




**FULLY EXECUTED**  
**Contract Number: 4400003770**  
Contract Effective Date: 12/23/2008  
Valid From: 12/01/2008 To: 06/30/2009

All using Agencies of the Commonwealth, Participating Political Subdivision, Authorities, Private Colleges and Universities

**Purchasing Agent**  
**Name: Vega Lisa**  
**Phone: 717-346-4290**  
**Fax: 717 346-3820**

Your SAP Vendor Number with us: 163713

**Supplier Name/Address:**   
**HAWORTH INC**  
P.O. Box 93237  
CHICAGO IL 60673-3237 US

**Please Deliver To:**  
  
To be determined at the time of the Purchase Order unless specified below.

**Supplier Phone Number:** 7175452119  
**Supplier Fax Number:** 717-545-2119

**Contract Name:**  
**Demountable/Relocatable Walls - Child 4**

**Payment Terms**  
NET 30

Solicitation No.: 6100007735

Issuance Date: 10/27/2008

Supplier Bid or Proposal No. (if applicable): 6500011798

Solicitation Submission Date: 11/12/2008

This contract is comprised of: The above referenced Solicitation, the Supplier's Bid or Proposal, and any documents attached to this Contract or incorporated by reference.

Item	Material/Service Desc	Qty	UOM	Price	Per Unit	Total
1	Demountable/Relocatable Walls	0.000		0.00	1	0.00

**General Requirements for all Items:**

**Header Text**

Contact Information:

Name: Priscilla St. Jacques-Glusko

Phone: 717-343-9322

Fax: 717-545-2119

E-mail: Priscilla.st.jacques-glusko@ haworth.com

No further information for this Contract

**Information:**

Supplier's Signature \_\_\_\_\_

Title \_\_\_\_\_

Printed Name \_\_\_\_\_

Date \_\_\_\_\_

ITEM SHEETS

<b>CONTACT NAME FOR CONTRACT:</b> Haworth Inc- Lifespace Walls			
<b>PHONE:</b> Local: 717 343-9322			
<b>FAX:</b> Local: 717 545 2119			
<b>E-MAIL:</b> Priscilla.St.Jacques-Glusko@Haworth.com			

MANUFACTURER	NAME/NUMBER OF CURRENT CATALOG/PRICE LIST	PERCENT DISCOUNT FROM LIST	EFFECTIVE DATE OF CATALOG/ PRICELIST
Haworth Inc	Lifespace Specification Guide-NA Walls/ August 2008	37%	Aug-08

## SPECIFICATIONS

**CONTRACT SCOPE/OVERVIEW:** This Contract will cover the requirements of Commonwealth State Agencies for the purchase and/or leasing of Demountable/Relocatable Walls. See attached leasing Terms & Conditions.

**BIDS:** In order to be eligible for award, a bidder must be the manufacturer of offered products or an authorized dealer or supplier of the manufacturer's products.

Manufacturers bidding this contract may offer more than one dealer to insure coverage for all agencies of the Commonwealth. Dealer lists noting if the dealer is authorized to receive purchase orders and payment directly, must be scanned and electronically attached to bid.

If a bidder is not the manufacturer of offered products, bidder must scan and electronically attach with its bid a letter signed by the manufacturer stating the bidder is authorized to sell the manufacturer's products, and also provide a letter authorizing the dealer to bid the manufacturer line direct. The manufacturer will honor any responsibilities under warranty for products sold by bidder, if bidder fails to perform such service. Bidders failing to provide signed, manufacturer's letter attesting to authorization to sell/bid manufacturer's product may result in rejection of bid.

**AWARD:** Awards will be made to the responsible bidders offering the greatest discount from the most recent manufacturer's official, dated price list, one copy of which must be submitted before award. Price List name and date must be included with bid. Failure to comply may result in bid rejection. One award will be made for each particular manufacturer's complete line of available products.

**TERM OF CONTRACT:** The Contract shall commence on the Effective Date, which shall be no earlier than July 1, 2008 and expire on June 30, 2009.

**OPTION TO EXTEND:** The Department of General Services reserves the right, upon notice to the Contractor, to extend the Contract or any part of the Contract for up to three (3) months upon the same terms and conditions. This will be utilized to prevent a lapse in Contract coverage and only for the time necessary, up to three (3) months, to enter into a new contract.

**OPTION TO RENEW:** The Contract or any part of the Contract may be renewed for two (2) additional one (1) year terms by mutual agreement between the Commonwealth and the Contractor. If this Contract is renewed the same terms and conditions shall apply.

**PRICE LISTS:** Price lists are to be submitted before award for the sole purpose of providing a reference to the various items on the price list and the manufacturer's price for each item. Any reference, which may appear on any price list, to any terms and conditions, such as, F.O.B. Shipping Point or prices subject to change, will not be part of any contract with the successful bidder(s) and will be disregarded by the Commonwealth. Suppliers agree to supply the Commonwealth with copies of the Catalogues and Price Lists as requested by using agencies. All price lists/catalogs must be identified in bid proposal (see attached sheet).

**SINGLE DISCOUNT:** Only one discount will be accepted. Where suppliers are offering multiple discounts, the Commonwealth will accept the greatest discount offered. Multiple discounts on a single price list must be averaged or the bid may be rejected. The percentage discount from the appropriate price list must contain a numeric figure not to exceed four (4) digits so that entry can be made on Commonwealth's computer (example 26.15%).

**NOTE TO ALL BIDDERS:** ALL DISCOUNTS WILL REMAIN FIRM FOR THE LENGTH OF THE CONTRACT.

**PRODUCT UPDATE:** The Awarded Suppliers may update the contract price lists at the end of each six (6) month period, during the contract period to reflect new products, manufacturer's price changes, and deletion of discontinued products. The first update is allowed after the contract has been in effect for 6 months.

Suppliers shall submit a letter to the appropriate Commodity Specialist requesting review and approval of the updated price list. The Supplier shall itemize all changes in a clear and concise fashion. It is the responsibility of the contractor to adequately justify changes. All requests for updates must be accompanied by the manufacturer's latest, official, published price list along with a letter of verification from the manufacturer. Suppliers will be notified in writing by the buyer indicating approval or disapproval of the requested update. If approved, a contract change notice will be issued putting the updated price list on contract it will then be the responsibility of the contractor to distribute the price list to the users.

At no time are awarded suppliers allowed to unilaterally change products or pricing. Orders will be monitored to ensure compliance.

**MINIMUM ORDER:** The minimum order qualifying for FOB delivery prices shall be one thousand dollars (\$1000.00) per single delivery point. Orders for less than \$1000.00 may be accepted by mutual agreement; however, freight charges shall be listed as a separate item on the invoice. Receipted freight bill shall accompany and be attached to the invoice. Applicable freight for any product will not exceed the rate charged by nationally recognized carriers operating in the same market for the same type of freight service.

**CONDITION OF PRODUCT: ALL EQUIPMENT OFFERED IN RESPONSE TO THIS INVITATION TO BID MUST BE NEW.**

**SERVICES:** Bidders may offer to provide additional related services in conjunction with the furniture items they are offering to supply the Commonwealth under this contract. The additional related services are limited to: design layout of existing furniture being moved from one area to another; storage of furniture until new buildings or building renovations are completed; relocation and/or reconfiguration of existing manufacturers' lines of furniture. Bidders should include with their bids a list of all such services with the associated prices. The prices will provide using agencies with better capability to analyze manufacturers' products based upon life cycle costs. These services and their associated prices will not be a factor in bid evaluation and award of the contract. The Commonwealth does, however, reserve the right to restrict the services which can be procured under the contract and not to include any services if either the prices are unacceptable or services are outside of the acceptable scope of additional services. Any updates for these services are subject to the "Update Option and Application" clause.

**INSTALLATION:** If the ordering agency requires installation of the equipment. The agency should negotiate an installation price with the awarded supplier and add it to the purchase order as a separate line item. If installation is required, certain statutory provisions are required based upon the total cost of the equipment and installation. The following chart indicates what clauses will be applicable based upon the total cost of the purchase order for equipment and installation. The text of the clauses follows.

Total Dollar Value of the Purchase Order for Equipment and Installation	Applicable Clauses
\$0 to \$24,999	<ul style="list-style-type: none"> <li>• Domestic Workforce Utilization Certification</li> <li>• Steel Products Procurement Act "A"</li> <li>• Prohibition Against the Use of Certain Steel and Aluminum Products</li> <li>• Insurance</li> </ul>

\$25,000 to \$99,000	<ul style="list-style-type: none"> <li>• Domestic Workforce Utilization Certification</li> <li>• Steel Products Procurement Act “A”</li> <li>• Prohibition Against the Use of Certain Steel and Aluminum Products</li> <li>• Insurance</li> <li>• Prevailing Minimum Wage</li> <li>• Performance Bond (Total Purchase Order Value Not Exceeding \$100,000)</li> </ul>
\$100,000 and greater	<ul style="list-style-type: none"> <li>• Domestic Workforce Utilization Certification</li> <li>• Steel Products Procurement Act “A”</li> <li>• Prohibition Against the Use of Certain Steel and Aluminum Products</li> <li>• Insurance</li> <li>• Prevailing Minimum Wage</li> <li>• Performance &amp; Payment Bonds (Total Purchase Order Exceeding \$100,000)</li> </ul>

**DOMESTIC WORKFORCE UTILIZATION CERTIFICATION:** To the extent that any services, such as design and consulting services could be performed outside of the geographical boundaries of the United States, the Contractor will be required to certify that those services will be performed exclusively within the geographical boundaries of the United States or specify the percentage of the direct labor that will be performed outside of the United States. The certification form will be included with the written solicitation for quotes and must be completed by the Contractor. The using agency will use the certification in making a best value selection.

**STEEL PRODUCTS PROCUREMENT ACT “A”:** In the performance of any contract awarded pursuant to this invitation to bid, the contractor, subcontractors, material men, or suppliers shall use only Steel Products, rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more of such operations, from steel made in the United States by the open hearth, basic oxygen, electric furnace, Bessemer or other steel making process. Steel Products include not only Cast Iron Products but also Machinery and Equipment listed in United States Department of Commerce Standard Industrial Classification 25 (furniture and fixture), 35 (machinery, except electrical) and 37 (transportation equipment) and made of, fabricated from, or containing steel components. If a product contains both foreign and United States steel, such products shall be determined to be a United States Steel product only if at least 75% of the cost of the articles, materials and supplies have been mined, produced or manufactured, as the case may be, in the United States. Transportation equipment shall be determined to be a United States steel product only if it complies with Section 165 of Public Law 97-424 (96 Stat. 2136).

When unidentified steel products are supplied under a contract, before any payment will be made, the contractor must provide documentation including, but not limited to, invoices, bills of lading and mill certification that the steel was melted and manufactured in the United States. If a steel product is identifiable from its face, the contractor must submit certification which satisfies the using agency that the contractor has fully complied with this provision. The Department shall not provide for or make any payment to any person who has not complied with the Act. Any such payments made to any person by the Department which should not have been made as a result of the Act shall be recoverable directly from the contractor, subcontractor, manufacturer or supplier who did not comply with the Act.

In addition to the withholding of payments, any person who willfully violates any of the provisions of the Act shall be prohibited from submitting any bids to any public agency for a period of five (5) years from the date of the determination that a violation has occurred. In the event the person who violates the provisions of the Act is a subcontractor, manufacturer or supplier, such person

shall be prohibited from performing any work or supplying any materials to a public agency for a period of five (5) years from the date of the determination that a violation has occurred.

The contractor shall include the provisions of the Steel Products Procurement Act in any subcontract and supply contract, so that the provisions of the Act shall be binding upon each subcontractor and supplier.

**PROHIBITION AGAINST THE USE OF CERTAIN STEEL AND ALUMINUM PRODUCTS:** In accordance with the Trade Practices Act of July 23, 1968 P.L. 686 (71 P.S. Section 773.101 et seq.), the contractor cannot and shall not use or permit to be used in the work any aluminum or steel products made in a foreign country which is listed below as a foreign country which discriminates against aluminum or steel products manufactured in Pennsylvania. The countries of Brazil, South Korea, Spain and Argentina have been found to discriminate against certain products manufactured in Pennsylvania. Therefore, the purchase or use of those countries' products, as listed below, is not permitted.

1. **BRAZIL:** Welded carbon steel pipes and tubes; carbon steel wire rods; tool steel; certain steel products, including hot-rolled stainless steel bar; stainless steel wire rod and cold-formed stainless steel bar; pre-stressed concrete steel wire strand; hot-rolled carbon steel plate in coil; hot-rolled carbon steel sheet and cold-rolled carbon steel sheet.
2. **SPAIN:** Certain stainless steel products, including stainless steel wire rod, hot-rolled stainless steel bars and cold-formed stainless steel bars; pre-stressed concrete steel wire strands certain steel products, including hot-rolled steel plate, cold-rolled carbon steel plate, carbon steel structural shapes, galvanized carbon steel sheet, hot-rolled carbon steel bars and cold-formed carbon steel bars.
3. **SOUTH KOREA:** Welded carbon steel pipes and tubes; hot-rolled carbon steel plate; hot-rolled carbon steel sheet and galvanized steel sheet.
4. **ARGENTINA:** Carbon steel wire rod and cold-rolled carbon steel sheet.

Penalties for violations of this paragraph may be found in the Trade Practices Act, which penalties include becoming ineligible for public works contracts for a period of three years.

**NOTE:**

THIS PROVISION IN NO WAY RELIEVES THE CONTRACTOR OF ITS RESPONSIBILITY TO COMPLY WITH THOSE PROVISIONS OF THIS INVITATION TO BID WHICH PROHIBIT THE USE OF FOREIGN-MADE STEEL AND CAST IRON PRODUCTS.

**INSURANCE** - Contractor shall purchase and maintain at its expense the following types of insurance, issued by companies acceptable to the Department and authorized to conduct such business under the laws of the Commonwealth of Pennsylvania.

- a. Worker's Compensation Insurance for all of the Contractor's employees and those of any subcontractor, engaged in work at the site of the project in accordance with the Worker's Compensation Act of 1915 and any supplements or amendments thereof.
- b. Public liability and property damage insurance to protect the Commonwealth, the Contractor, and any and all subcontractors from claims for damages for personal injury (including bodily injury), sickness or disease, accidental death and damage to property, including loss of use resulting from any property damage, which may arise from operations under this contract whether such operation be by the Contractor, by any subcontractor or by anyone directly or indirectly employed by either. The limits of such insurance shall be in an amount not less than \$500,000 each person and \$2,000,000 each occurrence, personal injury and property damage combined.

Such policies shall be occurrence rather than claims-made policies and shall name the Commonwealth of Pennsylvania as an additional insured. The insurance shall not contain any endorsements or any other form designed to limit and restrict any action by the Commonwealth, as an additional insured, against the insurance coverage in regard to the work performed for the Commonwealth.

Prior to commencement of work under this contract, the Contractor shall provide the Department with current certificates of insurance. These certificates shall contain a provision that coverage's afforded under the policies will not be cancelled or changed until at least thirty (30) days' written notice has been given to the Department.

Paragraph c. to be added to above when the purchase requisition calls for a complete in place where the vendor is using motor vehicles on Commonwealth Highways/property to apply the product.

c. Comprehensive Automobile Liability Insurance to protect the Commonwealth and the Contractor from claims for damages for personal injury (including bodily injury or death) and damage to property, including loss of use resulting from any property damage, which may arise from the use of Contractor owned or leased vehicles in the performance of this contract whether such operation be by the Contractor, by any subcontractor, or by anyone directly or indirectly employed by either. The limits of such insurance shall be in an amount not less than \$500,000 each person and \$2,000,000 dollars each occurrence, personal injury and property damage combined. Such policies shall be occurrence rather than claims-made policies and shall name the Commonwealth of Pennsylvania as an additional insured.

**PREVAILING MINIMUM WAGE** - The contract with the awarded vendor is subject to the provisions, duties, obligations, remedies and penalties of the Pennsylvania Prevailing Wage Act, 43 P.S. Section 165-1 ET SEQ., which is incorporated herein by reference as if fully set forth herein. The contractor shall pay no less than the wage rates as determined by the Secretary of Labor and Industry (hereinafter referred to in this paragraph as "Secretary") for each craft or classification of all workmen needed to perform this contract during the term hereof for the locality in which the work is to be performed. In compliance with said Pennsylvania Prevailing Wage Act, the Prevailing Minimum Wage Predetermination, as approved by the Secretary, is attached hereto and made a part hereof.

A. The provisions of this paragraph shall apply to all work performed on the contract by the contractor and to all work performed on the contract by all subcontractors. The contractor shall insert in each of his subcontracts all of the stipulations contained in these required provisions and such other stipulations as may be required.

B. No workmen may be employed on the public work except in accordance with the classifications set forth in the decisions of the Secretary. In the event that additional or different classifications are necessary, the procedure set forth in section 7 of the regulations shall be followed.

C. All workmen employed or working on the public work shall be paid unconditionally, regardless of whether any contractual relationship exists or the nature of any contractor, subcontractor and workmen, not less than once a week without deduction or rebate, on any account, either directly or indirectly, except authorized deductions, the full amounts due at the time of payment, computed at the rates applicable to the time worked in the appropriate classification. Nothing in the contract, the Act or the Regulations shall prohibit the payment of more than the general prevailing minimum wage rates as determined by the Secretary to any workman or public work.

D. The contractor and each subcontractor shall post for the entire period of construction the wage determination decisions of the Secretary, including the effective date of any changes

thereof, in a prominent and easily accessible place or places at the site of the work and at such place or places used by them to pay workmen their wages. The posted notice of wage rates must contain the following information:

- a. Name of project.
  - b. Name of public body of which it is being constructed.
  - c. The crafts and classifications of workmen listed in the Secretary's general prevailing minimum wage rate determinations for the particular project.
  - d. The general prevailing minimum wage rates determined for each craft and classification and the effective date of any changes.
  - e. A statement advising workmen that if they have been paid less than the general prevailing minimum wage rate for their job classification or that the contractor and/or subcontractor are not complying with the act or the regulations in any manner whatsoever, they may file a protest with the Secretary of Labor and Industry. Any workmen paid less than the rate specified in the contract shall have a civil right of action for the difference between the wage paid and the wages stipulated in the contract, which right of action must be exercised within six (6) months from the occurrence of the event creating such right.
- E. The contractor and all subcontractors shall keep an accurate record showing the name, craft and/or classification, number of hours worked per day, and the actual hourly rate of wage paid (including employee benefits) to each workman employed by him in connection with the public work and such record must include any deductions from each workman. The record shall be preserved for two years from the date of payment and shall be open at all reasonable hours to the inspection of the public body awarding the contract and to the Secretary or his duly authorized representatives.
- F. Apprentices shall be limited to such numbers as shall be in accordance with a bona fide apprenticeship program registered with and approved by the Pennsylvania Apprenticeship and Training Council and only apprentices whose training and employment are in full compliance with the provisions of the Apprenticeship and Training Act approved July 14, 1961 (Act No. 304) and the Rules and Regulations issued pursuant thereto shall be employed on the public work project. Any workman using the tools of a craft who does not qualify as an apprentice within the provisions of this subsection shall be paid the rate predetermined for journeymen in that particular craft and/or classification.
- G. Wages shall be paid without any deductions except authorized deductions. Employers not parties to a contract requiring contributions for employee benefits which the Secretary has determined to be included in the general prevailing minimum wage rate shall pay the monetary equivalent thereof directly to the workmen.
- H. Payment of compensation to workmen for work performed on public work on a lump sum basis, or a piece work system, or a price certain for the completion of a certain amount of work, or the production of a certain result shall be deemed a violation of the Act and the Regulations, regardless of the average hourly earnings resulting there from.
- I. Each contractor and each subcontractor shall file a statement each week and a final statement at the conclusion of the work on the contract with the using agency, under oath, and in form satisfactory to the Secretary, certifying that all workmen have been paid wages in strict conformity with the provisions these requirements. If any wages remain unpaid, the amount of wages due and owing to each workman respectively shall be included in the statement. A copy of the form entitled "Contractor's or Subcontractor's Weekly Payroll Certification for Public Works Projects" is attached hereto.
- J. Before final payment is made, a final wage certification must be submitted by all contractors and subcontractors.

**PERFORMANCE BOND (Total Purchase Order Exceeding \$100,000):** The awarded contractor must furnish within ten (10) days after award of the purchase order a performance bond at fifty percent of the contract amount, conditioned upon the faithful performance of the contract in accordance with the plans, specifications and conditions of the contract. The bond shall be solely for the protection of the contracting body which awarded the contract.

Failure to furnish the required performance bond within the required ten (10) days time frame shall be considered a failure to perform a contractual obligation which may result in termination of the purchase order and award to another bidder. In the event of termination and re-award for failure to provide payment and performance bonds, the contractor shall be responsible for any increase in cost to the Commonwealth. Where the contractor does not comply with the requirements of the purchase order, the amount of the performance bond shall be paid to the Commonwealth as liquidated damages for the contractor's failure to comply, or the Commonwealth may, at its sole option, sue the contractor or its surety for the damages it has suffered for any breach of contract.

**PERFORMANCE & PAYMENT BONDS (Total Purchase Order Exceeding \$100,000):** The awarded contractor must furnish within ten (10) days after award of the purchase order the following bonds:

(1) A performance bond at one hundred percent of the contract amount, conditioned upon the faithful performance of the contract in accordance with the plans, specifications and conditions of the contract. The bond shall be solely for the protection of the contracting body which awarded the contract.

(2) A payment bond at one hundred percent of the contract amount. The bond shall be solely for the protection of claimants supplying labor and materials to the awarded contractor or to any of its subcontractors, in the performance of the work provided for in the contract, and shall be conditioned on the prompt payment for material furnished or labor supplied or performed in the performance of the work. "Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for period when the equipment rented is actually used at the site.

Failure to furnish the required performance and payment bonds within the required ten (10) days time frame shall be considered a failure to perform a contractual obligation which may result in termination of the purchase order and award to another bidder. In the event of termination and re-award for failure to provide payment and performance bonds, the contractor shall be responsible for any increase in cost to the Commonwealth. Where the contractor does not comply with the requirements of the purchase order, the amount of the performance bond shall be paid to the Commonwealth as liquidated damages for the contractor's failure to comply, or the Commonwealth may, at its sole option, sue the contractor or its surety for the damages it has suffered for any breach of contract.

**INQUIRIES:** Direct all questions concerning this contract to the Contract Specialist named below:

Lisa A Vega, Commodity Specialist  
Department of General Services  
Bureau of Procurement  
555 Walnut Street, 6th Floor  
Harrisburg, PA 17101-1914  
717-346-4290 (Phone)  
717-346-3820 (Fax)  
[lvega@state.pa.us](mailto:lvega@state.pa.us)



## LEASING TERMS AND CONDITIONS

### I. General.

- A. Lease options. To the extent that the Contractor offers the Commonwealth or any purchasing agency ("Lessee") the option to lease any items covered by the Contract, these Leasing Terms And Conditions shall, in addition to the other terms and conditions of the Contract, govern the lease. The Contractor may offer both standard leases and lease/purchases. These transactions shall be referred to as "Leases" in these Leasing Terms and Conditions. If a Lessee desires a Lease, the Lessee shall indicate its election to lease contract items on the PO issued to the Contractor ("Lease PO"). By issuing a Lease PO, the Lessee explicitly agrees to these Leasing Terms and Conditions. Any items covered by a Lease shall be called "Leased Property" in these Leasing Terms and Conditions.
- B. Assignments. The Contractor may assign, without Lessee consent, any Lease to a third party ("Initial Assignee") who will fund the purchase of the Leased Property. The Initial Assignee may take title to, and assume the right to receive all rental payments for, the Leased Property. The Contractor shall notify the Lessee of any Lease assignment in its acknowledgment of the Lease PO to the Lessee, providing the Lessee with a copy of the assignment agreement between the Contractor and the Initial Assignee.
- C. Leased Property. Notwithstanding any provisions to the contrary in the Contract, in the event of a Lease assignment to an Initial Assignee, the Initial Assignee shall be bound only to the Contractor's obligations specified in these Leasing Terms and Conditions. An Initial Assignee shall not be responsible for any of the Contractor's additional representations, warranties, covenants, or obligations under the Contract Documents. By issuing a Lease PO, the Lessee waives any claims it may have under the Lease against the Initial Assignee for any loss, damage, or expense caused by, defect in, or use or maintenance of any Leased Property. The Lessee acknowledges that the Initial Assignee is not the supplier of the Leased Property and is not responsible for their selection or installation. After the ordering Lessee executes, and the Initial Assignee receives, an acceptance certificate in conformity with the provisions of Subsection I.D. of these Leasing Terms and Conditions, if the Leased Property is in whole or in part unsatisfactory for any reason, the Lessee shall, nevertheless, continue to make rental payments under the applicable Lease and shall make any claim against the Contractor or the manufacturer, not against the Initial Assignee or any subsequent assignee of the Initial Assignee.
- D. Acceptance. After a Lessee executes and the Initial Assignee receives an acceptance certificate in the form attached as Exhibit 1 to these Terms and Conditions ("Acceptance Certificate"):
1. The Lessee shall, regardless of whether any portion of the Leased Property is unsatisfactory for any reason, nevertheless, continue to make rental payments under the Lease and shall make any claim relating to the Leased Property against the Contractor or the manufacturer, not against the Initial Assignee or any subsequent assignee; and
  2. The rights of the Initial Assignee and any subsequent assignee to receive rental payments are absolute and unconditional and shall not be affected by any defense or right of set-off.
  3. If the Leased Property is delivered in more than one delivery, unless otherwise specified in the Contract Documents for this procurement, the Lessee will provide separate acceptance certificates for each delivery of Leased Property, and the Lessee will make periodic payments for the Leased Property corresponding to the amount of the Leased Property delivered and accepted 30 days prior to the payment due date.

### II. Lease Terms.

The Contractor may provide any Leased Property under the Contract for any term up to 120 months, including a Fair Market Value Option for Lease/Purchases. The Lessee shall identify the term selected, as well as its election of either a Lease or Lease/Purchase option, on the PO.

### III. Term.

The Lease term shall commence on the date the Lessee accepts the equipment and/or Leased Property by executing the Acceptance Certificate, and the term shall continue for the length specified on the Lease PO. If the Leased Property is provided in separate deliveries, the term for each delivery shall expire the specified time after the date of the Lessee's execution of the acceptance certificate as provided in Subsection I.D. of these Leasing Terms and Conditions

### IV. Payments.

- A. Full term intention. The Lessee shall pay the applicable monthly or annual rent payment for the Leased Property for the full Lease term unless the Lessee terminates the Lease, either for Contractor Default under Section V.J.2. of these Leasing Terms and Conditions or for nonappropriation of funds as specified in Subsection B. of this Section IV.
- B. Nonappropriation. The Lessee's obligation is payable only and solely from funds allotted for the purpose of the Lease. If sufficient funds are not appropriated for continuation of performance under any Lease for any fiscal year subsequent to the one in which the Lessee issued the Lease PO, the Lessee may return the Leased Property to the Contractor/Initial Assignee (as applicable), and thereafter the Contractor/Initial Assignee shall release the Lessee of all further obligations under the Lease, provided:
1. The Lessee delivers unencumbered title to the Leased Property to the Contractor or Initial Assignee (if applicable);
  2. The Lessee returns the Leased Property to the Contractor/Initial Assignee in good condition, reasonable wear and tear excepted; and
  3. The Lessee gives 30 days written notice of the failure of appropriations to the Contractor/Initial Assignee, along with a certification that the Leased Property are not being replaced by similar Property from another vendor. In the event the Lessee returns the Leased Property for failure of appropriations, the Lessee shall pay all amounts then due under the Lease through the end of the fiscal year for which sufficient funds were appropriated for the Lease.

### V. Leasing Terms and Conditions.

- A. Title. Title to the Leased Property shall not pass to the Lessee but shall remain in the Contractor or Initial Assignee, whichever applies; except in the case of a Lease/Purchase, the title shall pass upon payment of the final installment or other concluding payment option, after which neither the Contractor nor any assignee shall have any further interest in the Leased Property. The Lessee acknowledges that the Leased Property remains personal property during the Lease term and that the Leased Property shall not become a fixture or affixed to real property during that term. The Lessee shall keep the Leased Property free and clear of all encumbrances during the Lease term, excluding any Contractor or assignee security interest.
1. At the Contractor's or Initial Assignee's request, as applicable, the Lessee will join the Contractor/Initial Assignee in executing one or more financing statements pursuant to the Uniform Commercial Code or other registration law applicable to the location of any Leased Property.
  2. If the Contractor/Initial Assignee deems filing to be necessary or desirable, the Contractor/Initial Assignee shall pay the cost of filing the financing statement(s) in public offices.
- B. Risk of Loss. The Contractor shall assume and bear the risk of loss or damage to, or theft of, the Leased Property and all component parts while the Leased Property or parts are in the Lessee's possession, unless the Lessee could have prevented such loss, damage, or theft by exercising reasonable care or diligence in the use, protection, or care of the Leased Property or parts. No loss or damage to the Leased Property or parts shall impair any Contractor or Lessee obligation under the Lease, except as expressly provided in these Leasing Terms and Conditions. If the damage could not have been prevented by the Lessee's exercise of reasonable care or diligence, and the Contractor determines the Leased Property or parts can be economically

repaired, the Contractor shall repair or cause to be repaired all damages to the Leased Property or their parts. In the event that any of the Leased Property or their parts are stolen or destroyed, or if in the Contractor's opinion they are rendered irreparable, unusable, or damaged, the affected Leased Property shall be considered a total loss and the Lease shall terminate as to those Leased Property, and the Lessee's obligation to pay rent for the affected Leased Property shall be deemed to have ceased as of the date of the loss.

- C. Assignment. The Lessee shall not assign any Lease, or other interest in the Leased Property, nor shall the Lessee sublease the Leased Property, without the prior written consent of the Contractor or its assignee. The Contractor may assign, and/or grant security interests in whole, or in part, in the Lease PO and Leased Property to an Initial Assignee, who in turn may further assign and/or grant a security interest in a Lease or Leased Property to a subsequent assignee without the Lessee's consent. Any other Contractor assignment shall require the Lessee's prior written consent. Upon written notice to the Lessee, the Contractor may assign rental payments under any Lease or Lease/Purchase to a third party.
- D. Purchase Option. If the Lessee is not in default, it shall have the right at the expiration of the Lease term to buy the Leased Property "as is with no additional warranty" by tendering the purchase option amount the parties have established. For any Lease with a Fair Market Value Option, the fair market value of the equipment shall be established by the Contractor/Initial Assignee and shall not exceed the then-current purchase price of the Leased Property as established in the Contract. Upon the Lessee's exercise of a purchase option and payment of the required amount to the Contractor/Initial Assignee, all right, title, and interest in the Leased Property shall pass to the Lessee.
- E. Extension. If the Lessee does not elect to purchase the Leased Property at the expiration of a Lease term, and the Lessee is not in default under the Lease, the Lessee may elect to extend the Lease by written notification to the Contractor/Initial Assignee. The Lessee will make any elective extension under the same Leasing Terms and Conditions, including any rent payable (not less than fair market rental value), and will continue until the earlier of termination by either party upon one month's prior written notice, or five years from the date of installation.
- F. Return of Equipment. At the expiration or termination of a Lease for any Leased Property, or upon Contractor/Initial Assignee demand pursuant to Section V.J. of these Leasing Terms and Conditions, the Lessee shall promptly return the Leased Property, freight prepaid, to any location in the continental United States specified by the Contractor/Initial Assignee. The Lessee shall pay the required rent for the Leased Property until they have been shipped to the Contractor.

Except in the event of a total loss of any or all Leased Property as described in Subsection V.B. of these Leasing Terms and Conditions, the Lessee shall pay any costs the Contractor/Initial Assignee incurs to restore the Leased Property to good operating condition in accordance with the Contract specifications. All parts the Contractor/Initial Assignee may remove and replace shall become the Contractor's/Initial Assignee's property.

G. Warranties.

1. The Contractor/Initial Assignee, as applicable, grants to the Lessee the benefit of any and all manufacturer or supplier warranties for the Leased Property during the Lease term.
2. The Contractor/Initial Assignee and any subsequent assignee warrants that neither the Contractor/Initial Assignee or subsequent assignee, nor anyone acting or claiming through these parties by assignment or otherwise, shall interfere with the Lessee's quiet enjoyment of the Leased Property so long as no event of default as defined in Subsection V.J. of these Leasing Terms and Conditions shall have occurred and be continuing.

H. Liability.

1. The Lessee assumes all risks and liabilities for injury to or death of any person or damage to any property, arising out of the Lessee's possession, use, operation, condition, or storage of any Leased Property, whether such injury or death be of agents or employees of the Lessee or of third parties, and whether such property damage be to the Lessee 's property or the property of others; provided, however, that the damage or injury results from the negligent action or inaction of the Lessee, its agents or employees, and provided that judgment has been obtained against the Lessee, its agents or employees. This provision shall not be construed to limit the sovereign immunity of the Commonwealth or any Lessee.
2. The Lessee shall, during the Lease term, either self-insure or purchase insurance to cover the risks it has assumed under Subsection 1. of this Section H., including but not limited to risks of public liability and property damage.

I. Financing and Prepayment.

1. If the Contractor is not the supplier of the Leased Property, the Contractor shall pay the charges for the Leased Property directly to the supplier. In the event the Contractor assigns the Lease to an Initial Assignee, the Contractor shall require the Initial Assignee to pay the charges directly to the Contractor or the supplier, as applicable. If the Contractor has assigned rental payments to an Initial Assignee, the Lessee's obligation to make rental payments for the Leased Property for which the Lessee has executed and delivered acceptance certificates shall not be affected by any discontinuance, return, or Lessee dissatisfaction with any Leased Property.
2. The Lessee may terminate the financing for any Leased Property by prepaying its remaining rental payments. The Lessee shall provide notice of the intended prepayment date, which shall be at least one month after the date of the notice. Depending on market conditions at the time, the Contractor/Initial Assignee may reduce the balance of the remaining rental payments to reflect the requested prepayment and shall advise the Lessee of the balance to be paid.

J. Default

1. If the Lessee does not make a required payment within 30 days after its due date and such nonpayment continues for 15 days after receipt of written notice from the Contractor/Initial Assignee that the Lessee is delinquent in payment; if the Lessee breaches any other provision under these Terms and Conditions and such breach continues for 15 days after receipt of written notice of the breach from the Contractor/Initial Assignee, then the Contractor/Initial Assignee may pursue and enforce the following remedies, individually or collectively:
  - a. Terminate the Lease.
  - b. Take possession of any or all Leased Property in the Lessee's possession, without any court order or other process of law. For such purpose, upon written notice of its intention to do so, the Contractor or its assignee may enter

upon the premises where the Leased Property may be and remove and repossess the Leased Property from the Premises without being liable to the Lessee in any action or legal proceeding. The Contractor/assignee may, at its option, sell the repossessed Leased Property at public or private sale for cash or credit. The Lessee shall be liable for the Contractor's/assignee's expenses of retaking possession, including without limitation the removal of the Leased Property and placing the Leased Property in good operating condition (if not in good operating condition at the time of removal) in accordance with the manufacturer's specifications. Repossessed Leased Property shall include only those items that were leased or lease/purchased under the PO.

- c. Recover from the Lessee all rental payments then due, plus the net present value of the amount of the remaining rental payments. The present value of such remaining rental payments shall be calculated using a discount rate equal to the average of the weekly two- and three-year Treasury Constant Maturities published by the Federal Reserve Board for the last calendar week of the month preceding the contractor's/assignee's termination of the applicable Lease PO. The Treasury Constant Maturities are published in Statistical Release .15 and may be accessed via the Federal Reserve Board's Internet website.
2. In the event of Contractor default, the Lessee may pursue one or more of the following remedies:
    - a. If the rental payments under the Lease have been assigned to an Initial Assignee, the Lessee shall continue to make rental payments for those Contract Items which have been delivered and for which the Lessee has provided acceptance certificates to the Contractor/Initial Assignee.
    - b. The Lessee may cancel, without liability for payment, its order for any Contract items which have not been delivered and for which it has not issued acceptance certificates. In this instance, the amount of the rental payments will be recalculated to take into consideration and pay for the actual number of Leased Property which were delivered and accepted. If no Leased Property have been delivered and accepted, the Lessee may terminate the Lease without liability for any payment.
    - c. If payments have not been assigned, the Lessee may set off or counterclaim any and all damages incurred by the Lessee as a result of the Contractor's default against the Lessee's obligation to make rental payments.

## **VI. Compliance with Internal Revenue Code.**

- A. Tax Exempt Financing. If it intends to provide tax exempt financing, the Contractor/Initial Assignee must file, in timely fashion, any reports the Internal Revenue Service may require with respect to the order under the Internal Revenue Code (IRC). The Lessee shall cooperate with the Contractor/Initial Assignee in the preparation and execution of these documents. The Lessee shall also keep a copy of each notification of assignment with the Lessee's counterpart of the order and shall not, during the Lease term, permit the Leased Property to be directly or indirectly used for a private business use within the meaning of Section 141 of the IRC.
- B. Governmental status. Eligible Lessees include State entities or political subdivisions of a State for the purpose of Section 103(a) of the IRC as well as tax exempt non-profit corporations and entities under 501(c)(4) of the IRC. Any misrepresentation of a Lessee's status under the IRC shall constitute an event of default by the Lessee pursuant to Subsection V.J. of these Leasing Terms and Conditions. If the Internal Revenue Service rules that the Lessee does not so qualify under either Section 103(a) or 501(c)(4) of the IRC, or if the Lessee fails to cooperate with the Contractor/Initial Assignee in the preparation and execution of any reports required under Section 124 or 149 of the IRC (including 8038G and 8038GC forms), the Lessee will upon demand pay the Contractor/Initial Assignee a sum the Contractor/ Initial Assignee determines sufficient to return the Contractor/Initial Assignee to the economic status it would otherwise have received.

**VII. Use and Location of, and Alterations to, Leased Property.**

The Lessee shall keep the Leased Property within the confines of the Commonwealth of Pennsylvania and shall inform the Contractor/Initial Assignee upon request of the location of the Leased Property. The Lessee, at its own cost and expense, shall maintain the Leased Property in good operating condition and will not use or deal with the Leased Property in any manner which is inconsistent with the terms of the Contract or any applicable laws and regulations. The Lessee agrees not to misuse, abuse, or waste the Leased Property and the Lessee will not allow the Leased Property to deteriorate, except for ordinary wear and tear resulting from their intended use. No alterations, changes, or modifications to the Leased Property shall be made without the approval of the Contractor/Initial Assignee.

**VIII. Warranty Disclaimer.**

IN THE EVENT THE CONTRACTOR ASSIGNS A LEASE TO AN INITIAL ASSIGNEE, SUCH INITIAL ASSIGNEE AND ANY SUBSEQUENT ASSIGNEE MAKE NO WARRANTY (OTHER THAN A WARRANTY OF QUIET ENJOYMENT OF THE LEASED PROPERTY), EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. AS TO THE INITIAL ASSIGNEE AND ANY SUBSEQUENT ASSIGNEE, THE LESSEE TAKES THE EQUIPMENT AND ANY LEASED PROPERTY "AS IS." IN NO EVENT SHALL THE INITIAL ASSIGNEE OR ANY SUBSEQUENT ASSIGNEE HAVE ANY LIABILITY FOR, NOR SHALL THE LESSEE HAVE ANY REMEDY AGAINST, THE INITIAL ASSIGNEE OR ANY SUBSEQUENT ASSIGNEE FOR CONSEQUENTIAL DAMAGES, LOSS OF SAVINGS, OR LOSS OF USE.

**IX. Governing Law; Severability.**

- A. All Leases made under these Leasing Terms and Conditions shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, except that the parties agree that Article 2A of the Uniform Commercial Code shall not apply or govern transactions under these Leasing Terms and Conditions.
- B. If any provision of these Leasing Terms and Conditions is held to be invalid or unenforceable, all other provisions shall remain in effect.

**X. Notices.**

Service of all notices under these Leasing Terms and Conditions shall be sufficient if delivered to the Lessee at the address set forth in the applicable PO, or to the Contractor/Initial Assignee at the address set forth in its acknowledgment of the PO, including any attached document. Notices by mail shall be effective when deposited in the U.S. mail, properly addressed, with sufficient paid postage. Notices delivered by hand or by overnight courier shall be effective when actually received.

**XI. Terms.**

These Leasing Terms and Conditions are in addition to the other terms and conditions of the Contract, except to the extent the Contractor assigns a PO to an Initial Assignee, in which case the Initial Assignee shall be bound to the obligations of the Contractor only as specified in these Leasing Terms and Conditions. To the extent that there is a conflict between the other terms and conditions of the Contract and these Leasing Terms and Conditions, these Leasing Terms and Conditions shall prevail to the extent that the Lessee has elected the lease option.

**XII. Acceptance Certificate.**

The acceptance certificate required in Subsection I.D. of these Leasing Terms and Conditions shall be in the following form:

## Acceptance Certificate

Purchase order No. \_\_\_\_\_ dated \_\_\_\_\_, 20\_\_, by and between  
\_\_\_\_\_ (Contractor) and \_\_\_\_\_ (Lessee).

The undersigned certifies and represents to, and agrees with, the Contractor or its assignee as follows:

1. The Lessee has received and accepted the Leased Property identified on the attached schedule on the date specified below the signature on this page ("Acceptance Date").
2. The Lessee has conducted inspection and/or testing of the identified Leased Property as it deems necessary and appropriate and acknowledges that it accepts the identified Leased Property as of the Acceptance Date.
3. The Lessee is not in any event of default as defined in the Contract, and no event which would become an event of default has occurred and is continuing at the Acceptance Date.

\_\_\_\_\_  
(Lessee)

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date