cold water, in reasonable quantities, in the Demised Premises and the Building, as that term is defined in Section 1 (d) of this Lease.
- (3) Electric service distribution equipment, lighting fixtures, and electric service of sufficient amount and quality for the proper lighting of the Demised Premises and for the operation of the Lessee's Use, as that term is defined in Section 4 of this Lease, including, in addition to normal building requirements, electrical services for equipment, electrical equipment and appurtenances and emergency back-up power to the Demised Premises. Notwithstanding the foregoing, the State shall have no obligation to increase or change the amount or type of service or equipment and fixtures provided in the Demised Premises and the Building, as that term is defined in Section 1 (d) of this Lease.
- (4) The provision and replacement of lamps in lighting fixtures in the Building, as that term is defined in Section 1 (d) of this Lease, and the Premises, as that term is defined in Section 3 of this Lease.

EO-22, which is attached hereto as Exhibit 2, contains requirements and restrictions pertaining to heating, ventilation, air conditioning and electricity. The Lessee acknowledges an understanding of the requirements of EO-22, which is annexed hereto as Exhibit 2, and pledges to cooperate, to the extent practicable, with the State in its implementation.

- (b) If the Lessee erects any partitions or makes any improvements that stop, hinder, obstruct or interfere with the cooling of the air or the heating of the Demised Premises, then no such action by the Lessee shall impose any obligations on the State to increase or augment the existing or presently contemplated supply of conditioned airflow for air cooling or for heating, and the Lessee shall not in any such event be relieved of any of its obligations hereunder because a comfortable temperature is not maintained. In addition, upon reasonable notice, the Lessor will remove such partitions or improvements, and the Lessee shall pay the cost thereof to the State on demand, as additional rent. It is hereby understood further that the installation by the Lessee of any equipment that itself requires air cooling or that requires additional quantities of air cooling at the portion of the Demised Premises where such equipment is installed, or the concentration in any portion of the Demised Premises of such a number of people so as to require additional quantities of air cooling, shall not impose any obligation on the State to increase the capacity or output of initially existing facilities, equipment or fixtures for the supply of air cooling, and the Lessee shall not in any such event be relieved of any of its obligations hereunder.
- (c) The Lessee shall not waste or dissipate air cooling or heating nor draw any of the same into the Demised Premises from public areas contiguous thereto.
- (d) The State, upon reasonable advance notice to the Lessee (which may be given in person or by telephone), shall have the right to discontinue temporarily the supply of any of the services and utilities discussed in this section when necessary in the opinion of the State in order to make any repairs, alterations, changes or improvements in the Demised Premises or elsewhere in the Building, as that term is defined in Section 1 (d) of this Lease, provided, however, such repair, alteration, change or improvement, does not unreasonably interfere with the Lessee's Use, as that term is defined in Section 4 of this Lease, of the Demised Premises, access thereto and visibility thereof. In the event of an emergency, the State shall be entitled to discontinue temporarily such supply services and utilities discussed in this section, and shall notify the County (in person or by telephone) as soon as possible and shall restore such services or utilities as soon as possible. Failure to supply services and utilities for an extended period of time, in the reasonable determination of the County, shall be a breach of this Lease Agreement for which the County may terminate this Lease Agreement as provided for in Section 32.
- (e) No failure, delay, interruption or reduction in any service or services discussed in this section shall be or shall be construed to be an eviction of the Lessee, shall be grounds for any diminution or abatement of the Operating Expense Payment due and payable



hereunder, or shall constitute grounds, for any claim by the Lessee for damages, consequential or otherwise, unless due to the negligent acts of the State or its officers and employees, acting within the course and scope of their employment. If the Lessee shall be in default under any provisions of this Lease beyond any applicable notice and cure periods, the State shall be permitted to cease providing any service or services required to be provided by the State hereunder to the Lessee. The State may cease providing such services only during the period in which the Lessee remains in default hereunder.

- (f) The State shall be under no obligation to supply any service or services discussed in this section if and to the extent and during any period that the supplying of any such service or services or the use of any component necessary therefor shall be prohibited or rationed by any federal, State or municipal law, rule, regulation, requirement, order or direction and if the State deems it in the public interest to comply therewith, even though such law, rule, regulation, requirement, order or direction may not be mandatory on the State as a public agency.
- (g) Anything to the contrary notwithstanding for the purposes of this Lease Agreement, the Lessee has reviewed the utilities installations and agrees that the currently installed Utility, Mechanical, Electrical, Communication and Other Systems, as that term is defined in Section 1 (e) of this Lease, within the Demised Premises, are adequate for its intended Use, as that term is defined in Section 4 of this Lease with the exception of the cooling in the data center rooms, and, in those rooms, the County was permitted to bring in additional cooling units.:
- (h) Notwithstanding anything contained herein to the contrary, if any utility or service to the Demised Premises, which is provided by the State or under the State's control, is interrupted for more than twenty-four (24) hours due to the negligence of the State or its officers and employees, acting within the course and scope of their employment, then the Operating Expense Payment, and all other charges due and payable hereunder shall abate during the period such utility or service is interrupted.

## **SECTION 21. FORCE MAJEURE**

- (a) For purposes of this Lease, "Force Majeure" shall mean an event or effect that cannot be reasonably anticipated or controlled. Force Majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, terrorism, strikes, fires, explosions, actions of the elements, floods, viruses, pandemics, unexpected and unavoidable governmental action or other similar causes beyond the control of the Parties in the performance of this Lease which non-performance, by exercise of reasonable diligence, cannot be prevented but shall expressly exclude the inability of the Parties to comply with any payment obligations under this Lease, such as, by way of example only, the obligation to pay Operating Expense Payment, or additional rent hereunder. The Parties shall not be liable for any failure, delay, or interruption in performing their obligations hereunder due to Force Majeure. Further, the State or the Lessee, as the case may be, shall not be liable unless the failure, delay or interruption shall result from failure on the part of the State or the Lessee to use reasonable care to prevent, or reasonable efforts to cure such failure, delay or interruption.
- (b) No abatement, diminution or reduction of the Operating Expense Payment, or other charges payable by the Lessee, shall be claimed by or allowed to the Lessee for any inconvenience, interruption, cessation or loss of business or other loss caused, directly or indirectly, by any present or future laws, rules, requirements, orders, directions, ordinances or regulations of the United States of America, or of the State, county or city governments having jurisdiction over the Building, as that term is defined in Section 1 (d) of this Lease, and the Demised Premises, or of any other municipal, governmental or lawful authority whatsoever, or by priorities, rationing or curtailment of labor or materials, or by war or any matter or thing resulting therefrom.

## **SECTION 22. CHANGES IN THE BUILDING**

Subject to the provisions of this Lease Agreement, the State shall have the right at any time and from time to time, prior to and during the Term of this Lease, the Renewal Term, if applicable, and any extension or holdover thereof, in the interest of the efficient operation of the Building, as that term is defined in Section 1 (d) of this Lease, of which the Demised Premises are a part, to close, move or alter any common way in the said Building, as that term is defined in Section 1 (d)

of this Lease, including but not limited to entrances, exits, passages, halls, corridors, aisles, stairways, elevators, or escalators, or to restrict or change the traffic on or through any such common way; and no such action by the State shall release the Lessee from any of its obligations under this Lease Agreement. In exercising its rights hereunder, the State shall use all commercially reasonable efforts to avoid interference with the Lessee's Use, as that term is defined in Section 4 of this Lease, of the Demised Premises, access to the Demised Premises and visibility thereof.

### **SECTION 23. CONSTRUCTION, FINISHING OR DECORATING**

During the Term of this Lease, the Renewal Term, if applicable and any extension or holdover thereof, if the Lessee desires any additional work to be performed in the Demised Premises or elsewhere in the Building, it shall make a request for the same by submitting a Tenant Alteration Request form (hereinafter referred to as a "TAR") to the Lessor, in accordance with the directions on the TAR. The TAR and instructions on how to complete it can be found on the Lessor's website at <https://ogs.ny.gov/tenant-alteration-request-tar-101-form>. If the State determines that the requested work will be done, it will cause the same to be performed in a timely manner, at the Lessee's sole cost and expense. The State shall not commence work on any TAR until the Lessee provides written confirmation that it has obtained all legal approvals necessary to obtain funding for the proposal work and made payment to the Lessor. The Lessee will be solely responsible to pay the State, as additional rent, the cost of all work performed under this section within thirty (30) days of receipt of an invoice of the same. In the event any construction, finishing, decorating, improvement, alteration, modification, addition, repair or replacement is made by the Lessee or its officers, employees or contractors in the Demised Premises or the Building, as that term is defined in Section 1 (d) of this Lease, without the State's consent, then the State shall remove or change such work to its reasonable satisfaction, and the Lessee shall pay the cost thereof to the State, as additional rent, on demand. Any work done pursuant to this section shall be done in accordance with EO-22, which is annexed hereto as Exhibit 2.

(a) Except as herein expressly provided, during the Term of this Lease, the Renewal Term, if applicable and any extension or holdover thereof, the Lessee shall not without the prior, written approval of the State, which shall not be unreasonably withheld, conditioned or delayed, erect any structures, make any improvements or do any other construction work in the Demised Premises or elsewhere at the Building, or alter, modify, or make additions, improvements or repairs to or replacements of any structure now existing or built at any time, or install any fixtures (other than trade fixtures removable without irreparable injury to the Demised Premises); and in the event any construction, improvement, alteration, modification, addition, repair or replacement is made without such consent, then, upon reasonable notice, the Lessee will remove the same, or, at the option of the State, cause the same to be changed to the reasonable satisfaction of the State, or the State may affect the removal or change, and the Lessee shall pay the cost thereof to the State, as additional rent, on demand. The State shall either approve or disapprove, with reasonable explanation for such disapproval, any such plans submitted to the State, within twenty (20) days of submission. If the State fails to approve or disapprove within such time frame, the Lessee shall again submit such plans to the State and the State shall have an additional period of seven (7) days, or such longer period as mutually agreed to by the Parties, to either approve or disapprove, with reasonable explanation for such disapproval, or such plans shall be deemed approved. Notwithstanding anything contained herein to the contrary, the State shall have no approval rights over interior, non-structural alterations that do not affect any building systems and which cost less than Fifty Thousand and 00/100 Dollars (\$50,000.00) in the aggregate, except for signage which will be approved in accordance with Section 25 of this Lease.

In addition the Lessee reserve the right to make minor alterations or installations, including, but not limited to telephones, computers, and related equipment (including audio and visual related equipment), furniture, personal property and nonstructural furnishings and decorations such as painting and carpeting, to finish off and decorate the Demised Premises without approval of the State, provided those alternations or installations do not cause a change to the Building or its systems without submitting a TAR or obtaining prior approval from the Lessor. In such instances when a TAR is not required, the County will coordinate the work with the Building manager/onsite representative.

Any and all articles of personal property, including, without limitation, business and trade fixtures, machinery, computer equipment and other equipment (including audio visual related equipment), cabinets, furniture and moveable partitions, and water coolers, owned or installed by the County

are and shall remain the property of the County and may be removed by it at any time during the Term of the lease, any renewal, extension or holdover thereof.

- (b) In the event that pursuant to this section or otherwise, the Lessee is required or permitted to perform construction, finishing, decorating, alteration or improvement work to the Demised Premises or to make repairs thereto, all of the same shall be made or performed strictly in accordance with the following terms and conditions.
- (1) The Lessee shall, to the extent allowed under the law, indemnify and hold harmless the State, its officers, agents and employees, against the following distinct and several risks, whether they arise from acts or omissions of the Lessee, the State, their officers, agents and employees or of third persons, or from acts of God or of the public enemy, or otherwise excepting only risks to the extent resulting from the negligence of the State or its officers or employees, acting within the course and scope of their employment:
    - (i) The risk of loss or damage to all such construction, finishing, decorating, alteration, improvement, or repair work prior to the completion thereof. In the event of such loss or damage, the Lessee shall forthwith repair, replace, and make good the work without cost to the State.
    - (ii) The risk of death, injury, or damage, direct or consequential to the State, its officers, agents, and employees, and to its or their property, arising out of or in connection with the performance of the work. The Lessee shall indemnify the State, its officers, agents, and employees, for all such deaths, injuries and damages, and for all loss suffered by reason thereof.
    - (iii) The risk of claims and demands, just or unjust, by third persons against the State, its officers, agents, and employees arising or alleged to arise out of the performance of the work. The Lessee shall indemnify the State, its officers, agents, and employees, against and from (and shall reimburse to the State for the State's costs or expenses, including reasonable legal expenses, incurred in connection with the defense of) all such claims and demands.
  - (2) All work done pursuant to this section shall be done in accordance with drawings and specifications to be submitted to and approved by the State prior to the commencement of the work, except as otherwise set forth herein, and shall be done to its reasonable satisfaction, and shall be subject to its inspection during the progress of such work and after completion thereof; and the Lessee shall redo or replace, at its own expense, any work not reasonably approved by the State. Unless otherwise expressly provided herein, all workmanship and materials are required to be "first class."
  - (3) The Lessee shall pay all claims lawfully made against it by its contractors, subcontractors, material men and workmen and all claims lawfully made against it by other third persons arising out of or in connection with or because of the performance of the work and shall cause its contractors and subcontractors to pay all such claims lawfully made against them.
  - (4) Prior to the commencement of any work, the Lessee shall procure and maintain commercial general liability insurance (subject to the right of the Lessee to self-insure as provided in Section 25), or, if the work is to be done by an independent contractor, the Lessee shall require such contractor to procure and maintain such insurance in the name of the contractor; in either case, in limits not lower than those set forth for such categories of insurance in Section 25 of this Lease, naming the People of the State of New York, the New York State Office of General Services and their officers, agents and employees as additional insureds, and if not so set forth, then as may be reasonably specified in advance by the State. Proof of compliance shall be submitted to The New York State Office of General Services, Division of Real Estate, Leasing Services, The Governor Nelson A. Rockefeller Empire State Plaza, Corning Tower, 40<sup>th</sup> Floor, Albany, New York 12242 prior to the commencement of the work.

- (5) As soon as such construction, finishing, decorating, alteration or improvement or repair shall have been completed to the reasonable satisfaction of the State, then title thereto and property therein shall immediately and without execution of any further instrument vest in the State (excluding personal property, trade fixtures and equipment), and all such construction, finishes, decorations, alterations, improvements or repairs shall thereupon become and thereafter be part of the Demised Premises and on request the Lessee shall execute such documents confirming the same as the State may require. The Lessee remains liable for any liens filed against the Demised Premises for the construction activities permitted herein.

## **SECTION 24. SIGNS**

The Lessee recognizes that a common design and finish plan will be adopted for the construction, development and finishing of corridor and open areas on the level or floor in which the Demised Premises are located and for certain interior portions of the Lessee's Demised Premises and other Lessee areas located on the said level or floor. Therefore, the Lessee shall not erect, maintain or display any signs, advertising, posters or similar items at or on the exterior parts of the Demised Premises or in the Demised Premises, without the prior written consent of the State, which consent shall not be unreasonably withheld, conditioned or delayed; and so long as such consent is not inconsistent with the standards and regulations of the Building, as that term is defined in Section 1 (d) of this Lease. Upon the expiration or earlier termination of this Lease, the Lessee shall, at its sole cost and expense, remove, obliterate, or paint out, as the State may direct, any signs, advertising, posters, or similar devices, and in connection therewith shall restore the area affected to the condition requested by the State.

## **SECTION 25. INSURANCE REQUIREMENTS**

Notwithstanding anything to the contrary herein, the Lessee is self-insured, and the Lessor accepts the letter evidencing such self-insurance, which is annexed to this Lease as Schedule CD of this Lease, in lieu of compliance with the requirements of this section. In the event that during the Term of this Lease, the Renewal Term, if applicable, or any extension or holdover thereof, the Lessee is no longer self-insured, however, the Lessee agrees to notify the Lessor, in accordance with Section 16 of this Lease, of such change and, at its sole cost and expense, comply with the following insurance requirements within fifteen (15) business days of such change.

During the Term of this Lease, the Renewal Term, if applicable, and any holdover or extension thereof, the Lessee shall maintain in force, at its sole cost and expense, policies of insurance as required by this section. All insurance required by this section shall be written by companies that have an A.M. Best Company rating of "A-," Class "VII" or better. In addition, companies writing insurance intended to comply with the requirements of this section should be licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York. The Lessor may, at its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when certificates and/or other policy documents are accompanied by a completed Excess Lines Association of New York (ELANY) affidavit or other documents demonstrating the company's strong financial rating. If, during the term of a policy, the carrier's A.M. Best rating falls below "A-," Class "VII," the insurance must be replaced, on or before the renewal date of the policy, with insurance that meets the requirements above.

The Lessee shall deliver to the State evidence of the insurance required by this section in a form acceptable to the State. Proof of compliance shall be submitted to The New York State Office of General Services, Division of Real Estate, Leasing Services, The Governor Nelson A. Rockefeller Empire State Plaza, Corning Tower, 40<sup>th</sup> Floor, Albany, New York 12242. Policies must be written in accordance with the requirements of the paragraphs below, as applicable. Acceptance and/or approval by the State does not, and shall not be construed to, relieve the Lessee of any obligations, responsibilities, or liabilities under this Lease.

The Lessee shall not take any action or omit to take any action that would suspend or invalidate any of the required coverages during the Term of this Lease, the Renewal Term, if applicable, and any holdover or extension thereof.

### **General Conditions**

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**A. Conditions Applicable to Insurance.** All policies of insurance required by this section shall comply with the following requirements:

1. **Coverage Types and Policy Limits.** The types of coverage and policy limits required from the Lessee are specified below in Paragraph B-Insurance Requirements.
2. **Policy Forms.** Except as otherwise specifically provided herein, or agreed to in writing by the State, all policies of insurance required by this section shall be written on an occurrence basis.
3. **Certificate of Insurance/Notices.** The Lessee shall provide the State with a Certificate or Certificates of Insurance, in a form satisfactory to the State (i.e., an ACORD certificate), prior to the Commencement Date, and thereafter, pursuant to the timelines set forth in subsection A.13. below. Certificates shall reference the Lease number and shall name the New York State Office of General Services, Division of Real Estate, Leasing Services, The Governor Nelson A. Rockefeller Empire State Plaza, Corning Tower, 40<sup>th</sup> Floor, Albany, New York 12242 as the certificate holder.

Certificates of Insurance shall:

- Be in the form acceptable to the State and in accordance with the New York State Insurance Law (i.e.: an ACORD Certificate);
- Disclose any deductible, self-insured retention, aggregate limit or exclusion to the policy that materially changes the coverage required by this Lease;
- Be signed by an authorized representative of the referenced insurance carriers; and
- Contain the following language in the Description of Operations/Locations/Vehicles section: Additional insured protection afforded is on a primary and non-contributory basis. A waiver of subrogation is granted in favor of the additional insureds.

Only original documents (Certificate(s) and any endorsements and other attachments) or electronic versions of the same that can be directly traced back to the insurer, agent or broker via e-mail distribution or similar means will be accepted.

The State has not requested that the Lessee submit copies of its entire insurance policies. The State only requests specific documentation regarding proof of insurance coverage, such as certificates and endorsements. The Lessee is asked to refrain from submitting entire insurance policies. If an entire insurance policy is submitted but not requested, the State shall not be obligated to review and shall not be chargeable with knowledge of its contents. In addition, submission of an entire insurance policy not requested by the State does not constitute proof of compliance with the insurance requirements and does not discharge the Lessee from submitting the insurance documentation required by this section. The State reserves the right to request other proof of insurance, including, but not limited to, policies, and the Lessee agrees to comply with all reasonable requests.

4. **Primary Coverage.** All liability insurance policies shall provide that the required coverage shall be primary and non-contributory to other insurance available to the State. Any other insurance maintained by the State shall be excess of and shall not contribute with the Lessee's insurance.
5. **Breach for Lack of Proof of Coverage.** The Term of this Lease shall not commence if the coverage provisions and limits of the policies provided by the Lessee do not meet the provisions and requirements of this section or proof of compliance is not provided to the State. In addition, the failure to comply with the requirements of this section at any time during the Term of this Lease, the Renewal Term, if applicable, and any holdover or extension thereof, shall be considered a breach of the terms of this Lease and shall allow the State to avail itself of all remedies available under this Lease, at law or in equity.

6. ***Self-Insured Retention/Deductibles.*** Certificates of Insurance must indicate the applicable deductibles/self-insured retentions for each listed policy. Deductibles or self-insured retentions above \$100,000.00 are subject to approval from the State. Such approval shall not be unreasonably withheld, conditioned, or delayed. The Lessee shall be solely responsible for all claim expenses and loss payments within the deductibles or self-insured retentions. If the Lessee is providing the required insurance through self-insurance, evidence of the financial capacity to support the self-insurance program along with a description of that program, including, but not limited to, information regarding the use of a third-party administrator shall be provided upon request.
7. ***Subcontractors.*** Prior to the commencement of any work by a Subcontractor, the Lessee shall require such Subcontractor to procure policies of insurance as required by this section and maintain the same in force during the term of any work performed by that Subcontractor. An Additional Insured Endorsement CG 20 38 12 19 (or the equivalent) evidencing such coverage shall be provided to the Lessee prior to the commencement of any work by a subcontractor, pursuant to the timelines set forth in Section A.13, as applicable, and shall be provided to the State upon request. For subcontractors that are self-insured, the subcontractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the subcontractor would have been required to pursuant to this section had the subcontractor obtained such insurance policies.
8. ***Waiver of Subrogation.*** The Lessee shall cause to be included in its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the Lessee's right of subrogation against The People of the State of New York, The New York State Office of General Services and their officers, agents, and employees, or, if such waiver is unobtainable provide one of the following to the State prior to the Commencement Date of this Lease: (i) an express agreement that such policy shall not be invalidated if the Lessee waives or has waived before the casualty, the right of recovery against The People of the State of New York, The New York State Office of General Services and their officers, agents, and employees or (ii) any other form of permission for the release of The People of the State of New York, The New York State Office of General Services and their officers, agents, and employees. A Waiver of Subrogation Endorsement shall be provided upon request. A blanket Waiver of Subrogation Endorsement evidencing such coverage is also acceptable.
9. ***Additional Insured.*** The Lessee shall cause to be included in each of the liability policies required below for all work and operations naming as additional insured (via ISO form CG 20 26 12 19 and form CA 20 48 10 13, or a form or forms that provide equivalent coverage). The People of the State of New York, The New York State Office of General Services and their officers, agents, and employees. An Additional Insured Endorsement, or the equivalent, evidencing such coverage shall be provided to the State prior to the Commencement Date and pursuant to the timelines set forth in Section A.13. below. A blanket Additional Insured Endorsement CG 20 38 12 19 (or the equivalent) evidencing such coverage is also acceptable. If the Lessee is self-insured, the Lessee shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the Lessee would have been required to pursuant to this section had the Lessee obtained such insurance policies, excluding the negligence of the State, or its officers or employees, acting in the course and scope of their employment.
10. ***Excess/Umbrella Liability Policies.*** Required insurance coverage limits may be provided through a combination of primary and excess/umbrella liability policies. If coverage limits are provided through excess/umbrella liability policies, then a Schedule of Underlying Insurance listing policy information for all underlying insurance policies (insurer, policy number, policy term, coverage, and limits of insurance), including proof that the excess/umbrella insurance follows form, must be provided upon request.

11. **Notice of Cancellation or Non-Renewal.** Policies shall be written so as to include the requirements for notice of cancellation or non-renewal in accordance with the New York State Insurance Law. Within five (5) Business Days, as that term is defined in Section 1 (a) of this Lease of receipt of any notice of cancellation or non-renewal of insurance, the Lessee shall provide the State with a copy of any such notice received from an insurer together with proof of replacement coverage that complies with the requirements of this section.

12. **Policy Renewal/Expiration.** Upon policy renewal/expiration, evidence of renewal or replacement of coverage that complies with the requirements of this section shall be delivered to the State. If, at any time during the Term of this Lease, the Renewal Term, if applicable, and any extension or holdover thereof, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this section, or proof thereof is not provided to the State, the State shall have the right to avail themselves of all remedies available under this Lease, at law or in equity.

13. **Deadlines for Providing Insurance Documents after Renewal or Upon Request.** As set forth herein, certain insurance documents must be provided to the State after renewal or upon request. This requirement means that the Lessee shall provide the applicable insurance document to the State as soon as possible but in no event later than the following time periods:

- For certificates of insurance: five (5) Business Days, as that term is defined in Section 1(a) of this Lease, from request or renewal;
- For information on self-insurance or self-retention programs: fifteen (15) calendar days from request or renewal;
- For other requested documentation evidencing coverage: fifteen (15) calendar days from request or renewal;
- For additional insured and waiver of subrogation endorsements: thirty (30) calendar days from request or renewal; and
- For notice of cancellation or non-renewal and proof of replacement coverage that complies with the requirements of this section: five (5) Business Days, as that term is defined in Section 1(a) of this Lease, from request or renewal.

Notwithstanding the foregoing, if the Lessee shall have promptly requested the insurance documents from its broker or insurer and shall have thereafter diligently taken all steps necessary to obtain such documents from its insurer and submit them to the State, the State shall extend the time periods set forth above for a reasonable period that shall in no event exceed thirty (30) calendar days from request or renewal, whichever is later.

**B. Insurance Requirements:** The Lessee shall, at its own expense, obtain and maintain in full force and effect during the Term of this Lease, the Renewal Term, if applicable, and any extension or holdover thereof, the following insurance with limits not less than those described below, or as required by law, whichever is greater:

Insurance Type		Proof of Coverage is Due
<b>Commercial General Liability</b>	Not less than \$1,000,000 each occurrence	Prior to the Commencement Date, upon renewal and upon request.
General Aggregate	\$2,000,000	
Products – Completed Operations Aggregate	\$2,000,000	
Personal and Advertising Injury	\$1,000,000	
Damage to Rented Premises	\$500,000	
Medical Expenses Limit	\$5,000	
<b>Business Automobile Liability Insurance</b>	Not less than \$1,000,000 each occurrence	
<b>Commercial Property Insurance</b>	Not less than the Full Insurable Value	

1. **Commercial General Liability Insurance:** Such liability shall be written on the current edition of ISO occurrence form CG 00 01, or a substitute form providing equivalent coverage and shall cover liability arising from premises operations, independent contractors, products-completed operations, bodily injury, property damage and broad form contractual liability coverage, personal & advertising injury cross liability coverage, and liability assumed in a contract (including the tort liability of another assumed in a contract).

Coverage shall include, but not be limited to, the following:

- Premises liability;
- Independent contractors;
- Blanket contractual liability, including tort liability of another assumed in a contract;
- Defense and/or indemnification obligations, including obligations assumed under this Lease; and
- Cross liability for additional insureds.

If at any time during the Term of this Lease, the Renewal Term, if applicable, and any holdover or extension thereof, the Lessee conducts operations at more than one location, the policy shall contain an endorsement to the effect that the general aggregate limit in the policy shall apply separately to each location operated by the Lessee.

2. **Comprehensive Business Automobile Liability Insurance:** Such insurance shall cover liability arising out of automobiles used in connection with performance under this Lease, including owned, leased, hired and non-owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Laws of the State of New York to bear, license plates. If performance under this Lease shall require the removal of hazardous waste from the Building, as that term is defined in Section 1 (d) of this Lease, or the Demised Premises or other transporting of hazardous materials, pollution liability coverage for covered autos shall be provided by Form CA 9 48 03 06 or Form CA 00 12 03 06 and the Motor Carrier Act Endorsement (MCS90) shall be attached to the policy.

In the event that the Lessee does not own, lease or hire any automobiles used in connection with performance under this Lease, the Lessee does not need to obtain Comprehensive Business Automobile Liability Insurance, but must attest to the fact that the Lessee does not own, lease or hire any automobiles used in connection with performance under this Lease on a form provided by the State. If, however, during the Term of this Lease, the Renewal Term, if applicable, and any holdover or extension thereof, the Lessee acquires, leases or hires any automobiles that will be used in connection with performance under this Lease, the Lessee must obtain Comprehensive Business Automobile Liability Insurance that meets all of the requirements of this section and provide proof of such coverage to the State within ten (10) days following the date the coverage is bound.

3. **Commercial Property Insurance:** Such insurance shall cover the Demised Premises in an amount not less than the Full Insurable Value of the Demised Premises covering, at a minimum, the perils insured under the ISO Special Causes of Loss Form CP 10 30, or the equivalent, including coverage for loss caused by enforcement of ordinances or laws to the extent it is commercially available. Full Insurable Value shall mean actual replacement cost of the real property (exclusive of the cost of non-insurable portions thereof, such as excavation, foundations and footings).

## **SECTION 26. WORKERS' COMPENSATION INSURANCE & DISABILITY BENEFITS COVERAGE**

Notwithstanding anything to the contrary herein, the Parties understand that the Lessee is self-insured, and the Lessor accepts the letter evidencing such self-insurance, which is annexed to this Lease as Schedule C of this Lease, in lieu of compliance with the requirements of this section. In the event that during the Term of this Lease, the Renewal Term, if applicable, or any extension



or holdover thereof, the Lessee is no longer self-insured, however, the Lessee agrees to notify the Lessor, in accordance with Section 16 of this Lease, of such change and, at its sole cost and expense, comply with the following insurance requirements.

Sections 57 and 220 of the New York State Workers' Compensation Law require the heads of all municipal and State entities to ensure that businesses applying for leases, permits, licenses or contracts have appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original issuances and renewals, whether the governmental agency is having the work done or is simply issuing the lease, permit, license, or contract. The Lessee must submit proof to the State that it has workers' compensation and disability benefits coverage as required by the New York State Workers' Compensation Law, or proof that it is legally exempt from obtaining such coverage in compliance with the New York State Workers' Compensation Law. Proof of compliance must be submitted on one of the forms designated by the New York State Workers' Compensation Board. **An ACORD form is not acceptable proof of New York State workers' compensation or disability benefits insurance coverage.**

***Breach for lack of proof of coverage:*** The Term of this Lease shall not commence if the coverage provisions and limits of the policies provided by the Lessee do not meet the provisions and requirements of the New York State Workers' Compensation Law or proof of compliance is not provided to the State. In addition, the failure to comply with the requirements of this section at any time during the Term of this Lease, the Renewal Term, if applicable, and any holdover or extension thereof, shall be considered a breach of the terms of this Lease and shall allow the State to avail itself of all remedies available under this Lease or at law or in equity.

Prior to the commencement of any work by a Subcontractor, the Lessee shall require such Subcontractor to comply with and maintain compliance with the requirements of this Section during the term of any work performed by that Subcontractor.

**Proof of Compliance with the Workers' Compensation Coverage Requirements:**

In order to provide proof of compliance with the requirements of the New York State Workers' Compensation Law pertaining to workers' compensation coverage, the Lessee shall provide one of the following forms to the State prior to execution of this Lease by the Commissioner:

- A) Form CE-200, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required*, which is available on the New York State Workers' Compensation Board's website ([www.businessexpress.ny.gov](http://www.businessexpress.ny.gov));
- B) Form C-105.2 (9/07), *Certificate of Workers' Compensation Insurance*, sent to the State by the Lessee's insurance carrier upon request, or if coverage is provided by the New York State Insurance Fund, they will provide Form U-26.3 to the State upon request; or
- C) Form SI-12, *Certificate of Workers' Compensation Self-Insurance*, available from the New York State Workers' Compensation Board's Self-Insurance Office, or Form GSI-105.2, *Certificate of Participation in Workers' Compensation Group Self-Insurance*, available from the Lessee's Group Self-Insurance Administrator.

**Proof of Compliance with the Disability Benefits Coverage Requirements:**

In order to provide proof of compliance with the requirements of the New York State Workers' Compensation Law pertaining to disability benefits, the Lessee shall provide one of the following forms to the State prior to execution of this Lease by the Commissioner:

- A) Form CE-200, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required*, which is available on the New York State Workers' Compensation Board's website ([www.businessexpress.ny.gov](http://www.businessexpress.ny.gov));
- B) Form DB-120.1, *Certificate of Disability Benefits Insurance*, sent to the State by

the Lessee's insurance carrier upon request; or

- C) Form DB-155, *Certificate of Disability Benefits Self-Insurance*, available from the New York State Workers' Compensation Board's Self-Insurance Office.

Information clarifying the New York State Workers' Compensation Law requirements is available at the New York State Workers' Compensation Board's website, <http://www.wcb.ny.gov/content/main/Employers/requirements-businesses-applying-government-permits-licenses-contracts.pdf>.

Proof of compliance shall be submitted to The New York State Office of General Services, Division of Real Estate, Leasing Services, The Governor Nelson A. Rockefeller Empire State Plaza, Corning Tower, 40<sup>th</sup> Floor, Albany, New York 12242.

## **SECTION 27. NON-LIABILITY OF INDIVIDUALS**

Neither the Commissioner of General Services nor any officer, agent or employee of the State shall be charged personally by the Lessee with any liability or held liable to it under any term or provision of this Lease Agreement or because of its execution or attempted execution or because of any breach or attempted or alleged breach thereof.

## **SECTION 28. CASUALTY**

- (a) In the event that, as a result of a casualty, whether (i) insured against by the State or (ii) intended and deemed by the State to be the subject of its general plan to provide against and cover such casualty or loss by self-insurance or self-retention, the Demised Premises is damaged without the fault of the Lessee, its officers, members, employees, customers, guests, invitees or other persons who are doing business with the Lessee, or who are at the Demised Premises with the Lessee's consent, so as to render the Demised Premises untenable in whole or part, then:
  - (1) If the State finds that the necessary repairs or rebuilding can be completed within ninety (90) days after the occurrence of the damage, the State shall repair or rebuild with due diligence, and Operating Expense Payments shall be abated for the period from the Occurrence of the damage to the completion of the repairs or building, whether or not the work of repair or rebuilding is actually completed within the said ninety (90) days; or
  - (2) If the State finds that such repairs or rebuilding cannot be completed within ninety (90) days after the occurrence of the damage, or if the State concludes that areas other than the Demised Premises also require rebuilding, then the State shall have the options: (i) to proceed with due diligence to repair or to rebuild the Demised Premises as necessary; and the Operating Expense Payments shall be abated for the period from the occurrence of the damage to the completion of repair and rebuilding of the Demised Premises, or (ii) to terminate this Lease as to the entire Demised Premises, and the Operating Expense Payments shall be abated for the period from the period from the occurrence of the damage to the effective date of the termination.

In the event that the casualty is due to the fault of the Lessee, its officers, members, employees, customers, guests, invitees or other persons who are doing business with the Lessee, or who are at the Demised Premises with the Lessee's consent, then, the State shall repair or rebuild the Demised Premises, with due diligence, at the Lessee's sole cost and expense. The State's cost thereof shall be paid within twenty (20) days of demand.

- (b) The Parties do hereby stipulate that neither the provisions of Section 227 of the Real Property Law of the State of New York nor those of any other similar statute shall be extended or apply to this Lease Agreement.
- (c) The Lessee shall give the State immediate notice, in compliance with Section 16 of this Lease, in case of fire, accident or casualty to the Demised Premises or elsewhere in the Building, as that term is defined in Section 1 (d) of this Lease, if the occurrence elsewhere in the Building, as that term is defined in Section 1 (d) of this Lease, is known to and

involves the Lessee, its officers, members, employees, agents, representatives, contractors, or is known to any of them and involves customers, guests or invitees of the Lessee.

- (d) In the event of a partial or total destruction of the Demised Premises, the Lessee shall immediately remove any and all of its property and debris from the Demised Premises or the portion thereof destroyed, and if the Lessee does not promptly so remove, the State may remove the Lessee's property to a public warehouse for deposit or retain the same in its own possession and sell the same at public auction, the proceeds of which shall be applied first to the expenses of removal, storage and sale, and second to any sums owed by the Lessee to the State, with any balance remaining to be paid to the Lessee; if the expenses of such removal, storage and sale shall exceed the proceeds of sale, the Lessee shall pay such excess to the State upon demand, as additional rent.
- (e) The Lessee shall have the right to terminate this Lease if the damage is such that: (a) the Demised Premises cannot be (or are not) restored within one hundred eighty (180) days from the date of damage; (b) the damage or destruction is caused by a peril not required to be insured against hereunder; or (c) the damage or destruction occurs during the last two (2) years of the Term (or during any renewal, extension or holdover thereof).

## **SECTION 29. INDEMNITY**

Excluding the gross negligence of the State, or its officers or employees, acting in the course and scope of their employment, the Lessee shall indemnify and hold harmless the State, its officers, agents and employees from (and shall reimburse the State for the State's costs or expenses, including reasonable legal expenses incurred in connection with the defense of) all claims and demands of third persons including, but not limited to, those for death, personal injuries, or property damages, arising out of any default of the Lessee in performing or observing any term or provision of this Lease, or out of the Use, as that term is defined in Section 4 of this Lease, or occupancy of the Demised Premises, by the Lessee or by others with its consent, or out of any of the acts or omissions of the Lessee, its officers, members, employees, agents, representatives, contractors, customers, guests, invitees and other persons who are doing business with the Lessee's consent where such acts or omissions are on the Demised Premises, or arising out of any acts or omissions of the Lessee, its officers, members, employees, agents and representatives where such acts or omissions are elsewhere in the Building, as that term is defined in Section 1(d) of this Lease. If so directed, the Lessee shall, at its own expense, defend any suit based upon any such claim or demand even if such suit, claim, or demand is groundless, false, or fraudulent.

Notwithstanding the foregoing, subject to the availability of lawful appropriations and consistent with Section 8 of the New York State Court of Claims Act, the State shall hold the Lessee harmless from and indemnify it for any final judgment of a court of competent jurisdiction to the extent attributable to the negligence of the State or of its officers or employees when acting within the course and scope of their employment, with respect to this section.

## **SECTION 30. RENEWAL**

So long as the Lessee is not then in default under this Lease beyond the expiration of any applicable cure period, the Lessee shall have the option to renew this Lease for an additional term of five (5) years (the foregoing is hereinafter referred to as the "Renewal Term") subject to the terms set out below. The Lessee shall exercise its renewal option (the foregoing is hereinafter referred to as the "Renewal Option") by notifying the Lessor in writing, in accordance with Section 16 of this Lease, of its exercise of the Renewal Option (the foregoing is hereinafter referred to as the "Renewal Notice") not fewer than ninety (90) days prior to the end of the Term. Within thirty (30) days of the Lessor's receipt of the Lessee's Renewal Notice, the Lessor shall notify the Lessee in writing, in accordance with Section 16 of this Lease, that it agrees to the Lessee's exercise of the Renewal Option and the Parties shall commence the process of executing a renewal agreement (the foregoing shall hereinafter referred to as the "Renewal Agreement") memorializing the agreement of the Parties as to the terms that shall govern during the Renewal Term or (b) the Lessor shall notify the Lessee in writing, in accordance with Section 16 of this Lease, within the thirty (30) day period if it does not agree to the Lessee's exercise of the Renewal Option, in which case the Lessee shall be deemed without further notice and without further agreement between the Parties to have elected not to exercise its option for said Renewal Term and any prior exercise of the Renewal Option for that Renewal Term is deemed revoked, and the Lease shall terminate on the Termination Date.

The renewal of this Lease shall be binding upon the Parties and their respective successors and assigns upon the full completion of the (i) execution of the Renewal Agreement by all necessary Parties, subject to the Lessee receiving all necessary legal approvals; (ii) approval of the Renewal Agreement by the Office of the Attorney General, as to form, and the Office of the New York State Comptroller, as necessary, and the Office of the County Attorney; and (iii) delivery of the fully executed and approved Renewal Agreement to the Lessee by the Lessor.

### **SECTION 31. NEW LESSEE/NON-ASSIGNMENT**

Pursuant to Section 138 of the New York State Finance Law, the Lessee is prohibited from assigning, transferring, conveying, sub-letting or otherwise disposing of this Lease, or its right, title or interest therein, or its power to execute this Lease to another person, company or corporation without the previous consent in writing of the department or official awarding the same; provided, however, any consent shall not be unreasonably withheld, conditioned, delayed or denied. Therefore, prior to any such transfer, the Lessee shall submit a request, in accordance with Section 16 of this Lease, to the State for consent to the same. The Lessee's request shall include submission of a properly completed and executed Lease Assignment Agreement, a sample of which is attached to this Lease as Exhibit 3, all necessary documentation (Substitute W-9, attached hereto as Exhibit 4, and the Retail Disclosure Sheet, attached hereto as Form 1). Copies of these forms may be obtained through a written request made in accordance with the provisions of Section 16 of this Lease. The consent required by this section shall not be unreasonably withheld, conditioned, or delayed. When making such requests, the Lessee should allow ample time for the review and approval of the same by the State.

In addition, in the event that the Lessee changes its name, but not its federal identification number, the Lessee is required to notify the State of the change within ten (10) Business Days, as that term is defined in Section 1 (a) of the effective date of such change, by submitting written notification to the State in accordance with Section 16 of this Lease. The Lessee shall also be responsible for making all necessary changes to its profile in the Statewide Financial System by contacting the Statewide Financial System Vendor Management Unit. The web address for the Statewide Financial System is: <https://esupplier.sfs.ny.gov/psp/fscm/SUPPLIER/?cmd=login>.

### **SECTION 32. TERMINATION**

- (a) If any one or more of the following events shall occur, that is to say:
- (1) The Lessee shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, in any State thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all its property; or
  - (2) This Lease or the interest or estate of the Lessee under this Lease shall be transferred to pass to or devolve upon, by operation of law or otherwise, any other person, firm, or corporation without the consent of the State, to the extent required hereunder; or
  - (3) The Lessee, if a corporation, shall, without the prior consent of the State, make a change that results in a change in the Federal Identification Number of the Lessee by becoming (i) a possessor or merged corporation in a merger; or (ii) a constituent corporation in a consolidation; or (iii) a corporation in a dissolution; or
  - (4) The Lessee is a partnership, and the said partnership shall be dissolved as the result of any act or omission of its partners or any of them, or by operation of law or by order or decree of any court having jurisdiction or for any other reason whatsoever; or
  - (5) By or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer, a receiver, trustee, or liquidator shall take possession or control of all or substantially all the property of the Lessee, or any execution or attachment shall be issued against the Lessee or any of its property, whereupon possession of the Demised Premises shall be taken by someone other than the Lessee, and any such possession or control shall continue in effect for a period of fifteen (15) calendar days; or

- (6) Any lien is filed against the Demised Premises because of any act or omission of the Lessee and is not removed or bonded against to stay the effect of the lien, within thirty (30) calendar days; or
- (7) The Lessee shall voluntarily abandon, desert, vacate or discontinue its Use, as that term is defined in Section 4 of this Lease (excluding permitted closures as set forth herein) in the Demised Premises, or, after exhausting or abandoning any right of further appeal, the Lessee shall be prevented for a period of thirty (30) calendar days by action of any governmental agency from conducting its business in the Demised Premises, regardless of the fault of the Lessee; or
- (8) The Lessee shall fail duly and punctually to pay the Operating Expense Payment, as that term is defined in Section 7 of this Lease, or to make any other payment required hereunder within thirty (30) days after written notice that the same is due to the State; or
- (9) The Lessee shall fail to keep, perform and observe each and every other promise, covenant and agreement set forth in this Lease on its part to be kept, performed, or observed, within thirty (30) calendar days after receipt of notice of default thereunder from the State except where fulfillment of its obligation requires activity over a period of time, and the Lessee shall have commenced to perform whatever may be required for fulfillment within thirty (30) calendar days after receipt of notice and continues such performance without interruption except for Force Majeure, as defined in Section 21 (a) of this Lease; or
- (10) If this Lease shall require a guarantor of one or more of the Lessee's obligations under this Lease and any of the events described in subparagraphs (1) or (5) above shall occur to or with respect to the guarantor (whether or not they shall also occur to or with respect to the Lessee);

Then, upon the occurrence of any such event or at any time thereafter during the continuance thereof, the State may by five (5) calendar days' notice terminate this Lease, such termination to be effective upon the date specified in such notice. Such right of termination and the exercise thereof shall be and operate as a conditional limitation.

Notwithstanding anything to the contrary contained in this Lease, the State shall also have the right to terminate this Lease in accordance with the following:

- i. **For Cause:** This Lease may be terminated upon thirty (30) calendar days' (or other specified period) written notice, in accordance with Section 16 of this Lease, for a material breach that remains uncured (except if the nature of the breach is such that more than 30 days are required for its performance, then the Lessee shall not be in default if it commences to cure within the 30 day period and thereafter diligently pursues the cure to completion), situations where the Lessee becomes unable or incapable of performing or meeting any requirements or qualifications set forth in this Lease, non-performance, or upon a determination that the Lessee is non-responsible.

- ii. **For Non-Responsibility:** The Lessee agrees that the Commissioner may terminate this Lease if it is found by the State that the Lessee's responses to the Retail Disclosure Sheet were intentionally false or incomplete. In addition, upon written notice, in accordance with Section 16 of this Lease, to the Lessee, and a reasonable opportunity to be heard with appropriate officials of the Lessor, this Lease may be terminated by the Commissioner or his or her designee at the Lessee's expense where the Lessee is determined by the Commissioner or her designee to be non-responsible. In either event, the Commissioner or her designee may pursue available legal or equitable remedies for breach. In no case shall such a termination of the Lease by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, that may be sustained by the Lessee as a result of such a termination.

- iii. **Upon Conviction of Certain Crimes:** The Commissioner of General Services reserves the right to terminate this Lease in the event that it is found that a member, partner, director or officer of the Lessee is convicted of one or more of the following: Bribery involving Public Servants and Related Offenses as defined in

Article 200 of the New York State Penal Law; Corrupting the Government as defined in Article 496 of the New York State Penal Law or Defrauding the Government as defined in Section 195.20 of the New York State Penal Law.

- (b) If any of the events enumerated in paragraph (a) of this section shall occur prior to the Commencement Date, as that term is defined in Section 5 of this Lease, the State, upon the occurrence of any such event or at any time thereafter during the continuance thereof by twenty-four (24) hours' notice, provided in compliance with Section 16 of this Lease, may cancel the interest of the Lessee under this Lease Agreement, such cancellation to be effective upon the date specified in such notice and the Lessee shall be required to immediately vacate the Demised Premises or shall not be allowed to take possession of the Demised Premises.
- (c) No acceptance by the State of the Operating Expense Payment, as that term is defined in Section 7 of this Lease, fees, charges or other payments in whole or in part for any period or periods after a default in any of the terms, covenants and conditions to be performed, kept or observed by the Lessee shall be deemed a waiver of any right on the part of the State to terminate this Lease.
- (d) No waiver by the State of any default on the part of the Lessee in performance of any of the terms, covenants, or conditions hereof to be performed, kept, or observed by the Lessee shall be or be construed to be a waiver by the State of any other or subsequent default in performance of any of the said terms, covenants, and conditions.
- (e) The rights of termination described above shall be in addition to any other rights of termination provided in this Lease Agreement and in addition to any rights and remedies that the State would have at law or in equity consequent upon any breach of this Lease by the Lessee, and the exercise by the State of any right of termination shall be without prejudice to any other such rights and remedies.
- (f) The Lessee shall not interpose any non-compulsory counterclaims in any summary proceeding or action for non-payment of the Operating Expense Payment, as that term is defined in Section 7 of this Lease, or any other charges due and payable hereunder, which may be brought by the State.

The Lessee shall not be subject to any consequential damages as a result of a Lessee default hereunder, other than with respect to a holdover by the Lessee.

Notwithstanding any other provision hereof, the State shall reasonably mitigate any damages incurred as a result of the Lessee's default hereunder. The State's duty to mitigate damages shall be deemed satisfied if the State reasonably markets the Demised Premises and subsequently deals with any lessee prospects in a reasonable manner.

The Lessee shall have the right to terminate the Lease the event there is a breach or default by the State with respect to any of the provisions of the Lease Agreement, and the State fails to cure the breach or default within thirty (30) days after the receipt of written notice from the Lessee to cure a failure to do, observe, keep and perform any of the terms, covenants, conditions, agreements or provisions of this Lease (except if the nature of the State's obligation is such that more than thirty (30) days are required for its performance, then the State shall not be deemed in default if it commences performance within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion). Upon the failure of the State to cure the breach or default as provided for herein, the County shall have the right to terminate the Lease upon written notice to the State.

### **SECTION 33. LABOR DISTURBANCE**

If any type of strike, boycott, picketing, work stoppage, slow down or other labor activity is directed against the Lessee at the Building, as that term is defined in Section 1 (d) of this Lease, or against the Lessee's Use, as that term is defined in Section 4 of this Lease, pursuant to this Lease Agreement that in the reasonable opinion of the State adversely affects or is likely to adversely affect the operation of the Building, as that term is defined in Section 1 (d) of this Lease, or the operations of other lessees or permittees, whether or not the same is due to the fault of the Lessee or is caused by the employees of the Lessee or of others, the Lessee shall reasonably cooperate with the State to put an end to such actions as soon as possible.

## **SECTION 34. REMEDIES AND SUITS AGAINST THE LESSEE**

All remedies provided in this Lease Agreement shall be deemed cumulative and additional and not in lieu of or exclusive of each other or of any other remedy available to the State under this Lease, at law or in equity. In the event of a breach or threatened breach by the Lessee of any term, covenant, condition or provision of this Lease Agreement, the State shall have the right of injunction and the right to invoke any other remedy allowed by law or in equity as if termination, re-entry, summary proceedings and any other specific remedies including without limitation thereto, indemnity and reimbursement, were not mentioned herein, and neither the mention thereof nor the pursuance or exercise or failure to pursue or exercise any right or remedy shall preclude the pursuance or exercise of any other right or remedy.

## **SECTION 35. SURRENDER**

- (a) The Lessee shall promptly yield and deliver peaceably to the State possession of the Demised Premises on the date of the termination of this Lease, whether such termination be by expiration or otherwise. The Demised Premises shall be returned to the State in the condition in which the Lessee is required to maintain the Demised Premises hereunder, reasonable wear and tear excepted.
- (b) Notwithstanding the foregoing and the requirements pertaining to the removal of personal property set forth in Section 8 of this Lease, in the event that the Lessee leaves any personal property in the Demised Premises or the Building, as that term is defined in Section 1 (d) of this Lease, after the termination or expiration of this Lease, the State shall have the same rights with respect to such property as it has in the event of casualty under paragraph (d) of Section 28 of this Lease Agreement entitled "Casualty."

## **SECTION 36. ACCEPTANCE OF SURRENDER OF LEASE**

No agreement of surrender or to accept a surrender shall be valid unless and until the same shall have been reduced to writing and signed by the duly authorized representatives of the State and of the Lessee. Except as expressly provided in this section, neither the doing of, nor any omission to do, any act or thing, by any of the officers, agents, or employees of the State, shall be deemed an acceptance of a surrender of this Lease Agreement. Without limiting the foregoing, no employee or officer of the State shall be authorized to accept the keys to the Demised Premises prior to the Expiration Date of the Lease as fixed in Section 5 (a) of this Agreement entitled "Term," or the sooner termination of this Lease, and no delivery of keys by the Lessee shall constitute a termination of this Lease Agreement or acceptance of surrender.

## **SECTION 37. WAIVER OF REDEMPTION**

The Lessee hereby waives any and all rights of redemption, granted by or under any present or future law, arising in the event it is evicted or dispossessed for any cause, or in the event the State obtains or regains possession of the Demised Premises in any lawful manner.

## **SECTION 38. CONTINUITY OF OPERATIONS**

To assure continuity of the Use, as that term is defined in Section 4 of this Lease, upon the Expiration Date or any other termination hereunder, the Lessee shall be able to continue its occupancy as a month-to-month tenancy at the option of the State upon the Lessee's consent. During the term of such temporary extension, the Lessee shall be bound by all of the terms and conditions of this Lease Agreement.

## **SECTION 39. HOLDING OVER**

If the Lessee remains in possession of all or any part of the Demised Premises after the Expiration Date, without the express or implied consent of the State: (a) such tenancy will be deemed to be a periodic tenancy from month-to-month only; (b) such tenancy will not constitute a renewal or extension of this Lease for any further term; and (c) such tenancy may be terminated by the State upon the earlier of thirty (30) days' prior, written notice or the earliest date permitted by law. In such event, the Operating Expense Payment, as that is defined in Section 7 of this Lease, any other sums due under this Lease, including but not limited to additional rent, will be payable in the amount and at the times specified in this Lease Agreement. Such month-to-month

tenancy will be subject to every other term, condition, and covenant contained in this Lease Agreement.

#### **SECTION 40. STATE REMEDIES FOR SERVICES NOT PERFORMED**

- (a) If the Lessee shall fail or refuse to perform any of its obligations under this Lease after the expiration of any applicable notice and cure period, the State in addition to all other remedies available to it, shall have the right to perform any of the same and the Lessee shall pay the State's cost thereof, or if the State is required or elects to pay any sum or sums or incurs any obligations, expense or cost that the Lessee has agreed to pay or reimburse the State for, or if the State is required or elects to pay any sum or sums or incurs any obligations, expense or cost by reason of the failure, neglect or refusal of the Lessee to perform or fulfill any one or more of the conditions, covenants or agreements contained in this Lease, or as a result of an act or omission of the Lessee contrary to the said conditions, covenants and agreements, including any legal expense or cost in connection with any actions or proceedings brought by the State against the Lessee or by third parties against the State, the Lessee agrees to pay the sum or sums so paid or the expense and the State's cost so incurred, including all interest costs, damages and penalties, and each and every part of the same shall be and become additional rent.
- (b) "Cost" or "Costs" of the State in this Lease shall mean and include (i) cost of the participation in other pension plans or systems, insurance costs, sick leave pay, holiday, vacation, authorized absence pay or other fringe benefits; (ii) cost of materials, supplies and equipment used (including rent thereof); (iii) payments to contractors; and (iv) any other direct costs.
- (c) Whenever any default, request, action, or inaction by the Lessee causes the State to incur fees or any other expenses, the Lessee agrees that it shall pay and/or reimburse the State for such fees, costs, or expenses within twenty (20) calendar days after being billed therefor.

If any monies owing by the Lessee under this Lease Agreement are not paid in accordance with the payment provisions set forth herein, the Lessee shall pay to the State, as additional rent under this Lease, the greater of (i) interest thereon, at the rate of five percent (5%) of the amount due; or (ii) a late charge of Fifty and 00/100 Dollars (\$50.00) that shall be enforceable at any time after the payment of such monies shall become due without the necessity of any billing therefor, and the same shall be in addition to such other remedies the State may have pursuant to this Lease, at law or in equity.

Notwithstanding the foregoing, for the first two (2) times in any calendar year that the Lessee has failed to pay any such monthly installment of the Operating Expense Payment, as that term is defined in Section 7 of this Lease, or the payment of additional rent, such interest and late charge shall not apply unless the Lessee has failed to make such payments within ten (10) days of receipt of the State's written notice of such delinquency. The State shall not be required to give the Lessee such notice more than twice in any calendar year prior to assessing such interest and late charge.

#### **SECTION 41. RIGHTS OF ENTRY RESERVED**

- (a) The State, by its officers, employees, agents, representatives and contractors shall have the right at all reasonable times upon reasonable advance notice (except in an emergency situation) to enter the Demised Premises for the purpose of inspecting the same, for observing the performance by the Lessee of its obligations under this Lease Agreement, and for the doing of any act or thing that the State may be obligated or have the right to do under this Lease Agreement or otherwise. The Lessee upon request from the State shall demonstrate or operate any equipment, appliances, fixtures, or machinery used in connection with its Use, as that term is defined in Section 4 of this Lease, hereunder.
- (b) At any time and from time to time during Normal Business Hours, as that term is defined in Section 4 of this Lease, within the six (6) months next preceding the expiration of the Term, the State, by its agents and employees, whether or not accompanied by prospective lessees, occupiers or users of the Demised Premises, shall have the right to enter thereon for the purpose of exhibiting and viewing all parts of the same.



- (c) The Lessee shall not make any unreasonable claim or demand for damages based upon the exercise of any or all of the foregoing rights by the State or others. The State shall not be subject to consequential damages.

#### **SECTION 42. RIGHT OF RE-ENTRY**

The State shall, as an additional remedy upon the giving of a notice of termination as provided in Section 32 of this Lease Agreement entitled "Termination," have the right to re-enter the Demised Premises and every part thereof upon the effective date of termination without further notice of any kind and may regain and resume possession either with or without the institution of summary or any other legal proceedings or otherwise. Such re-entry or regaining or resumption of possession, however, shall not in any manner affect, alter, or diminish any of the obligations of the Lessee under this Lease Agreement, and shall in no event constitute an acceptance of surrender as provided in Section 36.

#### **SECTION 43. SURVIVAL OF THE OBLIGATIONS OF THE LESSEE**

- (a) In the event that this Lease shall have been terminated in accordance with a notice of termination as provided in Section 32 of this Lease Agreement entitled "Termination," or the interest of the Lessee canceled pursuant thereto, or in the event that the State has re-entered, regained or resumed possession of the Demised Premises in accordance with the provisions of Section 42 of this Lease Agreement entitled "Right of Re-entry," all the obligations of the Lessee under this Lease Agreement shall survive such termination or cancellation, re-entry, regaining or resumption of possession and shall remain in full force and effect for the full Term of this Lease Agreement, the Renewal Term, if applicable, and any holdover or extension thereof, and the amount of damages or deficiency shall become due and payable, as more specifically stated in paragraph (b) below, to the State to the same extent, at the same time or times and in the same manner as if no termination, cancellation, re-entry, regaining or possession had taken place.
- (b) Immediately upon any termination or cancellation pursuant to Section 32 of this Lease Agreement entitled "Termination," or upon any reentry, regaining or resumption of possession in accordance with Section 42 of this Agreement entitled "Right of Re-entry," there shall become due and payable by the Lessee to the State, in addition to the Operating Expense Payment, as that term is defined in Section 7 of this Lease, accrued prior to the effective date of termination, without notice or demand and as damages, the sum of the following:
- (1) the amount of all unfulfilled monetary obligations of the Lessee under this Lease Agreement, including without limitation thereto, all sums constituting additional rent hereunder and the cost to and expenses of the State for fulfilling all other obligations of the Lessee which would have accrued or matured during the balance of the Term or on the Termination Date originally fixed or within a stated time after expiration or termination; and
  - (2) an amount equal to the cost to and the expenses of the State in connection with the termination, cancellation, regaining possession and restoring and reletting the Demised Premises, the State's legal expenses and cost, and the State's cost and expenses for the care and maintenance of the Demised Premises during any period of vacancy, and any brokerage fees and commissions in connection with any reletting; and
  - (3) subject to the provisions of paragraph (c) below, it is understood and agreed that any damages sought pursuant to this section shall not affect or be construed to affect the State's right to damages in the event of termination or cancellation (or re-entry, regaining or resumption of possession) where the Lessee has not received any actual Gross Receipts under this Lease.
- (c) The State may at any time bring an action to recover all damages as set forth above not previously recovered in separate actions, or it may bring separate actions to recover the items of damages set forth in subparagraphs (1) and (2) of paragraph (b) above, and separate actions periodically to recover from time to time only such portion of the damages set forth in subparagraph (3) of paragraph (b) above as would have accrued as the Operating Expense Payment, as that term is defined in Section 7 of this Lease, up to the time of the

action if there had been no termination or cancellation. In any such action the Lessee shall be allowed a credit against its survived damages obligations equal to the amounts that the State shall have actually received from any lessee, licensee, permittee or other occupier of the Demised Premises or a part thereof during the period for which damages are sought, and if recovery is sought for a period subsequent to the date of suit a credit equal to the market rental value of the Demised Premises during such period (discounted to reflect the then present value thereof). If, at the time of such action the State has re-let the Demised Premises, the rent for the Demised Premises obtained through such re-letting shall be deemed to be the market rental value of the Demised Premises or be deemed to be the basis for computing such market rental value if less than the entire Demised Premises were re-let. In no event shall any credit allowed to the Lessee against its damages for any period exceed the then present value of the Operating Expense Payment, as that term is defined in Section 7 of this Lease, that would have been payable under this Lease Agreement during such period if a termination or cancellation had not taken place. In determining the present value of the Operating Expense Payment, as that term is defined in Section 7 of this Lease, an interest rate of five percent (5%) per annum shall be used.

#### **SECTION 44. RE-LETTING BY THE STATE**

The State, upon termination or cancellation pursuant to Section 32 of this Lease Agreement entitled "Termination," or upon any re-entry, regaining or resumption of possession pursuant to Section 42 of this Lease Agreement entitled "Right of Re-entry," may occupy the Demised Premises or may re-let the Demised Premises and shall have the right to permit any person, firm or corporation to enter upon the Demised Premises and use the same. The State may grant free rent or other concessions, and such re-letting may be for only part of the Demised Premises or of the Demised Premises or a part thereof, together with other space that is not part of the Demised Premises, and for a period of time the same as or different from the balance of the Term hereunder remaining, and on terms and conditions and for purposes the same as or different from those set forth in this Lease Agreement. The State shall also, upon termination or cancellation pursuant to Section 32 of this Lease Agreement entitled "Termination," or upon its re-entry, regaining or resumption of possession pursuant to Section 42 of this Lease Agreement entitled "Right of Re-entry," have the right to repair or to make structural or other changes in the Demised Premises, including changes that alter the character of the Demised Premises and the suitability thereof for the purposes of the Lessee under this Lease Agreement, without affecting, altering or diminishing the obligations of the Lessee hereunder. In the event either of any re-letting or of any actual use and occupancy by the State (the mere right to use and occupy not being sufficient however), there shall be credited to the account of the Lessee against its survived obligations hereunder any net amount remaining after deducting from the amount actually received from any lessee, licensee, permittee or other occupier as the rent or fee for the use of the said Demised Premises or portion thereof during the balance of the Term as the same is originally stated in Section 5 of this Lease Agreement, or from the market value of the use and occupancy, all expenses, costs and disbursements incurred or paid by the State in connection therewith. No such re-letting or such use and occupancy shall be or be construed to be an acceptance of a surrender.

#### **SECTION 45. CONDEMNATION**

- (a) In any action or proceeding instituted by any United States governmental or other authorized agency or agencies for the taking for a public use of any interest in all or any part of the Demised Premises, or in case of any deed, lease or other conveyance in lieu thereof (all of which are in this section referred to as "Taking or Conveyance"), the Lessee shall not be entitled to assert any claim to any compensation, award or part thereof made or to be made therein or therefor or any claim to any consideration or the Operating Expense Payment, as that term is defined in Section 7 of this Lease, additional rent or any part thereof paid therefor, or to institute any action or proceedings or to assert any claim against such agency or agencies or against the State for or on account of any such Taking or Conveyance, except for the possible claim to an award for trade fixtures owned and installed by the Lessee, it being understood and agreed between the State and the Lessee that the State shall be entitled to all the compensation or awards made or to be made or paid and all such consideration or the Operating Expense Payment, as that term is defined in Section 7 of this Lease, or additional rent, free of any claim or right of the Lessee. No taking by or delivery to any governmental authority under this paragraph (a) shall be or be construed to be an eviction of the Lessee or be the basis for any claim by the Lessee for damages, consequential or otherwise.

- (b) In the event of a Taking or Conveyance of the entire Demised Premises by any governmental or other authorized agency or agencies, then this Lease shall, as of the date possession is taken from the State by such agency or agencies, cease and terminate in the same manner and with the same effect as if the Term of the Lease had, on that date expired, and all obligations of the Lessee to pay the Operating Expense Payment, as that term is defined in Section 7 of this Lease, and additional rent hereunder shall terminate on the date of the Taking or Conveyance. In addition, the Lessee shall be entitled to a refund for any Operating Expense Payment, as that term is defined in Section 7 of this Lease, and additional rent paid in advance for any part of the Term, or the Renewal Term, if applicable, following such termination.
- (c) In the event of a Taking or Conveyance by any governmental or other authorized agency or agencies of a part of the Demised Premises then this Lease, as to such part only, shall, as of the date possession thereof is taken from the State by such agency or agencies, cease and terminate, and the Operating Expense Payment, as that term is defined in Section 7 of this Lease, thereafter to be paid by the Lessee to the State shall be abated from and after the date of such Taking or Conveyance.
- (d) In the event that the Taking or Conveyance or the delivery by the Lessee or Taking by the State pursuant to Section 46 of this Lease entitled "Governmental Compliance" covers fifty percent (50%) or more of the total usable area of the Demised Premises, then the Lessee and the State shall each have an option exercisable by notice given within ten (10) Business Days, as that term is defined in Section 1 (a) of this Lease, after such Taking or Conveyance, to terminate this Lease, as of the date of such Taking or Conveyance, and such termination shall be effective as if the date of such Taking or Conveyance were the original Termination Date of this Lease.

If this Lease is not terminated, then it shall remain in full force and effect as to the portion of the Demised Premises remaining, provided the Operating Expense Payment, as that term is defined in Section 7 of this Lease, shall be reduced in the same proportion that the area taken bears to the total area of the Demised Premises prior to the Taking, and the Lessee's Proportionate Share shall be adjusted in accordance with this paragraph. If this Lease is not terminated, then the State agrees, at the State's sole cost, to restore the Demised Premises as soon as reasonably possible to a complete unit of like quality, character, and utility for the Lessee's Use, as that term is defined in Section 4 of this Lease, as existed prior to the condemnation. Notwithstanding anything contained herein to the contrary, if the Demised Premises are not repaired and restored within one hundred eighty (180) days from the date of the condemnation, then the Lessee may terminate this Lease, upon notice provided in compliance with Section 16 of this Lease, at any time after the one hundred eightieth (180<sup>th</sup>) day and before the two hundred tenth (210<sup>th</sup>) day following the date of condemnation. If the State is aware the Demised Premises cannot be repaired and restored within one hundred eighty (180) days, the State shall notify the Lessee, in compliance with Section 16 of this Lease, within a reasonable time after it learns of such delay, and the Lessee shall have the option to terminate this Lease within sixty (60) days of such notice. The State shall return any deposits, all prepaid Operating Expense Payments, as that term is defined in Section 7 of this Lease, and other prepaid additional rent to the Lessee within thirty (30) days from the date of termination of the Lease.

#### **SECTION 46. GOVERNMENTAL COMPLIANCE**

In the event that all or any portion of the Demised Premises is required by the State to comply with any present or future governmental law, rule, regulation, requirement, order or direction, the State shall give the Lessee notice, in compliance with Section 16 of this Lease, that all or any such portion of the Demised Premises is so required, and the Lessee shall deliver all or any such portion of the Demised Premises so required on the date specified in such notice and, if the Lessee does not so deliver, the State may take the same. No such taking or delivery shall be or be construed to be an eviction of the Lessee or a breach of this Lease Agreement. In the event that the Lessee has received a notice hereunder, it shall deliver all or any such portion of the Demised Premises so required in the same condition as that required hereunder for the delivery of the Demised Premises on the Expiration Date. In the event of the taking or delivery of all the Demised Premises, this Lease Agreement shall, on the day of such taking or delivery, cease and expire as if that day were the Expiration Date, originally stated in this Lease Agreement; and, in the event of the taking or delivery of any portion of the Demised Premises, then, from and after such taking or delivery, such portion of the Demised Premises shall cease to be a part of the Demised Premises hereunder. There shall be an abatement of the Operating Expense Payment, as

that term is defined in Section 7 of this Lease, in the event of any such taking or delivery of a portion of the Demised Premises.

#### **SECTION 47. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS**

The Lessee shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208) and General Business Law Section 899-bb to the extent applicable to the County.

#### **SECTION 48. BROKERAGE**

The State represents to the Lessee that it did not consult or negotiate with any broker or finder with regard to the Premises and that no broker, finder or consultant participated with the State in procuring this Lease. Subject to the availability of lawful appropriations and consistent with Section 8 of the New York State Court of Claims Act, the State shall hold the Lessee harmless from and indemnify it for any final judgment of a court of competent jurisdiction to the extent attributable to the negligence of the State or of its officers or employees when acting within the course and scope of their employment with respect to this section.

The Lessee represents and warrants that it did not consult or negotiate with any broker or finder with regard to the Premises and that no broker, finder or consultant participated with the Lessee in procuring this Lease. The Lessee shall indemnify and save harmless the State from any claims for commission or brokerage made by any and all persons, firms or corporations whatsoever for services in connection with the negotiation and execution of this Lease Agreement.

#### **SECTION 49. PARKING**

As of the Commencement Date, the State shall provide the Lessee with the exclusive use of a total of two (2) assigned, on-site, paved, parking spaces, which shall be located in close proximity to an electrical outlet. The State also shall provide enough unreserved parking spaces for 10 full time County employees at the Building. The State reserves the right to change the location of the Lessee's parking space(s) as necessary, but in no event shall the total number of parking spaces allocated to the Lessee decrease below the number provided at the Commencement Date. In addition to the foregoing, the Lessee may request, in accordance with Section 16 of this Lease, the use of additional long-term parking spaces at the Building. If applicable, the Lessee shall be responsible for any fees charged for the use of such long-term parking spaces, and in such event the costs of the same shall not be included in Operating Expenses as discussed in Section 7 of this Lease.

The Lessee shall have the right to use the Building electrical outlets in the parking lot to charge County-owned electric vehicles parked at the Building.

In the event that the Lessee no longer needs the parking space(s), it shall notify the State, in compliance with Section 16 of this Lease, within five (5) Business Day of any changes so that the space(s) may be reallocated. The Lessee and its employees using the parking space(s) shall comply with all applicable rules and procedures established by the OGS Bureau of Parking Services. The parking space(s) shall be used only for parking duly registered and operating private passenger motor vehicles owned and operated by the Lessee or its employees, and the Lessee shall not use or allow its employees to use the parking spaces for overnight parking, storage or the repair of vehicles. The parking privileges shall not be transferable. Except to the extent otherwise provided in statute, the Lessor shall not be liable for any loss, injury or damage to persons using the OGS-managed parking lot or motor vehicles or other property therein, and, to the fullest extent permitted by law, the use of the OGS-managed parking lot shall be at the sole risk of the Lessee and its employees.

During the Term of this Lease, the Renewal Term, if applicable, and any extension or holdover thereof, the Lessor shall keep all the parking spaces allocated to the Lessee pursuant to the section, free of ice, snow and debris at no additional costs to the Lessee, but the costs of the services discussed in this paragraph shall be included in Operating Expenses in accordance with Section 7 of this Lease.

#### **SECTION 50. ENTIRE AGREEMENT**

The following appendix, exhibits, schedules and form are being attached and made part of the Lease:

Exhibit 1	OGS Drawing No. SOB-B1234-66263, dated 3/27/24 (Section 3)
Exhibit 2	Executive Order No. 22 (Sections 19, 20, 23, 61, 62 and Schedule A)
Exhibit 3	Sample Lease Assignment Agreement (Section 31)
Exhibit 4	Substitute W-9 (Section 31)
Exhibit 5	Sample Workforce Audit (Section 60)
Schedule A	Cleaning Standards (Section 19)
Schedule B	The EFT Authorization Form, Instructions and Related Information
Schedule C	Lessee's Self-Insurance Letter (Section 25)
Appendix A	Standard Clauses for New York State Contracts (Section 51)
Form 1	Retail Disclosure Sheet (Sections 31 and 53)

This Lease Agreement and its attachments constitutes the entire Lease Agreement of the parties on this subject matter hereof and may not be changed, modified, discharged or extend except by written instrument duly executed by the State and the Lessee and approval by the Attorney General, as to form, the Office of the State Comptroller and the Office of the County Attorney.

In the event of a conflict between the terms of this Lease and the exhibits, schedules, and form hereto, the terms of this Lease shall control. In the event of a conflict between the terms of this Lease (including the exhibits, schedules, and form) and Appendix A hereto, the terms of Appendix A shall control.

This Lease shall be binding upon the Parties and their respective successors and assigns. The submission of any unexecuted copy of this Lease shall not constitute an offer to be legally bound by the provisions of the document submitted. No Party shall be bound by this Lease until it is executed by all necessary Parties; (ii) approved by the Attorney General, as to form, and the Office of the New York State Comptroller, and the Office of the County Attorney (iii) has actually been delivered by the Lessor to the Lessee. This Lease may be executed in counterparts, and each counterpart constitutes an original document, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

If any term or provision of this Lease Agreement is held by a court of competent jurisdiction to be invalid or void or unenforceable, the remainder of the terms and provisions of this Lease Agreement shall in no way be affected, impaired, or invalidated, and to the extent permitted by applicable law, any such term, or provision shall be restricted in applicability or reformed to the minimum extent required for such to be enforceable. This provision shall be interpreted and enforced to give effect to the original written intent of the Parties prior to the determination of such invalidity or unenforceability.

#### **SECTION 51. APPENDIX A**

The Parties acknowledge and agree that the terms and provisions of Appendix A, Standard Clauses for New York State Contracts, attached hereto and forming a part of this Lease Agreement, shall be incorporated herein and constitute fully effective and binding obligations upon the Parties.

#### **SECTION 52. ENCOURAGING USE OF NEW YORK STATE BUSINESSES**

New York State businesses have a substantial presence in State leases and strongly contribute to the economies of the State and the nation. In recognition of the economic activity and leadership such businesses offer, lessees are strongly encouraged and expected to consider New York State businesses, including Small Business Enterprises and Minority- and Women-Owned Business Enterprises, as that term is defined in Section 1 (b) of this Lease, in the fulfillment of the requirements of leases. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Lessees are also strongly encouraged, to the maximum extent practicable and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology.

Utilizing New York State businesses in State leases will help create more private sector

jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the Lessee and its New York State business partners. New York State businesses will promote the Lessee's optimal performance under this Lease.

The State encourages lessees to provide maximum assistance to New York State businesses in their use of State leases. The potential participation by all kinds of New York State businesses will deliver great value to the State and its taxpayers.

### **SECTION 53. VENDOR RESPONSIBILITY**

The Lessor conducts a review of prospective lessees to provide reasonable assurance that the lessee is responsive and responsible. The Retail Disclosure Sheet, attached hereto as Form 1, is designed to provide information to assess a lessee's responsibility to conduct business in New York State based upon its financial and organizational capacity, legal authority, business integrity, and past performance history. The Lessee agrees to fully and accurately complete the Retail Disclosure Sheet. The Lessee acknowledges that the State's execution of this Lease will be contingent upon the State's determination that the Lessee is responsible, and that the State will be relying upon the Lessee's responses to the Retail Disclosure Sheet when making its responsibility determination.

In order to assist the State in determining the responsibility of a lessee prior to the award of a lease, the Lessee must complete and certify (or recertify) the Retail Disclosure Sheet no more than six (6) months prior to the date of execution of the Lease. The Lessee should become familiar with all of the requirements of the Retail Disclosure Sheet in order to accurately complete it.

The Lessee agrees that if it enters into this Lease with the Lessor, it shall at all times during the Lease Term, the Renewal Term, if applicable, and any holdover or extension thereof, remain responsible. The Lessee agrees, if requested by the Commissioner of General Services, or her designee, to present evidence of its continuing legal authority to do business in New York State and its business integrity, legal authority, experience, ability, prior performance, and organizational and financial capacity.

### **SECTION 54. PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESSES**

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"), thereby further integrating such businesses into New York State's economy. The Lessor recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of contracts entered into by the State.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of the economic activity such businesses offer in New York State, lessees are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of this Lease. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

For purposes of this Lease, the State conducted a comprehensive search and determined that this Lease does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to the Lessee. Nevertheless, the Lessee is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on this Lease for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <https://ogs.ny.gov/veterans/>.

The Lessee is encouraged to contact the Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss methods of maximizing participation by SDVOBs on this Lease.

### **SECTION 55. PRIOR LEASE / CANCELLATION**

Upon the Commencement Date, as that term is defined in Section 5 of this Lease, this Lease cancels, terminates and supersedes the Office of the New York State Comptroller Lease No.

L2017R dated January 1, 2015 and the Lease Modification Agreement dated December 18, 2019 (the foregoing is hereinafter referred to as the "Prior Lease").

## **SECTION 56. COMPLIANCE WITH LAWS**

The State shall, at its own cost and expense, ensure that the Building, as that term is defined in Section 1 (d) of this Lease, and the Premises comply with all applicable federal, State or local laws, rules, orders, ordinances and regulations at any time issued or in force, and the requirements of any insurance policy covering the Building, the Premises and the contents or improvements thereto, which requirements may be more restrictive than applicable base building code and/or municipal codes and laws. The Lessee agrees that it will not use the Premises for any purpose that shall violate any applicable laws, rules, orders, ordinances, and regulations.

## **SECTION 57. REPAIRS**

- (a) The State shall take good care of the Building, as that term is defined in Section 1 (d) of this Lease, and the Demised Premises, and shall make all repairs, replacement or maintenance necessary to put and keep the same in good order and condition, at its own cost and expense, except that repairs, replacement or maintenance that are necessary due to the negligence or willful misconduct of the Lessee, its employees, agents, invitees or contractors, shall be performed by the State, at the Lessee's sole cost and expense.
- (b) The State shall take good care of all State-owned items located in the Demised Premises, and shall make all repairs, replacements or maintenance necessary to put and keep the same in good order and condition, at its sole cost and expense, except that repairs, replacements or maintenance that are necessary due to the negligence or willful misconduct of the Lessee, its employees, agents, invitees or contractors, shall be performed by the State, at the Lessee's sole cost and expense.
- (c) Without limiting the generality of the foregoing, the State, by its officers, employees, representatives and contractors, shall have the right, for the benefit of the Lessee or for the benefit of others at the Building, to maintain initially existing and future Utility, Mechanical, Electrical, Communication and Other Systems, as that term is defined in Section 1 (e) of this Lease, or portions thereof in the Demised Premises and to enter the Demised Premises at all reasonable times upon reasonable advance notice, to make such repairs, alterations and replacements as may, in the reasonable opinion of the State, be deemed necessary or advisable and, from time to time, to construct or install over, in, under or through the Demised Premises new lines, pipes, mains, wires, conduits, equipment and other such encroachments and to use the Demised Premises for access to other portions of the Building not otherwise conveniently accessible, provided, however, that such repair, alteration, replacement, construction or access shall not unreasonably interfere with the Use, as that term is defined in Section 4 of this Lease, of the Demised Premises by the Lessee.
- (d) In the event that any property of the Lessee shall obstruct the access of the State, its employees, agents or contractors to any of the existing or future Utility, Mechanical, Electrical, Communication and Other Systems, as that term is defined in Section 1 (e) of this Lease, and thus shall interfere with the inspection, maintenance, repair or modification of any such systems, the Lessee shall use reasonable efforts to move such property as reasonably requested by the State, in order that access may be had to the system or part thereof for its inspection, maintenance, repair, or modification.
- (e) Notwithstanding the foregoing, the Lessee is and shall be in exclusive control and possession of the Demised Premises and the State shall not in any event be liable for any injury or damage to any property or to any person happening on or about the Demised Premises or for any injury or damage to the Demised Premises or any property of the Lessee or of any other person located therein or thereon, except caused by the negligence of the State, its officers or employees when acting within the course and scope of their employment.. Subject to the availability of lawful appropriations and consistent with Section 8 of the New York State Court of Claims Act, the State shall hold the Lessee harmless from and indemnify it for any final judgment of a court of competent jurisdiction to the extent attributable to the negligence of the State or of its officers or employees when acting within the course and scope of their employment with respect to this section.

- (f) Regardless of fault, all structural repairs and repairs to the building systems of the Building, as that term is defined in Section 1 (d) of this Lease, and the Demised Premises shall be done by the State, at its cost and expense, except that the Lessee shall, at its sole cost and expense, perform all repairs, structural repairs and repairs to the building systems of the Demised Premises, involving improvements, additions and fixtures, finishes and decorations made or installed by the Lessee, in accordance with Section 23 of this Lease.

#### **SECTION 58. SECURITY DEPOSIT**

*INTENTIONALLY DELETED*

#### **SECTION 59. CANCELLATION BY THE LESSEE**

*INTENTIONALLY DELETED*

#### **SECTION 60. LESSEE REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN**

*INTENTIONALLY DELETED*

#### **SECTION 61. REDUCING WASTE**

Except as otherwise set forth in this Lease, pursuant to Executive Order 22, which is annexed hereto as Exhibit 2, the Lessee shall identify all instances where single-use plastics are used in the common areas of the Building, as that term is defined in Section 1 (d) of this Lease, the Demised Premises or in performance of its obligations pursuant to this Lease and create a plan to eliminate their use in all circumstances where doing so will not endanger employee or public health and safety. In addition, Executive Order 22 prohibits the expenditure of State funds for the purchase of bottled water. The Lessee acknowledges an understanding of the requirements of EO-22, which is annexed hereto as Exhibit 2, and pledges to cooperate with the State in the State's implementation to the extent practicable and consistent with all legal requirements.

#### **SECTION 62. REDUCING GREEN HOUSE EMISSIONS/CLIMATE CHANGE/OPEN SPACE**

Executive Order No. 22, which is annexed hereto as Exhibit 2, provides requirements and prohibitions pertaining to a variety of matters, including but not limited to, the avoidance of the use of backup emergency diesel generators where practicable, the design and build out of projects to account for the climate change that may occur over the lifespan of the project including incorporating climate projections and adaptation strategies in upfront design and expected operations and management, and consideration of the preservation of open space as a strategy for climate risk mitigation in new and existing construction. The Lessee acknowledges an understanding of the requirements of EO-22, which is annexed hereto as Exhibit 2, and pledges to cooperate with the State in the State's implementation to the extent practicable and consistent with all legal requirements. Notwithstanding the foregoing, the Parties agree that the requirements of Executive Order 22 regarding the avoidance of the use of backup emergency diesel generators where practicable shall not impede or deter from the Lessor's obligation to provide emergency backup power to the Demised Premises in accordance with Section 20 (a) (3) of this Agreement.

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Contract Number \_\_\_\_\_

Thomas P. DiNapoli  
New York State Comptroller

By: \_\_\_\_\_

Date: \_\_\_\_\_

THE PEOPLE OF THE STATE OF NEW YORK  
Acting by and Through the Commissioner  
of General Services

By \_\_\_\_\_  
Scott C. Sandwick  
Associate Commissioner, Lease Management  
Division of Real Estate  
Leasing Services

\*\*\*\*\*

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APPROVED AS TO FORM:  
Letitia A. James  
Attorney General

By \_\_\_\_\_

Approved:  
Assistant Attorney General

EXHIBIT NO. 2

No. 22

**EXECUTIVE ORDER**

**Leading By Example: Directing State Agencies to Adopt a Sustainability and Decarbonization Program**

**WHEREAS**, the State of New York (“NYS” or “State”) is dedicated to the pursuit of environmental quality, sound public health, economic prosperity, and social well-being; and

**WHEREAS**, the use and disposal of materials, and the generation and use of energy, can have significant adverse impacts on environmental quality, public health and the climate; and

**WHEREAS**, the State's policies include conserving, improving, and protecting natural resources and the environment; preventing water, air, and land pollution; and enhancing the health, safety, and welfare of State residents and their overall economic and social well-being; and

**WHEREAS**, it is the State's policy to promote cost-effective methods to reduce energy and resource consumption, and reduce or eliminate the use of hazardous substances and the generation of hazardous substances, pollution, and waste at the source; and

**WHEREAS**, the State's solid waste management priorities include reducing the generation of solid waste and reusing and recycling materials; and

**WHEREAS**, the State's policies to advance environmental justice include improving the environment in communities, specifically minority and low-income communities, and addressing disproportionate adverse environmental impacts that may exist in those communities; and

**WHEREAS**, the State's procurement of commodities, services, and technology can be enhanced through State agency and public authority choices that minimize the negative environmental and health impacts of their operations; and

**WHEREAS**, State government can and should continue to lead in environmental stewardship through the use of green procurement and sustainable management practices; and

**WHEREAS**, State facilities and property can serve as testbeds for the deployment of clean energy projects and new technologies to scale, thereby accelerating widespread adoption of clean energy projects and technologies in the public and private sectors; and

**WHEREAS**, on July 18, 2019, the State enacted the Climate Leadership and Community Protection Act (the “Climate Act”), the most ambitious climate legislation in the United States. The Climate Act established a Climate Action Council charged with developing a plan to reduce greenhouse gas emissions in every sector of the State's economy; and

**WHEREAS**, Section 7 of the Climate Act addresses climate change actions by NYS agencies, and specifically that Section 7.1 states that NYS agencies shall assess and implement strategies to reduce their greenhouse gas emissions; and

**WHEREAS**, Section 7.3 of the Climate Act also directs all State agencies, offices, authorities, and divisions to prioritize reductions of greenhouse gas emissions and co-pollutants in Disadvantaged Communities as identified pursuant to Subdivision 5 of Section 75-0101 of the Environmental Conservation Law (“ECL”); and

**WHEREAS**, the State has already committed to meet 100 percent of its Office of General Services (“OGS”)-managed State agency facility electricity demand in New York City with renewable energy by 2025.

**NOW, THEREFORE, I, KATHY HOCHUL**, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and laws of the State of New York, do hereby order as follows:

## I. Definitions

- A. "Affected Entities" shall mean any agency or department over which the Governor has executive authority, including all offices and divisions thereof, as well as all public authorities for which the Governor appoints the Chair, the Chief Executive, or the majority of board members, including all offices and divisions thereof, except for the Port Authority of New York and New Jersey. This shall include the State University of New York and the City University of New York. Refer to the list presented in Exhibit A.
- B. "BuildSmart 2025" shall mean the collective effort by Affected Entities to reduce site energy use by 11 trillion British Thermal Units by 2025 from a 2015 baseline.
- C. "Disadvantaged Communities" shall mean communities that bear burdens of negative public health effects, environmental pollution, impacts of climate change, and possess certain socioeconomic criteria, or comprise high-concentrations of low- and moderate-income households, as identified pursuant to ECL § 75-0111.
- D. "Light-duty vehicles" shall mean vehicles equal or less than 10,000 pounds gross weight.
- E. "Medium- and heavy-duty vehicles" shall mean more than 10,000 pounds gross weight.
- F. "New construction" shall mean the construction of a new building that is occupied during all four seasons and is 5,000 square feet or larger.
- G. "Qualifying Tier" shall mean any tier of the New York State Public Service Commission's Clean Energy Standard (Case 15-E-0302) ("CES") that is designed to incentivize the delivery of additional, incremental clean energy to New York State or a specific location within New York State, which as of the date of this Executive Order includes Tier 1, Offshore Wind and Tier 4 but not Tier 2 or Zero-Emission Credits.

## II. GreenNY Council

- A. There is hereby established the GreenNY Council (the "Council"). The Council shall be comprised of the Director of the Division of the Budget ("DOB"); the Commissioner of the Office of General Services; the Commissioner of the Department of Environmental Conservation ("DEC"); the Commissioner of the Department of Health; the Commissioner of Economic Development; the Commissioner of Transportation; the Commissioner of the Office of Parks, Recreation, and Historic Preservation; the President of the Environmental Facilities Corporation; the President of the New York State Energy Research and Development Authority ("NYSERDA"); the President of the New York Power Authority ("NYPA"); the President of the Dormitory Authority of the State of New York; and the Chief Executive Officer of the Metropolitan Transportation Authority.
- B. The Council shall be the primary body responsible for implementing this Order.
- C. Members of the Council may designate a staff member, and an alternate, to represent them and participate on the Council on their behalf.
- D. The Council shall be led and co-chaired by the Commissioner of OGS, the Commissioner of DEC, the Director of DOB, the President of NYSERDA, and the President of NYPA, or their designees. The day-to-day work of the Council shall be performed by executive and program staff of these leadership agencies and authorities, in consultation with any other agency or authority staff that participate in Council work.
- E. The Office of Information Technology Services shall support the Council's performance of its responsibilities under this Order.
- F. The Council shall meet as needed, but no less than quarterly, to conduct public business. A majority of the members of the Council (or their designees), shall constitute a quorum, and all actions and recommendations of the Council shall require approval by a majority of the total members of the Council.
- G. The Council may form advisory subcommittees or workgroups, both standing and ad hoc, as the Council sees fit, made up of executive and program staff, to provide advice and

assistance to the Council regarding matters assigned to such subcommittees or workgroups by the Council.

### III. Training, Staff, and Support

- A. Each Affected Entity shall, no later than 30 days from the issuance of this Order, assign an employee to serve as its Sustainability Coordinator. Sustainability Coordinators shall be given management support and provided with the necessary resources to enable the Affected Entity to comply with this Order. Sustainability Coordinators shall serve as the Affected Entity's liaison to the Council.
  - 1. Affected Entities are encouraged to create a Sustainability Team in-house to support the work of the Council. This Sustainability Team should be comprised of appropriate staff involved in identifying, approving, and implementing sustainability or energy projects, and environmental justice matters. The Sustainability Team should include an executive sponsor at the Deputy or Associate Commissioner, or Vice President level or equivalent.
- B. The Council shall design and implement training and outreach programs for Sustainability Coordinators and other Affected Entity staff that participate in Council work to assist with carrying out the requirements of this Order.

### IV. Reporting

- A. All Affected Entities shall furnish such information and assistance as the Council determines is reasonably necessary to accomplish its purposes. All Affected Entities shall share data in the most efficient manner identified by the Council for purposes of informing any progress reports, and the Council shall follow applicable NYS Data Governance procedures regarding any interagency data sharing or collection.
- B. NYPA shall provide Affected Entities with access to the New York Energy Manager ("NYEM"), with necessary technical support, at cost. NYEM shall serve as the system of record for all energy data from covered facilities. All Affected Entities shall ensure that their energy data is entered into the NYEM system. The Council shall leverage this data to develop a GHG baseline for Affected Entity operations.
- C. The Council shall develop an annual survey to gather information from Affected Entities regarding:
  - 1. The progress each Affected Entity has made toward achieving the directives, targets and goals provided for or established pursuant to this Order;
  - 2. The effectiveness and usage of the procurement specifications;
  - 3. Efforts the Affected Entity has undertaken to advance environmental justice; and
  - 4. The specific sustainability and energy efficiency projects that have been implemented and the effectiveness of such programs in meeting the targets, goals, and other requirements of this Order.
- D. Affected Entities shall submit each year on or before a date as the Council may direct, a completed survey in the form and containing the information specified by the Council
- E. The Council, during the month of September in the year following the issuance of this Order, and each year thereafter, shall submit a progress report to the Governor, which shall compile the information submitted by Affected Entities pursuant to this Order and report on progress made on the implementation of this Order. Such progress report shall be published on a website established by the Council.

### V. Exemptions

- A. Exemptions from any of the specific targets, goals, or other requirements under this Order may be granted by the Council co-chairs, provided, however, that any exemptions to Section VII.A of this Order may only be granted by the President of NYSERDA in

consultation with the Chief Executive Officer of the New York State Department of Public Service (“DPS”) and Director of Budget.

- B. Affected Entities may request such an exemption from Council co-chairs and must justify such request based upon the Affected Entity’s particular circumstances or as set forth in this Order.

## VI. Buying and Operating Green

- A. The Council shall develop and issue sustainable procurement specifications (procurement specifications) for use by Affected Entities in the procurement of commodities, services, and technology, or where applicable, in the development of new public works solicitations and contracts.

Any procurement specifications developed, approved, or issued by the Interagency Committee on Sustainability and Green Procurement under Executive Order 4, issued on April 24, 2008, shall carry forward in full effect as if issued by the Council until modified by the Council.

- B. In developing the procurement specifications, the Council shall consider the following factors:

1. Protection of public health and the environment, including vulnerable populations and residents in Disadvantaged Communities;
2. Avoidance of hazards from the use or release of toxic substances;
3. Pollution reduction and prevention;
4. Sustainable resource management and use, and sustainable manufacturing and production processes;
5. Low impact development and climate resilient design practices, and standards and priorities for entities providing construction, engineering, and other similar services;
6. Reduction of greenhouse gas emissions;
7. The use of renewable and zero-emission resources, remanufactured components, and reused or recycled content;
8. Waste reduction, materials reuse, recyclability, and compostability;
9. Water conservation;
10. Quality, durability and utility of the item of procurement;
11. Minimizing adverse impacts throughout a commodity's or technology's life cycle (i.e., as identified by life-cycle assessment or other supply-chain impacts);
12. Cost;
13. Extended producer responsibility; and
14. Legal and regulatory requirements applicable to the use and procurement of commodities, services, and technology, or where applicable, the procurement of public works.

- C. Affected Entities shall follow the GreenNY procurement specifications approved by the Council when procuring under existing contracts or when developing new solicitations and contracts for the procurement of commodities, services, and technology, or where applicable, in the development of new public works solicitations and contracts.

- D. Where an Affected Entity determines: (1) that such commodities, services, or technology set forth in an approved GreenNY procurement specification will not meet required form, function or utility; (2) the cost of the commodities, services or technology set forth in an approved GreenNY procurement specification is not competitive; or (3) there is a compelling public health or safety reason not to purchase such commodities, services or technology set forth in an approved GreenNY procurement specification, the Affected

Entity may seek an exemption from the Council for its particular circumstances pursuant to Section V of this Order.

- E. The Council may issue green operational directives (“Operational Directives”) in a form substantially similar to its procurement specifications. In developing the Operational Directives, the Council shall consider the 13 factors set forth in Section VI.B above.
- F. The Council shall provide Affected Entities with a description of projects, programs and services that can be leveraged to implement the requirements of this Order.
- G. Affected Entities shall follow the Council’s Operational Directives when conducting the Affected Entity’s operations on real property and facilities under the Affected Entity’s jurisdiction.
- H. The Council shall work with the preferred sources and Minority and Woman Owned Business Enterprises and Service-Disabled Veteran Owned Businesses in order to increase awareness of the GreenNY procurement specifications.
- I. The Council shall develop a baseline for sustainable purchasing by affected entities and issue targets to achieve greater compliance.

## VII. Reducing Greenhouse Gas Emissions

- A. By 2030 and thereafter, subject to available supply, 100% of the electricity used by Affected Entities for their own operations, except electricity needed to support the generation of electricity by an Affected Entity in accordance with its enabling authority, shall come from energy systems that are eligible under the CES (“Eligible Systems”) as part of an all-of-government approach to meet the goals of the Climate Act in a cost-effective manner.
  - 1. Each Affected Entity shall first count the amount of clean energy generated by Eligible Systems across the State that the Affected Entity pays for in its electricity bills or otherwise towards compliance with CES, based on calculations provided by NYSERDA. Affected Entities shall provide information requested by NYSERDA to perform the applicable calculations, including load data, CES compliance payments, and any other necessary information.
  - 2. For the remainder of its electricity usage, each Affected Entity shall next be required to demonstrate meeting this obligation, where feasible, through the use of on- or off-site Eligible Systems providing energy dedicated to the Affected Entity’s operations.
  - 3. For the portion of electricity that cannot be served by such Eligible Systems, each Affected Entity shall, in consultation and agreement with NYSERDA and DPS, procure renewable energy certificates (“RECs”) qualified under a Qualifying Tier of the CES.
  - 4. NYSERDA and DPS shall establish further detailed guidelines and requirements with respect to how each Affected Entity shall comply, and report compliance, with this Section VII(A) of this Executive Order.
  - 5. The Council will monitor progress towards this requirement, and NYSERDA and DPS will make adjustments to this obligation as needed based on statewide progress towards Climate Act mandates.
- B. To the fullest extent feasible, beginning January 1, 2024, all new construction submitted for permitting by Affected Entities shall avoid infrastructure, building systems or equipment that can be used for the combustion of fossil fuels, excluding the necessary use for backup emergency generation and process loads, provided that Affected Entities shall avoid the use of backup emergency diesel generators where practicable. This shall not affect the continued operation and maintenance of State or Affected Entity owned or operated electric generating facilities. The Council will monitor progress towards this goal.

- C. Affected Entities shall achieve 11 trillion BTUs of energy savings at their facilities by 2025 as outlined in the BuildSmart 2025 program.
1. Each Affected Entity shall work with NYPA to achieve their allotted portion of the overall savings target for State operations. Affected Entities should consult the BuildSmart 2025 Program Guidelines for types of projects and programs to undertake, including master planning, O&M program development, participation in demand response and similar programs, submetering, LED lighting, and other projects that reduce energy consumption and enhance building efficiency.
  2. Prior to 2025, the Council shall issue a 2030 energy savings goal based on an evaluation of progress towards the 2025 goal and the additional opportunities that remain for cost-effective energy savings. Such 2030 goal shall be aligned with the most recent version of the State's Scoping Plan developed pursuant the Climate Act.
- D. The Council shall issue Operational Directives and guidance for common construction materials to reduce the amount of embodied carbon in such materials. Starting January 1, 2023, Affected Entities shall seek to reduce the embodied carbon in all new construction or construction projects consisting of adaptive reuse or significant renovations that cost greater than 50% of the cost of new construction, submitted for permitting by Affected Entities, by taking the following actions:
1. Design teams shall calculate the total embodied carbon that will result from the project, including shipping, transportation, and construction equipment requirements.
  2. Bidders shall be required to submit environmental product declarations when available, that include the amount of embodied carbon in given building materials.
- E. Affected Entities shall have 100% of their light-duty non-emergency vehicle fleets be Zero Emission Vehicles (ZEVs) by 2035 and 100% of their medium- and heavy-duty vehicle fleet be ZEVs by 2040.
1. All Affected Entities shall create and file a light-duty vehicle fleet decarbonization plan and a medium- and heavy-duty decarbonization plan with the Council. The Council shall provide technical assistance and guidance to agencies for the development of decarbonization plans. Such decarbonization plans shall include, at minimum, the following elements:
    - a. A purchasing plan that includes interim targets for how they will achieve the fleet decarbonization goals of this Order; and
    - b. A plan for providing staff training and engagement necessary for the successful decarbonization of their fleet.
  2. Affected Entities shall file such light-duty vehicle fleet decarbonization plans with the Council within one year of the issuance of this Order and shall file such medium- and heavy-duty decarbonization plans with the Council within three years of the issuance of this Order.
  3. Affected Entities shall file progress updates to their light and medium- and heavy-duty vehicle decarbonization plans every three years after the filing of their first plan.
  4. Priority shall be given to purchasing battery electric vehicles and hydrogen fuel cell vehicles, and if they are not practicable for an Affected Entity's needs, then plug-in hybrid electric vehicles may be considered in limited circumstances as specifically authorized by the Council.
  5. Affected Entities that operate emergency vehicles shall, at least annually, evaluate and test various ZEV technologies to determine if they can meet the use cases for these vehicles.



6. Affected Entities shall consult with OGS to develop ZEV charging infrastructure for their fleets. OGS shall provide guidance to agencies and coordinate the phased implementation of ZEV charging infrastructure.
  7. Affected Entities are encouraged to maximize employee access to and promote the use of ZEV charging infrastructure employee workplace charging at State owned and maintained parking facilities.
- F. Affected Entities shall evaluate the inclusion of distributed energy resources and energy storage to the maximum extent practicable. NYPA and NYSERDA shall collaborate to provide Affected Entities with needed technical assistance regarding new energy storage systems.
- G. Affected Entities shall seek to utilize the DEC Value of Carbon Guidance, where appropriate, to aid in their decision making on greenhouse gas emission reductions under this Executive Order

### VIII. Reducing Waste

- A. The Council shall create a waste diversion plan template that Affected Entities shall use to complete their plans. All Affected Entities shall create a waste diversion plan and file such plan with the Council that outlines how they will meet the following goals:
1. A decrease in waste disposal of 10 percent every five years from a baseline of Fiscal Year 2018-19, until reaching a goal of 75 percent.
  2. Waste data reported for these goals should be broken out into the following categories: recycled materials; compostable materials and other organics; material sent to landfill (including construction and demolition waste); and special waste (including hazardous waste).
  3. The waste diversion plan shall incorporate at least the following elements:
    - a. a schedule for conducting routine waste audits of facilities and how the findings from the waste audit will be utilized in advancing waste reduction;
    - b. a plan for diverting organic waste from landfill to meet the diversion goals;
    - c. identifying all instances where single-use plastics are used and creating a plan to eliminate their use in all circumstances where doing so will not endanger employee or public health and safety; and
    - d. consideration of whether the affected entity should, by 2025, transition to dual-stream recycling that source separates recyclable items into subcategories of mixed paper and commingled containers (plastic, glass, and metal), at all facilities where it is practicable and where dual-stream material recovery facilities are available, cost-effective and efficient.
  4. In addition, technical assistance in compiling the plans will be provided by DEC.
  5. The Council shall reassess the waste diversion goals of this Order at least every five years, and if the goals are updated by the Council, it shall require updated waste diversion plans to be submitted by Affected Entities on how each will meet the new goals.
  6. Affected Entities shall file such plans with the Council within one year of the receipt of the waste diversion plan template.
- B. After 90 days following the issuance of this Order, Affected Entities shall not expend State funds for the purchase of bottled water. If an Affected Entity determines that it has a need to purchase bottled water for health or safety reasons, it may request an exemption from the Council for its particular circumstances pursuant to Section V of this Order. The Council shall issue guidance on exceptions to this requirement to address public health issues and other appropriate circumstances. This Section does not apply to an Affected Entity purchasing bottled water for emergency purposes.

## IX. Reducing Use of Toxic Substances

- A. Affected Entities shall evaluate and incorporate toxics use reduction strategies into their operations, to the extent practicable, to achieve pollution prevention. The Council will, at a minimum, provide agencies with information on healthy buildings, green cleaning and disinfection, integrated pest management and green procurement.

## XI. Low Impact Development

- A. Affected Entities shall evaluate, and to the maximum extent practicable, incorporate green infrastructure concepts to reduce all stormwater runoff and improve water quality in new construction or redevelopment projects submitted for permitting by Affected Entities regardless of disturbance threshold. These include activities such as the reconstruction of parking lots and the addition of new landscaping.
- B. The Council, in collaboration with the EFC, will provide guidance on incorporating green infrastructure concepts to Affected Entities.
- C. Climate Risk Incorporation
  1. New infrastructure and building projects shall be designed and built to account for the climate changes that may occur over their lifespans. This includes incorporating climate projections and adaptation strategies in upfront design and expected operations and management. Preservation of open space shall be considered as a strategy for climate risk mitigation in new and existing construction.
  2. The Council will provide guidance on incorporating climate projections and climate risk concepts to Affected Entities.
  3. All Affected Entities shall evaluate opportunities to harden their infrastructure and mitigate the impacts of climate change with resilience practices such as nature-based solutions and modular infrastructure.

## XII. Promoting Biodiversity and Habitat Protection

- A. Affected Entities that have jurisdiction over real property shall, where practicable, seek opportunities to enhance the ecological integrity of their real property to support native biodiversity and the NYS Pollinator Protection Plan, protect threatened and endangered species, and increase climate resilience and natural carbon storage. This includes prioritizing the use of native plants and minimizing the use of non-native plants in landscaping and other planting efforts and other activities that may be identified in the New York Natural Heritage Program conservation guide and its management recommendations regarding listed plants.
- B. The Council shall provide a template for all Affected Entities to implement an Early Detection Rapid Response protocol in place for invasive species on the real property over which the Affected Entity has jurisdiction. The Council may issue additional operational directives to stop the spread of invasive species on State-owned real property.
- C. Affected entities shall give priority to the use of integrated pest management techniques to control invasive species before turning to other means of eradication.
- D. All Affected Entities shall follow available best practices for identifying and properly managing endangered species on real property and ensure that their projects and operations do not have an adverse impact upon any endangered species. The DEC shall provide guidance and technical assistance to Affected Entities regarding properly managing endangered species and data tools to identify locations where endangered species issues may be present.
- E. Affected Entities shall evaluate opportunities, to the extent practicable, to co-locate new projects with landscaping or habitat to support native pollinator species and the goals of the NYS Pollinator Protection Plan and enhance climate resilience and natural carbon storage.

XIII. Disadvantaged Communities

- A. Each Affected Entity shall, to the maximum extent practicable, lower the impact of its operations on Disadvantaged Communities, and shall incorporate lowered environmental impact in these communities into the plans developed by Affected Entities pursuant to this Order.
- B. The Council shall conduct an inventory of State-owned facilities located in Disadvantaged Communities.
- C. Affected Entities shall prioritize facilities over which the Affected Entity has jurisdiction that are located within Disadvantaged Communities for efficiency and other environmental upgrades, such as electrifying heating and cooling systems, which will lower the Affected Entity's environmental impacts on these communities.

XIV. Innovative Solutions

- A. The Council shall continuously evaluate the potential of new technologies in order to assist Affected Entities in continuing to reduce their environmental footprint and increase climate resilience (mitigation and adaptation) of its operations, and wherever feasible, test new technologies and equipment to determine if such technologies or equipment is practicable for adoption in Affected Entity operations.

XV. Repeal of Prior Executive Orders

- A. Executive Order 4, issued on April 24, 2008, Executive Order 18, issued on May 5, 2009, Executive Order 88, issued on December 28, 2012, and Executive Order 166, issued on June 1, 2017, are hereby revoked and superseded by this Executive Order.

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

BY THE GOVERNOR  
Secretary to the Governor

## EXHIBIT A – Affected Entities

- 1) AGING- Office for the Aging
- 2) AGM- Department of Agriculture and Markets
- 3) APA- Adirondack Park Agency
- 4) ARTS- Council on the Arts
- 5) BFSA- Buffalo Fiscal Stability Authority
- 6) BOE- Board of Elections
- 7) BPCA- Battery Park City Authority/Parks Conservancy
- 8) CDTA- Capital District Transportation Authority
- 9) CELG- Commission on Ethics and Lobbying in Government
- 10) CENTRO- Central New York Regional Transportation Authority
- 11) CIVIL- Department of Civil Service
- 12) CPB- Central Pines Barrens Joint Planning & Policy Commission
- 13) CUNY- City University of New York
- 14) DASNY- Dormitory Authority of New York
- 15) DCJS- Division of Criminal Justice Services
- 16) DEC- Department of Environmental Conservation
- 17) DED- Department of Economic Development
- 18) DFS- Department of Financial Services
- 19) DHCR- Division of Housing and Community Renewal
- 20) DHR- Division of Human Rights
- 21) DHSES- Division of Homeland Security and Emergency Services
- 22) DMV- Department of Motor Vehicles
- 23) DOB- Division of Budget
- 24) DOCCS- Department of Corrections and Community Supervision
- 25) DOH- Department of Health
- 26) DOS- Department of State
- 27) DOT- Department of Transportation
- 28) DPS- Department of Public Service
- 29) DVS- Division of Veterans Services
- 30) ECFSA- Erie County Fiscal Stability Authority
- 31) ECMC- Erie County Medical Center Corporation
- 32) EFC- Environmental Facilities Corporation
- 33) FCB- Financial Control Board
- 34) GAMING- Gaming Commission
- 35) GOER- Governor's Office of Employee Relations
- 36) HESC- Higher Education Services Corporation
- 37) HRBRRD- Hudson River- Black River Regulating District
- 38) HRVG- Hudson River Valley Greenway

- 39) IG- Office of Inspector General
- 40) ITS- Information Technology Services
- 41) JAVITS- New York Convention Center Operating Corporation
- 42) JC- Justice Center
- 43) LABOR- Department of Labor
- 44) LIPA- Long Island Power Authority
- 45) MNA- Division of Military and Naval Affairs
- 46) MTA- Metropolitan Transportation Authority
- 47) NFTA- Niagara Frontier Transportation Authority
- 48) NIFA- Nassau County Interim Finance Authority
- 49) NYPA- New York Power Authority
- 50) NYSBA- New York State Bridge Authority
- 51) NYSERDA- NYS Energy Research and Development Authority
- 52) NYSIF- Insurance Fund
- 53) OASAS- Office of Alcoholism and Substance Abuse Services
- 54) OCFS- Office of Children and Family Services
- 55) Office of Victim Services
- 56) OGDENSBURG- Ogdensburg Bridge and Port Authority
- 57) OGS- Office of General Services
- 58) OMH- Office of Mental Health
- 59) OPRHP- Office of Parks, Recreation, and Historic Preservation
- 60) OPWDD- Office of People with Developmental Disabilities
- 61) ORDA- Olympic Regional Development Authority
- 62) OTDA- Office of Temporary and Disability Assistance
- 63) BERB- Public Employment Relations Board
- 64) PORTOSWEGO- Port of Oswego Authority
- 65) RIOC- Roosevelt Island Operating Corporation of the State of New York
- 66) RTS – Rochester Genesee Regional Transportation Authority
- 67) SLA - Alcohol Beverage Control (State Liquor Authority)
- 68) SUNY- State University of New York
- 69) TAX- Department of Taxation & Finance
- 70) THRUWAY- Thruway Authority
- 71) TROOPERS- State Police
- 72) UDC- Urban Development Corporation
- 73) UNDC- United Nations Development Corporation
- 74) WCB- Workers' Compensation Board
- 75) WCMC- Westchester County Health Corporation

**SCHEDULE A**

**CLEANING STANDARDS**

The State shall provide, at a minimum, the following janitorial services using materials and procedures that comply with the requirements set forth in Section 19 of this Lease and that meet the standards set forth below. As used herein, the word "Daily" shall mean to occur once each Business Day, as that term is defined in Section 1 (a) of this Lease.

Floors: Resilient Tiles: Clean with good luster; scuffing and black marking to be minimal; without noticeable wear areas.

Floors-Carpeted: Carpeted areas are to be clean, free of surface dirt and dust.

Furniture and Counters: All surfaces must be clean and dust free, including desk accessories and equipment.

Light Fixtures: To be clean and free of dust.

Walls, Ceilings, Entrances, Metal Trim, Doors, etc.: High dusting, free of dust. Walls, metal trim and doors free of spots and metal to be polished. Entrance mats to be clean and presentable. Entrance glass to be clean.

Windows: To be cleaned on the following schedule:

Interior	Exterior	Entrance Door
Wash once a week	Minimum of 2 times per week	Daily, both sides

Windowsills and Window Trim: Will be clean and dry.

Woodwork: (Natural Wood Finish): Clean and lustrous unless finish is normally flat.

Rubbish: All wastepaper baskets, trash cans are to be emptied and all trash removed from the Building, as that term is defined in Section 1 (d) of this Lease, Daily. Wastepaper baskets are to be clean, odor free, and lined each day. In order to maximize materials recovery and implement effective programs to reduce waste, the Lessee shall, to the extent practicable and consistent with all legal requirements, comply with the requirements and information found at: <https://ogs.ny.gov/greeny/state-agency-waste-reduction-reuse-recycling> within the Demised Premises in compliance with Section 19 of this Lease. As discussed in Section 19 of this Lease, the Lessee agrees, to the extent practicable, to assist the Lessor with implementing said programs and shall likewise source separate and remove all such waste and comply with the requirements and information found at: <https://ogs.ny.gov/greeny/state-agency-waste-reduction-reuse-recycling> and all laws, rules, orders, ordinances and regulations at any time issued or in force and applicable in the borough, city, county, or other municipality in which the Demised Premises are located.

Exterminating Service: The State shall contract for effective exterminator services, when and as necessary.

All of the above-described services shall be adequate and effective to keep the Demised Premises and all equipment and materials used by the Lessee, at all times, clean, sanitary, and free from rubbish, refuse, dust, dirt, offensive or unclean material, insects, rodents, and vermin.

The Parties agree that, the standards set forth on this Schedule can be amended with prior, written notice in accordance with Section 16 of this Lease, but in no event shall the standards be less than those that are adequate and effective to keep the Demised Premises and all equipment and materials used by the Parties, at all times, clean, sanitary, and free from rubbish, refuse, dust, dirt, offensive or unclean material, insects, rodents, and vermin.

The Lessee shall cooperate with the State in their compliance with the requirements of EO-22, which is annexed hereto as Exhibit 2, to the extent practicable and consistent with all legal requirements, including but not limited to utilizing the GreenNY Council's approved specifications which can be found at: <https://ogs.ny.gov/greeny-purchasing-requirements-and-tools>.