A. Background. The college or department named in this purchase order ("College") is a constituent unit of The City University of New York ("CUNY"). The vendor or supplier named on page 1 of this purchase order shall hereafter be referred to as "Contractor". This Purchase Order is subject to the New York State Education Law Section 6218 and New York State Finance Law Articles 9 and 11. The agreement that is being established by this Purchase Order is comprised of and governed by the following (collectively, "Contract"): (a) this Purchase Order Terms and Conditions, (b) New York State Appendix A, Standard Clauses for all New York State Contracts, as it may be amended, modified, or supplemented from time to time ("Appendix A"), which is incorporated herein (a current copy of which is available upon request if not attached), (c) the specifications set forth on the first page of or attached to this Purchase Order, (d) any related bid or other solicitation document issued by CUNY (if any, "IFB"), (e) any related bid submission, proposal, quote or the like from Contractor (if any, "Bid Submission"). The term "State" in Appendix A includes the State of New York and CUNY, which is a "contracting agency" and "State agencies" for purposes of Appendix A. Defined terms may be used herein before being defined.

B. Questions: 1. The Work shall at all times be subject to the review, direction and control of the College Business Manager, or such other person as may be designated by CUNY in writing from time to time ("Business Manager"). All questions concerning performance of the Work shall be decided by the Business Manager. 2. CUNY, acting through the Business Manager, shall act reasonably in exercising this authority under Contract, except to the extent CUNY may act in its sole and absolute discretion or in accordance with such other standard, as specified herein.

C. Work: 1. The term "Work" shall be deemed to include all supplies, commodities, materials, equipment, and/or other goods ("Goods") and/or services ("Services") listed in Specifications, as applicable. 2. Contractor agrees to deliver Work that meets applicable New York State standards and terms of condition and shall promptly repair or replace any defect without cost to CUNY within one (1) year from date of Acceptance. 2. All manufacturers' warranties shall flow directly to CUNY. Notwithstanding the previous two sentences, if the manufacturers' guarantee for any Goods or any component thereof exceeds one (1) year, the longer guarantee period shall apply to such Goods. 3. In the event of any direct conflict between any guarantees contained in Specifications and this paragraph, the guarantees in Specifications shall control to the extent of such conflict. 4. Contractor shall convey full ownership of and clear title to Goods, free of all claims, encumbrances, liens, and other security interests. If any encumbrance, lien, or other security interest is filed against any Goods on account of any action or inaction of Contractor, Contractor shall discharge such encumbrance, lien, or other security interest, or if CUNY reserves the right to retain monies under Contract sufficient to satisfy any such lien. Contractor shall provide properly executed, acknowledged and delivered bills of sale or other title instruments as may be required by CUNY.

D. Price, Requirements, Payment: 1. Unless otherwise specified, each Unit Price is to be a net price including all charges for the goods and/or services, including without limitation, transportation and inside delivery charges, F.O.B. Destination, and unloading and assembly. In the event of a discrepancy between the Unit Price and the Extension Price, the Unit Price shall govern. 2. Unless otherwise specified, this is a requirements contract and, as such, Contractor shall have the right to purchase its full requirements at the Unit Price, and CUNY may issue additional purchase orders to Contractor to purchase its requirements for Work. Upon issuance, each additional purchase order shall be effective and binding on Contractor and constitute part of Contract. CUNY does not guarantee any minimum or maximum amount of Work to be performed. 3. Contractor shall submit properly documented invoices for Work to CUNY at College's Accounts Payable Department only following Acceptance of such Work and at time intervals and in form and substance acceptable to CUNY. CUNY reserves the right to request additional information at any time, and Contractor shall provide such information promptly. Following CUNY's receipt of such invoices, the CUNY (or the State of New York ("State") or the City of New York ("City"), as applicable) shall pay Contractor in accordance with the Unit Price set forth in Contract and in accordance with ordinary CUNY (or State or City) procedures and practices. 4. Contractor agrees to accept payments under Contract by electronic funds transfer, and Contractor shall provide all information and documentation requested by CUNY to effectuate such transfers. 5. Should Contractor be liable for any payments to CUNY or the State hereunder, interest, late payment charges, and collection fee charges will be determined and assessed pursuant to New York State Finance Law §18.

E. Delivery: 1. Unless otherwise specified, Contractor shall perform and/or deliver Work to College between 9:00 a.m. and 4:00 p.m., Monday to Friday (non-College holidays), or at such other time as may be specified in writing by CUNY reserves the right to reject delivery at any other time. 2. CUNY reserves the right to keep all containers as property of CUNY, require the Contractor to remove any containers at no cost to CUNY, and/or return containers and charge the cost of such return to Contractor. 3. Deliveries shall be made on or before the date specified in Writing by CUNY. 4. Contractor shall deliver any Goods and/or perform any Services within any timeframes in Specifications or as otherwise required by CUNY. 5. All deliveries shall be deemed to be freight on board (F.O.B.) destination.

F. Subcontracting: 1. Subcontracting is not permitted except as provided in Specifications. 2. Where subcontracting is permitted, Contractor shall obtain CUNY's prior written approval for (a) the portion of Work to be subcontracted and (b) the particular subcontractor(s). 3. Any contract(s) between Contractor and permitted subcontractor(s) (if any) shall incorporate by reference all Contract requirements relating to Contractor, and Contractor shall ensure that subcontractor(s) comply with such requirements. 4. Nothing herein shall be deemed to waive any rights of CUNY against Contractor.

G. Guarantees: Title: Notwithstanding any Acceptance by CUNY, Contractor guarantees Work against any defects of workmanship, construction and materials and shall promptly repair or replace any defect without cost to CUNY within one (1) year from date of Acceptance. 2. All manufacturers' warranties shall flow directly to CUNY. Notwithstanding the previous two sentences, if the manufacturers' guarantee for any Goods or any component thereof exceeds one (1) year, the longer guarantee period shall apply to such Goods. 3. In the event of any direct conflict between any guarantees contained in Specifications and this paragraph, the guarantees in Specifications shall control to the extent of such conflict. 4. Contractor shall convey full ownership of and clear title to Goods, free of all claims, encumbrances, liens, and other security interests. If any encumbrance, lien, or other security interest is filed against any Goods on account of any action or inaction of Contractor, Contractor shall discharge such encumbrance, lien, or other security interest, or if CUNY reserves the right to retain monies under Contract sufficient to satisfy any such lien. Contractor shall provide properly executed, acknowledged and delivered bills of sale or other title instruments as may be required by CUNY.

H. Protection of Site; Cooperation: 1. Contractor agrees to the terms and conditions of Contract, and Contractor shall comply, and shall cause its employees, agents, and/or subcontractor(s) (if any) to comply with all CUNY and College policies that Contractor is not responsible (as defined by Law); Contractor does not provide or misstate, conceal, or fail to disclose, any material information in Contract, or in any written statement or materials or oral examination or hearing in connection with Contract; (b) Contractor fails to advise CUNY of any change in the status of the job or in the progress of the job; (c) CUNY determines in accordance with Law or CUNY policies that Contractor is not responsible (as defined by Law); or (d) CUNY finds that the certification filed by Contractor in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. 3. CUNY reserves the right to exercise all legal and contractual remedies whether or not Contract is terminated for cause or convenience. 4. Upon any termination for cause or convenience of any Work, CUNY reserves the right to procure replacement Work and charge Contractor the difference between the applicable Unit Prices and the cost of such replacement Work, and Contractor shall promptly pay such amounts following receipt of invoice therefor.

I. Acceptance: 1. Unless specifically stated in Specifications, all Goods shall consist of new merchandise, new equipment, or new manufactured Goods, and shall be delivered complete, turnover, fully functional, and guaranteed. 2. Work shall not be deemed accepted by CUNY until CUNY has inspected it and so certified ("Accept", "Accepted" or "Acceptance"). 4. Payment or partial payment made before Acceptance shall not be deemed a waiver of CUNY's rights. 5. An acknowledgment by CUNY's personnel of the delivery or receipt of Goods (as applicable) shall not constitute acceptance of those Goods. Contractor bears the risk of loss of all Goods until Acceptance by CUNY; if Acceptance is revoked, Contractor bears the risk of loss thereafter. Acceptance shall not be deemed a waiver by CUNY of any of its rights or remedies under law or Contract.

J. Rejection: 1. CUNY reserves the right to reject Work not conforming to Specifications or Standards or both. 2. CUNY shall specify defects in writing and offer Contractor a reasonable period in which to cure such defects, such period to be determined in CUNY's sole and absolute discretion, and Contractor shall cure such defects to the satisfaction of CUNY within such period. 3. CUNY reserves the right to Accept partially conforming Work, in its sole and absolute discretion. 4. Contractor shall promptly remove rejected Work at its own expense. Rejected Work left longer than thirty (30) days will be deemed abandoned and CUNY shall have the right to dispose of Work and shall bill Contractor for the cost of returning or disposing rejected Work, and Contractor shall promptly pay all such costs upon receipt of invoice therefor. 6. Nothing in this paragraph shall limit any other right or remedy of CUNY with respect to improper performance of Work.

K. Termination for Cause or Convenience; Suspension: 1. If Contractor breaches any term or condition of Contract or if any certification made hereunder is false ("Default"), and Contractor fails to cure such Default following notice from CUNY, CUNY may terminate Contract for cause in accordance with this paragraph. Such notice shall identify the Default and give Contractor a reasonable period in which to cure, such period to be determined by CUNY in its sole and absolute discretion. Failure to cure within such period shall be deemed reasonable cause for termination of Contract, and, thereafter, CUNY may terminate Contract upon notice to Contractor. 2. CUNY may immediately terminate Contract for cause at any time upon notice (without an opportunity to cure) to Contractor if: (a) Contractor does not provide or misstate, conceal, or fail to disclose, any material information in Contract, or in any written statement or materials or oral examination or hearing in connection with Contract; (b) Contractor fails to advise CUNY of any change in the status of the job or in the progress of the job; (c) CUNY determines in accordance with Law or CUNY policies that Contractor is not responsible (as defined by Law); or (d) CUNY finds that the certification filed by Contractor in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. 3. CUNY reserves the right to exercise all legal and contractual remedies whether or not Contract is terminated for cause or convenience. 4. Upon any termination for cause or convenience of any Work, CUNY reserves the right to procure replacement Work and charge Contractor the difference between the applicable Unit Prices and the cost of such replacement Work, and Contractor shall promptly pay such amounts following receipt of invoice therefor. 5. Termination for cause may be deemed proof of non-responsibility under Law. 6. Notwithstanding the foregoing, CUNY may terminate Contract at any time for its convenience, without cause, upon five (5) days' written notice to Contractor, or upon five (5) days' written notice to Contractor the Unit Price (prorated, as applicable) for any Work delivered up to the date of termination and Acceptance by CUNY. 7. CUNY shall have the right, for any reason, to delay, postpone or suspend the Work, or any portion thereof, up to ninety (90) days, upon notice to Contractor (a "Work Suspension"). Any Work Suspension shall not give rise to any action of cause for damages against CUNY, but
Contractor’s term of performance for the Work shall be extended for the period of the Work Suspension. In the event of a Work Suspension, the Contractor shall resume the Work as directed by CUNY.

L. Indemnification: 1. Contractor shall indemnify and hold CUNY (including, without limitation, the College and all other constituent units), the Dormitory Authority of the State of New York, The City University Construction Fund, the City and the State, and the trustees, officers, employees and agents of each of them (collectively, the “Indemnified Parties”), harmless from all suits, claims, demands, fines, actions, and costs of any kind including attorneys’ fees and other defense costs, arising out of or related to Contractor’s operations (regardless of whether or not Contractor itself has been negligent) including, without limitation, (a) Contractor’s performance of its obligations under Contract, (b) Contractor’s failure to comply with Law or any of the requirements of Contract, (c) any damage to property and injuries to persons, including death, arising out of or related to Contractor’s operations, and (d) Contractor’s improper use or infringement of any proprietary process or item furnished or used pursuant to Contract. 2. In any circumstances contemplated above in which Contractor would be required to indemnify and hold any Indemnified Party harmless, Contractor shall also, upon the request of CUNY, defend the Indemnified Parties with counsel acceptable to CUNY. CUNY shall have final decision-making authority over any settlement during the course of such defense. 3. Insofar as the facts or Law relating to any of the foregoing would preclude the Indemnified Parties from being indemnified, for Contractor, the Indemnified Parties shall be partially indemnified by Contractor to the fullest extent permitted by Law.

M. Insurance: 1. Contractor shall provide CUNY with certificates of all required insurance before beginning Work, and upon CUNY’s request, copies of policies and all endorsements. All vehicles to be used for Work shall be insured in an amount not less than one million dollars ($1,000,000) per occurrence. 3. Contractor shall procure and maintain Workers’ Compensation, Employment Practices, and Disability Benefits insurance as required by New York law. 4. Contractor shall procure and maintain Commercial General Liability (“CGL”) insurance issued in Contractor’s name by a licensed carrier authorized to do business in New York, in an amount not less than one million dollars ($1,000,000) per occurrence. In the event such CGL insurance contains an aggregate limit, the aggregate shall apply on a per-project basis applicable to the Contract and such per-project aggregate shall be at least two million dollars ($2,000,000). Such CGL insurance shall protect each additional insured, Contractor and its subcontractors from property damage and/or bodily injury including death, that may arise from operations under the Contract. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office Form CG 001. Such insurance shall name CUNY (including, without limitation, College and all other constituent units of CUNY), City, State, the Dormitory Authority of the State of New York, The City University Construction Fund, and such additional persons or entities required by CUNY from time to time, as additional insureds on a primary and non-contributory basis. If Specifications contain alternate insurance requirements, such requirements shall control.

N. Modification: 1. Contract may not be amended or modified, and none of its provisions may be waived, except by a written instrument signed by CUNY. 2. CUNY shall not be liable for any additional Work or changes to Work without such instrument.

O. Liquidated Damages: Without limiting any other right CUNY may have in law or in equity, CUNY reserves the right to assess Contractor liquidated damages in the amount contained in the Specifications for Contractor’s failure to complete timely performance, and Contractor shall pay such amounts as directed by CUNY.

P. Applicable Laws and Licenses: Throughout the Contract term Contractor shall comply with all laws, codes, ordinances, rules, regulations, orders, requirements of federal, state, and local governments, courts, governmental authorities, legislative bodies, boards, agencies, commissions, and the like (collectively, “Law”). If there is a specific provision in the Specifications or the other terms and conditions of Contract, then Contractor shall comply with the most stringent Law or requirement in each instance. By noting any specific Law with particularity in Contract or in any other prior or future communication, Contractor is not relieved of any obligation to comply with all Laws, and no prior agreements or contract terms or conditions relating to any subject matter shall be changed or amended to such compliance. Contractor shall procure and maintain at its own cost any permits, licenses or certificates required for performance of Contract.

Q. Lien Waivers; Release: Contractor shall from time to time, following any request by CUNY, promptly execute and deliver, and cause any subcontractors and suppliers to execute and deliver, written releases and waivers of the right to mechanics’ liens in form and substance acceptable to CUNY. Receipt of such releases and waivers shall be a condition to any subsequent payment due under Contract. Without limiting the foregoing, Contractor agrees that, upon acceptance by Contractor of the final payment to be paid pursuant to Contract, it shall be deemed to have fully released the Indemnified Parties from any and all claims, demands and causes of action whatsoever that the Contractor or CUNY may have against any of all the Indemnified Parties in connection with Contract. Upon CUNY’s request, Contractor shall execute and deliver to CUNY a comparable written release in form and substance acceptable to CUNY.

R. Survival: All of Contractor’s obligations in connection with the Work related to insurance, indemnification, liens, releases, and guarantees and warranties shall survive Acceptance and/or expiration or earlier termination of Contract.

S. Strict Performance; No Waiver: Failure of CUNY to insist upon strict performance of any of the terms and conditions of Contract, or failure or delay to exercise any rights or remedies or to promptly notify Contractor of a Default, or the Acceptance of or payment for any Work, shall not constitute a waiver of the right to demand performance of such obligations, or to enforce any provisions of Contract. Contractor shall promptly bring any claim against CUNY to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity. The Chancellor of CUNY or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Chancellor of CUNY or his or her designee issues a written notice authorizing a resumption of performance under the Contract. Upon written notice to Contractor, and a reasonable opportunity to be heard with appropriate CUNY officials or staff, the Contract may be terminated by the Chancellor of CUNY or his or her designee. In such event, the Chancellor of CUNY or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.