MEMORANDUM

TO: Procurement Services Division

FROM: Keith McCook KCM

DATE: February 3, 2015 [Updated Table of Clauses attached.]

RE: SCEIS / Compendium Updates: 2015 Interim Clause Set

Please find attached the 2015 Interim Clause Set, including associated new forms and an Outline for Clause Selection. An MSWord version of each will be posted at procurement.sc.gov, under the heading Legal – Standard Clauses & Provisions. ***All have been approved by the Chief Procurement Officers and, effective immediately, both should be used in all procurements not yet awarded.*** Plans are underway to provide training on these materials. You should expect an event to be scheduled in the near future.

By memorandum dated December 17, 2013, we circulated "Information Security Contract Clauses," intended for temporary use. Among other things, the attached clauses replace those. ***You should no longer use the clauses previously circulated and marked "Temporary Use Only."***

The new clauses have not been integrated into SCEIS' Documents Builder Dialog – the series of questions you answer to select clauses. Accordingly, you must manually add them for each solicitation. Until more robust guidance can be added and these clauses integrated into the SCEIS dialog, ***please use these clauses as indicated in the Guidance for each clause and in conjunction with the attached Outline for Clause Selection.***

Attachments & Notes:

1. Outline for Clause Selection (Feb 2015)
   a. Provides instructions for when to use the clauses in this interim set. This Outline will be superseded at some later date, after the logic it represents has been incorporated into the SCEIS Dialog and / or more robust guidance.
2. 2015 Interim Clause Set & Guidance (Feb 2015)
   a. Attachments
      i. SPSAQ (Feb 2015), Clause No. 09-9025-1
         1. Service Provider Security Assessment Questionnaire
      ii. Software Table (Feb 2015), Clause No. 09-9035-1
      iii. EULA Pgybk Ver 5.2SA (2014), Clause No. 09-9030-1
         1. South Carolina Standard Amendment To End User License Agreements For Commercial Off-The-Shelf Software - **Single Agency**
3. Table of Clauses
   a. A redline version of the Compendium's current Table of Clauses revised to reflect all the clause changes noted above. Original version of Table of Clauses attached to memo replaced with version including Iran Divestment Clauses.

Outline for Clause Selection (Feb 2015)

SCOPE: This Outline applies only to the clauses listed in the 2015 Interim Clause Set. This Outline is not a substitute for a working knowledge of each clause's guidance.

I. Whether to include the following clauses depends on your answers to the following questions.
   A. Does the acquisition include either a significant component of information technology or contractor access to government information? If yes, include these clauses.
      1. 07-7B104-1, Information Security - Definitions (Feb 2015)
      2. 07-7B105-1, Information Security - Safeguarding Requirements (Feb 2015)
      3. 07-7B108-1, Information Use and Disclosure (Feb 2015)
   B. Does the acquisition involve contractor access to sensitive or confidential information (e.g., computer security plans, student records, protected health information, or personally identifying information)? If yes, include these clauses. (Document procurement file regarding agency approval of clause 7B110.)
      1. 04-4027-1, Service Provider Security Assessment Questionnaire - Required (Feb 2015)
      2. 07-7B007-1, Bankruptcy - Government Information (Feb 2015)
      3. 07-7B058-1, Contractor's Liability Insurance - Information Security and Privacy (Feb 2015)
      4. 07-7B102-1, Indemnification - Third Party Claims - Disclosures of Information (Feb 2015)
      5. 07-7B110-1, Information Use and Disclosure - Standards (Feb 2015)
      6. 07-7B217-1, Service Provider Security Representation (Feb 2015)
      7. 09-9025-1, Service Provider Security Assessment Questionnaire (Feb 2015)
   C. When using clauses called for by item 2 above, you should consider - in conjunction with the using agency - whether to include these clauses, which will not be addressed in documents builders dialog.
      1. 07-7B106-1, Information Security -Location of Data (Feb 2015)
      2. 07-7B122-1, Offshore Contracting Prohibited (Feb 2015)
   D. Does the acquisition involve wide-spread, computerized, web-based interaction directly between the contractor and either public employees, citizens, or population groups receiving services (e.g., students, patients, inmates)? If yes, include this clause.
      1. 07-7B212-1, Restrictions on Presenting Terms of Use or Offering Additional Services (Feb 2015)

II. Software Licensing. The following clauses facilitate the licensing of software and should be used only with the assistance of senior procurement staff at the information technology management office:
   A. 07-7B042-1, Contract Documents & Order of Precedence-Software Licensing-Single Agency (Feb 2015)
   B. 07-7B223-2, Software Licensing Agreements for Statewide Term Contracts (Feb 2015)
   C. 07-7B224-1, Software Licensing Agreements - Single Solicitation (Feb 2015)
   D. 09-9030-1, South Carolina Standard Amendment to End User License Agreements for Commercial Off-The-Shelf Software - Single Agency.
   E. 09-9035-1, Software Table
III. The following clauses should be added in the appropriate location to all solicitations.
   A. 02-2A007-1, Authorized Agent (Feb 2015)
   B. 06-6058-1, Discussions and Negotiations - Optional (Feb 2015)
IV. This clause is included only if selected by the procurement officer. Only an experienced procurement officer acting with approval of either a CPO or the manager in charge of ITMO, SPO, or OSE should use this clause:
   A. 06-6059-1, Discussions And Negotiations - Required (Feb 2015)
V. The following clauses should no longer used.
   A. 02-2A110-2, Restrictions Applicable To Offerors, replace w/ 02-2A087-1, Prohibited Communications And Donations (Feb 2015)
   B. 07-7B195-1, Privacy -- Web Services (JAN 2006)
   C. 07-7A070-1, Setoff (JAN 2006)
VI. Replacements - For the following clauses, you should only use the revised version:
   A. 02-2A003-2, Definitions (Feb 2015)
   B. 02-2A010-2, Award Notification (Feb 2015)
   C. 02-2A030-2, Board As Procurement Agent (Feb 2015)
   D. 02-2A047-2, Disclosure Of Conflicts Of Interest Or Unfair Competitive Advantage (Feb 2015)
   E. 02-2A070-2, Duty To Inquire (Feb 2015)
   F. 02-2A087-1, Prohibited Communications And Donations (Feb 2015) (f/k/a “Restrictions Applicable To Offerors”)
   G. 02-2A095-2, Questions From Offerors (Feb 2015)
   H. 02-2A125-2, Submitting Confidential Information (Feb 2015)
   I. 02-2B020-2, Conference -- Pre-Bid/Proposal -- Mandatory (Feb 2015)
   J. 02-2B040-2, Contents Of Offer (Rfp) (Feb 2015)
   K. 02-2B110-2, Opening Proposals -- Prices Not Divulged (Feb 2015)
   L. 05-5030-1, Subcontractor - Identification (Feb 2015)
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N. 07-7A004-2, Assignment (Feb 2015)
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USF Part IIA, Instructions to Offerors-General:

DEFINITIONS, CAPITALIZATION, AND HEADINGS (FEB 2015)
CLAUSE HEADINGS USED IN THIS SOLICITATION ARE FOR CONVENIENCE ONLY AND SHALL NOT BE USED TO CONSTRUE MEANING OR INTENT. EVEN IF NOT CAPITALIZED, THE FOLLOWING DEFINITIONS ARE APPLICABLE TO ALL PARTS OF THE SOLICITATION, UNLESS EXPRESSLY PROVIDED OTHERWISE.

AMENDMENT means a document issued to supplement the original solicitation document.

BOARD means the South Carolina Budget & Control Board or its successor in interest.

BUSINESS means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity. [11-35-310(3)]

CHANGE ORDER means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties to the contract. [11-35-310(4)]

CONTRACT See clause entitled Contract Documents & Order of Precedence.

CONTRACT MODIFICATION means a written order signed by the procurement officer, directing the contractor to make changes which the clause of the contract titled “Changes,” if included herein, authorizes the Procurement Officer to order without the consent of the contractor. [11-35-310(9)]

CONTRACTOR means the Offeror receiving an award as a result of this solicitation.

COVER PAGE means the top page of the original solicitation on which the solicitation is identified by number. Offerors are cautioned that Amendments may modify information provided on the Cover Page.

OFFER means the bid or proposal submitted in response this solicitation. The terms Bid and Proposal are used interchangeably with the term Offer.

OFFEROR means the single legal entity submitting the offer. The term Bidder is used interchangeably with the term Offeror. See bidding provisions entitled Signing Your Offer and Bid/Proposal As Offer To Contract.

PAGE TWO means the second page of the original solicitation, which is labeled Page Two.

PROCUREMENT OFFICER means the person, or his successor, identified as such on either the Cover Page, an amendment, or an award notice.

YOU and YOUR means Offeror.

SOLICITATION means this document, including all its parts, attachments, and any Amendments.

STATE means the Using Governmental Unit(s) identified on the Cover Page.

SUBCONTRACTOR means any person you contract with to perform or provide any part of the work.

US or WE means the using governmental unit.

USING GOVERNMENTAL UNIT means the unit(s) of government identified as such on the Cover Page. If the Cover Page identifies the Using Governmental Unit as “Statewide Term Contract,” the phrase “Using Governmental Unit” means any South Carolina Public Procurement Unit [11-35-4610(5)] that has submitted a Purchase Order to you pursuant to the contract resulting from this solicitation. Reference the clauses titled “Purchase Orders” and “Statewide Term Contract.”

WORK means all labor, materials, equipment, services, or property of any type, provided or to be provided by the Contractor to fulfill the Contractor's obligations under the Contract.
[02-2A003-2]

GUIDANCE: [None]

INSTRUCTIONS FOR SCEIS CHANGES
Instructions: (i) Add as Clause No. 02-2A003-2. (ii) Retire Clause No. 02-2A003-1.
Inclusion Attribute: Mandatory – overrides rules.

AUTHORIZED AGENT (FEB 2015)
All authority regarding this procurement is vested solely with the responsible Procurement Officer. Unless specifically delegated in writing, the Procurement Officer is the only government official authorized to bind the government with regard to this procurement or the resulting contract. [02-2A007-1]

GUIDANCE: *[None]*.

INSTRUCTIONS FOR SCEIS CHANGES
Instructions: (i) Add as Clause No. 02-2A007-1. (ii) Create rule to include in all solicitations.
Inclusion Attribute: Mandatory – overrides rules.

AWARD NOTIFICATION (FEB 2015)
Notice regarding any award, cancellation of award, or extension of award will be posted at the location and on the date specified on the Cover Page or, if applicable, any notice of extension of award. Should the contract resulting from this Solicitation have a total or potential value of one hundred thousand dollars or more, such notice will be sent to all Offerors responding to the Solicitation and any award will not be effective until the eleventh day after such notice is given. [02-2A010-2]

GUIDANCE: *[None]*

INSTRUCTIONS FOR SCEIS CHANGES
Instructions: (i) Add as Clause No. 02-2A010-2. (ii) Retire Clause No. 02-2A010-1.
Inclusion Attribute: Mandatory – overrides rules.

BOARD AS PROCUREMENT AGENT (FEB 2015)
The Procurement Officer is an employee of the Board acting on behalf of the Using Governmental Unit(s) pursuant to the Consolidated Procurement Code. Any contracts awarded as a result of this procurement are between the Contractor and the Using Governmental Units(s). The Board is not a party to such contracts, unless and to the extent that the Board is a using governmental unit, and bears no liability for any party's losses arising out of or relating in any way to the contract. [02-2A030-2]

GUIDANCE: *Mandatory for all solicitations conducted by the Procurement Services Division.*

INSTRUCTIONS FOR SCEIS CHANGES
Instructions: (i) Add as Clause No. 02-2A030-2. (ii) Designate Clause 02-2A030-1 (Board as Procurement Agent (JAN 2004)), as "Expired." (iii) Revise guidance as shown. (iv) Revise/create rule for inclusion in all solicitations issued by SPO or ITMO only.
Inclusion Attribute: Rule. Include only in every solicitation conducted by SPO or ITMO.

DISCLOSURE OF CONFLICTS OF INTEREST OR UNFAIR COMPETITIVE ADVANTAGE (FEB 2015)

You warrant and represent that your offer identifies and explains any unfair competitive advantage you may have in competing for the proposed contract and any actual or potential conflicts of interest that may arise from your participation in this competition or your receipt of an award. The two underlying principles are (a) preventing the existence of conflicting roles that might bias a contractor's judgment, and (b) preventing an unfair competitive advantage. If you have an unfair competitive advantage or a conflict of interest, the state may withhold award. Before withholding award on these grounds, an offeror will be notified of the concerns and provided a reasonable opportunity to respond. Efforts to avoid or mitigate such concerns, including restrictions on future activities, may be considered. Without limiting the foregoing, you represent that your offer identifies any services that relate to either this solicitation or the work and that has already been performed by you, a proposed subcontractor, or an affiliated business of either. [02-2A047-2]

GUIDANCE: [None]

INSTRUCTIONS FOR SCEIS CHANGES

Instructions: (i) Add as Clause No. 02-2A047-2. (ii) Retire Clause No. 02-2A047-1.
Inclusion Attribute: Mandatory – overrides rules.

DUTY TO INQUIRE (FEB 2015)

Offeror, by submitting an Offer, represents that it has read and understands the Solicitation and that its Offer is made in compliance with the Solicitation. Offerors are expected to examine the Solicitation thoroughly and should request an explanation of any ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation. Failure to do so will be at the Offeror's risk. All ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation shall be interpreted to require the better quality or greater quantity of work and/or materials, unless otherwise directed by amendment. Offeror assumes responsibility for any patent ambiguity in the Solicitation that Offeror does not bring to the State's attention. See clause entitled “Questions from Offerors.” [02-2A070-2]

GUIDANCE: [None]

INSTRUCTIONS FOR SCEIS CHANGES

Instructions: (i) Add as Clause No. 02-2A070-2. (ii) Retire Clause No. 02-2A070-1.
Inclusion Attribute: Mandatory – overrides rules.

PROHIBITED COMMUNICATIONS AND DONATIONS (FEB 2015)

Violation of these restrictions may result in disqualification of your offer, suspension or debarment, and may constitute a violation of law.

(a) During the period between publication of the solicitation and final award, ***you must not communicate, directly or indirectly, with the Using Governmental Unit or its employees, agents or officials regarding any aspect of this procurement activity****, unless otherwise approved in writing by the Procurement Officer****.*** All communications must be solely with the Procurement Officer. [R. 19-445.2010]
(b) You are advised to familiarize yourself with Regulation 19-445.2165, which restricts donations to a governmental entity with whom you have or seek to have a contract***. You represent that your offer discloses any gifts made, directly or through an intermediary, by you or your named subcontractors to or for the benefit of the Using Governmental Unit during the period beginning eighteen months prior to the Opening Date.*** [R. 19-445.2165**]** [02-2A087-1]

GUIDANCE: [None]

INSTRUCTIONS FOR SCEIS CHANGES
Instructions: (i) Add as Clause No. 02-2A087-1. (ii) Retire Clause No. 02-2A110-1.
Inclusion Attribute: Mandatory – overrides rules.

QUESTIONS FROM OFFERORS (FEB 2015)
(a) Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing. Questions regarding the original solicitation or any amendment must be received by the Procurement Officer no later than five (5) days prior to opening unless an earlier date is stated on the Cover Page. Label any communication regarding your questions with the name of the procurement officer, and the solicitation's title and number. Oral explanations or instructions will not be binding. [See R. 19-445.2042(B)] Any information given a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an Amendment to the solicitation, if that information is necessary for submitting offers or if the lack of it would be prejudicial to other prospective offerors. See clause entitled “Duty to Inquire.” **We will not identify you in our answer to your question.** (b) The State seeks to permit maximum practicable competition. Offerors are urged to advise the Procurement Officer -- as soon as possible -- regarding any aspect of this procurement, including any aspect of the Solicitation that unnecessarily or inappropriately limits full and open competition. [See R. 19-445.2140] [02-2A095-2]

GUIDANCE: [None]

INSTRUCTIONS FOR SCEIS CHANGES
Instructions: (i) Add as Clause No. 02-2A095-2. (ii) Retire Clause No. 02-2A095-1.
Inclusion Attribute: Mandatory – overrides rules.

SUBMITTING CONFIDENTIAL INFORMATION (FEB 2015)
(An overview is available at www.procurement.sc.gov) For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "CONFIDENTIAL" every page, or portion thereof, that Offeror contends contains information that is exempt from public disclosure because it is either (a) a trade secret as defined

in Section 30-4-40(a)(1), or (b) privileged and confidential, as that phrase is used in Section 11-35-410. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the words "TRADE SECRET" every page, or portion thereof, that Offeror contends contains a trade secret as that term is defined by Section 39-8-20 of the Trade Secrets Act. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "PROTECTED" every page, or portion thereof, that Offeror contends is protected by Section 11-35-1810. All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text. Do not mark your entire response (bid, proposal, quote, etc.) as confidential, trade secret, or protected. If your response, or any part thereof, is improperly marked as confidential or trade secret or protected, the State may, in its sole discretion, determine it nonresponsive. If only portions of a page are subject to some protection, do not mark the entire page. By submitting a response to this solicitation or request, Offeror (1) agrees to the public disclosure of every page of every document regarding this solicitation or request that was submitted at any time prior to entering into a contract (including, but not limited to, documents contained in a response, documents submitted to clarify a response, and documents submitted during negotiations), unless the page is conspicuously marked "TRADE SECRET" or "CONFIDENTIAL" or "PROTECTED", (2) agrees that any information not marked, as required by these bidding instructions, as a "Trade Secret" is not a trade secret as defined by the Trade Secrets Act, and (3) agrees that, notwithstanding any claims or markings otherwise, any prices, commissions, discounts, or other financial figures used to determine the award, as well as the final contract amount, are subject to public disclosure. In determining whether to release documents, the State will detrimentally rely on Offeror's marking of documents, as required by these bidding instructions, as being either "Confidential" or "Trade Secret" or "PROTECTED". By submitting a response, Offeror agrees to defend, indemnify and hold harmless the State of South Carolina, its agencies, officers and employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney's fees, arising out of or resulting from withholding information by the State of South Carolina or any of its agencies, that Offeror marked as "confidential" or "trade secret" or "PROTECTED". (All references to S.C. Code of Laws.) [02-2A125-2]

GUIDANCE: [None]

INSTRUCTIONS FOR SCEIS CHANGES
Instructions: (i) Add as Clause No. 02-2A125-2. (ii) Retire Clause No. 02-2A125-1.
Inclusion Attribute: Mandatory – overrides rules.

USF Part IIB, Instructions to Offerors-Special:

CONFERENCE -- PRE-BID/PROPOSAL -- MANDATORY (FEB 2015)
See Conference Pre-Bid/Proposal clause. Your failure to attend the conference shall result in rejection of your offer. Attendance will be evidenced by your representative's signature on the attendance roster. [R. 19-445.2042] [02-2B020-2]

GUIDANCE: (i) Change "loosing" to "losing" in first paragraph. (ii) Add this new paragraph between the two existing paragraphs:

> The decision to require attendance at a mandatory pre-bid conference must be supported by a written determination by the head of the agency or her designee. R. 19-445.2042(C). The determination must be made part of the procurement file.

INSTRUCTIONS FOR SCEIS CHANGES
Instructions: (i) Add as Clause No. 02-2B020-2. (ii) Retire Clause No. 02-2B020-1. (iii) Revise guidance as indicated.
Inclusion Attribute: Select to manually insert

CONTENTS OF OFFER (RFP) (FEB 2015)
(a) Offers should be complete and carefully worded and should convey all of the information requested.
(b) Offers should be prepared simply and economically, providing a straightforward, concise description of offeror's capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content.
(c) The contents of your offer must be divided into two parts, the technical proposal and the business proposal. Each part should be bound in a single volume.
(d) If your offer includes any comment over and above the specific information requested in the solicitation, you are to include this information as a separate appendix to your offer. Offers which include either modifications to any of the solicitation's contractual requirements or an offeror's standard terms and conditions may be deemed non-responsive and not considered for award.
[02-2B040-2]

GUIDANCE: *Use of this clause is mandatory for SPO and ITMO Procurement Officers conducting an RFP other than a solutions based procurement.*

INSTRUCTIONS FOR SCEIS CHANGES
Instructions: (i) Add as Clause No. 02-2B040-2. (ii) Designate Clause 02-2B040-1 (CONTENTS OF OFFER (RFP) - SPO (JAN 2006)), as "Expired." (iii) Designate Clause 02-2B035-1 ((CONTENTS OF OFFER (RFP) - ITMO (JAN 2006)), as "Expired." (iv) Revise existing rule for 2B035 to point to this new clause (02-2B040-2). (v) Revise existing rule for 2B040 to point to this new clause (02-2B040-2). (vi) Revise guidance as shown.
Inclusion Attribute: Rule. Change rule logic to refer to new clause number.

OPENING PROPOSALS -- INFORMATION NOT DIVULGED (FEB 2015)
In competitive sealed proposals, neither the number or identity of offerors nor prices will be divulged at opening. [Section 11-35-1530 & R. 19-445.2095(C) (1)] [02-2B110-2]

GUIDANCE: Change to read thus:

Regulation 19-445.2095(C)(1) provides: "Contents and the identity of competing offers shall not be disclosed during the process of opening by state personnel." However, use of this clause is optional.

INSTRUCTIONS FOR SCEIS CHANGES
Instructions: (i) Add as Clause No. 02-2B110-2. (ii) Retire Clause No. 02-2B110-1. (iii) Revise rule to refer to new clause. (iv) Revise guidance as indicated.
Inclusion Attribute: Rule

USF Part IV, Information for Offerors to Submit:

SERVICE PROVIDER SECURITY ASSESSMENT QUESTIONNAIRE - REQUIRED (FEB 2015)
[ASK QUESTIONS NOW: If you have a properly qualified third-party report or certification you believe we should accept in lieu of those identified in item (b), submit a question identifying same pursuant to the clause titled Questions from Offerors.]
The Contractor must demonstrate that programs, policies and procedures are in place to adequately provide for the confidentiality, integrity, and availability of the information systems used by contractor to process, store, transmit, and access all government information. In order for the State to accurately evaluate the strength and viability of the Contractor's security policies, procedures and practices related to confidentiality, integrity and availability, Offerors must submit with their offers a thorough and complete written response to the Service Provider Security Assessment Questionnaire ("Response to SPSAQ") attached to this Solicitation, which must address all applicable organizations and applicable information systems. The terms used in this clause shall have the same meaning as the terms defined in the clause titled Information Security – Definitions. [04-4027-1]

GUIDANCE:
*This clause should be used with the **Service Provider Security Representation** clause (7B217). Consider for use in all services procurements which involve either contractor's computerized interface with state systems or contractor's direct possession of important agency or citizen data. Due to critical cross-references, you must also use both the Information Security - Definitions clause (7B104) and the **Service Provider Security Assessment Questionnaire** attachment (9025) if this clause is used.*

Agencies are cautioned that they should take steps to insure that the representations provided by an Offeror are applicable to the computerized infrastructure that will be used by Contractor to collect, manage, store, process or access government information.

INSTRUCTIONS FOR SCEIS CHANGES
Instructions: (i) Add as Clause No. 04-4027-1. (ii) Add guidance as shown.
Inclusion Attribute: Select to Manually Insert.
Future logic notes: If this clause is selected, solicitation must also include the "Information Security - Definitions (FEB 2015)" [07-7B104-1] and "Service Provider

Security Representation (FEB 2015)" [07-7B217-1] clauses and the "Service Provider Security Assessment Questionnaire" attachment [09-9025-1].

USF Part V, Qualifications:

SUBCONTRACTOR – IDENTIFICATION (FEB 2015)
If you intend to subcontract, at any tier level, with another business for any portion of the work and that portion either (1) exceeds 10% of your cost, (2) involves access to any "government information," as defined in the clause entitled "Information Security - Definitions," if included, or (3) otherwise involves services critical to your performance of the work (err on the side of inclusion), your offer must identify that business and the work which they are to perform. Identify potential subcontractors by providing the business name, address, phone, taxpayer identification number, **and point of contact**. In determining your responsibility, the state may contact and evaluate your proposed subcontractors. [05-5030-2]

GUIDANCE: *Use of this clause is mandatory if the solicitation includes the* ***Information Security*** *clause (7B104), and is encouraged for all procurements other than commodities.*

INSTRUCTIONS FOR SCEIS CHANGES
Instructions: (i) Add as Clause No. 05-5030-2. (ii) Designate Clause 05-5030-1 (Subcontractor – Identification (JAN 2006)), as "Expired." (iii) Revise guidance as shown.
Inclusion Attribute: Rule. Change rule logic to refer to new clause number.
Future Logic Notes: Create rule to include clause if the "Information Security – Safeguarding Requirements (FEB 2015)" [07-7B105-1] clause is selected.

USF Part VI, Award Criteria:

DISCUSSIONS AND NEGOTIATIONS – OPTIONAL (FEB 2015)
Submit your best terms from both a price and a technical standpoint. Your proposal may be evaluated and your offer accepted without any discussions, negotiations, or prior notice. Ordinarily, nonresponsive proposals will be rejected outright without prior notice. Nevertheless, the State may elect to conduct discussions, including the possibility of limited proposal revisions, but only for those proposals reasonably susceptible of being selected for award. [11-35-1530(6); R.19-445.2095(I)] If improper revisions are submitted during discussions, the State may elect to consider only your unrevised initial proposal, provided your initial offer is responsive. The State may also elect to conduct negotiations, beginning with the highest ranked offeror, or seek best and final offers, as provided in Section 11-35-1530(8). Negotiations may involve both price and matters affecting the scope of the contract, so long as changes are within the general scope of the request for proposals. If negotiations are conducted, the State may elect to disregard the negotiations and accept your original proposal. [06-6058-1]

GUIDANCE*: Mandatory for all RFP solicitations, unless replaced with "Discussions and Negotiations - Required (FEB 2015)," Clause No. 06-6059-1.*

INSTRUCTIONS FOR SCEIS CHANGES
Instructions: (i) Add as Clause No. 06-6058-1. (ii) Designate Clause 02-2B060-1 (Discussions & Negotiations (Nov 2007)), as "Expired." (iii) Revise guidance as shown. (iv) Change rule logic to refer to new clause number, i.e., logic for the revised clause should be same as logic for now-expired Clause No. 02-2B-060-1.

DISCUSSIONS AND NEGOTIATIONS – REQUIRED (FEB 2015)
No award will be made to an offeror until after negotiations have been conducted with that offeror. As provided in Section 11-35-1530, negotiations must begin with the highest ranking offeror; accordingly, submit your best terms from both a price and a technical standpoint. In addition, make sure your offer is responsive; the State will not evaluate or negotiate with a non-responsive offeror, and ordinarily, nonresponsive proposals will be rejected outright without prior notice. The State may elect to conduct discussions, including the possibility of limited proposal revisions, but only for those proposals reasonably susceptible of being selected for award. [11-35-1530(6); R.19-445.2095(I)] If improper revisions are submitted during discussions, the State may elect to consider only your unrevised initial offer, but only if your initial offer is responsive. If a satisfactory contract cannot be negotiated with the highest ranking offeror, the State may elect to conduct negotiations with other offerors. As provided in Section 11-35-1530(8) the State also may elect to make changes within the general scope of the request for proposals and provide all responsive offerors an opportunity to submit their best and final offers. Negotiations may involve both price and matters affecting the scope of the contract, so long as the changes are within the general scope of the request for proposals. [06-6059-1]

GUIDANCE*: Use this clause as <u>an alternative to and replacement for</u> "Discussions and Negotiations – Optional," which is included in all RFPs by default. Use this clause only if the State is willing not to make any award until it has conducted meaningful, good faith negotiations with the offeror to which it intends to make an award. All discussions and negotiations must be conducted in accordance with <u>Guidance & Best Practices for Permissible Communications in a Competitive Sealed Proposal</u>, Procurement Policy Statement 2008-2 (April 28, 2008).*

INSTRUCTIONS FOR SCEIS CHANGES
Instructions: (i) Add as Clause No.06-6059-1. (ii) Add guidance as shown.

USF Part VIIA, Terms and Conditions - General:

ASSIGNMENT, NOVATION, AND CHANGE OF NAME, IDENTITY, OR STRUCTURE (FEB 2015)
(a) Contractor shall not assign this contract, or its rights, obligations, or any other interest arising from this contract, or delegate any of its performance obligations, without the express written consent of the responsible procurement officer. The foregoing restriction does not apply to a transfer that occurs by operation of law (e.g., bankruptcy; corporate reorganizations and consolidations, but not including partial asset sales). Notwithstanding the foregoing, contractor may assign monies receivable under the contract provided that the state shall have no obligation

to make payment to an assignee until thirty days after contractor (not the assignee) has provided the responsible procurement officer with (i) proof of the assignment, (ii) the identity (by contract number) of the specific state contract to which the assignment applies, and (iii) the name of the assignee and the exact address or account information to which assigned payments should be made. (b) If contractor amends, modifies, or otherwise changes its name, its identity (including its trade name), or its corporate, partnership or other structure, or its FEIN, contractor shall provide the procurement officer prompt written notice of such change. (c) Any name change, transfer, assignment, or novation is subject to the conditions and approval required by Regulation 19-445.2180, which does not restricts transfers by operation of law. [07-7A004-2]

GUIDANCE: [None]

INSTRUCTIONS FOR SCEIS CHANGES
Instructions: (i) Add as Clause No. 07-7A004-2. (ii) Retire Clause No. 07-7A004-1.
Inclusion Attribute: Mandatory – overrides rules.

BANKRUPTCY - GENERAL (FEB 2015)
(a) Notice. In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Using Governmental Unit. This notification shall be furnished within two (2) days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of all State contracts against which final payment has not been made. This obligation remains in effect until final payment under this Contract. (b) Termination. This contract is voidable and subject to immediate termination by the State upon the contractor's insolvency, including the filing of proceedings in bankruptcy. [07-7A005-2]

GUIDANCE: *Mandatory. For information technology procurements involving contractor access to government information, use the* ***Bankruptcy – Government Information*** *clause (7B007).*

INSTRUCTIONS FOR SCEIS CHANGES
Instructions: (i) Add as Clause No. 07-7A005-2. (ii) Designate Clause 07-7A005--1 (Bankruptcy (JAN 2006)), as "Expired." (iii) Revise guidance as shown.
Inclusion Attribute: Mandatory – overrides rules. Change rule logic to refer to new clause number.

CONTRACT DOCUMENTS & ORDER OF PRECEDENCE (FEB 2015)
(a) Any contract resulting from this solicitation shall consist of the following documents: (1) a Record of Negotiations, if any, executed by you and the Procurement Officer, (2) the solicitation, as amended, (3) documentation of clarifications [11-35-1520(8)] or discussions [11-35-1530(6)] of an offer, if applicable, (4) your offer, (5) any statement reflecting the state's final acceptance (a/k/a "award"), and (6) purchase orders. These documents shall be read to be consistent and complimentary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above.

(b) The terms and conditions of documents (1) through (5) above shall apply notwithstanding any additional or different terms and conditions in any other document, including without limitation, (i) a purchase order or other instrument submitted by the State, (ii) any invoice or other document submitted by Contractor, or (iii) any privacy policy, terms of use, or end user agreement. Except as otherwise allowed herein, the terms and conditions of all such documents shall be void and of no effect.
(c) No contract, license, or other agreement containing contractual terms and conditions will be signed by any Using Governmental Unit. Any document signed or otherwise agreed to by persons other than the Procurement Officer shall be void and of no effect. [07-7A015-2]

GUIDANCE: [None]

INSTRUCTIONS FOR SCEIS CHANGES
Instructions: (i) Add as Clause No. 07-7A015-2. (ii) Retire Clause No. 07-7A015-1.
Inclusion Attribute: Mandatory – overrides rules.

NO INDEMNITY OR DEFENSE (FEB 2015)
Any term or condition is void to the extent it requires the State to indemnify, defend, or pay attorney's fees to anyone for any reason. [07-7A045-2]

GUIDANCE: [None]

INSTRUCTIONS FOR SCEIS CHANGES
Instructions: (i) Add as Clause No. 07-7A045-2. (ii) Retire Clause No. 07-7A045-1.
Inclusion Attribute: Mandatory – overrides rules.

PAYMENT & INTEREST (FEB 2015)
(a) The State shall pay the Contractor, after the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified herein, including the purchase order, payment shall not be made on partial deliveries accepted by the Government. (b) Unless otherwise provided herein, including the purchase order, payment will be made by check mailed to the payment address on "Page Two." (c) Notwithstanding any other provision, payment shall be made in accordance with S.C. Code Section 11-35-45, or Chapter 6 of Title 29 (real property improvements) when applicable, which provides the Contractor's exclusive means of recovering any type of interest from the Owner. Contractor waives imposition of an interest penalty unless the invoice submitted specifies that the late penalty is applicable. Except as set forth in this paragraph, the State shall not be liable for the payment of interest on any debt or claim arising out of or related to this contract for any reason. (d) Amounts due to the State shall bear interest at the rate of interest established by the South Carolina Comptroller General pursuant to Section 11-35-45 ("an amount not to exceed fifteen percent each year"), as amended, unless otherwise required by Section 29-6-30. (e) Any other basis for interest, including but not limited to general (pre- and post-judgment) or specific interest statutes, including S.C. Code Ann. Section 34-31-20, are expressly waived by both parties. If a court,

despite this agreement and waiver, requires that interest be paid on any debt by either party other than as provided by items (c) and (d) above, the parties further agree that the applicable interest rate for any given calendar year shall be the lowest prime rate as listed in the first edition of the Wall Street Journal published for each year, applied as simple interest without compounding. (f) The State shall have all of its common law, equitable and statutory rights of set-off. [07-7A055-3]

GUIDANCE: [None]

INSTRUCTIONS FOR SCEIS CHANGES
Instructions: (i) Add as Clause No. 07-7A055-3. (ii) Retire Clause No. 07-7A055-2. (iii) Retire Clause No. 07-7A070-1.
Inclusion Attribute: Mandatory – overrides rules.

USF Part VIIB, Terms and Conditions - Special:

BANKRUPTCY – GOVERNMENT INFORMATION (FEB 2015)
(a) All government information (as defined in the clause herein entitled "Information Security - Definitions") shall belong exclusively to the State, and Contractor has no legal or equitable interest in, or claim to, such information. Contractor acknowledges and agrees that in the event Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, government information in its possession and/or under its control will not be considered property of its bankruptcy estate.
(b) Contractor agrees to notify the State within forty-eight (48) hours of any determination that it makes to file for bankruptcy protection, and Contractor further agrees to turn over to the State, before such filing, all government information that is in Contractor's possession in a format that can be readily utilized by the State.
(c) In order to protect the integrity and availability of government information, Contractor shall take reasonable measures to evaluate and monitor the financial circumstances of any subcontractor that will process, store, transmit or access government information. [07-7B007-1]

GUIDANCE*: Consider for use in procurements which involve contractor access to or possession of important agency or citizen data. Due to the definitional cross reference in subsection (a), you must also include the Information Security - Definitions clause if this clause is used.*

INSTRUCTIONS FOR SCEIS CHANGES
Instructions: (i) Add as Clause No. 07-7B007-1. (ii) Add guidance as shown.
Inclusion Attribute: Select to Manually Insert.
Future logic notes: If this clause is selected, solicitation must also include the "Information Security - Definitions (FEB 2015)" [07-7B104-1] clause.

CONTRACT DOCUMENTS & ORDER OF PRECEDENCE–SOFTWARE LICENSING–SINGLE AGENCY (FEB 2015):
Notwithstanding the clause entitled "Contract Documents & Order of Precedence," but as provided in the clause titled "Software Licensing Agreements–Single Solicitation," any contract awarded pursuant to this solicitation shall not include a software licensing agreement. Further, the document titled *South Carolina Standard Amendment To End User License Agreements For Commercial Off-The-Shelf Software – Single Agency*, which is attached hereto as an exhibit, is offered as information only and does not form part of the contract. [07-7B042-1]

GUIDANCE: *[To be added]*

INSTRUCTIONS FOR SCEIS CHANGES
Instructions: Add as Clause No. 07-7B042-1.
Inclusion Attribute: Select to Manually Insert.
Future Logic Notes: Create Rule to require this clause if solicitation includes "Software Licensing Agreements–Single Solicitation (FEB 2015)" clause [07-7B224-1].

CONTRACTOR'S LIABILITY INSURANCE - GENERAL (FEB 2015)
(a) Without limiting any of the obligations or liabilities of Contractor, Contractor shall procure from a company or companies lawfully authorized to do business in South Carolina and with a current A.M. Best rating of no less than A: VII, and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work and the results of that work by the contractor, his agents, representatives, employees or subcontractors.
(b) Coverage shall be at least as broad as:
(1) Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 12 07 covering CGL on an "occurrence" basis, including products-completed operations, personal and advertising injury, with limits no less than $1,000,000 per occurrence. If a general aggregate limit applies, the general aggregate limit shall be twice the required occurrence limit. This contract shall be considered to be an "insured contract" as defined in the policy.
(2) Auto Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limits no less than $1,000,000 per accident for bodily injury and property damage.
(3) Worker's Compensation: As required by the State of South Carolina, with Statutory Limits, and Employer's Liability Insurance with limit of no less than $1,000,000 per accident for bodily injury or disease.
(c) Every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them, must be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used.
(d) For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the State, every applicable Using Governmental Unit, and the officers,

officials, employees and volunteers of any of them. Any insurance or self-insurance maintained by the State, every applicable Using Governmental Unit, or the officers, officials, employees and volunteers of any of them, shall be excess of the Contractor's insurance and shall not contribute with it.
(e) Prior to commencement of the work, the Contractor shall furnish the State with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this section. All certificates are to be received and approved by the State before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The State reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by this section, at any time.
(f) Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. In addition, the Contractor shall notify the State immediately upon receiving any information that any of the coverages required by this section are or will be changed, cancelled, or replaced.
(g) Contractor hereby grants to the State and every applicable Using Governmental Unit a waiver of any right to subrogation which any insurer of said Contractor may acquire against the State or applicable Using Governmental Unit by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the State or Using Governmental Unit has received a waiver of subrogation endorsement from the insurer.
(h) Any deductibles or self-insured retentions must be declared to and approved by the State. The State may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
(i) The State reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
[07-7B056-2]

GUIDANCE: *No changes.*

INSTRUCTIONS FOR SCEIS CHANGES
Instructions: (i) Add as Clause No. 07-7B056-2. (ii) Designate Clause 07-7B056--1 (Contractor's Liability Insurance (MAR 2013)), as "Expired."
Inclusion Attribute: Rule. Change rule logic to refer to new clause number.

CONTRACTOR'S LIABILITY INSURANCE – INFORMATION SECURITY AND PRIVACY (FEB 2015)
[ASK QUESTIONS NOW: For products providing the coverages required by this clause, the insurance market is evolving. Our research indicates that the requirements stated herein reflect commercially-available insurance products. Any offeror having concerns with any specific requirements of this clause should communicate those concerns to the procurement officer well in advance of opening.]
(a) Without limiting any other obligations or liabilities of Contractor, Contractor shall procure from a company or companies lawfully authorized to do business in South Carolina and with a

current A.M. Best rating of no less than A: VII, and maintain for the duration of the contract, a policy or policies of insurance against claims which may arise from or in connection with the performance of the work and the results of that work by the contractor, his agents, representatives, employees, subcontractors or any other entity for which the contractor is legally responsible.

(b) Coverage must include claims for:

(i) information security risks, including without limitation, failure to prevent unauthorized access to, tampering with or unauthorized use of a computer system; introduction of malicious codes, computer viruses, worms, logic bombs, etc., into data or systems; or theft, damage, unauthorized disclosure, destruction, or corruption of information in whatever form;

(ii) privacy risks, including (A) failure to properly handle, manage, store, destroy, or otherwise control non-public personally identifiable information in any format; (B) loss or disclosure of confidential information; and (C) any form of invasion, infringement or interference with rights of privacy, including breach of security/privacy laws or regulations;

(iii) contractual liability for the contractor's obligations described in the clauses titled "Indemnification - Third Party Claims – Disclosure Of Information" and "Information Use And Disclosure;" and

(iv) errors, omissions, or negligent acts in the performance, by the contractor or by any entity for which the contractor is legally responsible, of professional services included in the work.

(c) If the work includes content for internet web sites or any publications or media advertisements, coverage must also include claims for actual or alleged infringement of intellectual property rights, invasion of privacy, as well as advertising, media and content offenses.

(d) If the work includes software, coverage must also include claims for intellectual property infringement arising out of software and/or content (with the exception of patent infringement and misappropriation of trade secrets)

(e) Coverage shall have limits no less than five million ($5,000,000.00) dollars per occurrence and ten million ($10,000,000.00) dollars aggregate.

(f) If the insurance required by this clause is procured on a form affording "claims-made" coverage, then (i) all limits stated above as "per occurrence" shall be understood to mean "per claim" or "per occurrence," as is consistent with the terms of the "claims-made" policy; and (ii) such claims-made insurance shall provide for a retroactive date no later than the date the contract is awarded.

(g) All terms of this clause shall survive termination of the contract and shall continue until thirty (30) days past the final completion of the work, including the performance of any warranty work. In addition, contractor shall maintain in force and effect any "claims-made" coverage for a minimum of two (2) years after final completion of all work or services to be provided hereunder. Contractor shall purchase an extended reporting period, or "tail coverage," if necessary to comply with the latter requirement.

(h) Every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them, must be covered as additional insureds on the policy or policies of insurance required by this clause.

(i) For any claims related to this contract, the insurance coverage required by this clause shall be primary insurance as respects the State, every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them. Any insurance or self-insurance maintained by the State, every applicable Using Governmental Unit, or the officers, officials,

employees and volunteers of any of them, shall be excess of the Contractor's insurance and shall not contribute with it.

(j) Prior to commencement of the work, the Contractor shall furnish the State with original certificates of insurance for every applicable policy effecting the coverage required by this clause. All certificates are to be received and approved by the Procurement Officer before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The State reserves the right to require complete, certified copies of all required insurance policies, including policy declarations and any endorsements required by this section, at any time.

(k) Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. In addition, the Contractor shall notify the State immediately upon receiving any information that any of the coverages required by this clause are or will be changed, cancelled, or replaced.

(l) Contractor hereby grants to the State and every applicable Using Governmental Unit a waiver of any right to subrogation which any insurer of said Contractor may acquire against the State or applicable Using Governmental Unit by virtue of the payment of any loss under such insurance as is required by this clause. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the State or Using Governmental Unit has received a waiver of subrogation endorsement from the insurer.

(m) Any deductibles or self-insured retentions must be declared to and approved by the State. The State may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. [07-7B058-1]

GUIDANCE:

1. Risk Assessment & Appropriate Policy Limits. Any contract involving vendor access or hosting of critical or confidential data should directly involve upper management of the using agency in the risk assessment and the decision regarding policy limits. ***Using the default policy limits is simply not appropriate.*** *Any evaluation of the need for such coverage and appropriate policy limits will require a consideration of the type of services being acquired and the type of data involved. To illustrate, a cloud service provider which serves as a data repository for your customer data would present a major risk for data breach losses and potential litigation. Accordingly, the agency may wish to require limits of coverage significantly higher than the default. In contrast, if a contract for web development involves NO access to your data, the risk may be limited to any risk associated with the website's content. Do not focus on the contract value, and do not default to your contractor's existing policy limits. Rather, consider the risks involved in exposure of the data involved. The exposure can be quite significant. See below for a partial list of the types of losses potentially involved in a data breach.*

2. Sample Types of Losses from Data Breach

a. Costs of forensic investigation of the breach, the data released/lost/damaged, and the potential parties affected.

b. Costs (legal, public relations, call centers, websites, etc.)involved in preparation and distribution of notice and information regarding breach.

c. Damage mitigation, including credit monitoring, ID theft protection & rehabilitation services, etc.

d. Legal defense costs and fees.

e. Cost to respond to regulatory investigations and pay any regulatory fines.

f. Costs to restore your damaged information assets (software apps, data, etc.)

3. In determining the appropriate policy limits, do not consider the total, potential financial consequences of a breach; rather, consider what losses insurance will cover. In determining the appropriate policy limits, the using agency may wish to consider published information regarding average minimum and maximum per record, per event costs by industry. For example, Ponemon Institute, LLC, sponsored by IBM, publishes an annual white paper on this topic entitled "Cost of Data Breach Study for the US." The study is available at www.ibm.com/services/costofbreach. (last visited Jan. 26, 2015)

INSTRUCTIONS FOR SCEIS CHANGES
Instructions: (i) Add as Clause No. 07-7B058-1. (ii) Add guidance as shown.
Inclusion Attribute: Select to Manually Insert.

DEFAULT – SHORT FORM (FEB 2015)
The state may terminate this contract, or any part hereof, for cause in the event of any default by the contractor, or if the contractor fails to comply with any material contract terms and conditions, or fails to provide the state, upon request, with adequate assurances of future performance. In the event of termination for cause, the state shall not be liable to the contractor for any amount for supplies or services not accepted, and the contractor shall be liable to the state for any and all rights and remedies provided by law. If it is determined that the state improperly terminated this contract for default, such termination shall be deemed a termination for convenience. [07-7B080-2]

GUIDANCE: No changes

INSTRUCTIONS FOR SCEIS CHANGES
Instructions: (i) Add as Clause No. 07-7B080-2. (ii) Retire Clause No. 07-7B080-1. (iii) Revise rule to refer to new clause.
Inclusion Attribute: Rule

INDEMNIFICATION-THIRD PARTY CLAIMS – GENERAL (NOV 2011)

GUIDANCE: *No changes.*

INSTRUCTIONS FOR SCEIS CHANGES
Instructions: Change title only of Clause No. 07-7B100-2. No changes to clause text, number, guidance, or inclusion attribute/logic.

INDEMNIFICATION - THIRD PARTY CLAIMS – DISCLOSURE OF INFORMATION (FEB 2015)

(a) Without limitation, Contractor shall defend and hold harmless Indemnitees from and against any and all suits, claims, investigations, or fines (hereinafter "action") of any character (and all related damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities) by a third party which arise out of or in connection with a disclosure of government information (as defined in the clause titled Information Security - Definitions) caused in whole or in part by any act or omission of contractor, its subcontractors at any tier, their employees, workmen, servants, agents, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by an Indemnitee, and whether or not such action is brought by a third party or an Indemnitee, but only if the act or omission constituted a failure to perform some obligation imposed by the contract or the law.

(b) Indemnitee must notify contractor in writing within a reasonable period of time after Indemnitee first receives written notice of any action. Indemnitee's failure to provide or delay in providing such notice will relieve contractor of its obligations under this clause only if and to the extent that such delay or failure materially prejudices contractors ability to defend such action. Indemnitee must reasonably cooperate with contractor's defense of such actions (such cooperation does not require and is without waiver of an Indemnitees attorney/client, work product, or other privilege) and, subject to Title 1, Chapter 7 of the South Carolina Code of Laws, allow contractor sole control of the defense, so long as the defense is diligently and capably prosecuted. Indemnitee may participate in contractor's defense of any action at its own expense. Contractor may not, without Indemnitee's prior written consent, settle, compromise, or consent to the entry of any judgment in any such commenced or threatened action unless such settlement, compromise or consent (i) includes an unconditional release of Indemnitee from all liability related to such commenced or threatened action, and (ii) is solely monetary in nature and does not include a statement as to, or an admission of fault, culpability or failure to act by or on behalf of, an Indemnitee or otherwise adversely affect an Indemnitee. Indemnitee's consent is necessary for any settlement that requires Indemnitee to part with any right or make any payment or subjects Indemnitee to any injunction.

(c) Notwithstanding any other provision, contractor's obligations pursuant to this clause are without any limitation whatsoever. Contractor's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of the contract. This provision shall be construed fairly and reasonably, neither strongly for nor against either party, and without regard to any clause regarding insurance.

(d) "Indemnitee" means the State of South Carolina, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees. [07-7B102-1]

GUIDANCE:

Consider for use in all services procurements which involve contractor access to or possession of important agency or citizen data. Due to critical cross-references and interlocking obligations, you also must include the ***Information Security - Definitions*** *and* ***Information Use and Disclosure*** *clauses if this clause is used.*

INSTRUCTIONS FOR SCEIS CHANGES

Instructions: (i) Add as Clause No. 07-7B102-1. (ii) Add guidance as shown.

Inclusion Attribute: Select to Manually Insert.

Future logic note: If this clause is selected, solicitation must also include the "Information Security - Definitions (FEB 2015)" [07-7B104-1] and "Information Use and Disclosure (FEB 2015)" [07-7B108-1] clauses

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INDEMNIFICATION-INTELLECTUAL PROPERTY (JAN 2006)
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[07-7B103-1]

INSTRUCTIONS FOR SCEIS CHANGES
Instructions: (i) Change title only of Clause No. 07-7B105-1. (ii) Renumber clause to 07-7B103-1. (iii) Revise clause number in text.
Inclusion Attribute: Rule. Change rule logic to refer to new clause number.

INFORMATION SECURITY - DEFINITIONS (FEB 2015)
The following definitions are used in those clauses that cross reference this clause.
Compromise means disclosure of information to unauthorized persons, or a violation of the security policy of a system in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object may have occurred. Without limitation, the term "compromise" includes copying the data through covert network channels, or copying the data to unauthorized media, or disclosure of information in violation of any obligation imposed by this contract.
Data means a subset of information in an electronic format that allows it to be retrieved or transmitted.
Government information means information (i) provided to Contractor by, or generated by Contractor for, the using governmental unit, or (ii) acquired or accessed by Contractor as a result of performing the Work. Without limiting the foregoing, government information includes any information that Contractor acquires or accesses by software or web-based services, which includes, without limitation, any metadata or location data. Government information excludes unrestricted information.
Information means any communication or representation of knowledge such as facts, statistics, or opinions, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual.
Information system means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.
Public information means any specific information, regardless of form or format, that the State has actively and intentionally disclosed, disseminated, or made available to the public. Information is not public information solely because it may be subject to inspection pursuant to an unfulfilled public records request.
Software means any computer program accessed or used by the Using Governmental Unit or a third party pursuant to or as a result of this contract.
Third party means any person or entity other than the Using Governmental Unit, the Contractor, or any subcontractors at any tier.

Unrestricted information means (1) public information acquired other than through performance of the work, (2) information acquired by Contractor prior to contract formation, (3) information incidental to your contract administration, such as financial, administrative, cost or pricing, or management information, and (4) any ideas, concepts, know-how, methodologies, processes, technologies, techniques which Contractor develops or learns in connection with Contractor's performance of the work.
Web-based service means a service accessed over the Internet and acquired, accessed, or used by the using governmental unit or a third party pursuant to or as a result of this contract, including without limitation, cloud services, software-as-a-service, and hosted computer services. [07-7B104-1]

GUIDANCE:
Use this clause any time you use a clause that references these definitions.

INSTRUCTIONS FOR SCEIS CHANGES
Instructions: (i) Add as Clause No. 07-7B104-1. (ii) Add guidance as shown.
Inclusion Attribute: Select to Manually Insert.

Notes for Future Revisions: Any future modifications to these definitions should be published only after the implications have been evaluated for every clause referencing these definitions.

INFORMATION SECURITY - SAFEGUARDING REQUIREMENTS (FEB 2015)
(a) *Definitions*. The terms used in this clause shall have the same meaning as the terms defined in the clause titled Information Security – Definitions. In addition, as used in this clause—
Clearing means removal of data from an information system, its storage devices, and other peripheral devices with storage capacity, in such a way that the data may not be reconstructed using common system capabilities (i.e., through the keyboard); however, the data may be reconstructed using laboratory methods.
Intrusion means an unauthorized act of bypassing the security mechanisms of a system.
Media means physical devices or writing surfaces including but not limited to magnetic tapes, optical disks, magnetic disks, large scale integration memory chips, and printouts (but not including display media, e.g., a computer monitor, cathode ray tube (CRT) or other (transient) visual output) onto which information is recorded, stored, or printed within an information system.
Safeguarding means measures or controls that are prescribed to protect information.
Voice means all oral information regardless of transmission protocol.
(b) *Safeguarding Information*. Without limiting any other legal or contractual obligations, contractor shall implement and maintain reasonable and appropriate administrative, physical, and technical safeguards (including without limitation written policies and procedures) for protection of the security, confidentiality and integrity of the government information in its possession. In addition, contractor stall apply security controls when the contractor reasonably determines that safeguarding requirements, in addition to those identified in paragraph (c) of this clause, may be required to provide adequate security, confidentiality and integrity in a dynamic environment based on an assessed risk or vulnerability.

(c) *Safeguarding requirements and procedures*. Contractor shall apply the following basic safeguarding requirements to protect government information from unauthorized access and disclosure:

(1) Protecting information on public computers or Web sites*:* Do not process government information on public computers (e.g., those available for use by the general public in kiosks, hotel business centers) or computers that do not have access control. Government information shall not be posted on Web sites that are publicly available or have access limited only by domain/Internet Protocol restriction. Such information may be posted to web pages that control access by user ID/password, user certificates, or other technical means, and that provide protection via use of security technologies. Access control may be provided by the intranet (versus the Web site itself or the application it hosts).

(2) Transmitting electronic information. Transmit email, text messages, blogs, and similar communications that contain government information using technology and processes that provide the best level of security and privacy available, given facilities, conditions, and environment.

(3) Transmitting voice and fax information. Transmit government information via voice and fax only when the sender has a reasonable assurance that access is limited to authorized recipients.

(4) Physical and electronic barriers. Protect government information by at least one physical and one electronic barrier (e.g., locked container or room, login and password) when not under direct individual control.

(5) Sanitization. At a minimum, clear information on media that have been used to process government information before external release or disposal. Overwriting is an acceptable means of clearing media in accordance with National Institute of Standards and Technology 800–88, Guidelines for Media Sanitization, at http://csrc.nist.gov/ publications/nistpubs/800-88/NISTSP800-88_with-errata.pdf.

(6) Intrusion protection. Provide at a minimum the following protections against intrusions and compromise:

(i) Current and regularly updated malware protection services, e.g., anti-virus, antispyware.

(ii) Prompt application of security-relevant software upgrades, e.g., patches, service packs, and hot fixes.

(7) Transfer limitations. Transfer government information only to those subcontractors that both require the information for purposes of contract performance and provide at least the same level of security as specified in this clause.

(d) *Subcontracts.* Any reference in this clause to Contractor also includes any subcontractor at any tier. Contractor is responsible for, and shall impose by agreement requirements at least as secure as those imposed by this clause on, any other person or entity that contractor authorizes to take action related to government information.

(e) *Other contractual requirements regarding the safeguarding of information.* This clause addresses basic requirements and is subordinate to any other contract clauses or requirements to the extent that it specifically provides for enhanced safeguarding of information or information systems. [07-7B105-1]

GUIDANCE*:*

Consider for use in all procurements which involve contractor access to or possession of important agency or citizen data. The requirements reflected herein are minimal and should not be relied upon as a default. In compliance with internal agency policies governing information security, each agency must determine for itself whether the services acquired from the contractor

warrant the imposition of additional controls by contract. Agencies should be aware that commercial providers of commodity-type services typically organize their business models and services around the concept of shared resources and devices for a broad and diverse customer base. Therefore, unless an organization obtains fully dedicated services from a commercial service provider, there may be a need for greater reliance on compensating security controls by the agency to provide the necessary protections for the information system that relies on those external services. Internal agency assessments of risk and risk mitigation activities are necessary to address this situation.

INSTRUCTIONS FOR SCEIS CHANGES

Instructions: (i) Add as Clause No. 07-7B105-1. (ii) Add guidance as shown. [Note: Current Clause No. 7B105, currently titled Intellectual Property Infringement (Jan 2006), is being renamed and renumbered. See instructions elsewhere herein.]

Inclusion Attribute: Select to Manually Insert.

Future logic note: If this clause is selected, dialog should include Information Security – Definitions (FEB 2015). If this clause is selected, dialog should suggest, but not require, inclusion of the following clauses: "Indemnification - Third Party Claims – Disclosure of Information (FEB 2015)" [07-7B102-1]; "Information Security – Data Location (FEB 2015)" [07-7B106-1]; "Information Use and Disclosure (FEB 2015)" [07-7B108-1]; and Ownership of Information (FEB 2015)" [07-7B127-1].

INFORMATION SECURITY – LOCATION OF DATA (FEB 2015)

Notwithstanding any other provisions, contractor is prohibited from processing, storing, transmitting, or accessing government information, as defined in the clause titled Information Security - Definitions, outside the continental United States. For clarity, this obligation is a material requirement of this contract and applies to subcontractors at any tier. [07-7B106-1]

GUIDANCE:

Consider for use in procurements where Contractor will have important agency or citizen data hosted in Contractor's computer systems. Given the common use of data centers located around the globe and the cost of hosting all data in the continental US, Using Agencies should be aware that this requirement will increase costs and may limit competition. These factors should be weighed against the risk of exposing the data to laws and social forces in other countries, particularly where the using agency will trust the contractor with data classified as Confidential or Restricted under the State's Data Classification Schema.

Due to critical cross-references, you must also use the ***Information Security - Definitions*** *clause if this clause is used. Ordinarily, you would not use this clause without also including the* ***Information Use and Disclosure*** *clause. You should also consider inclusion of the* ***Offshore Contracting Prohibited*** *clause.*

INSTRUCTIONS FOR SCEIS CHANGES

Instructions: (i) Add as Clause No. 07-7B106-1. (ii) Add guidance as shown.

Inclusion Attribute: Select to Manually Insert.

Future logic note: If this clause is selected, solicitation must include the "Information Security - Definitions (FEB 2015)" [07-7B104-1] clause; it should, but is not required to, also include the "Information Use and Disclosure (FEB 2015)" [07-7B108-1] clause.

INFORMATION USE AND DISCLOSURE (FEB 2015)

Except to the extent necessary for performance of the work, citizens should not be required to share information with those engaged by the government in order to access services provided by the government and such information should be used by those engaged by the government only to the extent necessary to perform the work acquired; accordingly, this clause addresses basic requirements for the Contractor's use and disclosure of government information, which expressly includes, but is not limited to, information provided by or obtained from the citizens. Anonymizing information does not resolve the foregoing concern. This clause should be broadly interpreted to effectuate this intent. Every obligation in this clause is material. Absent express reference to this clause, this clause supersedes any other clause to the extent of any inconsistency unless and to the extent the other clause provides greater protection for government information.

(a) *Definitions.* The terms used in this clause shall have the same meaning as the terms defined in the clause titled Information Security – Definitions.

(b) *Legal mandates*. Contractor shall be permitted to use, disclose, or retain government information to the limited extent necessary to comply with any requirement imposed on Contractor by law. If it is necessary for Contractor to use, disclose, or retain government information in order to comply with a law, Contractor shall provide using governmental unit with written notice, including a description of the circumstances and applicable law, in advance of such use, disclosure or retention except to the extent expressly prohibited by law.

(c) *Flow down.* Any reference in this clause to Contractor also includes any subcontractor at any tier. Contractor is responsible for, and shall impose by agreement the requirements of this clause on, any other person or entity that contractor authorizes to take action related to government information.

(d) *Collecting Information*. Contractor must gather and maintain government information only to the minimum extent necessary to accomplish the work.

(e) *Rights, Disclosure and Use.* Except as otherwise expressly provided in this solicitation, Contractor agrees NOT to either (1) use or disclose government information, or (2) retain government information after termination or expiration of this contract. Contractor acquires no rights in any government information except the limited rights to use, disclose and retain the government information in accordance with the terms of this solicitation. To the extent reasonably necessary to perform the work, Contractor may: (i) use (including access, process, transmit, and store) and maintain the government information itself; and (ii) disclose government information to persons having a need-to-know (e.g., subcontractors). Before disclosing government information to a subcontractor or third party, Contractor shall give the using governmental unit detailed written notice of both the reason for disclosure and the identity and location of the recipient. The notice shall be provided no later than fifteen (15) business days in advance of the disclosure.

(f) *Return*. Notwithstanding the using governmental unit's failure to perform or the pendency of a dispute, Contractor agrees to promptly deliver to the using governmental unit (or destroy, at the using governmental unit's option) all government information in its possession as and upon written request of using governmental unit (provided that, if the contract has not expired or been

terminated, Contractor shall be excused from the performance of any work reasonably dependent on Contractor's further access to such government information).

(g) *Privacy Policy & Applicable Laws*. Without limiting any other legal or contractual obligations imposed by this contract or the law, Contractor shall (a) comply with its own privacy policies and written privacy statements relevant to the work, and (b) comply with (1) all laws applicable to Contractor regarding government information, and (2) all laws and standards identified in the clause, if included, entitled Information Use and Disclosure – Standards.

(h) *Actions Following Disclosure*. Immediately upon discovery of a compromise or improper use of government information, Contractor shall take such action as may be necessary to preserve forensic evidence and eliminate the cause of the compromise or improper use. As soon as practicable, but no later than twenty-four hours after discovery, Contractor shall notify using governmental unit of the compromise or improper use, including a description of the circumstances of the use or compromise. As soon as practicable after discovery, Contractor shall undertake a thorough forensic investigation of any compromise or improper use and provide the using governmental unit all information necessary to enable the using governmental unit to fully understand the nature and extent of the compromise or improper use. With regard to any compromise or improper use of government information, Contractor shall: (1) provide any notification to third parties legally required to be provided such notice by Contractor, and if not (e.g., if legally required of the using governmental unit), Contractor shall reimburse using governmental unit for the cost of providing such notifications; (2) pay all costs and expenses for at least two years of identity theft monitoring services (including without limitation, credit monitoring) and identity theft restoration services for any such affected individuals receiving notice where such services are appropriate given the circumstances of the incident and the nature of the information compromised; (3) undertake any other measures that are customary and reasonable for an entity to take when experiencing a similar disclosure, (4) pay any related fines or penalties imposed on the using governmental unit, and (5) reimburse the Using Governmental Unit all costs reasonably incurred for communications and public relations services involved in responding to the compromise or improper us. Notwithstanding any other provision, contractor's obligations pursuant to this item (h) are without limitation.

(j) *Survival & Remedy.* All the obligations imposed by this paragraph are material. The obligations of this section shall survive termination or expiration of the contract. Without limiting any rights the using governmental unit may have, and notwithstanding any other term of this contract, Contractor agrees that using governmental unit may have no adequate remedy at law for a breach of Contractor's obligations under this clause and therefore the using governmental unit shall be entitled to pursue equitable remedies in the event of a breach of this clause. [07-7B108-1]

GUIDANCE:

Consider for use in all services procurements which involve contractor access to or possession of important agency or citizen data. Due to critical cross-references, you must also use the ***Information Security - Definitions*** *and* ***Information Use and Disclosure – Standards*** *clauses if this clause is used. Ordinarily, you would not use this clause without also including the* ***Indemnification – Third Party Claims – Disclosure of Information*** *clauses.*

INSTRUCTIONS FOR SCEIS CHANGES

Instructions: (i) Add as Clause No. 07-7B108-1. (ii) Add guidance as shown. (iii) Designate Clause 07-7B195-1 (Privacy – Web Services (JAN 2006)) as "Expired."

Inclusion Attribute: Select to Manually Insert.
Future logic notes: (a) If this clause is selected, solicitation must also include the "Information Security - Definitions (FEB 2015)" [07-7B104-1] and "Information Use and Disclosure - Standards (FEB 2015)" [07-7B110-1] clauses. It should, but is not required to, also include the "Indemnification – Third Party Claims – Disclosure of Information (FEB 2015)" [07-7B102-1] clause. (b) Need to develop dialog/ prompts/ guidance similar to current use of the "Privacy – Web Services" clause.

INFORMATION USE AND DISCLOSURE – STANDARDS (FEB 2015)
To the extent applicable:
(a) Breach of security of state agency data; notification; rights and remedies of injured parties; penalties; notification of Consumer Protection Division, S.C. Code Ann. § 1-11-490.
(b) South Carolina Financial Identity Fraud and Identity Theft Protection Act (FIFITPA), 2008 Act 190, as amended. Solely for purposes of Section 39-1-90 of the South Carolina Code of Laws, as amended, Contractor is deemed to be the owner of government information, as defined herein, and Contractor agrees that the Using Governmental Unit is not a licensee.
(c) The South Carolina Family Privacy Protection Act of 2002, S.C. Code Ann. §§ 30-2-10, *et seq.*
(d) Personal Identifying Information Privacy Protection, S.C. Code Ann. §§ 30-2-310 *et seq.*
(e) Data Breach Notification, 2014 Act No. 286, § 117.117, as revised in any future annual appropriations act. [07-7B110-1]

GUIDANCE:
Consider for use in all services procurements which involve contractor access to or possession of important agency or citizen data. Due to critical cross-references, you also must use both the ***Information Security - Definitions*** *and* ***Information Use and Disclosure*** *clauses, if this clause is used.* ***PRIOR TO INCLUDING THIS CLAUSE IN ANY SOLICITATION THE PROCUREMENT OFFICER IS STRONGLY CAUTIONED TO CONSULT WITH THE USING AGENCY TO DETERMINE IF ANY SPECIFIC LEGAL STANDARDS SHOULD BE ADDED TO OR REMOVED FROM THIS CLAUSE.***

Other standards which may be applicable include, but are not limited to, the following:
(1) FISMA: Federal Information Security Management Act, 44 U.S.C. §§3541, et seq.
(2) HIPAA: Health Insurance Portability and Accountability Act of 1996) and HITECH (Health Information Technology for Economic and Clinical Health Act of 2009); Privacy Rule at 45 C.F.R. 160 & 164
(3) FERPA: Family Educational Rights and Privacy Act, 20 U.S.C. §1232g
(4) GLB: Gramm–Leach–Bliley Act; Financial Privacy Rule codified at 15 U.S.C. §§ 6801–6809
(5) IRS Publication 1075
(6) IRC § 6103(p)(4) (26 U.S.C. § 6103(p)(4))
(7) FCRA: Fair Credit Reporting Act, 15 U.S.C. §§1681 et seq.
(8) FACT Act: Fair and Accurate Credit Transactions Act, PL 108-159 (2003) (Disposal Rule at 16 CFR Part 682)
(9) FTC: Regulations promulgated by the Federal Trade Commission collectively known as the "Red Flags Rule," found at 16 CFR 681

(10) CJIS: Criminal Justice Information Services Security Policy, published by Federal Bureau of Investigation, U.S. Department of Justice; current version 5.1 (July 13, 2012)
(11) PCI DSS (Payment Card Industry Data Security Standard): the current version of PCI DSS published on the PCI SSC (PCI Security Standards Council) website

INSTRUCTIONS FOR SCEIS CHANGES
Instructions: (i) Add as Clause No. 07-7B110-1. (ii) Add guidance as shown.
Inclusion Attribute: Select to Manually Insert.
Future logic notes: If this clause is selected, solicitation must also include the "Information Security - Definitions (FEB 2015)" [07-7B104-1] and "Information Use and Disclosure (FEB 2015)" [07-7B108-1] clauses.

OFFSHORE CONTRACTING PROHIBITED (FEB 2015)
No part of the resulting contract from this solicitation may be performed offshore of the United States by persons located offshore of the United State or by means, methods, or communications that, in whole or in part, take place offshore of the United States. [07-7B122-1]

GUIDANCE:
Consider for use in all ITMO services procurements which involve contractor access to or possession of important agency or citizen data. Ordinarily, this clause would be included in contracts acquiring software as a service and other hosted services. Given the common use of data and call centers located around the globe and the cost of hosting all data in the continental US, Using Agencies should be aware that this requirement will increase costs and may limit competition. These factors should be weighed against the risk of exposing the data to laws and social forces in other countries, particularly where the using agency will trust the contractor with data classified as Confidential or Restricted under the State's Data Classification Schema. You may also consider inclusion of the ***Information Security – Data Location*** *clause.*

INSTRUCTIONS FOR SCEIS CHANGES
Instructions: (i) Add as Clause No. 07-7B122-1. (ii) Add guidance as shown.
Inclusion Attribute: Select to Manually Insert.

RESTRICTIONS ON PRESENTING TERMS OF USE OR OFFERING ADDITIONAL SERVICES (FEB 2015)
(a) Citizens, as well as public employees (acting in their individual capacity), should not be unnecessarily required to agree to or provide consent to policies or contractual terms in order to access services acquired by the government pursuant to this contract (hereinafter "applicable services") or, in the case of public employees, to perform their job duties; accordingly, in performing the work, contractor shall not require or invite any citizen or public employee to agree to or provide consent to any end user contract, privacy policy, or other terms of use (hereinafter "terms of use") not previously approved in writing by the procurement officer. Contractor agrees that any terms of use regarding applicable services are void and of no effect.

(b) Unless expressly provided in the solicitation, public contracts are not intended to provide contractors an opportunity to market additional products and services; accordingly, in performing the work, contractor shall not – for itself or on behalf of any third party – offer citizens or public employees (other than the procurement officer) any additional products or services not required by the contract.
(c) Any reference to contractor in items (a) or (b) also includes any subcontractor at any tier. Contractor is responsible for compliance with these obligations by any person or entity that contractor authorizes to take any action related to the work.
(d) Any violation of this clause is a material breach of contract. The parties acknowledge the difficulties inherent in determining the damage from any breach of these restrictions. Contractor shall pay the state liquidated damages of $1,000 for each contact with a citizen or end user that violates this restriction.
[07-7B212-1]

GUIDANCE:
1. Recent experience reflects that some businesses are using their public contracts to either sell additional services to or acquire additional data from those they interact with while performing the work. The most common scenario involves a contract in which citizens or state employees are interacting with the government or the contractor over the internet via a computer-based service provided by the contractor. In some instances, contractors are requiring citizens and/or state employees to enter into a contract with the vendor as a condition of accessing the service the agency contracted the vendor to provide. This clause is intended to forbid such activity.

2. If you are acquiring an off-the-shelf service, the following additional paragraph may be one that helps potential vendors to find practical ways to accommodate this requirement:

> *(d) Notwithstanding item (a) above, contractor may require or invite a citizen or public employee to provide consent or agree to an end user contract, privacy policy, or other terms of use (collectively referred to hereinafter as "terms of use") if every person presented with terms of use during performance of the work will also be presented with a statement to the effect that, notwithstanding anything in those terms of use to the contrary, the terms of use apply only to the extent [Option 1: "they are not inconsistent with this contract. Without limiting the generality of the foregoing, terms of use may not address dispute resolution, choice of forum, choice of law, limitations of liability, remedies, or use of government information (as defined in the Information Use and Disclosure clause) by Contractor or those for whom it is responsible (e.g., subcontractors)." Option 2: "they do not add to, remove from, or modify this contract."*

INSTRUCTIONS FOR SCEIS CHANGES
Instructions: (i) Add as Clause No. 07-7B212-1. (ii) Add guidance as shown.
Inclusion Attribute: Select to Manually Insert.

SERVICE PROVIDER SECURITY REPRESENTATION (FEB 2015)
The following obligations are subordinate to any other contract clause to the extent the other clause specifically provides for enhanced safeguarding of government information, applicable information systems, or applicable organizations. Offeror (i) warrants that the work will be performed, and any applicable information system (as defined in the clause titled "Information Security - Definitions") will be established and maintained in substantial conformity with the information provided in Offeror's Response to SPSAQ; (ii) agrees to provide the Using Governmental Unit with prompt notice of any material variation in operations from that reflected in the Response to SPSAQ; and (iii) agrees to comply with all other obligations involving either information security or information use and disclosure imposed by the contract, notwithstanding any inconsistent statement in Offeror's Response to SPSAQ. To the extent Offeror's Response to SPSAQ does not conform to any other contractual requirements, the Using Agency's lack of objection does not constitute a waiver [07-7B217-1]

***GUIDANCE**:*
*This clause should be used with the **Service Provider Security Assessment Questionnaire - Required** clause (4027). Consider for use in all services procurements which involve either contractor's computerized interface with state systems or contractor's direct possession of important agency or citizen data. Due to critical cross-references, you must also use both the **Information Security - Definitions** clause (7B104) and the **Service Provider Security Assessment Questionnaire** attachment (9025) if this clause is used.*

Agencies are cautioned that they should take steps to insure that the representations provided by an Offeror are applicable to the computerized infrastructure that will be used by Contractor to collect, manage, store, process or access government information.

INSTRUCTIONS FOR SCEIS CHANGES
Instructions: (i) Add as Clause No. 07-7B217-1. (ii) Add guidance as shown.
Inclusion Attribute: Select to Manually Insert.
Future logic notes: If this clause is selected, solicitation must also include the "Information Security - Definitions (FEB 2015)" [07-7B104-1] and "Service Provider Security Assessment Questionnaire - Required (FEB 2015)" [04-4027-1] clauses and the "Service Provider Security Assessment Questionnaire" attachment [09-9025-1].

SOFTWARE LICENSING AGREEMENTS FOR STATEWIDE TERM CONTRACTS (FEB 2015)
(a) Definitions. As used in this paragraph, these terms are defined as follows: "Software" means any computer program identified by the solicitation. "Licensor" means an entity that owns the intellectual property rights for an item of Software or has the authority to license or sublicense the Software directly to the state. "Software licensing agreement" means any agreement, regardless of how designated, pertaining to the intellectual property rights for or the right to use any Software, including, but not limited to, any such agreement proposed prior to or after award, including without limitation any such agreement that either is affixed to (e.g., shrink-wrap), imbedded in (e.g., click-wrap), or in any way accompanies the Software upon delivery.

(b) Separate Agreement for License and Services. This contract will address all Work (excluding the right to use the Software) and all terms regarding pricing, payment, and delivery of all Software. An independent Software Licensing Agreement has already been entered between the state and each applicable Licensor for all Software identified herein. Pursuant to this contract, the state intends to pay contractor in order to acquire license rights from Licensor under terms governed by the applicable Software Licensing Agreement. **ACCORDINGLY, YOU MUST NOT SUBMIT ANY SOFTWARE LICENSING AGREEMENTS WITH YOUR OFFER.**
(c) Political Subdivisions. You agree not to fulfill an order or provide any software to a local public procurement unit (see "Statewide Term Contract" provision) unless and until you have first presented to the unit a copy of the "Enrollment Agreement for South Carolina Public Entities" (Exhibit A of the COTS Piggyback), for execution, and if signed, delivered a copy to the applicable Licensor. For each Licensor, a unique version of the Enrollment Agreement for South Carolina Public Entities form is attached. This requirement does not apply to software licensed by a Licensor not identified on the list attached and entitled Enrollment Agreement Applicability List. [07-07B223-2]

GUIDANCE:
- For use only for Statewide Term Contracts acquiring brand-name software and only if all software to be acquired is covered by a pre-existing statewide software licensing agreement such as the COTS Piggyback.
- For every item of software to be acquired, determine whether the COTS Piggyback for the applicable Licensor included an Enrollment Agreement for South Carolina Public Entities. If it did, identify the software in your Enrollment Agreement Applicability List.
- FOR ALL LICENSORS IDENTIFIED IN YOUR ENROLLMENT AGREEMENT APPLICABILITY LIST, MAKE SURE TO ATTACH THAT LICENSOR'S UNIQUE ENROLLMENT AGREEMENT, WHICH SHOULD APPEAR AS AN ATTACHMENT TO THAT LICENSOR'S COTS PIGGYBACK.

INSTRUCTIONS FOR SCEIS CHANGES
Instructions: (i) Add as clause No. 07-07B223-2. (ii) Designate Clause No. 07-07B223-1 (SOFTWARE LICENSING AGREEMENTS FOR COTS (SEPT 2008)) as "Expired."
(iii) Add guidance as indicated.
Inclusion Attribute: Select to manually insert.

SOFTWARE LICENSING AGREEMENTS–SINGLE SOLICITATION (FEB 2015)
(a) Definitions. As used in this clause, these terms are defined as follows:
"Commercial Off-The-Shelf (COTS) Software" means software used with no customization and for which source code is not made available to licensees.
"Configuration" means any customer-specific modification to software that does not require changes to the software's source code, such as rules-based, rules engine based, or parameter driven modifications to configure the software.
"Customization" means any customer-specific modification to software that requires changes to the software's source code.
"Firmware" means software sold or licensed only in conjunction with machines, designed for execution only on a machine with which it is provided, designed only for machines other than a

dedicated computer, and embedded into or installed on the machine by the machine's manufacturer or seller.

"Licensor" means an entity that owns the intellectual property rights for an item of software or has the authority to license or sublicense the software directly to the using governmental unit.

"Piggyback" means the document attached to this solicitation and entitled *South Carolina Standard Amendment To End User License Agreements For Commercial Off-The-Shelf Software – Single Agency*, which serves as South Carolina's standard amendment to a licensor's standard software licensing agreement (regardless of how denominated, e.g., master software licensing agreement, end user license agreement) for COTS. [Note: While the piggyback is generally indicative of what the State finds acceptable, terms in a Licensor's standard software licensing agreement may need to be negotiated.]

"Software" means a combination of computer instructions and data definitions that enable computer hardware to perform computational or control functions, excluding firmware.

"Software licensing agreement" means any agreement, regardless of how designated, that defines the intellectual property rights for, or the rights to use, any software product. A software licensing agreement must address only terms directly associated with licensing the right to use the software and must not address any of the work governed by the contract or any services (other than warranty services regarding the software code or associated documentation).

"Software maintenance" means the process of modifying software after delivery to correct faults, improve performance or other attributes, or adapt to a changed environment. (Reference ISO/IEC 14764:2006, as amended or superseded.) Software maintenance does not include any customization or configuration.

"Software product" means any COTS which you propose to provide pursuant to the contract.

"Source code" means computer instructions and data definitions expressed in a form suitable for input into an assembler, compiler or other translator.

(b) Contract and Software Licensing Agreement are Separate. The State seeks to establish related but independent agreements, one with each applicable licensor of COTS and one with the contractor - regardless of whether the licensor and the contractor are the same or different entities. As provided in the clause titled "Bid / Proposal As Offer To Contract," a contract between the State and the contractor results from an award made pursuant to this solicitation. In contrast, the State's acceptance of your offer does not serve as the State's acceptance of any software licensing agreement; rather, software licensing agreements must be separately executed in order to be binding, regardless of whether the license to use the software will be granted by you or a third party. The contract, as defined in the clause titled "Definitions," will address all work (excluding the use rights for any software product) and all terms regarding pricing, payment, and delivery of any software product. Accordingly, the State intends to pay contractor in order to acquire license rights for any software product, but the license rights will be governed by a software licensing agreement with the licensor.

(c) **Critical Instructions**. (1) Your offer must identify each software product you propose to provide, identify the licensor, and explain which of the following licensing models apply: (i) you intend to license (or sublicense) the item directly to the State, or (ii) you intend to "resell" or distribute the item to the State (with licensing handled directly with the third-party licensor). You should use the Software Table attached to this solicitation to assist you in providing this information. **(2) Your offer must NOT include any software licensing agreements; however, for any software product identified in your offer, you must submit a software licensing agreement upon request of the procurement officer.** You must be prepared to provide any

requested software licensing agreement within one business day of receiving a request. (3) Regardless of your licensing model, your price must include the cost of providing every software product you propose to provide to the State and those terms will form part of the contract.
(d) Pre-Condition of Award. If the work you are offering to perform is dependent upon the licensing of a software product by the State and the State is unsuccessful in negotiating an acceptable software licensing agreement for any software product for which it finds such an agreement necessary, your offer will be rejected. To facilitate the timely and successful negotiation of a software licensing agreement deemed necessary by the State, the State may ask you, after opening but prior to award, to acquire from the licensor an executed copy of the piggyback. You should communicate with the licensors for any major or critical software product well in advance of submitting a proposal, and licensors should be informed that few changes will be made to the piggyback. [The State already has, and continues to enter into, standing, statewide, licensing agreements for a variety of computer programs. Without limiting any of the above requirements, an applicable agreement may already exist for one or more items of COTS you have identified.] [07-7B224-1]

GUIDANCE:

1. Only for use with an RFP. Do not use in any type of bid.

2. If you use this clause, you must (a) include the clause titled "Contract Documents & Order of Precedence–Software Licensing–Single Agency (FEB 2015)," and (b) attached both the Single Agency version of the Piggyback and the "Software Table" to the solicitation as exhibits.

3. For every software product identified in the highest-ranked offeror's proposal, you must determine whether the State needs to have a negotiated software licensing agreement executed with pen-and-ink. For each such agreement, you must have the software licensing agreement executed prior to posting an intent to award. (Do not attach a Software Licensing Agreement to a Record of Negotiations.) You may request a copy of the vendor's standard form software licensing agreement from either the contractor or the licensor. You should confirm that the licensor has been provided a copy of the piggyback. Any negotiations regarding a software licensing agreement should be conducted under the same general rules applicable to negotiations conducted pursuant to Section 11-35-1530.

4. Use the single agency piggyback only for COTS. Its use is not appropriate for licensing modifiable off-the-shelf software (MOTS), which – as used here – includes software that involves either (a) a source code license, or (b) any modification to the software that requires changes to the software's source code. The piggyback is not appropriate for any type of services (e.g., customization or configuration) other than warranty services regarding software code or documentation. As used above, the concept of software maintenance does not include any customer-specific software support services.

5. If the acquisition involves limited custom software acquired to facilitate use of COTS (e.g., interface, as defined in IEEE Std 610.12-1990), you might consider whether the solicitation can be drafted to provide that such custom software will be acquired under a clause such as Software Licenses, Clause No. 7B215-1.

6. Bankruptcy

Prior to issuing a solicitation, and no later than negotiations, an agency may wish to consider the implications of bankruptcy by the licensor of any software to be acquired that is expensive and mission-critical. Some bankruptcy-related risks can be addressed in the procurement contract, but some must be addressed in the software licensing agreement. To that end, the following may be of interest:

In broad, general terms, the bankruptcy code allows a bankrupt business to avoid its unperformed contractual obligations by "rejecting" executory contracts, i.e., contracts that have not been fully performed on both sides. In 1985, the Fourth Circuit Court of Appeals held that a technology license could be rejected unilaterally by a licensor, thus eliminating the licensee's right to use the intellectual property. Lubrizol Enter., Inc. v. Richmond Meal Finishers, Inc., 756 F.2d 1043 (4th Cir. 1985). In response, Congress enacted the Intellectual Property Bankruptcy Protection Act of 1988, which appears in section 365(n) of the U.S. Bankruptcy Code. Section 365(n) was enacted to ensure that an intellectual property licensee would not be denied the benefit of its bargain with the licensor following the licensor's bankruptcy. It prevents a bankrupt licensor from rejecting licensing agreements and depriving a licensee of the intellectual property rights it acquired in the licensing contract, and does so by validating and making self-enforcing any agreement which the parties may have regarding access to the intellectual property prior to the bankruptcy.

Section 365(n) provides the non-debtor licensee two options when the debtor-licensor rejects the license contract. First the licensee can treat the contract as terminated if rejection of the contract would constitute a breach of the agreement were the licensor is not in bankruptcy. Under this option, the licensee may assert a claim against the licensor's bankruptcy estate for damages, but it might forfeit all right to continue use of the intellectual property. Second, the licensee can retain its right to use the license to the intellectual property for the contract period, and "any period for which such contract may be extended by the licensee as of right under applicable non-bankruptcy law." While a licensee cannot force the licensor to specifically perform any of its contractual obligations, it can maintain its right to continue using the intellectual property. So, for example, the licensee may no longer acquire any maintenance (patches, fixes, and updates), but can continue using the software. To take advantage of Section 365(n) licensees need to address this issue in its license agreement. We do so in Piggyback paragraph 12.2, particularly the last sentence which provides the State with the option of using the software for either the original term of the authorized EULA or a period of five years after the licensor seeks to reject the software license. The concept is to prevent the State from an immediately loss of the right to use the intellectual property as a result of the licensor's business failure. To date, we have not agreed to any modifications to this clause.

Section 365(n) provides that, if the licensee chooses to retain its rights under the license notwithstanding its rejection by the debtor, "then on the written request of the licensee the trustee shall – (A) to the extent provided in such contract . . . provide to the licensee any intellectual property (including such embodiment) held by the trustee . . .." (Also see additional language in 365(n).) We lack internal expertise in bankruptcy, but this may well provide a means by which the licensee – despite bankruptcy and despite the debtor's efforts to reject the lease – can force the bankruptcy trustee to honor a source code escrow agreement, provided one has been negotiated into the contract. Accordingly, the procurement officer may wish to discuss this option with the using agency on the front end. Having the source code and a license to use it may be a valuable parachute for expensive, mission-critical software that would be challenging to replace.

Along the same lines, and according to at least one article, a licensee that elects to retain its rights under a rejected IP license should be aware that a later sale of the debtor's assets free and clear of interests and liens under section 363(f) can extinguish the licensee's rights. (This risk exists even if the license is not rejected.) The interplay between 265(n) and 363(f) is unclear, and case law is limited, but agencies acquiring expensive mission-critical software should

consider negotiating for rights beyond the five year – such as a separate escrow agreement that, if the licensee acquires the source code under 365(n), provides the licensee a perpetual right to use that source code. For a case addressing the topic, and reaching a good outcome for the licensee, see In re Dynamic Tooling Systems, Inc., 349 B.R. 847 (Bkrtcy. D. Kan. 2006) at http://chapter11cases.com/2012/07/01/in-re-dynamic-tooling-systems-inc-349-br-847-bankr-court-d-kansas-2006/

INSTRUCTIONS FOR SCEIS CHANGES
Instructions: (i) Add as clause No. 07-07B224-1. (ii) Add guidance as indicated.
Inclusion Attribute: Select to manually insert.
Future Logic Notes: Need rule to include clauses Nos. 07-7B042-1, 09-9030-1, and 09-9035-1.

STATEWIDE TERM CONTRACT (FEB 2015)
(a) With this solicitation, the state seeks to establish a term contract (as defined in Section 11-35-310(35)) available for use by all South Carolina public procurement units (as defined in Section 11-35-4610(5)). Use by state governmental bodies (as defined in Section 11-35-310(18)), which includes most state agencies, is mandatory except under limited circumstances, as provided in Section 11-35-310(35). See clause entitled "Acceptance of Offers 10% Below Price" in Part VII.B. of this solicitation. Use by local public procurement units is optional. Section 11-35-4610 defines local public procurement units to include any political subdivision, or unit thereof, which expends public funds. Section 11-35-310(23) defines the term political subdivision as all counties, municipalities, school districts, public service or special purpose districts.
(b) The State shall be entitled to audit the books and records of you and any subcontractor to the extent that such books and records relate to the performance of the work. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the contract and by the subcontractor for a period of three years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing by the Chief Procurement Officer.
(c) As used herein, “additional contract terms” means additional terms not otherwise allowed by the “Purchase Orders” clause. Notwithstanding the “Purchase Orders” clause, a purchase order may include additional contract terms but only if and to the extent necessary (i) to comply with a requirement directly related to the work and imposed on the Using Governmental Unit either by law or as a condition of using state or federal assistance, grant, or contract funds, or (ii) for the Using Governmental Unit to impose organizational, operational, or technical security measures designed to protect the integrity, availability, or confidentiality of the Using Governmental Unit’s data. Contractor may decline to honor a purchase order including additional contract terms. [07-7B225-2]

GUIDANCE: No changes

INSTRUCTIONS FOR SCEIS CHANGES
Instructions: (i) Add as Clause No. 07-7B225-2. (ii) Retire Clause No. 07-7B225-1. (iii) Revise rule to refer to new clause.
Inclusion Attribute: Rule

USF Part IX Attachments to Solicitation:

SERVICE PROVIDER SECURITY ASSESSMENT QUESTIONNAIRE (FEB 2015)

GUIDANCE:
You must attach the Service Provider Security Assessment Questionnaire if your solicitation includes the ***Service Provider Security Assessment Questionnaire - Required (****4027) and* ***Service Provider Security Representation*** *(7B217) clauses.*

INSTRUCTIONS FOR SCEIS CHANGES
Instructions: (i) Add as Clause No. 09-9025-1, text of which is a separate MSWord document attached hereto. Include page break at top of clause. (ii) Add guidance as shown.
Inclusion Attribute: Select to Manually Insert.
Future logic notes: This attachment should be included by rule if the solicitation includes the "Service Provider Security Assessment Questionnaire - Required (FEB 2015)" [04-4027-1] and "Service Provider Security Representation (FEB 2015)" [07-7B217-1] clauses.

SOUTH CAROLINA STANDARD AMENDMENT TO END USER LICENSE AGREEMENTS FOR COMMERCIAL OFF-THE-SHELF SOFTWARE - SINGLE AGENCY (FEB 2015)

GUIDANCE:
You must attach the South Carolina Standard Amendment to End User License Agreements for Commercial Off-The-Shelf Software - Single Agency if your solicitation includes the ***Software Licensing Agreements–Single Solicitation*** *(7B224) clause.*

INSTRUCTIONS FOR SCEIS CHANGES
Instructions: (i) Add as Clause No. 09-9030-1, text of which is a separate MSWord document attached hereto. Include page break at top of clause. (ii) Add guidance as shown.
Inclusion Attribute: Select to Manually Insert.
Future logic notes: This attachment should be included by rule if the solicitation includes the "Software Licensing Agreements–Single Solicitation (FEB 2015)" [07-7B224-1] clause.

SOFTWARE TABLE (FEB 2015)

GUIDANCE:
You must attach the Software Table if your solicitation includes the ***Software Licensing Agreements–Single Solicitation*** *(7B224) clause.*

INSTRUCTIONS FOR SCEIS CHANGES

Instructions: Add as Clause No. 09-9035-1, text of which is a separate MSWord document attached hereto. Include page break at top of clause. (ii) Add guidance as shown.

Inclusion Attribute: Select to Manually Insert.

Future logic notes: This attachment should be included by rule if the solicitation includes the “Software Licensing Agreements–Single Solicitation (FEB 2015)” [07-7B224-1] clause.

SERVICE PROVIDER SECURITY ASSESSMENT QUESTIONNAIRE

Instructions: (1) Attach additional pages or documents as appropriate and make sure answers cross reference to the questions below. (2) As used in this Questionnaire, the phrase "government information" shall have the meaning defined in the clause titled "Information Security." (3) This Questionnaire must be read in conjunction with both of the following two clauses (a) Service Provider Security Assessment Questionnaire – Required, and (b) Service Provider Security Representation.

1. Describe your policies and procedures that ensure access to government information is limited to only those of your employees and contractors who require access to perform your proposed services.

2. Describe your disaster recovery and business continuity plans.

3. What safeguards and practices do you have in place to vet your employees and contractors who will have access to government information?

4. Describe and explain your security policies and procedures as they relate to your use of your contractors and next-tier sub -contractors.

5. List any reports or certifications that you have from properly accredited third-parties that demonstrate that adequate security controls and assurance requirements are in place to adequately provide for the confidentiality, integrity, and availability of the information systems used to process, store, transmit, and access all government information. (For example, an ISO/IEC 27001 compliance certificate, an AICPA SOC 2 (Type 2) report, or perhaps an AICPA SOC 3 report (i.e., a SysTrust or WebTrust seal)). For each certification, describe the scope of the assessment performed. Will these reports / certifications remain in place for the duration of the contract? Will you provide the state with most recent and future versions of the applicable compliance certificate / audit report?

6. Describe the policies, procedures and practices you have in place to provide for the physical security of your data centers and other sites where government information will be hosted, accessed or maintained.

7. Will government information be encrypted at rest? Will government information be encrypted when transmitted? Will government information be encrypted during data backups, and on backup media? Please elaborate.

8. Describe safeguards that are in place to prevent unauthorized use, reuse, distribution, transmission, manipulation, copying, modification, access or disclosure of government information.

9. What controls are in place to detect security breaches? What system and network activity do you log? How long do you maintain these audit logs?

10. How will government information be managed after contract termination? Will government information provided to the Contractor be deleted or destroyed? When will this occur?

11. Describe your incident response policies and practices.

12. Identify any third party which will host or have access to government information.

Offeror's response to this questionnaire includes any other information submitted with its offer regarding information or data security.

SIGNATURE OF PERSON AUTHORIZED TO REPRESENT THE ACCURACY OF THIS INFORMATION ON BEHALF OF CONTRACTOR:

By: _____
(authorized signature)

Its: _____
(printed name of person signing above)

_____
(title of person signing above)

Date: _____

SPSAQ (JAN 2015) [09-9025-1]

	Name of Software Product	Name of Software Product's Licensor	Contractor licenses or sublicenses Software Product directly to State	Contractor "resells" or distributes Software Product
1				
2				
3				
4				
5				
6				
7				

[09-9035-1]

[Licensor's name]
[mm/dd/yyyy to mm/dd/yyyy]

SOUTH CAROLINA STANDARD AMENDMENT
TO
END USER LICENSE AGREEMENTS
FOR
COMMERCIAL OFF-THE-SHELF SOFTWARE

SINGLE AGENCY

This Agreement is made the _____ day of _____, 20__ (the "Effective Date") between [Company Name], a corporation organized and existing under the laws of [State], and having its principal office at [address] (hereinafter referred to as "Licensor") and [Agency Name], an instrumentality of the State of South Carolina (hereinafter referred to as "Licensee." Licensor and Licensee may also be referred to in this Agreement collectively as the "Parties."

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized agents.

Solicitation Description:_____	**Solicitation No.:** _____
LICENSOR. _____ By: Its:	**INFORMATION TECHNOLOGY MANAGEMENT OFFICE**, acting on behalf of Licensee. _____ By: Its:

Recitals

This document is being used in conjunction with a solicitation issued for a government procurement being conducted for Licensee; nevertheless, the Parties intend for this document (including any attachments) to memorialize a contractual relationship related to but independent of any contractual relationship entered into by an award issued pursuant to that solicitation.

Agreement

For the reasons recited above, and in consideration of the mutual covenants contained herein, the Parties agree as follows:

Definitions

Agreement means this South Carolina Standard Amendment to End User License Agreements for Commercial Off-The-Shelf Software, not including any EULA or other attachments.

Authorized EULA means any EULAs attached as Exhibit "C", but does not include any document referenced or incorporated therein unless attached to this Agreement. Licensor warrants that every Authorized EULA is an unmodified copy of Licensor's standard form agreement.

Distributor means the generic category of entities authorized by Licensor, if any, that participate in the distribution chain between Licensor and Licensee, including, but not limited to, value added resellers (VARs), original equipment manufacturers (OEMs), distributors, dealers, independent sales organizations (ISOs), resellers, and retail outlets.

Distributor Contract means a contract between a Licensee and a Distributor by which Licensee can acquire licenses of the Software. Nothing in this agreement constitutes a representation or obligation that Licensor has made or will make its Software available through a Distributor.

Documentation means all materials supplied, directly or indirectly, to Licensees by Licensor, by any means or media that explain or facilitate the use of the Software, which may include, without limitation, any materials that describe the functional, operational, and/or performance capabilities of the Software; training materials; user, operator, system administration, technical, support, and other manuals or instructions; flow charts, and logic diagrams. Licensor warrants that the Documentation does and will continue to accurately describe the functional and operational characteristics of the Software. Licensor warrants that the Documentation will be contemporaneously updated to reflect any changes made to the Software.

End User License Agreement ("EULA") means any license agreement or other commercial agreement, regardless of how designated, pertaining to the right to use any Software, including, but not limited to, any such agreement proposed prior to or after execution of this Agreement, and including without limitation any such agreement that either is affixed to (e.g., shrinkwrap), imbedded in (e.g., clickwrap), or in any way accompanies the Software upon delivery. The term "EULA" does not include this Agreement. The term "EULA" does not include any contract awarded by or on behalf of a Licensee as a result of a formal solicitation (e.g., invitation for bids or request for proposals) issued by or on behalf of a licensee. The term "EULA" does not include a contract to the extent it governs software maintenance as defined in ISO/IEC 14764:2006.

ITMO means the Information Technology Management Office established by South Carolina Code Section 11-35-820, as amended, or its successor in interest. Pursuant to Section 11-35-510 of the South Carolina Code of Laws, ITMO is authorized to act as the statutory procurement agent for every South Carolina Governmental Body (as defined by S.C. Code Ann. § 11-35-310(18), as amended) covered by the South Carolina Consolidated Procurement Code. Consistent with its statutory authority, ITMO is acting solely in a representative capacity and on behalf of Licensees. ITMO is not a party to this Agreement. Notwithstanding any other provision, ITMO bears no liability for any party's losses arising out of or relating in any way to this Agreement.

Ordering and Confirming Documents means those documents exchanged between a Licensee and the Licensor to memorialize the number and configuration of licenses ordered and provided, whether exchanged directly with Licensor or indirectly through a Distributor. By way of example, ordering documents may include a purchase order or other instrument submitted by Licensee, and confirming documents may include a software key or license-specific identifying information, an invoice, or another document submitted by Licensor.

Prior Agreement means a written agreement that was negotiated, signed using pen and paper, and executed by an authorized representative of a Licensee prior to the Effective Date of this Agreement.

Procurement Contract means any contract awarded pursuant to the Solicitation identified above by reference to its Solicitation Number and Solicitation Description.

Software means any computer program referenced on Exhibit "B", including any future service packs, maintenance updates, patches, fixes, or like modifications to the computer program by whatever name provided by Licensor, if any. In addition, Exhibit B excludes any computer program not identified in the Procurement Contract. For clarity, Exhibit B excludes all services, including without limitation, so-called “software-as-a-service” and “cloud services,” application services, etc., even if included therein.

Attachments

Exhibit A – [RESERVED]
Exhibit B – Software List
Exhibit C - Authorized EULAs

1. RELATIONSHIP BETWEEN THIS AGREEMENT AND THE AUTHORIZED EULAs.

1.1 Agreement to Authorized EULAs. Subject to the provisions of this Agreement, Licensee agrees to the terms and conditions of the Authorized EULAs. Any EULA that is not an Authorized EULA is void and of no effect. Licensor represents that every EULA applicable to the computer programs referenced on Exhibit "B" has been attached to Exhibit "C" as an Authorized EULA.

1.2 Primacy of Agreement. The terms of this Agreement shall be given full effect prior to the application of any term in the Authorized EULAs. To the extent of any inconsistency or conflict, the terms of this Agreement take precedence over any similar terms in any Authorized EULAs. To the extent an Authorized EULA provides Licensee with options or rights in addition to or beyond those available under this Agreement, nothing in this Agreement is intended to limit Licensee's exercise of such options or rights.

1.3 Entire Agreement. Within the scope of this Agreement, as defined in Paragraph 2, this Agreement, Exhibit “B” (the Software List), and the Authorized EULAs constitute the entire agreement between the Parties and supersede all other prior or contemporaneous agreements, representations, or discussions, whether oral or written. This Agreement and the Authorized EULAs shall apply notwithstanding any conflicting or additional provisions in Ordering or Confirming Documents.

2. LIMITED SCOPE OF AGREEMENT.

2.1 This Agreement and the Authorized EULAs apply only to the use and licensing of Software by Licensee. All terms in an Authorized EULA regarding services (other than warranty services) are void.

2.2 Neither this Agreement nor an Authorized EULA authorize any Licensee to pay any funds directly to Licensor. All terms in a EULA regarding pricing, payment, interest, and delivery are void. This Agreement and the Authorized EULAs are independent of, and do not form a part of a Procurement Contract. Ordering and Confirming Documents may not be issued pursuant to an Authorized EULA, but must be issued pursuant to a Procurement Contract. Ordering and Confirming Documents form a part of this Agreement and the Authorized EULAs but only to the extent they memorialize the number of, configuration of, and prices paid for licenses ordered and provided. Ordering and Confirming Documents may not supplement, alter, or modify any provision of this Agreement or an Authorized EULA.

2.3 Subject to the limits of item 2.1, this Agreement and the Authorized EULAs apply to all licenses of Software licensed from Licensor by a Licensee during the term of this Agreement, whether acquired directly from Licensor or indirectly through a Distributor.

3. TERM OF AGREEMENT.

3.1 With regard to the licensure of any particular copy of Software, the terms of this Agreement and the Authorized EULAs shall continue to apply to that license notwithstanding the expiration of this Agreement.

3.2 This Agreement shall be in effect for seven years from the Effective Date. Expiration of this Agreement does not terminate any particular license of Software.

4. LICENSE GRANT.

4.1 Any rights granted by Licensor to Licensee in an Authorized EULA are in addition to any rights granted by this Paragraph 4. Licensor agrees that Licensee shall have the rights that are set forth in items 4.2, 4.3, 4.4, and 4.5 below.

4.2 For each license acquired, the Software may be:

4.2.1 Used or copied for use in or with the computer or computers for which it was acquired, including without limitation use at any of Licensee's installations to which such computer or computers may be transferred;

4.2.2 Used or copied for use in or with a backup computer if any computer for which it was acquired is inoperative;

4.2.3 Reproduced for safekeeping (archives) or backup purposes;

4.2.4 Modified, adapted, or combined with other computer programs ~~or computer data bases~~; however, a Licensee may not reverse engineer, decompile or disassemble the Software except to the extent necessary to create interfaces to, or allow inter-operability with, other computer programs or computer data bases;

4.2.5 Disclosed to and used by support service contractors or their subcontractors for the benefit of the Licensee, subject to the restrictions set forth in this Agreement; and,

4.2.6 Used or copied for use in or transferred to a replacement computer.

4.3 Notwithstanding any other provision, Licensee's fair use rights (17 U.S.C. § 107) are not limited in any way.

5. INTELLECTUAL PROPERTY INFRINGEMENT.

5.1 As used in this Paragraph 5, these terms are defined as follows: "Acquired Item(s)" means the rights, Software, or services, if any, furnished under this Agreement or any Authorized EULA. “Affiliate” means any business connected with or related to Licensor. "Indemnitee" means Licensee, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees. "IP Right(s)" means a copyright, patent, trademark, trade secret, or any other proprietary right.

5.2 In the event of any claim by any third party against an Indemnitee asserting or involving an IP Right which concerns any Acquired Item(s), Licensor shall defend Indemnitee, at its expense, against all actions, proceedings or claims of any nature and shall, without limitation, indemnify Indemnitee for and against any loss, cost, expense, attorneys' fees and expenses (including inside counsel), or liability, resulting from or related to such claim, whether or not such claim is successful.

5.3 Indemnitee must notify Licensor in writing within a reasonable period of time after Indemnitee first receives written notice of any such claim or action. Indemnitee's failure to provide or delay in providing such notice will relieve Licensor of its obligations under this Paragraph 5 only if and to the extent that such delay or failure materially prejudices Licensor's ability to defend such claim. Indemnitee must reasonably cooperate with Licensor's defense of such claims or suits and, subject to Title 1, Chapter 7 of the South Carolina Code of Laws, allow Licensor sole control of the defense, so long as the defense is diligently and capably prosecuted. Licensee may participate in Licensor’s_defense of any action. Except for an injunction limited to requiring the cessation of use of an Acquired Item that is the subject of a claim, Licensor may not, without Licensee’s prior written consent, settle, compromise, or consent to the entry of any judgment in any such commenced or threatened claim or action unless such settlement, compromise or consent (i) includes an unconditional release of Indemnitee from all liability related to such commenced or threatened claim or action, and (ii) is solely monetary in nature and does not include a statement as to, or an admission of fault, culpability or failure to act by or on behalf of, an Indemnitee or otherwise

adversely affect an Indemnitee. Licensee's consent is necessary for any settlement that requires Licensee to part with any right or make any payment or subjects Licensee to any injunction, except for an injunction requiring cessation of use of an Acquired Item that is the subject of the claim.

5.4 In the event an injunction, order, or agreement shall be obtained against Licensee's use of any Acquired Item, Licensor shall, without in any way limiting its other obligations under this Agreement and at its sole expense: (a) use good faith, diligent efforts to procure for Licensee the right to continue to use, and to have used, the Acquired Item, and if such remedy is commercially impracticable, to then (b) replace or modify the Acquired Item so that it becomes non-infringing but only if the modification or replacement does not materially_adversely affect the functionality of the Acquired Item or its use by Licensee. In the event that both of these remedies are commercially impracticable, Licensor may require that Licensee stop using the Acquired Item, refund to Licensee an amount equal to all money paid by Licensee therefore, and take all steps necessary to have any Indemnitees released from any further liability.

5.5 Licensor's obligations under this Paragraph 5 do not apply to a claim to the extent (a) that the claim is caused by a modification of Software made by Licensee; (b) that the claim is caused by Licensee's use of a superseded release of Software if the infringement would have been avoided by Licensee's timely implementation of an update or upgrade previously provided to Licensee, but only if such update or upgrade (1) was provided by Licensor at no cost or as part of either maintenance or a previous purchase by Licensee, and (2) does not materially adversely affect the functionality of the Acquired Item or its use by Licensee; (c) that the claim is caused by Licensee combining the Software with another computer program or hardware unless such combinations are recommended by the Documentation or otherwise suggested by Licensor or its Affiliates; (d) that the claim is caused by Licensee reverse engineering, decompiling, or disassembling Software; (e) that the claim arises from Licensee's use of any Software that is open source or freeware, but only if the open source or freeware is not incorporated or combined by Licensor in Software provided by Licensor; (f) that the claim is caused (1) by modifications made to the Software by Licensor or its Affiliates in accordance with a detailed, exact statement of specifications furnished by Licensee unless Licensor or its Affiliates knew or should have known that compliance with the Licensee's specifications would infringe an IP right, or (2) by compliance by Licensor or its Affiliates with specifications furnished by Licensee if Licensee knowingly relied on a third party's product to develop the specifications provided to Licensor or its Affiliates and failed to identify such product to Licensor.

5.6 Notwithstanding any other provision, Licensor's obligations pursuant to this Paragraph 5 are without any limitation whatsoever. Licensor's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of this Agreement.

5.7 Paragraph 5 states Licensee's exclusive remedy for third party damages claims asserting a violation or infringement of the third party's intellectual property rights.

6. LIMITATION OF RECOVERY.

6.1 Limitation of Damages – Licensor. Except as provided in Paragraph 5 (Intellectual Property Infringement), Paragraph 7.1 (Right to Audit; Misuse of Data), and Paragraph 14.22 (Privacy), Licensor's liability for damages, if any, for any cause whatsoever, and regardless of the form of action, shall in no event exceed an amount equal to twice the cumulative fees paid or payable by Licensee to license the Software. The foregoing limitation applies to the exclusion of any other limitation or exclusion of the remedies available against Licensor, the liability of Licensor, or the damages recoverable from Licensor.

6.2 Limitation of Damages - Licensee. Except as provided in Paragraph 7.2 (Audit Remedy; Exclusivity), Licensee's liability for damages, if any, for any cause whatsoever, and regardless of the form of action, shall in no event exceed an amount equal to twice the cumulative fees paid or payable by Licensee to license Software. Licensee's total liability for any obligation arising under any clause imposing any duty of confidentiality or non-disclosure shall not exceed an amount equal to fifty thousand dollars. The foregoing limitations do not apply to a loss incurred by Licensor to the extent the loss results because

Licensee has created a derivative work from, reverse assembled, reverse compiled, or otherwise reduced to human readable form the Software without Licensor's prior written consent. Nothing herein shall be construed to waive any clause regarding the availability or appropriation of funds, sovereign immunity, or any other immunity, restriction, or limitation on recovery provided by law.

7. AUDIT.

7.1 Right to Audit; Misuse of Data. Licensor has the right to audit Licensee at Licensor's expense. Licensor shall conduct an audit and use the information obtained in an audit only to enforce Licensor's rights under, and to determine whether Licensee is in compliance with, the terms of this Agreement and any Authorized EULAs. Any audit will be subject to a confidentiality obligation and will take place upon not fewer than 30 days notice, during Licensee's normal business hours, and in a manner that does not interfere unreasonably with Licensee's operations. Licensor's sole audit right regarding Licensee is provided by this Paragraph 7. Notwithstanding any other provision, Licensor's liability for intentional breach of its obligation regarding the use of information obtained in an audit is without any limitation whatsoever.

7.2 Audit Remedy; Exclusivity. If an audit reveals or Licensor otherwise discovers unlicensed use of Software by Licensee, Licensee shall either (a) promptly order and pay for sufficient licenses to permit all Software usage discovered and pay Licensor the difference between (i) the license fees that Licensee should have paid for such Software, based upon actual usage, and (ii) the actual license fees that Licensee paid for the software, based upon the actual usage level for which such Software was licensed, or (b) immediately terminate any unlicensed use of Software and pay any applicable license fees for any noncompliance discovered. If a Distributor Contract exists, Licensee may order licenses from, and pay license fees to, a Distributor at a price established by a Distributor Contract. If Licensee's unlicensed use of the Software would be within the scope of license rights granted by this Agreement and the Authorized EULAs but for Licensee's failure to acquire an adequate number of licenses or an available license, Licensor's exclusive remedy for the unlicensed use shall be the remedy provided by this item 7.2. If Licensee fails to execute either option within a reasonable time, the foregoing remedy will not be considered exclusive.

7.3 Licensor's right to conduct an audit is limited by any applicable statutory or regulatory limitations on access to public records.

8. LICENSEE'S RECORDS. For each license of Software acquired pursuant to this Agreement, Licensee agrees to retain records of that license for one year beyond the duration of that license, provided that Licensee has no obligation to retain records of a license beyond one year after Licensee ceases to retain a copy of the Software to which a license applies. Licensor may access Licensee's records as provided in the South Carolina Freedom of Information Act and any other applicable law. Except as stated in this Agreement, Licensor agrees that Licensee has no obligation to retain any records.

9. CONFIDENTIALITY & NONDISCLOSURE. This Agreement and the Authorized EULAs are subject to public disclosure. All provisions of an Authorized EULA regarding confidentiality or nondisclosure are subject to the South Carolina Freedom of Information Act and other applicable laws. Any duty of confidentiality or nondisclosure established by an Authorized EULA applies only to Software and Documentation that has been conspicuously marked with the words confidential, proprietary, or trade secret.

10. TERMINATION. Licensor may not terminate either this Agreement or the Authorized EULAs in the absence of a breach by Licensee that would, under the common law, be material. Any termination by Licensor must be preceded by adequate notice and opportunity to cure. If Licensor exercises any termination rights under any Authorized EULA, Licensee may, in addition to any rights provided in the Authorized EULAs, continue using software pursuant to this Agreement and the Authorized EULAs for a period of six months in order to allow Licensee to convert from the use of Software, unless Licensee has violated the restrictions in paragraph 4.2.4. During the conversion period, and to the extent applicable

Licensee shall pay any applicable, previously unpaid license fees at the price last available from Licensor to Licensee prior to termination or, at Licensee's option, at the price established by an applicable Distributor Contract, if any.

11. WARRANTIES. The warranties provided in this Paragraph 11 are in addition to any other warranties provided in the Authorized EULAs. Licensor warrants (a) that every item of Software, without unauthorized modification, will perform substantially in accordance with the Documentation applicable to the Software for a period of 365 days from the date the item of Software is installed by Licensee, (b) that Licensor has all necessary right and authority to license the Software and to grant the licenses provided hereunder, and (c) that there is currently no actual or threatened legal action against Licensor by any third party based on an alleged violation of an intellectual or proprietary property right that has not been disclosed to ITMO and that could adversely affect Licensor's ability to license the use of the Software. Licensor agrees that it will not electronically repossess, trigger any lock, or use any device capable of halting operations or erasing or altering data or programs with regard to any Software that it has licensed to Licensee.

12. BANKRUPTCY.

12.1 Notice of Insolvency. Licensor shall provide ITMO and Licensee with written notice immediately upon the filing by Licensor of a petition in bankruptcy or insolvency or upon any other proceeding or action by or against Licensor under the relevant law on insolvency or bankruptcy, or after the making by Licensor of any assignment or attempted assignment for the benefit of creditors or upon or after the institution of any proceedings for the liquidation or winding up of Licensor's business or for the termination of its corporate charter.

12.2 Rejection of Executory License. The Parties agree that the Software is "intellectual property" as defined in Section § 101(35A) of the U.S. Bankruptcy Code. Upon the filing by Licensor of a petition in bankruptcy or insolvency or upon any other proceeding or action by or against the Licensor under the relevant law on insolvency or bankruptcy, this Agreement and the Authorized EULAs shall be governed by Section 365(n) of the U.S. Bankruptcy Code. If any person seeks to reject this Agreement or the Authorized EULAs pursuant to bankruptcy law, Licensee shall have the option of using the Software for either the original term of the Authorized EULAs or a period of five years after rejection is requested.

13. RIGHTS TO SOFTWARE OR DATABASE DEVELOPED BY LICENSEE. Nothing in this Agreement or any Authorized EULA shall be construed to give Licensor any rights with regard to computer programs developed by Licensee, regardless of whether or not such programs are connected to or embedded in Software or are functionally similar, in whole or part, to Software. Nothing in this paragraph grants a Licensee any rights to Licensor's intellectual property or to any derivative works.

14. GENERAL

14.1 Choice of Law & Choice of Forum. Both the rights and obligations of the Parties and this Agreement and any EULA, as well as any dispute, claim, or controversy arising out of or relating to this Agreement or any EULA, shall, in all respects, be established, interpreted, construed, enforced and governed by and under the laws of the State of South Carolina, without regard to any provision governing conflicts of law. All disputes, claims, or controversies arising out of or in any way relating to this Agreement or any EULA shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Richland County, State of South Carolina.

14.2 Sovereign Immunity. Title 11, Chapter 35, Article 17 constitutes a limited statutory waiver of sovereign immunity. Notwithstanding paragraph 14.1, Licensor agrees that neither this Agreement, any Authorized EULAs, nor any act by either ITMO or Licensee regarding this Agreement or any EULA is a waiver of either their sovereign immunity or their immunity under the Eleventh Amendment of the United States Constitution.

14.3 Subject to Applicable Law. This Agreement is entered into pursuant to the South Carolina Consolidated Procurement Code (Title 11, Chapter 35 of the South Carolina Code of Laws.) As a public entity, all of Licensee's obligations are subject to any applicable laws.

14.4 Alternative Dispute Resolution. No method of mandatory alternative dispute resolution shall apply to any dispute, claim, or controversy arising out of or relating to this Agreement or the Authorized EULAs.

14.5 CISG / UCITA. Neither the UN Convention on the International Sale of Goods nor the Uniform Computer Information Transactions Act (nor any non-uniform version) shall apply to this Agreement or the Authorized EULAs.

14.6 ITMO Participation In Contract Disputes. Consistent with its statutory authority, ITMO is acting solely in a representative capacity and on behalf of Licensee~~s~~. Accordingly, ITMO is not a party to this Agreement and need not be joined as a party to any dispute that may arise out of this Agreement. With regard to this Agreement, the officers, agents and employees of ITMO are acting solely in their official capacity and need not be joined as a party to any dispute that may arise out of this Agreement.

14.7 Notices. In addition to any other obligations the parties may have regarding notice, all **notices or other communications regarding termination, material breach, modification, or audit of this Agreement, an Authorized EULA, or a license covered by either shall be copied to ITMO at the following address.**

Information Technology Management Office
Procurement Services Division
State Budget & Control Board
1201 Main Street, Suite 600
Columbia, SC 29201

14.8 Third Party Beneficiary. This Agreement and the Authorized EULAs are made solely and specifically among and for the benefit of the Parties hereto, and their respective successors and assigns, and no other person will have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Agreement or the Authorized EULAs as a third party beneficiary or otherwise.

14.9 Assignment. Except as set forth below, neither party may assign or transfer this Agreement, the Authorized EULAs, or any rights regarding either, without the prior written consent of ITMO. Reference S.C. Code Ann. Regs § 19-445.2180. Such consent shall not be unreasonably withheld. Any attempted assignment, delegation or transfer in derogation of this Paragraph shall be null and void.

14.9.1 This Agreement and the Authorized EULAs, and any rights regarding either, may be assigned to an affiliate~~s~~ of the Licensor, or to successors-in-interest of substantially all the assets of the Licensor, if the assignee expressly assumes the Licensor's obligations under the assigned agreement. Licensor must give Licensee reasonable prior notice of any assignment. As used in this item, affiliate means a legal entity that controls, is controlled by, or is under common control with Licensor.

14.9.2 If Licensee is reorganized such that certain operations or functions are transferred from Licensee to a different public procurement unit, then in connection with such reorganization, a Licensee may, upon written notice to Licensor, transfer licenses to another public procurement unit provided that the transferee is performing some substantially similar business and/or operational functions as the original Licensee. Both entities shall execute such paperwork as Licensor may reasonably require.

14.10 Interpretation. Any question of interpretation or construction shall not be resolved by any rule providing for interpretation or construction against the party who causes the uncertainty to exist or against the drafters of this Agreement.

14.11 Headings. The headings contained in this Agreement are for the purposes of convenience only and are not intended to define or limit the contents of this Agreement.

14.12 Publicity. Licensor agrees not to refer to Licensees in such a manner as to state or imply that either Licensor or its Software is endorsed or preferred by Licensee, the State of South Carolina, or any unit of either. The foregoing shall not prohibit the Licensor from identifying a Licensee as a customer in a customer list.

14.13 Relationship Among Public Entities. Each Licensee's obligations and liabilities are independent of every other Licensee's obligations and liabilities. Termination of one Licensee does not constitute grounds for termination of a different Licensee.

14.14 Language of Agreement & Notices. The language of this Agreement is English. If translated into another language, this English version of the Agreement shall be controlling. All notices required or permitted to be given hereunder shall be written in the English language.

14.15 Survival of Obligations. The Parties' rights and obligations which, by their nature, would continue beyond the termination, cancellation, rejection, or expiration of this Agreement shall survive such termination, cancellation, rejection, or expiration, including, but not limited to, the rights and obligations created by the following clauses: Intellectual Property Infringement, Limitation of Recovery, Audit, Bankruptcy, and General.

14.16 Waiver & Modification. No waiver of any default by either party shall act as a waiver of a subsequent or different default. The provisions of this Agreement and the Authorized EULAs may not be modified or waived except by another agreement in writing executed by an authorized representative of Licensee and an authorized representative of Licensor.

14.17 Anti-Indemnification & Anti-Representation. Any provision in the Authorized EULAs is void to the extent it imposes an obligation upon ITMO or a Licensee that would properly be characterized as an indemnity. Licensee makes no representations or warranties to Licensor, and any language to the contrary is void.

14.18 Statute of Limitations. Any provision in the Authorized EULAs is void to the extent that it modifies the statute of limitations or alters the time period within which an action must be brought.

14.19 Non-appropriations. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefore. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled.

14.20 Attorneys' Fees. Except as otherwise provided in this Agreement, each party waives any claim it may have to recover attorneys' fees from any other party.

14.21 Users. A Licensee has no liability for any acts or omissions of any person that Licensee allows to use the Software, unless such acts or omissions are within the scope of that person's employment or have been properly authorized by Licensee.

14.22 Privacy. As used in this paragraph, the term 'data' means any information regarding any person or entity other than a Licensee that is gathered or acquired as a result of the Software licensed by Licensee being used. Except to the extent fully disclosed in writing (e.g., a privacy policy or the Documentation) prior to execution of this Agreement, Licensor represents that Software will not provide any entity other than Licensor with any data. Notwithstanding anything to the contrary, Licensor agrees (i) not to use or retain data for any purpose other than performing this contract, except to the extent that using or retaining state data is incidental to contract administration, such as financial, administrative, cost or pricing, and (ii) not to sell, trade, or release data. Upon request, Licensor shall provide written confirmation of compliance with this clause. Licensor agrees that Licensee has no adequate remedy at

law for a violation of Licensor's obligations under this paragraph. Notwithstanding any other provision, Licensor's liability for breach of its obligation under this paragraph is without any limitation whatsoever. [09-9030-1]

--- end of Piggyback ---

EXHIBIT B
SOFTWARE LIST

Table of Clauses (FEB 2015)

EXPLANATION OF COLUMNS

Column 1 – SCEIS Clause #: This column provides an abbreviated version of the SCEIS Clause Number, a unique designation used by SCEIS to identify the clause. The numbers in this column contain three pieces of information. The first number (and letter, if Part 2 or Part 7) indicates the part of the Uniform Solicitation Format in which the clause appears. The next three digits identify the clause itself, within the USF Part. The suffix, following the dash character, serves special purposes within SCEIS such as versioning or ordering of clauses. Thus, Clause No. 1005-1 appears in part 1 of the solicitation; Clause No. 7B100-2 appears in part 7B of the solicitation; and so forth.

Column 2 – Text of Clause: This column represents the actual contents of SCEIS. It includes the Title and the date the clause first appeared in SCEIS in that form. The bracketed number at the end of the clause text is the full SCEIS Clause Number. It also signals the end of the contract or solicitation provision.

TYPICAL CLAUSE FORMAT (MAR 2005): Each clause, in this format (including full title and date) will appear in this column. [01-1111-1]

By convention, a clause that appears in this format (with a parenthetical date and bracketed clause number) has not been altered or modified. **IF YOU MUST MAKE CHANGES TO THE TEXT OF A SCEIS CLAUSE, OR ADD ADDITIONAL LANGUAGE, YOU SHOULD NOT INCLUDE EITHER THE CLAUSE DATE OR NUMBER IN THE MODIFIED CLAUSE.**

Column 3 – Guidance on Use: This column contains guidance offered by management to the procurement staff regarding use of a clause.

Clause #	*Text*	*Guidance on Use*
	PART 1	
1001	I. SCOPE OF SOLICITATION	Mandatory. Include this header at the beginning of the appropriate part of the Uniform Solicitation Format. See guidance on the Uniform Solicitation Format at the beginning of this document.
1005-1	ACQUIRE SERVICES & SUPPLIES / EQUIPMENT (JAN 2006): The purpose of this solicitation is to acquire services and supplies or equipment complying with the enclosed description and/or specifications and conditions. [01-1005-1]	This clause is a very generic clause. Its purpose is only to inform Offerors at the beginning of the solicitation that the procurement both services and supplies.
1010-1	ACQUIRE SERVICES (JAN 2006): The purpose of this solicitation is to acquire services complying with the enclosed description and/or specifications and conditions. [01-1010-1]	This clause is a very generic clause. Its purpose is only to inform Offerors at the beginning of the solicitation that the procurement involves services only.
1015-1	ACQUIRE SUPPLIES / EQUIPMENT (JAN 2006): The purpose of this solicitation is to establish a source or sources of supply for the purchase of new supplies and/or equipment as listed. [01-1015-1]	This clause is a very generic clause. Its purpose is only to inform Offerors at the beginning of the solicitation that the procurement involves supplies only.

Clause #	Text	Guidance on Use
1020-1	BUDGET – DESIRED RANGE (JAN 2006): The Using Governmental Unit seeks to incur costs in the following range: [01-1020-1]	Except in solutions based procurements, in which the scope of work is not concrete, use of this clause is discouraged. Use this clause to provide the vendors with an idea of the range the state is willing to spend.
1025-1	BUDGET ESTIMATE (JAN 2006): The estimated budget for this project is $ Offers in excess of this amount may be considered. [01-1025-1]	Use of this clause is discouraged. In general, the state seeks to have Offerors price their work against the scope of services, not against the state's budget.
1030-1	BUDGET MAXIMUM (JAN 2006): The funds available for this project are limited to $. If the price you offer exceeds this amount, your offer will be rejected as non-responsive. [01-1030-1]	Use of this clause is discouraged. In general, the state seeks to have Offerors price their work against the scope of services, not against the state's budget. If an Offeror submits a price in excess off the stated maximum, the offer must be rejected as non-responsive.
1035-1	FUNDS NOT AVAILABLE (JAN 2006): The State's obligation under this contract is contingent upon the availability of funds from which payment for contract purposes can be made. [01-1035-1]	Use of this clause is strongly discouraged. Use this clause only if the agency anticipates, but does not yet have, grant, appropriated, or other funds at the time the solicitation is issued.
1040-1	MAXIMUM CONTRACT PERIOD -– ESTIMATED (JAN 2006): Start date: End date: . Dates provided are estimates only. Any resulting contract will begin on the date specified in the notice of award. See clause entitled "Term of Contract - Effective Date/Initial Contract Period". [01-1040-1]	At the time of solicitation, agencies never know when the contract will actually begin. Often, evaluation takes longer than anticipated. Government politics can have an influence. Lastly, protests can delay an award. Occasionally, these delays result in emergency extensions to an existing contract. Accordingly, the solicitation specifies the maximum contract period to indicate both a desired start date and the maximum time for the contract.
	PART 2A	
2A001	II. INSTRUCTIONS TO OFFERORS - A. GENERAL INSTRUCTIONS	Mandatory. Include this header at the beginning of the appropriate part of the Uniform Solicitation Format. See guidance on the Uniform Solicitation Format at the beginning of this document.
2A003-1	DEFINITIONS, CAPITALIZATION, AND HEADINGS (FEB 2015) CLAUSE HEADINGS USED IN THIS SOLICITATION ARE FOR CONVENIENCE ONLY AND SHALL NOT BE USED TO CONSTRUE MEANING OR INTENT. EVEN IF NOT CAPITALIZED, ~~DEFINITIONS (JAN 2006): EXCEPT AS OTHERWISE PROVIDED HEREIN,~~ THE FOLLOWING DEFINITIONS ARE APPLICABLE TO ALL PARTS OF THE SOLICITATION, UNLESS EXPRESSLY PROVIDED OTHERWISE. AMENDMENT means a document issued to supplement the original solicitation document. BOARD means the South Carolina Budget & Control Board or its successor in interest. BUSINESS means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity. [11-35-310(3)]~~BUYER means the Procurement Officer.~~	Mandatory for all solicitations. This clause should be the first clause in Part II.A.

Clause #	Text	Guidance on Use
	CHANGE ORDER means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties to the contract. [11-35-310(4)] CONTRACT See clause entitled Contract Documents & Order of Precedence. CONTRACT MODIFICATION means a written order signed by the Procurement Officer, directing the contractor to make changes which the ~~changes~~ clause of the contract titled "Changes," if included herein, authorizes the Procurement Officer to order without the consent of the contractor. [11-35-310(9)] CONTRACTOR means the Offeror receiving an award as a result of this solicitation. COVER PAGE means the top page of the original solicitation on which the solicitation is identified by number. Offerors are cautioned that Amendments may modify information provided on the Cover Page. OFFER means the bid or proposal submitted in response this solicitation. The terms Bid and Proposal are used interchangeably with the term Offer. OFFEROR means the single legal entity submitting the offer. The term Bidder is used interchangeably with the term Offeror. See bidding provisions entitled Signing Your Offer and Bid/Proposal As Offer To Contract. ~~ORDERING ENTITY Using Governmental Unit that has submitted a Purchase Order.~~ PAGE TWO means the second page of the original solicitation, which is labeled Page Two. PROCUREMENT OFFICER means the person, or his successor, identified as such on either the Cover Page, an amendment, or an award notice. YOU and YOUR means Offeror. SOLICITATION means this document, including all its parts, attachments, and any Amendments. STATE means the Using Governmental Unit(s) identified on the Cover Page. SUBCONTRACTOR means any person ~~having a contract~~ you contract with to perform or provide any part of the Work ~~or render service to Contractor as a part of the Contractor's agreement arising from this solicitation~~. US or WE means the using governmental unit. USING GOVERNMENTAL UNIT means the unit(s) of government identified as such on the Cover Page. If the Cover Page ~~names a~~ identifies the Using Governmental Unit as "Statewide Term Contract," ~~as the Using Governmental Unit, the Solicitation seeks to establish a Term Contract [11-35-310(35)] open for use by all~~ the phrase "Using Governmental Unit" means any South Carolina Public Procurement Unit~~s~~ [11-35-4610(5)] that has submitted a Purchase Order to you pursuant to the contract resulting from this solicitation. Reference the clauses titled "Purchase Orders" and "Statewide Term Contract." WORK means all labor, materials, equipment, ~~and~~ services, or property of any type, provided or to be provided by the Contractor to fulfill the Contractor's obligations under the Contract. [02-2A003-~~1~~2]	

Clause #	Text	Guidance on Use
2A005-1	AMENDMENTS TO SOLICITATION (JAN 2004): (a) The Solicitation may be amended at any time prior to opening. All actual and prospective Offerors should monitor the following web site for the issuance of Amendments: www.procurement.sc.gov(b) Offerors shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on Page Two, (3) by letter, or (4) by submitting a bid that indicates in some way that the bidder received the amendment. (c) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged. [02-2A005-1]	Mandatory for all solicitations and amendments. (APS users: no longer use the existing "amendments" clause for amendments.) This clause instructs the vendors how to acknowledge receipt and agreement with solicitation amendments.
2A007-1	AUTHORIZED AGENT (FEB 2015): All authority regarding this procurement is vested solely with the responsible Procurement Officer. Unless specifically delegated in writing, the Procurement Officer is the only government official authorized to bind the government with regard to this procurement or the resulting contract. [02-2A007-1]	Mandatory for all solicitations.
2A010-1	AWARD NOTIFICATION (~~NOV 2007~~FEB 2015): Notice regarding any award, ~~or~~ cancellation of award, or extension of award will be posted at the location and on the date specified on the Cover Page or, if applicable, any notice of extension of award. ~~If the contract resulting from this Solicitation has a total or potential value of fifty thousand dollars or more, such notice will be sent to all Offerors responding to the Solicitation.~~ Should the contract resulting from this Solicitation have a total or potential value of one hundred thousand dollars or more, such notice will be sent to all Offerors responding to the Solicitation and any award will not be effective until the eleventh day after such notice is given. [02-2A010-~~1~~2]	Mandatory for all solicitations.
2A015-1	BID / PROPOSAL AS OFFER TO CONTRACT (JAN 2004): By submitting Your Bid or Proposal, You are offering to enter into a contract with the Using Governmental Unit(s). Without further action by either party, a binding contract shall result upon final award. Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror on the Cover Page. An Offer may be submitted by only one legal entity; "joint bids" are not allowed. [02-2A015-1]	Mandatory for all solicitations.
2A020-1	BID ACCEPTANCE PERIOD (JAN 2004): In order to withdraw Your Offer after the minimum period specified on the Cover Page, You must notify the Procurement Officer in writing. [02-2A020-1]	Mandatory for all solicitations.
2A025-1	BID IN ENGLISH & DOLLARS (JAN 2004): Offers submitted in response to this solicitation shall be in the English language and in US dollars, unless otherwise permitted by the Solicitation. [02-2A025-1]	Mandatory for all solicitations.
2A030-1	BOARD AS PROCUREMENT AGENT (~~JAN 2004~~FEB 2015): ~~(a) Authorized Agent. All authority regarding the conduct of this procurement is vested solely with the responsible Procurement Officer. Unless specifically delegated in writing, the Procurement Officer is the only government official authorized to bind the government with regard to this procurement. (b) Purchasing Liability.~~ The Procurement Officer is an employee of the Board acting on behalf of the Using Governmental Unit(s) pursuant to	Mandatory for all solicitations conducted by the Procurement Services Division.

Clause #	Text	Guidance on Use
	the Consolidated Procurement Code. Any contracts awarded as a result of this procurement are between the Contractor and the Using Governmental Units(s). The Board is not a party to such contracts, unless and to the extent that the board is a using governmental unit, and bears no liability for any party's losses arising out of or relating in any way to the contract. [02-2A030-~~1~~2]	
2A032-1	CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (MAY 2008): GIVING FALSE, MISLEADING, OR INCOMPLETE INFORMATION ON THIS CERTIFICATION MAY RENDER YOU SUBJECT TO PROSECUTION UNDER SECTION 16-9-10 OF THE SOUTH CAROLINA CODE OF LAWS AND OTHER APPLICABLE LAWS. (a) By submitting an offer, the offeror certifies that- (1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to— (i) Those prices; (ii) The intention to submit an offer; or (iii) The methods or factors used to calculate the prices offered. (2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and (3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition. (b) Each signature on the offer is considered to be a certification by the signatory that the signatory- (1) Is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this certification; or (2)(i) Has been authorized, in writing, to act as agent for the offeror's principals in certifying that those principals have not participated, and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this certification [As used in this subdivision (b)(2)(i), the term "principals" means the person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal]; (ii) As an authorized agent, does certify that the principals referenced in subdivision (b)(2)(i) of this certification have not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this certification; and (iii) As an agent, has not personally participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this certification. (c) If the offeror deletes or modifies paragraph (a)(2) of this certification, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure. [02-2A032-1]	Mandatory for all solicitations.
2A035-1	CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY	Mandatory for all solicitations.

Clause #	Text	Guidance on Use
	MATTERS (JAN 2004) (a) (1) By submitting an Offer, Offeror certifies, to the best of its knowledge and belief, that- (i) Offeror and/or any of its Principals- (A) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any state or federal agency; (B) Have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and (C) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision. (ii) Offeror has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any public (Federal, state, or local) entity. (2) “Principals,” for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions). (b) Offeror shall provide immediate written notice to the Procurement Officer if, at any time prior to contract award, Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. (c) If Offeror is unable to certify the representations stated in paragraphs (a)(1), Offer must submit a written explanation regarding its inability to make the certification. The certification will be considered in connection with a review of the Offeror’s responsibility. Failure of the Offeror to furnish additional information as requested by the Procurement Officer may render the Offeror nonresponsible. (d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings. (e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly or in bad faith rendered an erroneous certification, in addition to other remedies available to the State, the Procurement Officer may terminate the contract resulting from this solicitation for default. [02-2A035-1]	
2A040-2	CODE OF LAWS AVAILABLE (JAN 2006): The South Carolina Code of Laws,	Mandatory for all solicitations.

Clause #	Text	Guidance on Use
	including the Consolidated Procurement Code, is available at: http://www.scstatehouse.gov/code/statmast.php The South Carolina Regulations are available at: http://www.scstatehouse.gov/coderegs/statmast.php [02-2A040-2]	
2A045-1	COMPLETION OF FORMS / CORRECTION OF ERRORS (JAN 2006): All prices and notations should be printed in ink or typewritten. Errors should be crossed out, corrections entered and initialed by the person signing the bid. Do not modify the solicitation document itself (including bid schedule). (Applicable only to offers submitted on paper.) [02-2A045-1]	Mandatory for all solicitations.
2A047-1	DISCLOSURE OF CONFLICTS OF INTEREST OR UNFAIR COMPETITIVE ADVANTAGE (~~MAY 2011~~FEB 2015): You warrant and represent that your offer identifies and explains any unfair competitive advantage you may have in competing for the proposed contract and any actual or potential conflicts of interest that may arise from your participation in this competition or your receipt of an award. The two underlying principles are (a) preventing the existence of conflicting roles that might bias a contractor's judgment, and (b) preventing an unfair competitive advantage. If you have an unfair competitive advantage or a conflict of interest, the state may withhold award. Before withholding award on these grounds, an offeror will be notified of the concerns and provided a reasonable opportunity to respond. Efforts to avoid or mitigate such concerns, including restrictions on future activities, may be considered. Without limiting the foregoing, you represent that your offer identifies any services that relate to either this solicitation or the work and that has already been performed by you, a proposed subcontractor, or an affiliated business of either. [02-2A047-~~1~~2]	Mandatory for all solicitations.
2A050-1	DEADLINE FOR SUBMISSION OF OFFER (JAN 2004): Any offer received after the Procurement Officer of the governmental body or his designee has declared that the time set for opening has arrived, shall be rejected unless the offer has been delivered to the designated purchasing office or the governmental bodies' mail room which services that purchasing office prior to the bid opening. [R.19-445.2070(H)] [02-2A050-1]	Mandatory for all solicitations.
2A065-1	DRUG FREE WORK PLACE CERTIFICATION (JAN 2004): By submitting an Offer, Contractor certifies that, if awarded a contract, Contractor will comply with all applicable provisions of The Drug-free Workplace Act, Title 44, Chapter 107 of the South Carolina Code of Laws, as amended. [02-2A065-1]	Mandatory for all solicitations.
2A070-1	DUTY TO INQUIRE (~~JAN 2004~~FEB 2015): Offeror, by submitting an Offer, represents that it has read and understands the Solicitation and that its Offer is made in compliance with the Solicitation. Offerors are expected to examine the Solicitation thoroughly and should request an explanation of any ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation. Failure to do so will be at the Offeror's risk. All ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation shall be interpreted to require the better quality or greater quantity of work and/or materials, unless otherwise directed by amendment. Offeror	Mandatory for all solicitations.

Clause #	Text	Guidance on Use
	assumes responsibility for any patent ambiguity in the Solicitation that Offeror does not bring to the State's attention. See clause entitled "Questions from Offerors." [02-2A070-~~1~~2]	
2A075-2	ETHICS CERTIFICATE (MAY 2008): By submitting an offer, the offeror certifies that the offeror has and will comply with, and has not, and will not, induce a person to violate Title 8, Chapter 13 of the South Carolina Code of Laws, as amended (ethics act). The following statutes require special attention: Section 8-13-700, regarding use of official position for financial gain; Section 8-13-705, regarding gifts to influence action of public official; Section 8-13-720, regarding offering money for advice or assistance of public official; Sections 8-13-755 and 8-13-760, regarding restrictions on employment by former public official; Section 8-13-775, prohibiting public official with economic interests from acting on contracts; Section 8-13-790, regarding recovery of kickbacks; Section 8-13-1150, regarding statements to be filed by consultants; and Section 8-13-1342, regarding restrictions on contributions by contractor to candidate who participated in awarding of contract. The state may rescind any contract and recover all amounts expended as a result of any action taken in violation of this provision. If contractor participates, directly or indirectly, in the evaluation or award of public contracts, including without limitation, change orders or task orders regarding a public contract, contractor shall, if required by law to file such a statement, provide the statement required by Section 8-13-1150 to the procurement officer at the same time the law requires the statement to be filed. [02-2A075-2]	Mandatory for all solicitations.
2A077-1	IRAN DIVESTMENT ACT - CERTIFICATION (JAN 2015): (a) The Iran Divestment Act List is a list published by the Board pursuant to Section 11-57-310 that identifies persons engaged in investment activities in Iran. Currently, the list is available at the following URL: http://procurement.sc.gov/PS/PS-iran-divestment.phtm(.) Section 11-57-310 requires the government to provide a person ninety days written notice before he is included on the list. The following representation, which is required by Section 11-57-330(A), is a material inducement for the State to award a contract to you. (b) By signing your Offer, you certify that, as of the date you sign, you are not on the then-current version of the Iran Divestment Act List. (c) You must notify the Procurement Officer immediately if, at any time before posting of a final statement of award, you are added to the Iran Divestment Act List. [02-2A077-1]	Mandatory. Required by the Iran Divestment Act of 2014, S.C. Code Ann. §§ 11-57-10, *et seq.*
2A080-1	OMIT TAXES FROM PRICE (JAN 2004): Do not include any sales or use taxes in Your price that the State may be required to pay. [02-2A080-1]	Mandatory for all solicitations.
2A085-1	PROTESTS (JUNE 2006): Any prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest within fifteen days of the date of issuance of the applicable solicitation document at issue. Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest within ten days of the date notification of award is posted in accordance with this code. A protest shall be in writing, shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided, and must be received by the	Mandatory for all solicitations.

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	appropriate Chief Procurement Officer within the time provided. See clause entitled "Protest-CPO". [Section 11-35-4210] [02-2A085-1]	
2A087-1	**PROHIBITED COMMUNICATIONS AND DONATIONS (FEB 2015)** Violation of these restrictions may result in disqualification of your offer, suspension or debarment, and may constitute a violation of law. (a) During the period between publication of the solicitation and final award, ***you must not communicate, directly or indirectly, with the Using Governmental Unit or its employees, agents or officials regarding any aspect of this procurement activity,*** *unless otherwise approved in writing by the Procurement Officer.* All communications must be solely with the Procurement Officer. [R. 19-445.2010] (b) You are advised to familiarize yourself with Regulation 19-445.2165, which restricts donations to a governmental entity with whom you have or seek to have a contract. ***You represent that your offer discloses any gifts made, directly or through an intermediary, by you or your named subcontractors to or for the benefit of the Using Governmental Unit during the period beginning eighteen months prior to the Opening Date.*** [R. 19-445.2165] [02-2A087-1]	Mandatory for all solicitations.
2A090-1	PUBLIC OPENING (JAN 2004)) Offers will be publicly opened at the date/time and at the location identified on the Cover Page, or last Amendment, whichever is applicable. [02-2A090-1]	Mandatory for all solicitations not conducted under 11-35-1550.
2A095-1	QUESTIONS FROM OFFERORS (~~JAN 2004~~FEB 2015): (a) Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing. Questions regarding the original solicitation or any amendment must be received by the Procurement Officer no later than five (5) days prior to opening unless ~~otherwise~~ an earlier date is stated on the Cover Page. Label any communication regarding your questions with the name of the procurement officer, and the solicitation's title and number. Oral explanations or instructions will not be binding. [See R. 19-445.2042(B)] Any information given a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an Amendment to the solicitation, if that information is necessary for submitting offers or if the lack of it would be prejudicial to other prospective offerors. See clause entitled "Duty to Inquire." **We will not identify you in our answer to your question.** (b) The State seeks to permit maximum practicable competition. Offerors are urged to advise the Procurement Officer -- as soon as possible -- regarding any aspect of this procurement, including any aspect of the Solicitation, that unnecessarily or inappropriately limits full and open competition. [See R. 19-445.2140] [02-2A095-~~1~~2]	Mandatory for all solicitations.
2A100-1	REJECTION/CANCELLATION (JAN 2004): The State may cancel this solicitation in whole or in part. The State may reject any or all proposals in whole or in part. [SC Code Section 11-35-1710 & R.19-445.2065] [02-2A100-1]	Mandatory for all solicitations.
2A105-1	RESPONSIVENESS/IMPROPER OFFERS (JAN 2004): (a) Bid as Specified. Offers for supplies or services other than those specified will not be considered unless authorized by the Solicitation. (b) Multiple Offers. Offerors may submit more than one Offer, provided that each Offer	Mandatory for all solicitations.

Clause #	Text	Guidance on Use
	has significant differences other than price. Each separate Offer must satisfy all Solicitation requirements. If this solicitation is an Invitation for Bids, each separate offer must be submitted as a separate document. If this solicitation is a Request for Proposals, multiple offers may be submitted as one document, provided that you clearly differentiate between each offer and you submit a separate cost proposal for each offer, if applicable. (c) Responsiveness. Any Offer which fails to conform to the material requirements of the Solicitation may be rejected as nonresponsive. Offers which impose conditions that modify material requirements of the Solicitation may be rejected. If a fixed price is required, an Offer will be rejected if the total possible cost to the State cannot be determined. Offerors will not be given an opportunity to correct any material nonconformity. Any deficiency resulting from a minor informality may be cured or waived at the sole discretion of the Procurement Officer. [R.19-445.2070 and Section 11-35-1520(13)] (d) Price Reasonableness: Any offer may be rejected if the Procurement Officer determines in writing that it is unreasonable as to price. [R. 19-445.2070]. (e) Unbalanced Bidding. The State may reject an Offer as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the State even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment. [02-2A105-1]	
~~2A110-1~~	~~RESTRICTIONS APPLICABLE TO OFFERORS (JAN 2004): Violation of these restrictions may result in disqualification of your offer, suspension or debarment, and may constitute a violation of the state Ethics Act. (a) After issuance of the solicitation, you agree not to discuss this procurement activity in any way with the Using Governmental Unit or its employees, agents or officials. All communications must be solely with the Procurement Officer. This restriction may be lifted by express written permission from the Procurement Officer. This restriction expires once a contract has been formed. (b) Unless otherwise approved in writing by the Procurement Officer, you agree not to give anything to any Using Governmental Unit or its employees, agents or officials prior to award. [02-2A110-1]~~	~~Mandatory for all solicitations.~~
2A115-1	SIGNING YOUR OFFER (JAN 2004): Every Offer must be signed by an individual with actual authority to bind the Offeror. (a) If the Offeror is an individual, the Offer must be signed by that individual. If the Offeror is an individual doing business as a firm, the Offer must be submitted in the firm name, signed by the individual, and state that the individual is doing business as a firm. (b) If the Offeror is a partnership, the Offer must be submitted in the partnership name, followed by the words by its Partner, and signed by a general partner. (c) If the Offeror is a corporation, the Offer must be submitted in the corporate name, followed by the signature and title of the person authorized to sign.	Mandatory for all solicitations.

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	(d) An Offer may be submitted by a joint venturer involving any combination of individuals, partnerships, or corporations. If the Offeror is a joint venture, the Offer must be submitted in the name of the Joint Venture and signed by every participant in the joint venture in the manner prescribed in paragraphs (a) through (c) above for each type of participant. (e) If an Offer is signed by an agent, other than as stated in subparagraphs (a) through (d) above, the Offer must state that is has been signed by an Agent. Upon request, Offeror must provide proof of the agent's authorization to bind the principal. [02-2A115-1]	
2A120-2	STATE OFFICE CLOSINGS (JAN 2004): If an emergency or unanticipated event interrupts normal government processes so that offers cannot be received at the government office designated for receipt of bids by the exact time specified in the solicitation, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal government processes resume. In lieu of an automatic extension, an Amendment may be issued to reschedule bid opening. If state offices are closed at the time a pre-bid or pre-proposal conference is scheduled, an Amendment will be issued to reschedule the conference. Useful information may be available at: http://scemd.org/index.php/department/response/severe-winter-weather [02-2A120-2]	Mandatory for all solicitations.
2A125-1	SUBMITTING CONFIDENTIAL INFORMATION (~~AUG 2002~~FEB 2015): (An overview is available at www.procurement.sc.gov) For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "CONFIDENTIAL" every page, or portion thereof, that Offeror contends contains information that is exempt from public disclosure because it is either (a) a trade secret as defined in Section 30-4-40(a)(1), or (b) privileged and confidential, as that phrase is used in Section 11-35-410. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the words "TRADE SECRET" every page, or portion thereof, that Offeror contends contains a trade secret as that term is defined by Section 39-8-20 of the Trade Secrets Act. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "PROTECTED" every page, or portion thereof, that Offeror contends is protected by Section 11-35-1810. All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text. Do not mark your entire response (bid, proposal, quote, etc.) as confidential, trade secret, or protected. If your response, or any part thereof, is improperly marked as confidential or trade secret or protected, the State may, in its sole discretion, determine it nonresponsive. If only portions of a page are subject to some protection, do not mark the entire page. By submitting a response to this solicitation or request, Offeror (1) agrees to the public disclosure of every page of every document regarding this solicitation or request that was submitted at any time prior to entering into a contract (including, but not limited to, documents contained in a response, documents submitted	Mandatory for all solicitations.

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	to clarify a response, and documents submitted during negotiations), unless the page is conspicuously marked "TRADE SECRET" or "CONFIDENTIAL" or "PROTECTED", (2) agrees that any information not marked, as required by these bidding instructions, as a "Trade Secret" is not a trade secret as defined by the Trade Secrets Act, and (3) agrees that, notwithstanding any claims or markings otherwise, any prices, commissions, discounts, or other financial figures used to determine the award, as well as the final contract amount, are subject to public disclosure. In determining whether to release documents, the State will detrimentally rely on Offeror's marking of documents, as required by these bidding instructions, as being either "Confidential" or "Trade Secret" or "PROTECTED". By submitting a response, Offeror agrees to defend, indemnify and hold harmless the State of South Carolina, its agencies, officers and employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney's fees, arising out of or resulting from ~~the State~~ withholding information by the State of South Carolina or any of its agencies, that Offeror marked as "confidential" or "trade secret" or "PROTECTED". (All references to S.C. Code of Laws.) [02-2A125-~~1~~2]	
2A130-1	SUBMITTING YOUR OFFER OR MODIFICATION (JAN 2004): (a) Offers and offer modifications shall be submitted in sealed envelopes or packages (unless submitted by electronic means) - (1) Addressed to the office specified in the Solicitation; and (2) Showing the time and date specified for opening, the solicitation number, and the name and address of the bidder. (b) If you are responding to more than one solicitation, each offer must be submitted in a different envelope or package. (c) Each Offeror must submit the number of copies indicated on the Cover Page. (d) Offerors using commercial carrier services shall ensure that the Offer is addressed and marked on the outermost envelope or wrapper as prescribed in paragraphs (a)(1) and (2) of this provision when delivered to the office specified in the Solicitation. (e) Facsimile or e-mail offers, modifications, or withdrawals, will not be considered unless authorized by the Solicitation. (f) Offers submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation. [02-2A130-1]	Mandatory for all solicitations.
2A135-1	TAX CREDIT FOR SUBCONTRACTING WITH DISADVANTAGED SMALL BUSINESSES (JAN 2008): Pursuant to Section 12-6-3350, a taxpayer having a contract with this State who subcontracts with a socially and economically disadvantaged small business is eligible for an income tax credit equal to four percent of the payments to that subcontractor for work pursuant to the contract. The subcontractor must be certified as a socially and economically disadvantaged small business as defined in Section 11-35-5010 and regulations pursuant to it. The credit is limited to a maximum of fifty thousand dollars annually. A taxpayer is eligible to claim the credit for ten consecutive taxable years beginning with the taxable year in which the first payment is made to the subcontractor that qualifies for the credit. After the above ten consecutive taxable years, the taxpayer is no longer eligible for the credit. A taxpayer claiming the credit shall maintain evidence of work performed for the contract by the subcontractor. The credit may be claimed on Form TC-2, "Minority Business	Mandatory for all solicitations.

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	Credit." A copy of the subcontractor's certificate from the Governor's Office of Small and Minority Business (OSMBA) is to be attached to the contractor's income tax return. Questions regarding the tax credit and how to file are to be referred to: SC Department of Revenue, Research and Review, Phone: (803) 898-5786, Fax: (803) 898-5888. Questions regarding subcontractor certification are to be referred to: Governor's Office of Small and Minority Business Assistance, Phone: (803) 734-0657, Fax: (803) 734-2498. [02-2A135-1]	
2A140-1	TAXPAYER IDENTIFICATION NUMBER (JAN 2004): (a) If Offeror is owned or controlled by a common parent as defined in paragraph (b) of this provision, Offeror shall submit with its Offer the name and TIN of common parent. (b) Definitions: "Common parent," as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member. "Taxpayer Identification Number (TIN)," as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number. (c) If Offeror does not have a TIN, Offeror shall indicate if either a TIN has been applied for or a TIN is not required. If a TIN is not required, indicate whether (i) Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States; (ii) Offeror is an agency or instrumentality of a state or local government; (iii) Offeror is an agency or instrumentality of a foreign government; or (iv) Offeror is an agency or instrumentality of the Federal Government. [02-2A140-1]	Mandatory for all solicitations.
2A145-1	VENDOR REGISTRATION MANDATORY (JAN 2006): You must have a state vendor number to be eligible to submit an offer. To obtain a state vendor number, visit www.procurement.sc.gov and select New Vendor Registration. (To determine if your business is already registered, go to "Vendor Search"). Upon registration, you will be assigned a state vendor number. Vendors must keep their vendor information current. If you are already registered, you can update your information by selecting Change Vendor Registration. (Please note that vendor registration does not substitute for any obligation to register with the S.C. Secretary of State or S.C. Department of Revenue. You can register with the agencies at http://www.scbos.com/default.htm) [02-2A145-1]	Mandatory for all solicitations.
2A150-1	WITHDRAWAL OR CORRECTION OF OFFER (JAN 2004): Offers may be withdrawn by written notice received at any time before the exact time set for opening. If the Solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for opening. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for opening, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid. The withdrawal and correction of Offers is governed by S.C. Code Section 11-35-1520 and Regulation 19-445.2085. [02-2A150-1]	Mandatory for all solicitations.

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	PART 2B	
2B001	II. INSTRUCTIONS TO OFFERORS -- B. SPECIAL INSTRUCTIONS	Mandatory. Include this header at the beginning of the appropriate part of the Uniform Solicitation Format. See guidance on the Uniform Solicitation Format at the beginning of this document.
2B005-1	SECTION NOT APPLICABLE INTENTIONALLY OMMITTED	Use this clause if you have no special instructions.
2B010-1	BID BOND (JAN 2006): Your offer must include either a bid bond issued by a surety or sureties licensed in South Carolina or a certified check. The amount of surety shall be five per cent (5%) of the total bid amount. This bid bond penalty may be expressed in terms of a percentage of the bid price or may be expressed in dollars and cents. If a certified check is submitted in lieu of a bid bond, it must be made payable to the Using Governmental Unit. [02-2B010-1]	Optional. You should consult with senior staff or legal counsel before requiring a bid bond. Bid bonds are ordinarily appropriate only for competitive sealed bids and fixed price bids of substantial importance to the State.
2B015-1	BOARD APPROVAL REQUIRED (JAN 2006): Any award is subject to prior approval by the Budget and Control Board. Board meetings are normally, but not always, held monthly. [02-2B015-1]	Optional. Use of this clause should be limited to those situations where the law requires the Board's approval for some aspect of the procurement AND that approval has not been given prior to issuance of the solicitation. Ordinarily, approval for the use of contracts in excess of seven years should be sought prior to issuance of the solicitation. See Section 11-35-2030(4). Regarding approval for contracts involving a lease of real property, contact the Budget & Control Board's Office of General Services.
2B020-1	CONFERENCE – PRE-BID/PROPOSAL – MANDATORY (~~JAN 2006~~FEB 2015): See Conference Pre-Bid/Proposal clause. Your failure to attend the conference shall result in rejection of your offer. Attendance will be evidenced by your representative's signature on the attendance roster. [R. 19-445.2042] [02-2B020-~~1~~2]	Optional. Use of this clause is strongly discouraged. Mandatory conferences restrict competition, increase costs for vendors, and may result in losing a desired vendor. [Many times, an incumbent – believing that their on-site presence excuses their attendance – have been excluded from participating.] The decision to require attendance at a mandatory pre-bid conference must be supported by a written determination by the head of the agency or her designee. R. 19-445.2042(C). The determination must be made part of the procurement file. Do not publish the attendance roster in your amendments without approval of a supervisor. Doing so does not further any state goals and it helps vendors determine which competitors they are competing with, which does not help the state get the best offers.

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2B025-1	CONFERENCE – PRE-BID/PROPOSAL (JAN 2006): Pre-Bid/Proposal Conference Date and Time: Location of Pre-Bid/Proposal Conference: Due to the importance of all offerors having a clear understanding of the specifications and requirements of this solicitation, a conference of potential offerors will be held on the date specified on the cover page. Bring a copy of the solicitation with you. Any changes resulting from this conference will be noted in a written amendment to the solicitation. Your failure to attend will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the State. The State assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available at the conference. Nor does the State assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract. [02-2B025-1]	Optional. Such conferences provide an opportunity for an interactive discussion regarding the state's requirements and any issues the vendors may have. You should not agree to anything in such a conference. All answers should be memorialized in a written amendment.
2B030-1	CONTENTS OF OFFER - RFP - Solutions Based (JAN 2006): The following outline may be helpful in preparing your proposal. Your offer should address each of the areas outlined below (as applicable) and provide the information requested. As your offer will be evaluated based on the information you provide, failure to provide a complete and comprehensive presentation of your solution could negatively effect our evaluation of your offer. 1. Executive Overview: Your offer should include a summary of the proposed solution that reflects your understanding of both the state's needs and how your solution will satisfy those needs. Please explain your overall approach to the management of this effort, including a brief discussion of the total organization (structure and relationships among personnel and consultants/subcontractors). 2. Technical Overview: Your offer should include a summary of the proposed technical solution with enough detail to demonstrate an understanding of the current environment and scope of the project 3. Detailed explanation of proposed solution 3.1 Management 3.1.1 Implementation schedule 3.1.1.1 from contract formation to installation and acceptance 3.1.1.2 installation, testing, and pilot, as appropriate 3.1.1.3 detailed staffing deployment schedule 3.1.1.4 milestones and deliverables 3.1.2 Project management practices, policies, and certifications 3.1.3 Application development methodologies 3.1.4 Subcontracting, outsourcing, offshore contribution (if any) 3.1.5 Escalation policies, practices, and contacts 3.2 Technical. As appropriate, provide an explanation and/or information about the	Use of this clause is mandatory for ITMO Procurement Officers conducting a solutions based procurement.

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	following, in detail: 3.2.1 Functional capabilities of the proposed solution, including all performance capabilities, specifications and response times. 3.2.2 Technical information about proposed solution, including technical specifications of any proposed equipment or services 3.2.3 Software, if any, including manufacturer, functional capabilities, warranties, support levels, and documentation (any applicable license agreements and documents reflecting offeror's authority to include such software). 3.2.4 Services included in the proposal and otherwise available 3.2.5 Environmental requirements for the proposed solution. 3.2.6 Software development plan, interfaces documentation, data synchronization, and replication plans, etc. 3.2.7 Technical and operational manuals, by reference. 3.3 Change Management. Who initiates change requests, what justifications and explanations are included, risks associated with change, approval process, etc. 3.4 Installation and support. 3.4.1 Installation -- provide detailed information on the installation requirements and schedule. 3.4.2 Training -- explain any proposed training solution. Include plans for training new employees beyond the initial training cycle, employee readiness evaluations, training feedback, student-instructor ratios, duration of training, etc. Include plans for updating and maintaining training plans, system documentation, operational documentation, etc. For the duration of the implementation or term of the contract as appropriate. Include any other training solutions that are available. 3.4.3 Support services including hardware and software maintenance include an explanation of any proposed support services including performance guarantees. Identify all proposed maintenance including a detailed explanation of response times. Include any forms or agreements. 3.4.4 Data conversion requirements should include who is responsible for developing any data conversion programs, what the acceptable level of conversion, how many records are to be converted, who is responsible for entering any records that do not convert properly, etc. 3.4.5 Service level agreements (SLA) with performance commitments. If appropriate, include industry standard response times and performance requirements for normal business processing and/or critical business processing as appropriate. 3.4.6 Disaster recovery plans should be included, as appropriate. 3.4.7 Back-up plans for proposed network, data, and systems outages and disruptions, if appropriate. 3.4.8 Warranties -- include all functional, performance, and quality of workmanship warranties. Describe acceptable warranty performance specifications and warranty performance reporting to include number of calls, number and type of repairs and changes, etc.	

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	3.5 Intellectual property: explain the ownership rights to all proposed intellectual property. 3.6 Staffing 3.6.1 Contractor 3.6.1.1 Key staff, their resumes, and areas of responsibility on this project 3.6.1.2 Non-key staff, by number and areas of responsibility on this project 3.6.1.3 State the number of state employees necessary and what training and skill levels are anticipated? 3.6.2 Other -- are there any other staffing requirements? 3.7 Business proposals 3.7.1 Total cost of ownership -- provide anticipated cost of purchasing, owning, operating, maintaining, and supporting the proposed solution for the total potential term of the contract. Include a detailed accounting of the total cost of ownership. 3.7.2 Risk analysis -- identify the internal and external factors could significantly impact the probability of completing this project on time and within budget 3.7.3 Risk mitigation -- identify any actions that could be taken to mitigate the identified risks 3.7.4 Risk sharing -- identify any opportunities for mutually beneficial risk sharing 3.7.5 Performance incentives -- identify any opportunities for performance-based incentives 3.7.6 Financing options -- identify any alternative financing options available to the state 3.8 Offeror's Qualifications. Provide the information requested by the following provisions: Qualifications -- Required Information -- SB Subcontractor Identification [02-2B030-1]	
~~2B035-1~~	~~CONTENTS OF OFFER (RFP) - ITMO (JAN 2006): The contents of your offer must be divided into two parts, the technical proposal and the business proposal. Each part should be bound in a single volume. [02-2B035-1]~~	~~Use of this clause is mandatory for ITMO Procurement Officers conducting an RFP other than a solutions based procurement. sentence deleted because this instruction already covered in the magnetic media clause~~
2B040-1	CONTENTS OF OFFER (RFP) ~~– SPO~~ (~~JAN 2006~~FEB 2015): (a) Offers should be complete and carefully worded and should convey all of the information requested. (b) Offers should be prepared simply and economically, providing a straightforward, concise description of offeror's capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content. (c) ~~Each copy of your offer should be bound in a single volume where practical. All documentation submitted with your offer should be bound in that single volume.~~ The contents of your offer must be divided into two parts, the technical proposal and the business proposal. Each part should be bound in a single volume. (d) If your offer includes any comment over and above the specific information requested in the solicitation, you are to include this information as a separate appendix	Use of this clause is mandatory for SPO and ITMO Procurement Officers conducting an RFP other than a solutions based procurement.

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	to your offer. Offers which include either modifications to any of the solicitation's contractual requirements or an offeror's standard terms and conditions may be deemed non-responsive and not considered for award. [02-2B040-~~1~~2]	
2B045-1	DESCRIPTIVE LITERATURE – LABELLING (JAN 2006): Include offeror's name on the cover of any specifications or descriptive literature submitted with your offer. [02-2B045-1]	Optional.
2B050-1	DESCRIPTIVE LITERATURE – REQUIRED (JAN 2006): Your offer must include manufacturer's latest literature showing complete product specifications. [02-2B050-1]	Optional.
2B055-1	CLARIFICATION (NOV 2007): Pursuant to Section 11-35-1520(8), the Procurement Officer may elect to communicate with you after opening for the purpose of clarifying either your offer or the requirements of the solicitation. Such communications may be conducted only with offerors who have submitted an offer which obviously conforms in all material aspects to the solicitation. Clarification of an offer must be documented in writing and included with the offer. Clarifications may not be used to revise an offer or the solicitation. [Section 11-35-1520(8); R.19-445.2080] [02-2B055-1]	Appropriate for all solicitations.
~~2B060-1~~	~~DISCUSSIONS & NEGOTIATIONS (NOV 2007): Submit your best terms from a cost or price and from a technical standpoint. Your proposal may be evaluated and your offer accepted without any discussions, negotiations, or prior notice. Ordinarily, nonresponsive proposals will be rejected outright. Nevertheless, the State may elect to conduct discussions, including the possibility of limited proposal revisions, but only for those proposals reasonably susceptible of being selected for award. If improper revisions are submitted, the State may elect to consider only your unrevised initial proposal. [11-35-1530(6); R.19-445.2095(I)] The State may also elect to conduct negotiations, beginning with the highest ranked offeror, or seek best and final offers, as provided in Section 11-35-1530(8). If negotiations are conducted, the State may elect to disregard the negotiations and accept your original proposal. [02-2B060-1]~~	~~Mandatory for all RFP solicitations.~~
2B065-1	LEASE FORM-QUESTIONS (JAN 2006): Use of the attached standard equipment agreement (form 80-SC-EL-1, revised 7/1/88) is required by Regulation 19-445.2152. No other lease form shall be used. Offerors may propose modifications to this agreement prior to the deadline for submitting questions (see cover page). Any modifications accepted will be noted in an amendment. [02-2B065-1]	You must use this clause whenever you use the standard equipment agreement.
2B070-1	MAGNETIC MEDIA – REQUIRED FORMAT (JAN 2006): As noted on the cover page, an original hard copy of your offer must be accompanied by the specified number of copies in the following electronic format: compact disk (CD) in one of the following formats: CD-R, DVD, ROM, DVD-R, or DVD+R . Formats such as CD-RW, DVD-RAM, DVD-RW, DVD-+RW, or DVIX are not acceptable and will result in the Offeror's proposal being rejected. Every CD must be labeled with offeror's name, solicitation number, and specify whether contents address technical proposal or business proposal. If multiple CD sets are provided, each CD in the set must be appropriately identified as to its relationship to the set, e.g., 1 of 2. Each CD must be identical to the original hard copy. File format shall be MS Word 97 or later. [02-2B070-1]	Optional. When offers are submitted on magnetic media, concerns arise regarding the integrity of their submission. ITMO has determined that the formats identified in this clause address this concern.

Clause #	Text	Guidance on Use
2B075-1	MAGNETIC MEDIA WITH DEMONSTRATION / PRESENTATION (JAN 2006): Compact discs included with your offer may include a demonstration of the proposed solution and/or a presentation of your offer. The following formats are acceptable: Power Point, .qt, .mpeg, .mpg, .miv, .asf, .asx, .ra, .ram, .rm, .rmm, .aif, .aifc., aiff, .mov, .avi, .au, .snd, or .wav formats. If you use another format, the compact disc must include a self-executing viewer or player, with instructions. [02-2B075-1]	Optional.
2B080-1	MAIL PICKUP (JAN 2006): The State Procurement Office picks up all mail from The US Postal Service once daily around 8:30 a.m. (excluding weekends and holidays). See provision entitled Deadline for Submission of Offer. [02-2B080-1]	Use this only if you provide Offerors with a post office box address for the submission of bids and proposals.
2B085-1	OFFERING BY ITEM (JAN 2006): Offers may be submitted for one or more items. [02-2B085-1]	Optional.
2B090-1	OFFERING BY ITEM OR LOT (JAN 2006): Offers may be submitted for complete lots or for one or more items not within lots. Failure to offer on all items within a single lot will be reason for rejection. [02-2B090-1]	Optional.
2B095-1	OFFERING BY LOT (JAN 2006): Offers may be submitted for one or more complete lots. Failure to offer on all items within a lot will be reason for rejection. [02-2B095-1]	Optional.
2B105-1	ON-LINE BIDDING INSTRUCTIONS (NOV 2007): (a) Mandatory Registration: For on-line bidding, you must register before you can submit an offer! See instructions in clause entitled "VENDOR REGISTRATION MANDATORY". (b) Steps for On-Line Bidding: #1 The link provided on the solicitation's Cover Page will take you to our web based on-line bidding system, where you will enter and/or upload your offer. #2 Follow the general user instructions posted at www.procurement.sc.gov under the heading "Submitting Offers On-Line". [02-2B105-1]	
2B110-1	OPENING PROPOSALS – ~~PRICES~~ INFORMATION NOT DIVULGED (~~JAN 2006~~FEB 2015): In competitive sealed proposals, neither the number or identity of offerors nor prices will ~~not~~ be divulged at opening. [Section 11-35-1530 & R. 19-445.2095(C) (1)] [02-2B110-~~1~~2]	~~The law~~ Regulation 19-445.2095(C)(1) provides: ~~that the~~ "Contents and the identity of competing offers shall not be disclosed during the process of opening by state personnel." ~~of proposals submitted in response to an RFP is not released at opening.~~ However, use of this clause is optional.

Clause #	Text	Guidance on Use
2B111-1	PREFERENCES - A NOTICE TO VENDORS (SEP 2009): On June 16, 2009, the South Carolina General Assembly rewrote the law governing preferences available to in-state vendors, vendors using in-state subcontractors, and vendors selling in-state or US end products. This law appears in Section 11-35-1524 of the South Carolina Code of Laws. A summary of the new preferences is available at www.procurement.sc.gov/preferences . ALL THE PREFERENCES MUST BE CLAIMED AND ARE APPLIED BY LINE ITEM, REGARDLESS OF WHETHER AWARD IS MADE BY ITEM OR LOT. VENDORS ARE CAUTIONED TO CAREFULLY REVIEW THE STATUTE BEFORE CLAIMING ANY PREFERENCES. THE REQUIREMENTS TO QUALIFY HAVE CHANGED. IF YOU REQUEST A PREFERENCE, YOU ARE CERTIFYING THAT YOUR OFFER QUALIFIES FOR THE PREFERENCE YOU'VE CLAIMED. IMPROPERLY REQUESTING A PREFERENCE CAN HAVE SERIOUS CONSEQUENCES. [11-35-1524(E)(4)&(6)] [02-2B111-1]	
2B112-1	PREFERENCES - SC/US END-PRODUCT (SEP 2009): Section 11-35-1524 provides a preference to vendors offering South Carolina end-products or US end-products, if those products are made, manufactured, or grown in SC or the US, respectively. An end-product is the tangible project identified for acquisition in this solicitation, including all component parts in final form and ready for the use intended. The terms "made," "manufactured," and "grown" are defined by Section 11-35-1524(A). By signing your offer and checking the appropriate space(s) provided and identified on the bid schedule, you certify that the end-product(s) is either made, manufactured or grown in South Carolina, or other states of the United States, as applicable. Preference will be applied as required by law. Post award substitutions are prohibited. See "Substitutions Prohibited - End Product Preferences (Sep 2009)" provision. [02-2B112-1]	
2B113A-1	PREFERENCES - RESIDENT CONTRACTOR PREFERENCE (SEP 2009): To qualify for the RCP, you must maintain an office in this state. An office is a nonmobile place for the regular transaction of business or performance of a particular service which has been operated as such by the bidder for at least one year before the bid opening and during that year the place has been staffed for at least fifty weeks by at least two employees for at least thirty five hours a week each. In addition, you must, at the time you submit your bid, directly employ, or have a documented commitment with, individuals domiciled in South Carolina that will perform services expressly required by the solicitation and your total direct labor cost for those individuals to provide those services must exceed fifty percent of your total bid price. [11-35-1524(C)(1)(iii)] Upon request by the procurement officer, you must identify the persons domiciled in South Carolina that will perform the services involved in the procurement upon which you rely in qualifying for the preference, the services those individuals are to perform, and documentation of the your labor cost for each person identified. If requested, your failure to provide this information promptly will be grounds to deny the preference (and, potentially, for other enforcement action). [02-2B113A-1]	

Clause #	Text	Guidance on Use
2B113B-1	PREFERENCES - RESIDENT SUBCONTRACTOR PREFERENCE (SEP 2009): To qualify for this preference, You must meet the following requirements. (1) You must -- at the time you submit your bid -- have a documented commitment from a single proposed first tier subcontractor to perform some portion of the services expressly required by the solicitation. (2) The subcontractor -- at the time you submit your bid -- must directly employ, or have a documented commitment with, individuals domiciled in South Carolina that will perform services expressly required by the solicitation and the total direct labor cost to the subcontractor for those individuals to provide those services exceeds, as applicable, either twenty percent for a 2% preference or forty percent of bidder's total bid price for a 4% preference. (3) You must identify the subcontractor that will perform the work, the work the subcontractor is to perform, and your factual basis for concluding that the subcontractor's work constitutes the required percentage of the work to be performed in the procurement. [11-35-1524(D)] You can stack this preference, i.e., earn another 2% or 4% preference for each additional qualifying subcontractor, but the preference is capped. [11-35-1524(D)(4), (E)(7)] Upon request by the procurement officer, you must identify the persons domiciled in South Carolina that are to perform the services involved in the procurement upon which you rely in qualifying for the preference, the services those individuals are to perform, the employer of those persons, your relationship with the employer, and documentation of the subcontractor's labor cost for each person identified. If requested, your failure to provide this information promptly will be grounds to deny the preference (and, potentially, for other enforcement action). YOU WILL NOT RECEIVE THE PREFERENCE UNLESS YOU SPECIFY WHETHER YOUR ARE CLAIMING THE 2% OR 4% PREFERENCE AND YOU PROVIDE THE INFORMATION REQUIRED BY ITEM (3) ABOVE. [02-2B113B-1]	
2B114-1	PREFERENCES - RESIDENT VENDOR PREFERENCE (SEP 2009): To qualify for the RVP, you must maintain an office in this state. An office is a nonmobile place for the regular transaction of business or performance of a particular service which has been operated as such by the bidder for at least one year before the bid opening and during that year the place has been staffed for at least fifty weeks by at least two employees for at least thirty five hours a week each. In addition, you must either: (1) maintain at a location in South Carolina at the time of the bid an inventory of expendable items which are representative of the general type of commodities for which the award will be made and which have a minimum total value, based on the bid price, equal to the lesser of fifty thousand dollars [$50,000] or the annual amount of the contract; or (2) be a manufacturer headquartered and having an annual payroll of at least one million dollars in South Carolina and the end product being sold is either made or processed from raw materials into a finished end product by that manufacturer or its affiliate (as defined in Section 1563 of the Internal Revenue Code). [02-2B114-1]	
2B115-1	PRICE AS DISCOUNT (JAN 2006): Your price must be in the form of a single percentage discount to apply to a catalog, price sheet, or price schedule as described. [02-2B115-1]	Optional.

Clause #	Text	Guidance on Use
2B120-1	PROTEST - CPO - ITMO ADDRESS (JUNE 2006): Any protest must be addressed to the Chief Procurement Officer, Information Technology Management Office, and submitted in writing (a) by email to protest-itmo@itmo.sc.gov , (b) by facsimile at 803-737-0102 , or (c) by post or delivery to 1201 Main Street, Suite 601, Columbia, SC 29201. [02-2B120-1]	All solicitations must include the address of the appropriate chief Procurement Officer.
2B122-1	PROTEST - CPO - MMO ADDRESS (JUNE 2006): Any protest must be addressed to the Chief Procurement Officer, Materials Management Office, and submitted in writing (a) by email to protest-mmo@mmo.state.sc.us , (b) by facsimile at 803-737-0639 , or (c) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201. [02-2B122-1]	All solicitations must include the address of the appropriate chief Procurement Officer.
2B125-1	QUALIFIED PRODUCTS LIST (JAN 2006): Offer only products that are on the qualified products list. [02-2B125-1]	Optional.
2B130-1	SAMPLES (JAN 2006): Free samples may be required for testing and/or evaluation. If requested, your failure to provide a sample will result in rejection of your offer. You must send your sample to the Procurement Officer under separate cover, mark the solicitation number on the outside of the shipping carton, and tag each sample with your name and other pertinent information. The Procurement Officer must receive your samples prior to opening date. Send Sample To: Mark to attn of buyer listed on cover page. [02-2B130-1]	Optional.
2B135-1	SAMPLES-TESTING (JAN 2006): Free samples may be required for testing by an independent laboratory. If requested, your failure to provide a sample will result in rejection of your offer. Upon invoice, you agree to pay any reasonable cost incurred for this testing. Unless your sample is accompanied by a request for its return, your sample will not be returned. Your sample may be destroyed during testing. [02-2B135-1]	Optional.
2B140-1	SITE VISIT - BY APPOINTMENT (JAN 2006): Appointment for a site visit may be made by contacting: at [02-2B140-1]	Optional.

Clause #	Text	Guidance on Use
2B145-1	SITE VISIT – MANDATORY (JAN 2006): See Site Visit Clause. Your failure to attend site visit shall result in rejection of your offer. [02-2B145-1]	Optional. Use of this clause is strongly discouraged. Mandatory site visits restrict competition, increase costs for vendors, and may result in losing a desired vendor. [Many times, an incumbent – believing that their on-site presence excuses their attendance – have been excluded from participating.] Do not publish the attendance roster in your amendments without approval of a supervisor. Doing so does not further any state goals and it helps vendors determine which competitors they are competing with, which does not help the state get the best offers.
2B165-1	SITE VISIT (JAN 2006): A site visit will be held at the following date, time and location. Your failure to attend will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the State. The State assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available at the conference. Nor does the State assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract. Date & Start Time: Contact Person's Name: Contact's Phone Number: Location: [02-2B165-1]	Optional. Site visits provide an opportunity for vendors to acquire information best learned by seeing the site. It also provides an opportunity for an interactive discussion regarding the state's requirements and any issues the vendors may have. You should not agree to anything in a site visit. All answers should be memorialized in a written amendment.
2B170-1	UNIT PRICES REQUIRED (JAN 2006): Unit price to be shown for each item. [02-2B170-1]	Optional
	PART 3	
3001	III. SCOPE OF WORK/SPECIFICATIONS	Mandatory. Include this header at the beginning of the appropriate part of the Uniform Solicitation Format. See guidance on the Uniform Solicitation Format at the beginning of this document.
3003-1	STATEMENT OF WORK (June 2007): Please see ATTACHMENT for STATEMENT OF WORK. [03-3003-1]	Include this item if the specifications appear in an attachment to the solicitation.
3005-1	See Bidding Schedule [03-3005-1]	Include this item if you have no specifications other than what appears in the bidding schedule.
3015-1	DELIVERY / PERFORMANCE LOCATION – PURCHASE ORDER (JAN 2006): After award, all deliveries shall be made and all services provided to the location specified by the Using Governmental Unit in its purchase order. [03-3015-1]	Optional. Cross-reference with provisions entitled "Purchase Order" and "Contract Documents & Order of Precedence".
3020-1	DELIVERY / PERFORMANCE LOCATION – SPECIAL (JAN 2006): Contractor shall deliver to: . [Procurement Officer must identify a specific location, such as a shipping	Optional. Remember to fill in the address.

Clause #	Text	Guidance on Use
	dock, building or room number, if a postal address is inadequate.] [03-3020-1]	
3025-1	DELIVERY DATE – 30 DAYS ARO (JAN 2006): Unless otherwise specified herein, all items shall be delivered no later than thirty days after contractor's receipt of the purchase order. If the using governmental unit requests delivery sooner than the time specified, contractor may invoice the ordering entity any additional shipping charges approved by the ordering entity on the purchase order. [03-3025-1]	Optional. Cross-reference with provisions entitled "Purchase Order" and "Contract Documents & Order of Precedence".
3030-1	DELIVERY / PERFORMANCE LOCATION - SPECIFIED (JAN 2006): After award, all deliveries shall be made and all services provided to the following address, unless otherwise specified: [03-3030-1]	Optional. [APS users. (a) APS inserts an address based on the selection you made at the requisition header. This clause replaces the clause which currently reads "Unless otherwise specified, all contractual deliveries shall be made to the following address:" (b) APS allows users to specify a unique shipping address for each line item in the bid schedule. When addresses are specified for each line item, APS will insert the phrase "See Bidding Schedule" below this clause, rather than a specific address.]
3035-1	DELIVERY COSTS – EXEMPTION (JAN 2006): For individual orders involving less than $, contractor shall ship these orders prepaid, add the shipping charges to the invoice as a separate charge and include in the invoice total for payment by Using Governmental Unit. [03-3035-1]	Optional. Remember to fill in the blank.
3040-1	DELIVERY DATE - SPECIFIED (JAN 2006): Delivery shall be made no later than . Contractor may request approval to deliver items prior to the delivery date. [03-3040-1]	Optional. Remember to fill in the blank.
3045-1	DELIVERY DATE – PURCHASE ORDER (JAN 2006): All items shall be delivered within days after receipt of purchase order. [03-3045-1]	Optional. Remember to fill in the blank. Use this clause for situations in which the "30 days ARO" will not work. For example, perishable items, such as certain medical supplies or food, may need to be delivered within 24 hours after receipt of purchase order.-
3050-1	INSTALLATION (JAN 2006): Contractor shall install all items acquired pursuant to this contract as follows: [3-3050-1]	Optional. Remember to fill in the blank.
3055-1	OPERATIONAL MANUALS (JAN 2006): Unless otherwise specified, contractor shall provide one operational manual for each item acquired. [03-3055-1]	Optional.
3060-1	QUALITY – NEW (JAN 2006): All items must be new. [03-3060-1]	Optional.
3065-1	QUALITY – REFURBISHED (JAN 2006): Items may be refurbished. [03-3065-1]	Optional. Procurement officer should provide a commodity-specific definition of "refurbished" because the term may have very different meanings depending on the industry or commodity.
3070-1	QUALITY – USED (JAN 2006): Items may be used. [03-3070-1]	Optional.
3075-1	TECHNICAL SUPPORT – INCLUDED (JAN 2006): Upon request, contractor shall provide technical assistance or service. Such service shall be available within hours following request. [03-3075-1]	Optional. Use this clause only for procurements that involve very limited technical support. For procurements involving any significant degree of support, use a specially drafted clause.

Clause #	Text	Guidance on Use
3080-1	TRAINING (JAN 2006): Upon request, contractor shall demonstrate equipment within days after delivery. [03-3080-1]	Optional. Use this clause only for procurements that involve very limited training. For procurements involving any significant degree of training, use a specially drafted clause.
	PART 4	
4001	IV. INFORMATION FOR OFFERORS TO SUBMIT	Mandatory. Include this header at the beginning of the appropriate part of the Uniform Solicitation Format. See guidance on the Uniform Solicitation Format at the beginning of this document.
4005-1	INFORMATION FOR OFFERORS TO SUBMIT - EVALUATION (JAN 2006): In addition to information requested elsewhere in this solicitation, offerors should submit the following information for purposes of evaluation: [04-4005-1]	Optional. Use this clause to identify information that will be evaluated in determining the award and which has not been requested in some other part of the solicitation. Examples: (a) Offeror's explanation regarding how the scope of work will be performed or specifications will be met, (b) Offeror's personnel, (c) Offeror's experience, (d) Offeror's internal operational procedures (e.g., disaster recover plan, maintenance schedules, training programs, human resource policies, staffing guides, etc.), (e) Documents published by Offeror (e.g., prospectus for publicly traded companies, cut sheets and product literature, white papers), (f) Test results (e.g., independent laboratory test results, benchmark results); and, (g) Offeror's management structure. Caution: If you are asking for information under this clause, it must be tied to an evaluation criteria specified in the Award part of your solicitation.
4010-1	INFORMATION FOR OFFERORS TO SUBMIT – GENERAL (JAN 2006): Offeror shall submit a signed Cover Page and Page Two. Offeror should submit all other information and documents requested in this part and in parts II.B. Special Instructions; III. Scope of Work; V. Qualifications; VIII. Bidding Schedule/Price Proposal; and any appropriate attachments addressed in section IX. Attachments to Solicitations. [04-4010-1]	Mandatory for all solicitations. If you request information that will <u>not</u> be used for evaluation and that is not requested elsewhere, list that information under this clause with a general statement requesting its submission, e.g., "Please submit the following information:" Do not make the request mandatory unless you intend to reject the offer for failure to include such information.
4015-1	MINORITY PARTICIPATION (JAN 2006): Is the bidder a South Carolina Certified Minority Business? [ ] Yes [ ] No Is the bidder a Minority Business certified by another governmental entity? [ ] Yes [ ] No If so, please list the certifying governmental entity: _____	

Clause #	Text	Guidance on Use
	Will any of the work under this contract be performed by a SC certified Minority Business as a subcontractor? [ ] Yes [ ] No If so, what percentage of the total value of the contract will be performed by a SC certified Minority Business as a subcontractor? _____ Will any of the work under this contract be performed by a minority business certified by another governmental entity as a subcontractor? [ ] Yes [ ] No If so, what percentage of the total value of the contract will be performed by a minority business certified by another governmental entity as a subcontractor? _____ If a certified Minority Business is participating in this contract, please indicate all categories for which the Business is certified: [ ] Traditional minority [ ] Traditional minority, but female [ ] Women (Caucasian females) [ ] Hispanic minorities [ ] DOT referral (Traditional minority) [ ] DOT referral (Caucasian female) [ ] Temporary certification [ ] SBA 8 (a) certification referral [ ] Other minorities (Native American, Asian, etc.) (If more than one minority contractor will be utilized in the performance of this contract, please provide the information above for each minority business.) For a list of certified minority firms, please consult the Minority Business Directory, which is available at the following URL: http://www.govoepp.state.sc.us/osmba/ [04-4015-1]	
4020-1	OFFSHORE CONTRACTING (JAN 2006): Work that will be performed offshore by the Offeror and/or its subcontractors must be identified in the Offeror's response. For the purpose of this solicitation, offshore is defined as outside the 50 States and US territories. Offeror is to include an explanation for the following: (a) What type of work is being contracted offshore? _____ (b) What percentage (%) of the total work is being contracted offshore? _____ (c) What percentage (%) of the total value of the contract is being contracted offshore? _____ (d) Provide a Service Level Agreement (SLA) demonstrating the arrangement between the off-shore contactor and the Offeror. Attach Service Level Agreement to this document or paste here. Data provided by the Offeror in regards to this clause is for information only and will not be used in the evaluation and determination of an award. [04-4020-1]	

Clause #	Text	Guidance on Use
4025-1	RECYCLED PRODUCT (JAN 2006): Offeror shall identify which product(s) is made out of or contains recycled materials. This information will be used for future research [ ] Yes [ ] No (Items:_____) If the above applies to more than one item, please indicate above. [04-4025-1]	
4027-1	SERVICE PROVIDER SECURITY ASSESSMENT QUESTIONNAIRE - REQUIRED (FEB 2015) [ASK QUESTIONS NOW: If you have a properly qualified third-party report or certification you believe we should accept in lieu of those identified in item (b), submit a question identifying same pursuant to the clause titled Questions from Offerors.] The Contractor must demonstrate that programs, policies and procedures are in place to adequately provide for the confidentiality, integrity, and availability of the information systems used by contractor to process, store, transmit, and access all government information. In order for the State to accurately evaluate the strength and viability of the Contractor's security policies, procedures and practices related to confidentiality, integrity and availability, Offerors must submit with their offers a thorough and complete written response to the Service Provider Security Assessment Questionnaire ("Response to SPSAQ") attached to this Solicitation, which must address all applicable organizations and applicable information systems. The terms used in this clause shall have the same meaning as the terms defined in the clause titled Information Security – Definitions. [04-4027-1]	*This clause should be used with the **Service Provider Security Representation** clause (7B217). Consider for use in all services procurements which involve either contractor's computerized interface with state systems or contractor's direct possession of important agency or citizen data. Due to critical cross-references, you must also use both the Information Security - Definitions clause (7B104) and the **Service Provider Security Assessment Questionnaire** attachment (9025) if this clause is used.* *Agencies are cautioned that they should take steps to insure that the representations provided by an Offeror are applicable to the computerized infrastructure that will be used by Contractor to collect, manage, store, process or access government information.*
4030-1	SUBMITTING REDACTED OFFERS (FEB 2007): You are required to mark the original copy of your offer to identify any information that is exempt from public disclosure. You must do so in accordance with the clause entitled "Submitting Confidential Information." In addition, you must also submit one complete copy of your offer from which you have removed any information that you marked as exempt, i.e., a redacted copy. The information redacted should mirror in ever detail the information marked as exempt from public disclosure. The redacted copy should (i) reflect the same pagination as the original, (ii) show the empty space from which information was redacted, and (iii) be submitted on magnetic media. (See clause entitled "Magnetic Media Required Format.") Except for the redacted information, the CD must be identical to the original hard copy. Portable Document Format (.pdf) is preferred. [04-4030-1]	
	PART 5	
5001	V. QUALIFICATIONS	Mandatory. Include this header at the beginning of the appropriate part of the Uniform Solicitation Format. You are strongly encouraged to study the general guidance on Part 5 (V. Qualifications) of the Uniform Solicitation Format at the beginning of this document.
5005-1	QUALIFICATION OF OFFEROR (JAN 2006): To be eligible for award of a contract, a prospective contractor must be responsible. In evaluating an Offeror's responsibility, the State Standards of Responsibility [R.19-445.2125] and information from any other source may be considered. An Offeror must, upon request of the State, furnish satisfactory evidence of its ability to meet all contractual requirements. Unreasonable	Mandatory. Include this paragraph in all procurements. This paragraph may be used in conjunction with any of the other paragraphs in Part 5.

Clause #	Text	Guidance on Use
	failure to supply information promptly in connection with a responsibility inquiry may be grounds for determining that you are ineligible to receive an award. S.C. Code Section 11-35-1810. [05-5005-1]	
5010-1	QUALIFICATIONS - MANDATORY MINIMUM (JAN 2006): (a) In order to be qualified to receive award, you must meet the following mandatory minimum qualifications: (b) The Procurement Officer may, in his discretion, consider (1) the experience of a predecessor firm or of a firm's key personnel which was obtained prior to the date offeror was established, and/or (2) any subcontractor proposed by offeror. (c) Provide a detailed, narrative statement providing adequate information to establish that you meet all the requirements stated in subparagraph (a) above. Include all appropriate documentation. [05-5010-1]	Optional 1. Use this clause to require that offerors meet certain mandatory minimum qualification requirements. When you write such requirements, make sure that (a) each requirement is very specific, (b) the decision regarding whether a vendor meets the requirement is an objective decision, one that does not involve the exercise of discretion or judgment, and (c) each requirement is mandatory. See the general guidance for Part 5. 2. When you create mandatory minimum qualification requirements, you are establishing a special standard of responsibility. Offerors that do not have the required qualifications must be deemed non-responsible. 3. The imposition of special standards limits competition. Section 11-35-1710 prohibits unduly restrictive requirements. Be prepared to defend why your minimum qualifications are necessary. 4. If an offeror relies on its staff, a predecessor firm, or a proposed subcontractor to meet a minimum requirement, see the guidance on Part 5 at the beginning of this compendium.
5015-1	QUALIFICATIONS – REQUIRED INFORMATION (JAN 2006): In order to evaluate your responsibility, offeror shall submit the following information or documentation for the offeror and any subcontractor, if the value of subcontractor's portion of the work exceeds 10% of your price (if in doubt, provide the information): (a) Include a brief history of the offeror's experience in providing work of similar size and scope. (b) Your most current financial statement, financial statements for your last two fiscal years, and information reflecting your current financial position. If you have audited financial statements meeting these requirements, you must provide those statements. [Reference Statement of Concepts No. 5 (FASB, December, 1984)] (c) A detailed, narrative statement listing the three most recent, comparable contracts (including contact information) which you have performed and the general history and experience of your organization. (d) A list of every business for which offeror has performed, at any time during the past three year(s), services substantially similar to those sought with this solicitation. Err on the side of inclusion; by submitting an offer, offeror represents that the list is complete. (e) List of failed projects, suspensions, debarments, and significant litigation. [05-5015-1]	1. Use this clause to request any documentation or information you need to facilitate your determination of responsibility. 2. Do not use this clause alone; it is intended to be used with the provision entitled Qualifications of Offeror. 3. Subparagraph (c) asks for customer lists. The default is for three years. You may elect to ask for a longer or shorter time frame, as appropriate. 4. If you find the standard requests to be inadequate, draft changes as appropriate. The following sample contents are provided for your convenience: - A detailed, narrative statement providing adequate information to establish that you meet all the requirements established by the provision entitled Qualifications – Mandatory Minimum. Include all appropriate documentation. - A detailed, narrative statement explaining how offeror has available the appropriate financial, material,

Clause #	Text	Guidance on Use
		equipment, facility, and personnel resources and expertise, or firm commitments to obtain them, necessary to meet all contractual requirements of this solicitation. - A detailed, narrative statement listing [all] [the three most] [the three most recent] comparable contracts (including contact information) which you have performed and the general history and experience of your organization. - A list of every business for which offeror has performed, at any time during the past [one] year(s), services [somewhat] [substantially] similar to those sought with this solicitation. Err on the side of inclusion; by submitting an offer, offeror represents that the list is complete. - A list of every business [governmental entity] for which offeror has performed services or provided supplies in South Carolina at any time during the past [five] years. By submitting an offer, offeror represents that the list is complete.
5030-1	SUBCONTRACTOR – IDENTIFICATION (~~JAN 2006~~FEB 2015): If you intend to subcontract, at any tier level, with another business for any portion of the work and that portion either (1) exceeds 10% of your ~~price~~cost, (2) involves access to any "government information," as defined in the clause entitled "Information Security - Definitions," if included, or (3) otherwise involves services critical to your performance of the work (err on the side of inclusion), your offer must identify that business and the portion of work which they are to perform. Identify potential subcontractors by providing the business~~'~~ name, address, phone, taxpayer identification number, **and point of contact.** In determining your responsibility, the state may evaluate your proposed subcontractors. [05-5030-~~1~~2]	~~Optional. Use of this clause is encouraged for all procurements other than commodities.~~ Use of this clause is mandatory if the solicitation includes the **Information Security** clause (7B104), and is encouraged for all procurements other than commodities.
	PART 6	
6001	VI. AWARD CRITERIA	Mandatory. Include this header at the beginning of the appropriate part of the Uniform Solicitation Format. See guidance on the Uniform Solicitation Format at the beginning of this document. In building this section, the following base clauses will serve as a starting point: 1. Award Criteria – Bids 2. Award Criteria – Fixed Price Bidding 3. Award Criteria – Proposals / Best Value Bids These clauses are intended to be used in conjunction with all other applicable clauses in this section.
6005-1	AWARD BY ITEM (JAN 2006): Award will be made by individual item. [06-6005-1]	Use this clause only in conjunction with the clause entitled AWARD CRITERIA – BIDS.

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6010-1	AWARD BY ITEM OR LOT (JAN 2006): Award will be made by individual items and/or complete lot(s). [06-6010-1]	Use this clause only in conjunction with the clause entitled AWARD CRITERIA – BIDS.
6015-1	AWARD BY LOT (JAN 2006): Award will be made by complete lot(s). [06-6015-1]	Use this clause in conjunction with either of the following clauses, AWARD CRITERIA – BIDS, or AWARD CRITERIA – PROPOSALS / BEST VALUE.
6020-1	AWARD CRITERIA – BIDS (JAN 2006): Award will be made to the lowest responsible and responsive bidder(s). [06-6020-1]	Use this clause for all low bid IFBs. If appropriate, use this clause in conjunction with one of the following clauses: Award by Item, Award by Item or Lot, or Award by Lot. If the method for determining the low bid is not crystal clear, use in conjunction with the clause entitled CALCULATING THE LOW BID
6023-1	AWARD CRITERIA – FIXED PRICE BIDDING (JAN 2006): Award will be made to all responsive and responsible Offerors. [06-6023-1]	Use this clause for all fixed price bids. If appropriate, use this clause in conjunction with the clause entitled Bids Received After Award – Fixed Price Bidding.
6025-1	AWARD CRITERIA – BEST VALUE BIDS (JAN 2006): Award will be made to the highest ranked, responsive and responsible offeror whose offer is determined to be the most advantageous to the State. [06-6025-1]	Use this clause in any best value bid. In a BVB, you must define the evaluation criteria. Accordingly, use this clause in conjunction with the evaluation clause entitled Evaluation Factors – Best Value Bids.
6030-1	AWARD CRITERIA – PROPOSALS (JAN 2006): Award will be made to the highest ranked, responsive and responsible offeror whose offer is determined to be the most advantageous to the State. [06-6030-1]	Use this clause in any request for proposals. In a RFP, you must define the evaluation criteria. Accordingly, use this clause in conjunction with the evaluation clause entitled Evaluation Factors – Proposals.
6035-1	AWARD TO MULTIPLE OFFERORS (JAN 2006): Award may be made to more than one Offeror. [06-6035-1]	Use as appropriate.
6040-1	AWARD TO ONE OFFEROR (JAN 2006): Award will be made to one Offeror. [06-6040-1]	Use as appropriate.
6045-1	BIDS RECEIVED AFTER AWARD – FIXED PRICE BIDDING (JAN 2006): Offerors not responding to the initial solicitation may be added to the awarded vendors list provided the bidder furnishes evidence of responsibility and responsiveness to the state's original fixed price bid as authorized by the solicitation. [06-6045-1]	Use as appropriate.
6050-1	CALCULATING THE LOW BID [06-6050-1]	If appropriate, you must develop a unique formula to determine the low bid. Examples: [1. In determining the low bid, the price of the lot alternate will be compared against the sum of the price of the individual lots".]
6055-1	CALCULATING THE LOW BID – MAINTENANCE (JAN 2006): In calculating the low bid, the price of your annual maintenance, less any included initial warranty period, will be considered. [06-6055-1]	
6057-1	COMPETITION FROM PUBLIC ENTITIES (JAN 2006): If a South Carolina	Include this provision if you have any expectation that a

Clause #	Text	Guidance on Use
	governmental entity submits an offer, the Procurement Officer will, when determining the lowest offer, add to the price provided in any offers submitted by non-governmental entities a percentage equivalent to any applicable sales or use tax. S.C. Code Ann. Regs 117-304.1 (Supp. 2004). [06-6057-1]	state agency will submit an offer.
6058-1	DISCUSSIONS AND NEGOTIATIONS – OPTIONAL (FEB 2015) Submit your best terms from both a price and a technical standpoint. Your proposal may be evaluated and your offer accepted without any discussions, negotiations, or prior notice. Ordinarily, nonresponsive proposals will be rejected outright without prior notice. Nevertheless, the State may elect to conduct discussions, including the possibility of limited proposal revisions, but only for those proposals reasonably susceptible of being selected for award. [11-35-1530(6); R.19-445.2095(I)] If improper revisions are submitted during discussions, the State may elect to consider only your unrevised initial proposal, provided your initial offer is responsive. The State may also elect to conduct negotiations, beginning with the highest ranked offeror, or seek best and final offers, as provided in Section 11-35-1530(8). Negotiations may involve both price and matters affecting the scope of the contract, so long as changes are within the general scope of the request for proposals. If negotiations are conducted, the State may elect to disregard the negotiations and accept your original proposal. [06-6058-1]	Mandatory for all RFP solicitations, unless replaced with "Discussions and Negotiations - Required (FEB 2015)," Clause No. 06-6059-1.
6059-1	DISCUSSIONS AND NEGOTIATIONS – REQUIRED (FEB 2015) No award will be made to an offeror until after negotiations have been conducted with that offeror. As provided in Section 11-35-1530, negotiations must begin with the highest ranking offeror; accordingly, submit your best terms from both a price and a technical standpoint. In addition, make sure your offer is responsive; the State will not evaluate or negotiate with a non-responsive offeror, and ordinarily, nonresponsive proposals will be rejected outright without prior notice. The State may elect to conduct discussions, including the possibility of limited proposal revisions, but only for those proposals reasonably susceptible of being selected for award. [11-35-1530(6); R.19-445.2095(I)] If improper revisions are submitted during discussions, the State may elect to consider only your unrevised initial offer, but only if your initial offer is responsive. If a satisfactory contract cannot be negotiated with the highest ranking offeror, the State may elect to conduct negotiations with other offerors. As provided in Section 11-35-1530(8) the State also may elect to make changes within the general scope of the request for proposals and provide all responsive offerors an opportunity to submit their best and final offers. Negotiations may involve both price and matters affecting the scope of the contract, so long as the changes are within the general scope of the request for proposals. [06-6059-1]	Use this clause as an alternative to and replacement for "Discussions and Negotiations – Optional," which is included in all RFPs by default. Use this clause only if the State is willing not to make any award until it has conducted meaningful, good faith negotiations with the offeror to which it intends to make an award. All discussions and negotiations must be conducted in accordance with Guidance & Best Practices for Permissible Communications in a Competitive Sealed Proposal, Procurement Policy Statement 2008-2 (April 28, 2008).
6060-1	EVALUATION FACTORS – BEST VALUE BID (JAN 2006): Offers will be evaluated using only the factors stated below. Numerical weightings are provided for each evaluation factor. All evaluation factors, other than cost (which must be at least 60%), will be considered prior to determining the effect of cost on the score for each offeror. Once evaluation is complete, all responsive offerors will be ranked from most advantageous to least advantageous. [06-6060-1]	By law, cost must be weighted at least 60%. Best value bid evaluation factors may include, but are not limited to, any of the following statutory factors: (a) operational costs that the State would incur if the bid is accepted; (b) quality of the product or service, or its technical

Clause #	Text	Guidance on Use
		competency; (c) reliability of delivery and implementation schedules; (d) maximum facilitation of data exchange and systems integration; (e) warranties, guarantees, and return policy; (f) vendor financial stability; (g) consistency of the proposed solution with the state's planning documents and announced strategic program direction; (h) quality and effectiveness of business solution and approach; (i) industry and program experience; (j) prior record of vendor performance; (k) vendor expertise with engagement of similar scope and complexity; (l) extent and quality of the proposed participation and acceptance by all user groups; (m) proven development methodologies and tools; and (n) innovative use of current technologies and quality results.]
6065-1	EVALUATION FACTORS – PROPOSALS (JAN 2006): Offers will be evaluated using only the factors stated below. Evaluation factors are stated in the relative order of importance, with the first factor being the most important. Once evaluation is complete, all responsive offerors will be ranked from most advantageous to least advantageous. [06-6065-1]	For any Competitive Sealed Proposal, the Procurement Officer must include the unique evaluation factors for this procurement. The request for proposals shall state the relative importance of the factors to be considered in evaluating proposals but shall not require a numerical weighting for each factor. Price may but need not be an evaluation factor. If you have two or more factors with the same weight, that fact must be communicated to the offerors.
6075-1	UNIT PRICE GOVERNS (JAN 2006): In determining award, unit prices will govern over extended prices unless otherwise stated. [06-6075-1]	If Offerors are requested to provide both unit and extended prices, include this clause. If the Offeror miscalculates the extended price, unit price will govern.
	PART 7A	
7A001	VII. TERMS AND CONDITIONS -- A. GENERAL	Mandatory. Include this header at the beginning of the appropriate part of the Uniform Solicitation Format. See guidance on the Uniform Solicitation Format at the beginning of this document.
7A004-1	ASSIGNMENT, NOVATION, AND CHANGE OF NAME, IDENTITY, OR STRUCTURE (~~JAN 2006~~FEB 2015): ~~No contract or its provisions may be assigned, sublet, or transferred without the written consent of the Procurement Officer.~~ (a) Contractor shall not assign this contract, or its rights, obligations, or any other interest arising from this	Mandatory. Do not agree to an assignment without consulting with legal counsel or management.

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	contract, or delegate any of its performance obligations, without the express written consent of the responsible procurement officer. The foregoing restriction does not apply to a transfer that occurs by operation of law (e.g., bankruptcy; corporate reorganizations and consolidations, but not including partial asset sales). Notwithstanding the foregoing, contractor may assign monies receivable under the contract provided that the state shall have no obligation to make payment to an assignee until thirty days after contractor (not the assignee) has provided the responsible procurement officer with (i) proof of the assignment, (ii) the identity (by contract number) of the specific state contract to which the assignment applies, and (iii) the name of the assignee and the exact address or account information to which assigned payments should be made. (b) If contractor amends, modifies, or otherwise changes its name, its identity (including its trade name), or its corporate, partnership or other structure, or its FEIN, contractor shall provide the procurement officer prompt written notice of such change. (c) Any name change, transfer, assignment, or novation is subject to the conditions and approval required by Regulation 19-445.2180, which does not restricts transfers by operation of law. [07-7A004-~~1~~2]	
7A005-1	BANKRUPTCY – GENERAL (~~JAN 2006~~FEB 2015): (a) Notice. In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Using Governmental Unit. This notification shall be furnished within ~~five~~ two (~~5~~2) days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of all State contracts against which final payment has not been made. This obligation remains in effect until final payment under this Contract. (b) Termination. This contract is voidable and subject to immediate termination by the State upon the contractor's insolvency, including the filing of proceedings in bankruptcy. [07-7A005-~~1~~2]	Mandatory. For information technology procurements involving contractor access to government information, use the **Bankruptcy – Government Information** clause (7B007).
7A010-1	CHOICE-OF-LAW (JAN 2006): The Agreement, any dispute, claim, or controversy relating to the Agreement, and all the rights and obligations of the parties shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina, except its choice of law rules. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation. [07-7A010-1]	Mandatory. This clause must be included in every contract. This clause provides that the contract and disputes about it are governed by the laws of this state. (In case you're really interested, "choice of law" rules are those laws of a state which dictate which state's laws apply to a dispute.)
7A015-~~1~~2	CONTRACT DOCUMENTS & ORDER OF PRECEDENCE (~~JAN 2006~~FEB 2015): (a) Any contract resulting from this solicitation shall consist of the following documents: (1) a Record of Negotiations, if any, executed by you and the Procurement Officer, (2) the solicitation, as amended, (3) documentation ~~regarding the~~ of clarifications [11-35-1520(8)] or discussions [11-35-1530(6)] of an offer ~~[e.g., 11-35-1520(8) or 11-35-1530(6)]~~, if applicable, ~~(3) the solicitation, as amended,~~ (4) ~~modifications, if any, to your offer, if accepted by the Procurement Officer,~~ (5) ~~your offer, (6)~~ any statement reflecting the state's final acceptance (a/k/a "award"), and (~~7~~6) purchase orders. These	Mandatory. This clause identifies those documents that form the contract. It also explains how to resolve any inconsistencies among the terms of those documents. Lastly, it explains that documents signed by agencies (using governmental units) are not enforceable.

The highlighted language - "your offer," should be left in.

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	documents shall be read to be consistent and complimentary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. (b) The terms and conditions of documents (1) through (~~6~~5) above shall apply notwithstanding any additional or different terms and conditions in ~~either~~ any other document, including without limitation, (i) a purchase order or other instrument submitted by the State, ~~or~~ (ii) any invoice or other document submitted by Contractor, or (iii) any privacy policy, terms of use, or end user agreement. Except as otherwise allowed herein, the terms and conditions of all such documents shall be void and of no effect. (c) No contract, license, or other agreement containing contractual terms and conditions will be signed by any Using Governmental Unit. Any document signed or otherwise agreed to by persons other than the Procurement Officer shall be void and of no effect. [07-7A015-~~1~~2]	
7A020-1	DISCOUNT FOR PROMPT PAYMENT (JAN 2006): (a) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a discount for prompt payment in conjunction with the offer, offerors awarded contracts may include discounts for prompt payment on individual invoices. (b) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. If the Contractor has not placed a date on the invoice, the due date shall be calculated from the date the designated billing office receives a proper invoice, provided the state annotates such invoice with the date of receipt at the time of receipt. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or, for an electronic funds transfer, the specified payment date. When the discount date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day, [07-7A020-1]	Mandatory. This clause dovetails with the Prompt Payment form appearing on Page Two. If the agency can accommodate faster payments, you may wish to encourage potential Offerors to provide such discounts.
7A025-1	DISPUTES (JAN 2006): (1) Choice-of-Forum. All disputes, claims, or controversies relating to the Agreement shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Richland County, State of South Carolina. Contractor agrees that any act by the Government regarding the Agreement is not a waiver of either the Government's sovereign immunity or the Government's immunity under the Eleventh Amendment of the United State's Constitution. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation. (2) Service of Process. Contractor consents that any papers, notices, or process necessary or proper for the initiation or continuation of any disputes, claims, or controversies relating to the Agreement; for any court action in connection therewith; or for the entry of judgment on any award made,	Mandatory. Use in all contracts. This clause provides that any disputes will be resolved by the chief Procurement Officer, a process required by law. This clause also provides how contractors will accept service of the papers required to initiate a law suit. (In case you're wondering, the "forum" in "choice-of-forum" is the forum in which disputes will be heard. With this clause, we choose the chief Procurement Officers as the forum, not to be confused with the "Roman Forum".)

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	may be served on Contractor by certified mail (return receipt requested) addressed to Contractor at the address provided as the Notice Address on Page Two or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given upon deposit in the United States mail. [07-7A025-1]	
7A030-1	EQUAL OPPORTUNITY (JAN 2006): Contractor is referred to and shall comply with all applicable provisions, if any, of Title 41, Part 60 of the Code of Federal Regulations, including but not limited to Sections 60-1.4, 60-4.2, 60-4.3, 60-250.5(a), and 60-741.5(a), which are hereby incorporated by reference. [07-7A030-1]	When applicable, federal regulations require the inclusion of certain clauses in state contracts. (a) Regarding contracts involving federally assisted construction contracts, see (1) 41 C.F.R. § 60-1.4; can be included by reference per § 60-1.4(b)(1),(d); automatically included per § 60-1.4(e); (2) 41 C.F.R. § 60-4.2; automatically included per § 60-4.9; (3) 41 C.F.R. § 60-4.3; automatically included per § 60-4.9. (b) Regarding requirements for Disabled Veterans, see 41 C.F.R. § 60-250.5; can be included by reference per § 60-250.5(d); automatically included per § 60-250.5(e). (c) Regarding requirements for Disabled Individuals, see 41 C.F.R. § 60-741.5; can be included by reference per § 741.5(d); automatically included per § 60-741.5(e). (d) Legal office has notebook with CFR Title 41, Part 60, and the relevant provisions.
7A035-1	FALSE CLAIMS (JAN 2006): According to the S.C. Code of Laws Section 16-13-240, "a person who by false pretense or representation obtains the signature of a person to a written instrument or obtains from another person any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud a person of that property is guilty" of a crime. [07-7A035-1]	Mandatory This clause informs participants that criminal penalties may accompany any false claims made on the state.
7A040-1	FIXED PRICING REQUIRED (JAN 2006): Any pricing provided by contractor shall include all costs for performing the work associated with that price. Except as otherwise provided in this solicitation, contractor's price shall be fixed for the duration of this contract, including option terms. This clause does not prohibit contractor from offering lower pricing after award. [07-7A040-1]	Mandatory. Use this clause in all solicitations, except in the very rare case of a cost reimbursement contract. Cost reimbursement contracts are defined in Section 11-35-1410(1) and governed by Section 11-35-2010.
7A045-1	~~NON-INDEMNIFICATION~~NO INDEMNITY OR DEFENSE (~~JAN 2006~~FEB 2015): Any term or condition is void to the extent it requires the State to indemnify, defend, or pay attorney's fees to anyone for any reason. [07-7A045-~~1~~2]	Mandatory. The SC Attorney General has repeatedly stated that the state cannot indemnify a vendor. This clause reflects that position.
7A050-1	NOTICE (JAN 2006): (A) After award, any notices shall be in writing and shall be deemed duly given (1) upon actual delivery, if delivery is by hand, (2) upon receipt by the transmitting party of automated confirmation or answer back from the recipient's device if delivery is by telex, telegram, facsimile, or electronic mail, or (3) upon deposit into the United States mail, if postage is prepaid, a return receipt is requested, and either registered or certified mail is used. (B) Notice to contractor shall be to the address identified as the Notice Address on Page Two. Notice to the state shall be to the Procurement Officer's address on the Cover Page. Either party may designate a	Mandatory. This clause applies only after award. Part (A) identifies those methods of services that the parties have agreed are adequate. Part (B) identifies the address to which the parties have agreed that notice may be sent.

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	different address for notice by giving notice in accordance with this paragraph. [07-7A050-1]	
7A055-2	PAYMENT & INTEREST (~~MAY 2011~~FEB 2015): (a) ~~Unless otherwise provided in this Solicitation,~~ The State shall pay the Contractor, after the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified herein, including the purchase order, payment shall not be made on partial deliveries accepted by the Government. (b) Unless otherwise provided herein, including the purchase order, payment will be made by check mailed to the payment address on "Page Two." (c) Notwithstanding any other provision, payment shall be made in accordance with S.C. Code Section 11-35-45, or Chapter 6 of Title 29 (real property improvements) when applicable, which provides the Contractor's exclusive means of recovering any type of interest from the Owner. Contractor waives imposition of an interest penalty unless the invoice submitted specifies that the late penalty is applicable. Except as set forth in this paragraph, the State shall not be liable for the payment of interest on any debt or claim arising out of or related to this contract for any reason. (d) Amounts due to the State shall bear interest at the rate of interest established by the South Carolina Comptroller General pursuant to Section 11-35-45 ("an amount not to exceed fifteen percent each year"), as amended, unless otherwise required by Section 29-6-30. (e) Any other basis for interest, including but not limited to general (pre- and post-judgment) or specific interest statutes, including S.C. Code Ann. Section 34-31-20, are expressly waived by both parties. If a court, despite this agreement and waiver, requires that interest be paid on any debt by either party other than as provided by items (c) and (d) above, the parties further agree that the applicable interest rate for any given calendar year shall be the lowest prime rate as listed in the first edition of the Wall Street Journal published for each year, applied as simple interest without compounding. (f) The State shall have all of its common law, equitable and statutory rights of set-off. [07-7A055-~~2~~3]	Mandatory. IMPORTANT NOTE. Partial payments are very appropriate for many types of contracts, especially service contracts. If payments will be made prior to full performance, the solicitation must explain the conditions upon which partial payment will be made. For example, a janitorial contract may provide that payments will be made on a monthly basis. Software development contracts might provide that payment will be made upon acceptance of certain intermediate deliverables or upon proof of a certain degree of project completion. In the absence of such a provision, this clause provides for payment upon completion. This clause allows the payment method to be dictated in the purchase order. However, since prospective contractors usually need to know this prior to submitting offers, this issue should be addressed in the solicitation. Cross Reference the Purchase Order clause.
7A060-1	PUBLICITY (JAN 2006): Contractor shall not publish any comments or quotes by State employees, or include the State in either news releases or a published list of customers, without the prior written approval of the Procurement Officer. [07-7A060-1]	Mandatory. Seek permission of management before providing a contractor with written approval under this paragraph.
7A065-1	PURCHASE ORDERS (JAN 2006): Contractor shall not perform any work prior to the receipt of a purchase order from the using governmental unit. The using governmental unit shall order any supplies or services to be furnished under this contract by issuing a purchase order. Purchase orders may be used to elect any options available under this contract, e.g., quantity, item, delivery date, payment method, but are subject to all terms and conditions of this contract. Purchase orders may be electronic. No particular form is required. An order placed pursuant to the purchasing card provision qualifies as a purchase order. [07-7A065-1]	Mandatory. Under this clause, purchase orders serve as a "notice to proceed". Ordinarily, the state does not have a right not to issue a purchase order once a contract has been awarded. While purchase orders may not be used to alter the solicitation, certain critical issues are addressed only in purchase orders. Cross reference should be made to the following clauses:

Clause #	Text	Guidance on Use
		1. Delivery – Purchase Order 2. Deliver – Time 3. Contract Documents & Order of Precedent 4. Payment 5. Definition
~~7A070-1~~	~~SETOFF (JAN 2006): The state shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the state with regard to this contract, any other contract with any state department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the state for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. [07-7A070-1]~~	~~Mandatory. This clause has implications when the state has claims against or amounts due from a contractor. Consult with legal counsel regarding this clause.~~
7A072-1	IRAN DIVESTMENT ACT – ONGOING OBLIGATIONS – (JAN 2015): (a) You must notify the procurement officer immediately if, at any time during the contract term, you are added to the Iran Divestment Act List. (b) Consistent with Section 11-57-330(B), you shall not contract with any person to perform a part of the Work, if, at the time you enter into the subcontract, that person is on the then-current version of the Iran Divestment Act List. [07-7A072-1]	Mandatory. Required by the Iran Divestment Act of 2014, S.C. Code Ann. §§ 11-57-10, et seq.
7A075-1	SURVIVAL OF OBLIGATIONS (JAN 2006): The Parties' rights and obligations which, by their nature, would continue beyond the termination, cancellation, rejection, or expiration of this contract shall survive such termination, cancellation, rejection, or expiration, including, but not limited to, the rights and obligations created by the following clauses: Indemnification - Third Party Claims, Intellectual Property Indemnification, and any provisions regarding warranty or audit. [07-7A075-1]	Mandatory. The implications of this clause are illustrated by the following example. If the state buys a widget and a warranty for the widget, the warranty does not end simply because the remainder of the contract is terminated for convenience.
7A080-1	TAXES (JAN 2006): Any tax the contractor may be required to collect or pay upon the sale, use or delivery of the products shall be paid by the State, and such sums shall be due and payable to the contractor upon acceptance. Any personal property taxes levied after delivery shall be paid by the State. It shall be solely the State's obligation, after payment to contractor, to challenge the applicability of any tax by negotiation with, or action against, the taxing authority. Contractor agrees to refund any tax collected, which is subsequently determined not to be proper and for which a refund has been paid to contractor by the taxing authority. In the event that the contractor fails to pay, or delays in paying, to any taxing authorities, sums paid by the State to contractor, contractor shall be liable to the State for any loss (such as the assessment of additional interest) caused by virtue of this failure or delay. Taxes based on Contractor's net income or assets shall be the sole responsibility of the contractor. [07-7A080-1]	Mandatory. Dovetails with clause entitled "Omit Taxes from Price". Clause makes state liable for paying the taxes applicable to sale, use, or delivery of products provided under the contract.
7A085-1	TERMINATION DUE TO UNAVAILABILITY OF FUNDS (JAN 2006): Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled. In the event of a cancellation pursuant to this	Mandatory for any procurement in which a contractual obligation may extend beyond the end of the fiscal year in which the contract is entered.

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	paragraph, contractor will be reimbursed the resulting unamortized, reasonably incurred, nonrecurring costs. Contractor will not be reimbursed any costs amortized beyond the initial contract term. [07-7A085-1]	
7A090-1	THIRD PARTY BENEFICIARY (JAN 2006): This Contract is made solely and specifically among and for the benefit of the parties hereto, and their respective successors and assigns, and no other person will have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Contract as a third party beneficiary or otherwise. [07-7A090-1]	Mandatory. Include this clause unless the State intends that a direct beneficiary of the contractor's performance can sue the contractor to either enforce the contract or recover for breach. (A very, very rare occurrence!) The only contracts even eligible for such an approach would be contracts in which the Contractor was providing direct services to a group.
7A095-1	WAIVER (JAN 2006): The State does not waive any prior or subsequent breach of the terms of the Contract by making payments on the Contract, by failing to terminate the Contract for lack of performance, or by failing to strictly or promptly insist upon any term of the Contract. Only the Procurement Officer has actual authority to waive any of the State's rights under this Contract. Any waiver must be in writing. [07-7A095-1]	This clause is intended to limit unintentional waivers of rights the state may have under a contract.
	PART 7B	
7B001	VII. TERMS AND CONDITIONS -- B. SPECIAL	Mandatory. Include this header at the beginning of the appropriate part of the Uniform Solicitation Format. See guidance on the Uniform Solicitation Format at the beginning of this document.
7B005-1	Section Not Applicable - Intentionally Omitted [07-7B005-1]	Include this clause if there are no special terms in your solicitation.
7B007-1	BANKRUPTCY – GOVERNMENT INFORMATION (FEB 2015) (a) All government information (as defined in the clause herein entitled "Information Security - Definitions") shall belong exclusively to the State, and Contractor has no legal or equitable interest in, or claim to, such information. Contractor acknowledges and agrees that in the event Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, government information in its possession and/or under its control will not be considered property of its bankruptcy estate. (b) Contractor agrees to notify the State within forty-eight (48) hours of any determination that it makes to file for bankruptcy protection, and Contractor further agrees to turn over to the State, before such filing, all government information that is in Contractor's possession in a format that can be readily utilized by the State. (c) In order to protect the integrity and availability of government information, Contractor shall take reasonable measures to evaluate and monitor the financial circumstances of any subcontractor that will process, store, transmit or access government information. [07-7B007-1]	Consider for use in procurements which involve contractor access to or possession of important agency or citizen data. Due to the definitional cross reference in subsection (a), you must also include the Information Security - Definitions clause if this clause is used.
7B025-1	CHANGES (JAN 2006): (1) Contract Modification. By a written order, at any time, and without notice to any surety, the Procurement Officer may, subject to all appropriate adjustments, make changes within the general scope of this contract in any one or more of the following:	This clause should be included in any contract with a value in excess of $100,000 and in any contract with a potential value below that threshold if the state may need the authority to order changes to the contract.

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	(a) drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for the [State] in accordance therewith; (b) method of shipment or packing; (c) place of delivery; (d) description of services to be performed; (e) time of performance (i.e., hours of the day, days of the week, etc.); or, (f) place of performance of the services. Subparagraphs (a) to (c) apply only if supplies are furnished under this contract. Subparagraphs (d) to (f) apply only if services are performed under this contract (2) Adjustments of Price or Time for Performance. If any such change increases or decreases the contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, an adjustment shall be made in the contract price, the delivery schedule, or both, and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract. Failure of the parties to agree to an adjustment shall not excuse the contractor from proceeding with the contract as changed, provided that the State promptly and duly make such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion. (3) Time Period for Claim. Within 30 days after receipt of a written contract modification under Paragraph (1) of this clause, unless such period is extended by the Procurement Officer in writing, the contractor shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the contractor's claim unless the State is prejudiced by the delay in notification. (4) Claim Barred After Final Payment. No claim by the contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this contract. [07-7B025-1]	The Price Adjustments Clause must be used in conjunction with this clause. If you are conducting a procurement for a very large services contract involving customized services and the potential for many post-award contract modifications (such as a large information technology project involving either software development or significant configuration of existing software), consider engaging legal counsel to draft a more thorough changes clause, such as that found in OSE's standard modifications to Part 7 of the AIA A201 (1997). By definition, a "Contract Modification is "a written order signed by the Procurement Officer, directing the contractor to make changes which the changes clause of the contract authorizes the Procurement Officer to order without the consent of the contractor." Section 11-35-310(9).
7B030-1	CISG (JAN 2006): The parties expressly agree that the UN Convention on the International Sale of Goods shall not apply to this agreement. [07-7B030-1]	Recommended for all contracts for the sale of goods. In contracts involving an international sale of goods, the UN Convention on the International Sale of Goods (CISG) governs the rights of the parties and trumps local law such as the Uniform Commercial Code (UCC). CISG expressly allows parties to opt out of CISG. By doing so, the parties rights would be governed by the UCC. Include this clause any time your acquisition may involve a foreign vendor.
7B035-1	COMPLIANCE WITH LAWS (JAN 2006): During the term of the contract, contractor shall comply with all applicable provisions of laws, codes, ordinances, rules, regulations, and tariffs. [07-7B035-1]	Optional. This clause makes the contractor's compliance with applicable laws a contract performance obligation.
7B040-1	CONFERENCE – PRE-PERFORMANCE (JAN 2006): Unless waived by the	Optional.

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	Procurement Officer, a pre-performance conference between the contractor, state and Procurement Officer shall be held at a location selected by the state within five (5) days after final award, and prior to commencement of work under the contract. The responsibilities of all parties involved will be discussed to assure a meeting of the minds of all concerned. The successful contractor or his duly authorized representative shall be required to attend at contractor's expense. [07-7B040-1]	
7B042-1	CONTRACT DOCUMENTS & ORDER OF PRECEDENCE–SOFTWARE LICENSING–SINGLE AGENCY (FEB 2015): Notwithstanding the clause entitled "Contract Documents & Order of Precedence," but as provided in the clause titled "Software Licensing Agreements–Single Solicitation," any contract awarded pursuant to this solicitation shall not include a software licensing agreement. Further, the document titled South Carolina Standard Amendment To End User License Agreements For Commercial Off-The-Shelf Software – Single Agency, which is attached hereto as an exhibit, is offered as information only and does not form part of the contract. [07-7B042-1]	
7B045-1	CONTRACT LIMITATIONS (JAN 2006): No sales may be made pursuant to this contract for any item or service that is not expressly listed. No sales may be made pursuant to this contract after expiration of this contract. Violation of this provision may result in termination of this contract and may subject contractor to suspension or debarment. [07-7B045-1]	Optional. This clause is recommended for all Indefinite Quantity Contracts, such as statewide term contracts.
7B056-1	CONTRACTOR'S LIABILITY INSURANCE – GENERAL (~~MAR 2013~~FEB 2015): (a) Without limiting any of the obligations or liabilities of Contractor, Contractor shall procure from a company or companies lawfully authorized to do business in South Carolina and with a current A.M. Best rating of no less than A: VII, and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work and the results of that work by the contractor, his agents, representatives, employees or subcontractors. (b) Coverage shall be at least as broad as: (1) Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 12 07 covering CGL on an "occurrence" basis, including products-completed operations, personal and advertising injury, with limits no less than $1,000,000 per occurrence. If a general aggregate limit applies, the general aggregate limit shall be twice the required occurrence limit. This contract shall be considered to be an "insured contract" as defined in the policy. (2) Auto Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limits no less than $1,000,000 per accident for bodily injury and property damage. (3) Worker's Compensation: As required by the State of South Carolina, with Statutory Limits, and Employer's Liability Insurance with limit of no less than $1,000,000 per accident for bodily injury or disease.	This clause requires three types of insurance: Commercial General Liability, or CGL; Automobile Liability; and Workers Compensation/Employers Liability. You should always include this clause if you anticipate the contractor will perform substantial services on state property or in a state building. If the contractor will have no presence, or insignificant presence, in the state, you may omit the requirements for Automobile Liability and Workers Compensation/Employers Liability. If you are purchasing goods, especially products with the potential of harming the user or a third party, you should require CGL coverage. If the contract will be performed outside of the state and does not involve the purchase of goods, you may omit the clause entirely. Previous versions of the insurance provision attempted to define each type of coverage required under a CGL policy, which often led to vendor questions and negotiation over the specific language of the clause. This edition simply requires CGL coverage at least as broad as that provided under the most commonly-used policy form. The clause

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	(~~b~~c) Every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them, must be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used. (~~c~~d) For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the State, every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them. Any insurance or self-insurance maintained by the State, every applicable Using Governmental Unit, or the officers, officials, employees and volunteers of any of them, shall be excess of the Contractor's insurance and shall not contribute with it. (~~d~~e) Prior to commencement of the work, the Contractor shall furnish the State with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this section. All certificates are to be received and approved by the State before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The State reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by this section, at any time. (~~e~~f) Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. In addition, the Contractor shall notify the State immediately upon receiving any information that any of the coverages required by this section are or will be changed, cancelled, or replaced. (~~f~~g) Contractor hereby grants to the State and every applicable Using Governmental Unit a waiver of any right to subrogation which any insurer of said Contractor may acquire against the State or applicable Using Governmental Unit by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the State or Using Governmental Unit has received a waiver of subrogation endorsement from the insurer. (~~g~~h) Any deductibles or self-insured retentions must be declared to and approved by the State. The State may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. (~~h~~i) The State reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances. [07-7B056-2~~1~~]	does not dictate the use of this form; rather, it defines the required coverage with reference to it. Given the generic types of coverage and the low limits of coverage stated, the insurance required should be readily available in most circumstances. However, if you become aware that the target vendor community will experience difficulty with this insurance requirement, appropriate adjustments may be necessary. Consult with your management. This clause is intended to cover routine goods and services contracts. There will always be contracts which are unusual or have unusual insurance requirements (examples: implosion of a building, a contract for medical services for inmates, or a contract to handle hazardous waste). If you suspect your procurement may involve special insurance needs, consult with the appropriate subject matter experts (internal risk management staff, legal counsel, the Insurance Reserve Fund, or your general liability carrier, as appropriate). In the event you use this clause on a statewide term contract, the named insured should be as follows: State of South Carolina, including all public procurement units (S.C. Code Section 11-35-4610).

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7B058-1	CONTRACTOR'S LIABILITY INSURANCE – INFORMATION SECURITY AND PRIVACY (FEB 2015) [ASK QUESTIONS NOW: For products providing the coverages required by this clause, the insurance market is evolving. Our research indicates that the requirements stated herein reflect commercially-available insurance products. Any offeror having concerns with any specific requirements of this clause should communicate those concerns to the procurement officer well in advance of opening.] (a) Without limiting any other obligations or liabilities of Contractor, Contractor shall procure from a company or companies lawfully authorized to do business in South Carolina and with a current A.M. Best rating of no less than A: VII, and maintain for the duration of the contract, a policy or policies of insurance against claims which may arise from or in connection with the performance of the work and the results of that work by the contractor, his agents, representatives, employees, subcontractors or any other entity for which the contractor is legally responsible. (b) Coverage must include claims for: (i) information security risks, including without limitation, failure to prevent unauthorized access to, tampering with or unauthorized use of a computer system; introduction of malicious codes, computer viruses, worms, logic bombs, etc., into data or systems; or theft, damage, unauthorized disclosure, destruction, or corruption of information in whatever form; (ii) privacy risks, including (A) failure to properly handle, manage, store, destroy, or otherwise control non-public personally identifiable information in any format; (B) loss or disclosure of confidential information; and (C) any form of invasion, infringement or interference with rights of privacy, including breach of security/privacy laws or regulations; (iii) contractual liability for the contractor's obligations described in the clauses titled "Indemnification - Third Party Claims – Disclosure Of Information" and "Information Use And Disclosure;" and (iv) errors, omissions, or negligent acts in the performance, by the contractor or by any entity for which the contractor is legally responsible, of professional services included in the work. (c) If the work includes content for internet web sites or any publications or media advertisements, coverage must also include claims for actual or alleged infringement of intellectual property rights, invasion of privacy, as well as advertising, media and content offenses. (d) If the work includes software, coverage must also include claims for intellectual property infringement arising out of software and/or content (with the exception of patent infringement and misappropriation of trade secrets) (e) Coverage shall have limits no less than five million ($5,000,000.00) dollars per occurrence and ten million ($10,000,000.00) dollars aggregate. (f) If the insurance required by this clause is procured on a form affording "claims-made" coverage, then (i) all limits stated above as "per occurrence" shall be	1. Risk Assessment & Appropriate Policy Limits. Any contract involving vendor access or hosting of critical or confidential data should directly involve upper management of the using agency in the risk assessment and the decision regarding policy limits. **Using the default policy limits is simply not appropriate.** Any evaluation of the need for such coverage and appropriate policy limits will require a consideration of the type of services being acquired and the type of data involved. To illustrate, a cloud service provider which serves as a data repository for your customer data would present a major risk for data breach losses and potential litigation. Accordingly, the agency may wish to require limits of coverage significantly higher than the default. In contrast, if a contract for web development involves NO access to your data, the risk may be limited to any risk associated with the website's content. Do not focus on the contract value, and do not default to your contractor's existing policy limits. Rather, consider the risks involved in exposure of the data involved. The exposure can be quite significant. See below for a partial list of the types of losses potentially involved in a data breach. 2. Sample Types of Losses from Data Breach a. Costs of forensic investigation of the breach, the data released/lost/damaged, and the potential parties affected. b. Costs (legal, public relations, call centers, websites, etc.)involved in preparation and distribution of notice and information regarding breach. c. Damage mitigation, including credit monitoring, ID theft protection & rehabilitation services, etc. d. Legal defense costs and fees. e. Cost to respond to regulatory investigations and pay any regulatory fines. f. Costs to restore your damaged information assets (software apps, data, etc.) 3. In determining the appropriate policy limits, do not consider the total, potential financial consequences of a breach; rather, consider what losses insurance will cover.

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	understood to mean "per claim" or "per occurrence," as is consistent with the terms of the "claims-made" policy; and (ii) such claims-made insurance shall provide for a retroactive date no later than the date the contract is awarded. (g) All terms of this clause shall survive termination of the contract and shall continue until thirty (30) days past the final completion of the work, including the performance of any warranty work. In addition, contractor shall maintain in force and effect any "claims-made" coverage for a minimum of two (2) years after final completion of all work or services to be provided hereunder. Contractor shall purchase an extended reporting period, or "tail coverage," if necessary to comply with the latter requirement. (h) Every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them, must be covered as additional insureds on the policy or policies of insurance required by this clause. (i) For any claims related to this contract, the insurance coverage required by this clause shall be primary insurance as respects the State, every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them. Any insurance or self-insurance maintained by the State, every applicable Using Governmental Unit, or the officers, officials, employees and volunteers of any of them, shall be excess of the Contractor's insurance and shall not contribute with it. (j) Prior to commencement of the work, the Contractor shall furnish the State with original certificates of insurance for every applicable policy effecting the coverage required by this clause. All certificates are to be received and approved by the Procurement Officer before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The State reserves the right to require complete, certified copies of all required insurance policies, including policy declarations and any endorsements required by this section, at any time. (k) Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. In addition, the Contractor shall notify the State immediately upon receiving any information that any of the coverages required by this clause are or will be changed, cancelled, or replaced. (l) Contractor hereby grants to the State and every applicable Using Governmental Unit a waiver of any right to subrogation which any insurer of said Contractor may acquire against the State or applicable Using Governmental Unit by virtue of the payment of any loss under such insurance as is required by this clause. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the State or Using Governmental Unit has received a waiver of subrogation endorsement from the insurer. (m) Any deductibles or self-insured retentions must be declared to and approved by the State. The State may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. [07-	In determining the appropriate policy limits, the using agency may wish to consider published information regarding average minimum and maximum per record, per event costs by industry. For example, Ponemon Institute, LLC, sponsored by IBM, publishes an annual white paper on this topic entitled "Cost of Data Breach Study for the US." The study is available at www.ibm.com/services/costofbreach. (last visited Jan. 26, 2015)

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	7B058-1]	
7B060-1	CONTRACTOR PERSONNEL (JAN 2006): The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. [07-7B060-1]	Recommended for any contract involving the presence of contractor's employees or subcontractors on property controlled by the state.
7B065-1	CONTRACTOR'S OBLIGATION – GENERAL (JAN 2006): The contractor shall provide and pay for all materials, tools, equipment, labor and professional and non-professional services, and shall perform all other acts and supply all other things necessary, to fully and properly perform and complete the work. The contractor must act as the prime contractor and assume full responsibility for any subcontractor's performance. The contractor will be considered the sole point of contact with regard to all situations, including payment of all charges and the meeting of all other requirements. [07-7B065-1]	Recommended for all contracts involving the provision of services.
7B067-1	CONTRACTOR'S USE OF STATE PROPERTY (JAN 2006): Upon termination of the contract for any reason, the State shall have the right, upon demand, to obtain access to, and possession of, all State properties, including, but not limited to, current copies of all State application programs and necessary documentation, all data, files, intermediate materials and supplies held by the contractor. Contractor shall not use, reproduce, distribute, display, or sell any data, material, or documentation owned exclusively by the State without the State's written consent, except to the extent necessary to carry out the work. [07-7B067-1]	If the state will provide the contractor with state-owned property during performance of the contract, include this clause. Cross-reference the Ownership of Data & Materials clause.
7B075-1	DEFAULT (JAN 2006): (a) (1) The State may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to: (i) Deliver the supplies or to perform the services within the time specified in this contract or any extension; (ii) Make progress, so as to endanger performance of this contract (but see paragraph (a)(2) of this clause); or (iii) Perform any of the other material provisions of this contract (but see paragraph (a)(2) of this clause). (2) The State's right to terminate this contract under subdivisions (a)(1)(ii) and (1)(iii) of this clause, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Procurement Officer) after receipt of the notice from the Procurement Officer specifying the failure. (b) If the State terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Procurement Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated. (c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond	Optional. Use this clause for clauses with an expected value in excess of $100,000. [An amount should be specified. FYI - $100,000 is the small acquisition threshold for the federal acquisition regulations – Part 13.] For contracts below this threshold, use the Short Version. A "termination for cause," "termination for default," or "Default" clause is NOT essential. Under the common law, parties can terminate a contract without such a clause. Nevertheless, a Default clause does have benefits.

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	the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the State in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor. (d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule. (e) If this contract is terminated for default, the State may require the Contractor to transfer title and deliver to the State, as directed by the Procurement Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Procurement Officer, the Contractor shall also protect and preserve property in its possession in which the State has an interest. (f) The State shall pay contract price for completed supplies delivered and accepted. The Contractor and Procurement Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property; if the parties fail to agree, the Procurement Officer shall set an amount subject to the Contractor's rights under the Disputes clause. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the Procurement Officer determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders. (g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the termination had been issued for the convenience of the State. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the State, the contract shall be adjusted to compensate for such termination and the contract modified accordingly subject to the contractor's rights under the Disputes clause. (h) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this contract. [07-7B075-1]	
7B080-1	DEFAULT – SHORT FORM (~~JAN 2006~~FEB 2015): The state may terminate this contract, or any part hereof, for cause in the event of any default by the contractor, or if the contractor fails to comply with any material contract terms and conditions, or fails to	Optional. Use this clause for clauses with an expected value of $100,000 or less. [An amount should be specified. FYI - $100,000 is the small acquisition threshold for the

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	provide the state, upon request, with adequate assurances of future performance. In the event of termination for cause, the state shall not be liable to the contractor for any amount for supplies or services not accepted, and the contractor shall be liable to the state for any and all rights and remedies provided by law. If it is determined that the state improperly terminated this contract for default, such termination shall be deemed a termination for convenience. [07-7B080-~~1~~2]	federal acquisition regulations – Part 13.] For contracts above this threshold, use the standard Default clause.
7B085-1	DISPOSAL OF PACKAGING (JAN 2006): Contractor shall dispose of all wrappings, crating, and other disposable materials pertaining to this contract at the end of each working day and upon completion of installation. [07-7B085-1]	Recommended for any contract involving inside delivery, setup, or installation.
7B090-1	ESTIMATED QUANTITY - PURCHASES FROM OTHER SOURCES (JAN 2006): The state may bid separately any unusual requirements or large quantities of supplies covered by this contract. [07-7B090-1]	Include only in Indefinite Quantity Contracts, such as statewide term contracts..
7B095-1	ESTIMATED QUANTITY - UNKNOWN (JAN 2006): The total quantity of purchases of any individual item on the contract is not known. The State does not guarantee that the State will buy any specified item or total amount. The omission of an estimated purchase quantity does not indicate a lack of need but rather a lack of historical information. [07-7B095-1]	Include in all Indefinite Quantity Contracts, such as statewide term contracts.
7B097-1	ILLEGAL IMMIGRATION (NOV 2008): (An overview is available at www.procurement.sc.gov) By signing your offer, you certify that you will comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws and agree to provide to the State upon request any documentation required to establish either: (a) that Title 8, Chapter 14 is inapplicable to you and your subcontractors or sub-subcontractors; or (b) that you and your subcontractors or sub-subcontractors are in compliance with Title 8, Chapter 14. Pursuant to Section 8-14-60, "A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony, and, upon conviction, must be fined within the discretion of the court or imprisoned for not more than five years, or both." You agree to include in any contracts with your subcontractors language requiring your subcontractors to (a) comply with the applicable requirements of Title 8, Chapter 14, and (b) include in their contracts with the sub-subcontractors language requiring the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14. [07-7B097-1]	
7B100-2	INDEMNIFICATION-THIRD PARTY CLAIMS – GENERAL (NOV 2011): Notwithstanding any limitation in this agreement, and to the fullest extent permitted by law, Contractor shall defend and hold harmless Indemnitees for and against any and all suits or claims of any character (and all related damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities) by a third party which are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property arising out of or in connection with the goods or services acquired hereunder or caused in whole or in part by any act or omission of contractor, its subcontractors, their employees, workmen, servants, agents, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable,	Optional. This clause may be used in any procurement and should be included if contractor's personnel will be on the state's property.

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	regardless of whether or not caused in part by an Indemnitee, and whether or not such claims are made by a third party or an Indemnitee; however, if an Indemnitee's negligent act or omission is subsequently determined to be the sole proximate cause of a suit or claim, the Indemnitee shall not be entitled to indemnification hereunder. Contractor shall be given timely written notice of any suit or claim. Contractor's obligations hereunder are in no way limited by any protection afforded under workers' compensation acts, disability benefits acts, or other employee benefit acts. This clause shall not negate, abridge, or reduce any other rights or obligations of indemnity which would otherwise exist. The obligations of this paragraph shall survive termination, cancelation, or expiration of the parties' agreement. This provision shall be construed fairly and reasonably, neither strongly for nor against either party, and without regard to any clause regarding insurance. As used in this clause, "Indemnitees" means the State of South Carolina, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees. [07-7B100-2]	
7B102-1	INDEMNIFICATION - THIRD PARTY CLAIMS – DISCLOSURE OF INFORMATION (FEB 2015) (a) Without limitation, Contractor shall defend and hold harmless Indemnitees from and against any and all suits, claims, investigations, or fines (hereinafter "action") of any character (and all related damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities) by a third party which arise out of or in connection with a disclosure of government information (as defined in the clause titled Information Security - Definitions) caused in whole or in part by any act or omission of contractor, its subcontractors at any tier, their employees, workmen, servants, agents, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by an Indemnitee, and whether or not such action is brought by a third party or an Indemnitee, but only if the act or omission constituted a failure to perform some obligation imposed by the contract or the law. (b) Indemnitee must notify contractor in writing within a reasonable period of time after Indemnitee first receives written notice of any action. Indemnitee's failure to provide or delay in providing such notice will relieve contractor of its obligations under this clause only if and to the extent that such delay or failure materially prejudices contractors ability to defend such action. Indemnitee must reasonably cooperate with contractor's defense of such actions (such cooperation does not require and is without waiver of an Indemnitees attorney/client, work product, or other privilege) and, subject to Title 1, Chapter 7 of the South Carolina Code of Laws, allow contractor sole control of the defense, so long as the defense is diligently and capably prosecuted. Indemnitee may participate in contractor's defense of any action at its own expense. Contractor may not, without Indemnitee's prior written consent, settle, compromise, or consent to the entry of any judgment in any such commenced or threatened action unless such settlement, compromise or consent (i) includes an unconditional release of Indemnitee from all liability related to such commenced or threatened action, and (ii) is solely	Consider for use in all services procurements which involve contractor access to or possession of important agency or citizen data. Due to critical cross-references and interlocking obligations, you also must include the **Information Security - Definitions** and **Information Use and Disclosure** clauses if this clause is used.

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	monetary in nature and does not include a statement as to, or an admission of fault, culpability or failure to act by or on behalf of, an Indemnitee or otherwise adversely affect an Indemnitee. Indemnitee's consent is necessary for any settlement that requires Indemnitee to part with any right or make any payment or subjects Indemnitee to any injunction. (c) Notwithstanding any other provision, contractor's obligations pursuant to this clause are without any limitation whatsoever. Contractor's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of the contract. This provision shall be construed fairly and reasonably, neither strongly for nor against either party, and without regard to any clause regarding insurance. (d) "Indemnitee" means the State of South Carolina, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees. [07-7B102-1]	

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~~7B105-1~~7B103-1	INDEMNIFICATION -INTELLECTUAL PROPERTY ~~INFRINGEMENT~~ (JAN 2006): (a) Without limitation and notwithstanding any provision in this agreement, Contractor shall, upon receipt of notification, defend and indemnify the State, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees against all actions, proceedings or claims of any nature (and all damages, settlement payments, attorneys' fees (including inside counsel), costs, expenses, losses or liabilities attributable thereto) by any third party asserting or involving an IP right related to an acquired item. State shall allow Contractor to defend such claim so long as the defense is diligently and capably prosecuted. State shall allow Contractor to settle such claim so long as (i) all settlement payments are made by Contractor, and (ii) the settlement imposes no non-monetary obligation upon State. State shall reasonably cooperate with Contractor's defense of such claim. (b) In the event an injunction or order shall be obtained against State's use of any acquired item, or if in Contractor's opinion, the acquired item is likely to become the subject of a claim of infringement or violation of an IP right, Contractor shall, without in any way limiting the foregoing, and at its expense, either: (1) procure for State the right to continue to use, or have used, the acquired item, or (2) replace or modify the acquired item so that it becomes non-infringing but only if the modification or replacement does not adversely affect the specifications for the acquired item or its use by State. If neither (1) nor (2), above, is practical, State may require that Contractor remove the acquired item from State, refund to State any charges paid by State therefor, and take all steps necessary to have State released from any further liability. (c) Contractors obligations under this paragraph do not apply to a claim to the extent (i) that the claim is caused by Contractor's compliance with specifications furnished by the State unless Contractor knew its compliance with the State's specifications would infringe an IP right, or (ii) that the claim is caused by Contractor's compliance with specifications furnished by the State if the State knowingly relied on a third party's IP right to develop the specifications provided to Contractor and failed to identify such product to Contractor. (d) As used in this paragraph, these terms are defined as follows: "IP right(s)" means a patent, copyright, trademark, trade secret, or any other proprietary right. "Acquired item(s)" means the rights, goods, or services furnished under this agreement. "Specification(s)" means a detailed, exact statement of particulars such as a statement prescribing materials, dimensions, and quality of work. (e) Contractor's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of this Agreement. [07-~~7B105~~7B103-1]	Optional. Ordinarily, this clause need not be used for an acquisition of goods only (an acquisition covered by the UCC), as long as you do not allow the contractor to insert any limitation of damages, remedy, or warranty disclaimers. Otherwise, this clause should be widely used in all contracts. This clause should also be used for acquisitions of goods involving detailed design specifications, such as school bus procurements.

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7B104-1	INFORMATION SECURITY - DEFINITIONS (FEB 2015) The following definitions are used in those clauses that cross reference this clause. **Compromise** means disclosure of information to unauthorized persons, or a violation of the security policy of a system in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object may have occurred. Without limitation, the term "compromise" includes copying the data through covert network channels, or copying the data to unauthorized media, or disclosure of information in violation of any obligation imposed by this contract. **Data** means a subset of information in an electronic format that allows it to be retrieved or transmitted. **Government information** means information (i) provided to Contractor by, or generated by Contractor for, the using governmental unit, or (ii) acquired or accessed by Contractor as a result of performing the Work. Without limiting the foregoing, government information includes any information that Contractor acquires or accesses by software or web-based services, which includes, without limitation, any metadata or location data. Government information excludes unrestricted information. **Information** means any communication or representation of knowledge such as facts, statistics, or opinions, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual. **Information system** means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information. **Public information** means any specific information, regardless of form or format, that the State has actively and intentionally disclosed, disseminated, or made available to the public. Information is not public information solely because it may be subject to inspection pursuant to an unfulfilled public records request. **Software** means any computer program accessed or used by the Using Governmental Unit or a third party pursuant to or as a result of this contract. **Third party** means any person or entity other than the Using Governmental Unit, the Contractor, or any subcontractors at any tier. **Unrestricted information** means (1) public information acquired other than through performance of the work, (2) information acquired by Contractor prior to contract formation, (3) information incidental to your contract administration, such as financial, administrative, cost or pricing, or management information, and (4) any ideas, concepts, know-how, methodologies, processes, technologies, techniques which Contractor develops or learns in connection with Contractor's performance of the work. **Web-based service** means a service accessed over the Internet and acquired, accessed, or used by the using governmental unit or a third party pursuant to or as a result of this contract, including without limitation, cloud services, software-as-a-service, and hosted computer services. [07-7B104-1]	Use this clause any time you use a clause that references these definitions.
7B105-1	INFORMATION SECURITY - SAFEGUARDING REQUIREMENTS (FEB 2015) (a) *Definitions*. The terms used in this clause shall have the same meaning as the	Consider for use in all procurements which involve contractor access to or possession of important agency or

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	terms defined in the clause titled Information Security – Definitions. In addition, as used in this clause— **Clearing** means removal of data from an information system, its storage devices, and other peripheral devices with storage capacity, in such a way that the data may not be reconstructed using common system capabilities (i.e., through the keyboard); however, the data may be reconstructed using laboratory methods. **Intrusion** means an unauthorized act of bypassing the security mechanisms of a system. **Media** means physical devices or writing surfaces including but not limited to magnetic tapes, optical disks, magnetic disks, large scale integration memory chips, and printouts (but not including display media, e.g., a computer monitor, cathode ray tube (CRT) or other (transient) visual output) onto which information is recorded, stored, or printed within an information system. **Safeguarding** means measures or controls that are prescribed to protect information. **Voice** means all oral information regardless of transmission protocol. (b) *Safeguarding Information*. Without limiting any other legal or contractual obligations, contractor shall implement and maintain reasonable and appropriate administrative, physical, and technical safeguards (including without limitation written policies and procedures) for protection of the security, confidentiality and integrity of the government information in its possession. In addition, contractor stall apply security controls when the contractor reasonably determines that safeguarding requirements, in addition to those identified in paragraph (c) of this clause, may be required to provide adequate security, confidentiality and integrity in a dynamic environment based on an assessed risk or vulnerability. (c) *Safeguarding requirements and procedures*. Contractor shall apply the following basic safeguarding requirements to protect government information from unauthorized access and disclosure: (1) Protecting information on public computers or Web sites*:* Do not process government information on public computers (e.g., those available for use by the general public in kiosks, hotel business centers) or computers that do not have access control. Government information shall not be posted on Web sites that are publicly available or have access limited only by domain/Internet Protocol restriction. Such information may be posted to web pages that control access by user ID/password, user certificates, or other technical means, and that provide protection via use of security technologies. Access control may be provided by the intranet (versus the Web site itself or the application it hosts). (2) Transmitting electronic information. Transmit email, text messages, blogs, and similar communications that contain government information using technology and processes that provide the best level of security and privacy available, given facilities, conditions, and environment. (3) Transmitting voice and fax information. Transmit government information via voice and fax only when the sender has a reasonable assurance that access is limited to	citizen data. The requirements reflected herein are minimal and should not be relied upon as a default. In compliance with internal agency policies governing information security, each agency must determine for itself whether the services acquired from the contractor warrant the imposition of additional controls by contract. Agencies should be aware that commercial providers of commodity-type services typically organize their business models and services around the concept of shared resources and devices for a broad and diverse customer base. Therefore, unless an organization obtains fully dedicated services from a commercial service provider, there may be a need for greater reliance on compensating security controls by the agency to provide the necessary protections for the information system that relies on those external services. Internal agency assessments of risk and risk mitigation activities are necessary to address this situation.

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	authorized recipients. (4) Physical and electronic barriers. Protect government information by at least one physical and one electronic barrier (e.g., locked container or room, login and password) when not under direct individual control. (5) Sanitization. At a minimum, clear information on media that have been used to process government information before external release or disposal. Overwriting is an acceptable means of clearing media in accordance with National Institute of Standards and Technology 800–88, Guidelines for Media Sanitization, at http://csrc.nist.gov/publications/nistpubs/800-88/NISTSP800-88_with-errata.pdf. (6) Intrusion protection. Provide at a minimum the following protections against intrusions and compromise: (i) Current and regularly updated malware protection services, e.g., anti-virus, antispyware. (ii) Prompt application of security-relevant software upgrades, e.g., patches, service packs, and hot fixes. (7) Transfer limitations. Transfer government information only to those subcontractors that both require the information for purposes of contract performance and provide at least the same level of security as specified in this clause. (d) *Subcontracts.* Any reference in this clause to Contractor also includes any subcontractor at any tier. Contractor is responsible for, and shall impose by agreement requirements at least as secure as those imposed by this clause on, any other person or entity that contractor authorizes to take action related to government information. (e) *Other contractual requirements regarding the safeguarding of information.* This clause addresses basic requirements and is subordinate to any other contract clauses or requirements to the extent that it specifically provides for enhanced safeguarding of information or information systems. [07-7B105-1]	

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7B106-1	INFORMATION SECURITY – LOCATION OF DATA (FEB 2015) Notwithstanding any other provisions, contractor is prohibited from processing, storing, transmitting, or accessing government information, as defined in the clause titled Information Security - Definitions, outside the continental United States. For clarity, this obligation is a material requirement of this contract and applies to subcontractors at any tier. [07-7B106-1]	Consider for use in procurements where Contractor will have important agency or citizen data hosted in Contractor's computer systems. Given the common use of data centers located around the globe and the cost of hosting all data in the continental US, Using Agencies should be aware that this requirement will increase costs and may limit competition. These factors should be weighed against the risk of exposing the data to laws and social forces in other countries, particularly where the using agency will trust the contractor with data classified as Confidential or Restricted under the State's Data Classification Schema. Due to critical cross-references, you must also use the **Information Security - Definitions** clause if this clause is used. Ordinarily, you would not use this clause without also including the **Information Use and Disclosure** clause. You should also consider inclusion of the **Offshore Contracting Prohibited** clause.
7B108-1	INFORMATION USE AND DISCLOSURE (FEB 2015) Except to the extent necessary for performance of the work, citizens should not be required to share information with those engaged by the government in order to access services provided by the government and such information should be used by those engaged by the government only to the extent necessary to perform the work acquired; accordingly, this clause addresses basic requirements for the Contractor's use and disclosure of government information, which expressly includes, but is not limited to, information provided by or obtained from the citizens. Anonymizing information does not resolve the foregoing concern. This clause should be broadly interpreted to effectuate this intent. Every obligation in this clause is material. Absent express reference to this clause, this clause supersedes any other clause to the extent of any inconsistency unless and to the extent the other clause provides greater protection for government information. (a) *Definitions.* The terms used in this clause shall have the same meaning as the terms defined in the clause titled Information Security – Definitions. (b) *Legal mandates*. Contractor shall be permitted to use, disclose, or retain government information to the limited extent necessary to comply with any requirement imposed on Contractor by law. If it is necessary for Contractor to use, disclose, or retain government information in order to comply with a law, Contractor shall provide using governmental unit with written notice, including a description of the circumstances and applicable law, in advance of such use, disclosure or retention except to the extent expressly prohibited by law. (c) *Flow down.* Any reference in this clause to Contractor also includes any subcontractor at any tier. Contractor is responsible for, and shall impose by agreement	Consider for use in all services procurements which involve contractor access to or possession of important agency or citizen data. Due to critical cross-references, you must also use the **Information Security - Definitions** and **Information Use and Disclosure – Standards** clauses if this clause is used. Ordinarily, you would not use this clause without also including the **Indemnification – Third Party Claims – Disclosure of Information** clauses.

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	the requirements of this clause on, any other person or entity that contractor authorizes to take action related to government information. (d) *Collecting Information*. Contractor must gather and maintain government information only to the minimum extent necessary to accomplish the work. (e) *Rights, Disclosure and Use.* Except as otherwise expressly provided in this solicitation, Contractor agrees NOT to either (1) use or disclose government information, or (2) retain government information after termination or expiration of this contract. Contractor acquires no rights in any government information except the limited rights to use, disclose and retain the government information in accordance with the terms of this solicitation. To the extent reasonably necessary to perform the work, Contractor may: (i) use (including access, process, transmit, and store) and maintain the government information itself; and (ii) disclose government information to persons having a need-to-know (e.g., subcontractors). Before disclosing government information to a subcontractor or third party, Contractor shall give the using governmental unit detailed written notice of both the reason for disclosure and the identity and location of the recipient. The notice shall be provided no later than fifteen (15) business days in advance of the disclosure. (f) *Return*. Notwithstanding the using governmental unit's failure to perform or the pendency of a dispute, Contractor agrees to promptly deliver to the using governmental unit (or destroy, at the using governmental unit's option) all government information in its possession as and upon written request of using governmental unit (provided that, if the contract has not expired or been terminated, Contractor shall be excused from the performance of any work reasonably dependent on Contractor's further access to such government information). (g) *Privacy Policy & Applicable Laws*. Without limiting any other legal or contractual obligations imposed by this contract or the law, Contractor shall (a) comply with its own privacy policies and written privacy statements relevant to the work, and (b) comply with (1) all laws applicable to Contractor regarding government information, and (2) all laws and standards identified in the clause, if included, entitled Information Use and Disclosure – Standards. (h) *Actions Following Disclosure*. Immediately upon discovery of a compromise or improper use of government information, Contractor shall take such action as may be necessary to preserve forensic evidence and eliminate the cause of the compromise or improper use. As soon as practicable, but no later than twenty-four hours after discovery, Contractor shall notify using governmental unit of the compromise or improper use, including a description of the circumstances of the use or compromise. As soon as practicable after discovery, Contractor shall undertake a thorough forensic investigation of any compromise or improper use and provide the using governmental unit all information necessary to enable the using governmental unit to fully understand the nature and extent of the compromise or improper use. With regard to any compromise or improper use of government information, Contractor shall: (1) provide any notification to third parties legally required to be provided such notice by	

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	Contractor, and if not (e.g., if legally required of the using governmental unit), Contractor shall reimburse using governmental unit for the cost of providing such notifications; (2) pay all costs and expenses for at least two years of identity theft monitoring services (including without limitation, credit monitoring) and identity theft restoration services for any such affected individuals receiving notice where such services are appropriate given the circumstances of the incident and the nature of the information compromised; (3) undertake any other measures that are customary and reasonable for an entity to take when experiencing a similar disclosure, (4) pay any related fines or penalties imposed on the using governmental unit, and (5) reimburse the Using Governmental Unit all costs reasonably incurred for communications and public relations services involved in responding to the compromise or improper us. Notwithstanding any other provision, contractor's obligations pursuant to this item (h) are without limitation. (j) *Survival & Remedy.* All the obligations imposed by this paragraph are material. The obligations of this section shall survive termination or expiration of the contract. Without limiting any rights the using governmental unit may have, and notwithstanding any other term of this contract, Contractor agrees that using governmental unit may have no adequate remedy at law for a breach of Contractor's obligations under this clause and therefore the using governmental unit shall be entitled to pursue equitable remedies in the event of a breach of this clause. [07-7B108-1]	
7B110-1	INFORMATION USE AND DISCLOSURE – STANDARDS (FEB 2015) To the extent applicable: (a) Breach of security of state agency data; notification; rights and remedies of injured parties; penalties; notification of Consumer Protection Division, S.C. Code Ann. § 1-11-490. (b) South Carolina Financial Identity Fraud and Identity Theft Protection Act (FIFITPA), 2008 Act 190, as amended. Solely for purposes of Section 39-1-90 of the South Carolina Code of Laws, as amended, Contractor is deemed to be the owner of government information, as defined herein, and Contractor agrees that the Using Governmental Unit is not a licensee. (c) The South Carolina Family Privacy Protection Act of 2002, S.C. Code Ann. §§ 30-2-10, et seq. (d) Personal Identifying Information Privacy Protection, S.C. Code Ann. §§ 30-2-310 et seq. (e) Data Breach Notification, 2014 Act No. 286, § 117.117, as revised in any future annual appropriations act. [07-7B110-1]	Consider for use in all services procurements which involve contractor access to or possession of important agency or citizen data. Due to critical cross-references, you also must use both the **Information Security - Definitions** and **Information Use and Disclosure** clauses, if this clause is used. **PRIOR TO INCLUDING THIS CLAUSE IN ANY SOLICITATION THE PROCUREMENT OFFICER IS STRONGLY CAUTIONED TO CONSULT WITH THE USING AGENCY TO DETERMINE IF ANY SPECIFIC LEGAL STANDARDS SHOULD BE ADDED TO OR REMOVED FROM THIS CLAUSE.** Other standards which may be applicable include, but are not limited to, the following: (1) FISMA: Federal Information Security Management Act, 44 U.S.C. §§3541, et seq. (2) HIPAA: Health Insurance Portability and Accountability Act of 1996) and HITECH (Health Information Technology for Economic and Clinical Health Act of 2009); Privacy Rule at 45 C.F.R. 160 & 164 (3) FERPA: Family Educational Rights and Privacy Act, 20

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		U.S.C. §1232g (4) GLB: Gramm–Leach–Bliley Act; Financial Privacy Rule codified at 15 U.S.C. §§ 6801–6809 (5) IRS Publication 1075 (6) IRC § 6103(p)(4) (26 U.S.C. § 6103(p)(4)) (7) FCRA: Fair Credit Reporting Act, 15 U.S.C. §§1681 et seq. (8) FACT Act: Fair and Accurate Credit Transactions Act, PL 108-159 (2003) (Disposal Rule at 16 CFR Part 682) (9) FTC: Regulations promulgated by the Federal Trade Commission collectively known as the "Red Flags Rule," found at 16 CFR 681 (10) CJIS: Criminal Justice Information Services Security Policy, published by Federal Bureau of Investigation, U.S. Department of Justice; current version 5.1 (July 13, 2012) (11) PCI DSS (Payment Card Industry Data Security Standard): the current version of PCI DSS published on the PCI SSC (PCI Security Standards Council) website
7B115-1	LICENSES AND PERMITS (JAN 2006): During the term of the contract, the Contractor shall be responsible for obtaining, and maintaining in good standing, all licenses (including professional licenses, if any), permits, inspections and related fees for each or any such licenses, permits and /or inspections required by the State, county, city or other government entity or unit to accomplish the work specified in this solicitation and the contract. [07-7B115-1]	Use for service contracts if you expect some licensing or permitting requirement to apply to the contractor's performance obligations.
7B120-1	MATERIAL AND WORKMANSHIP (JAN 2006): Unless otherwise specifically provided in this contract, all equipment, material, and articles incorporated in the work covered by this contract are to be new and of the most suitable grade for the purpose intended. [07-7B120-1]	Ordinarily, this clause should be used in all procurements involving the acquisition of any equipment or other material. It does not apply to acquisitions for used supplies.

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7B122-1	OFFSHORE CONTRACTING PROHIBITED (FEB 2015) No part of the resulting contract from this solicitation may be performed offshore of the United States by persons located offshore of the United State or by means, methods, or communications that, in whole or in part, take place offshore of the United States. [07-7B122-1]	Consider for use in all ITMO services procurements which involve contractor access to or possession of important agency or citizen data. Ordinarily, this clause would be included in contracts acquiring software as a service and other hosted services. Given the common use of data and call centers located around the globe and the cost of hosting all data in the continental US, Using Agencies should be aware that this requirement will increase costs and may limit competition. These factors should be weighed against the risk of exposing the data to laws and social forces in other countries, particularly where the using agency will trust the contractor with data classified as Confidential or Restricted under the State's Data Classification Schema. You may also consider inclusion of the **Information Security – Data Location** clause.
7B125-1	OWNERSHIP OF DATA & MATERIALS (JAN 2006): All data, material and documentation prepared for the state pursuant to this contract shall belong exclusively to the State. [07-7B125-1]	Cross-reference the Contractor's Use of State Property clause.
7B130-1	PACK SIZE - BUNDLING (JAN 2006): You may bundle units differently than called for by the bidding schedule provided your offer explains how you bundle units. [07-7B130-1]	Optional. As needed.
7B135-1	PACKAGING (JAN 2006): Alternate packaging will be given consideration. [07-7B135-1]	Optional. As needed.
7B140-1	PALLETIZING (JAN 2006): Palletized products must be furnished on hardwood pallets. [07-7B140-1]	Optional. As needed.
7B145-1	PARTIAL SHIPMENTS (JAN 2006): No partial shipments on any item will be accepted. [07-7B145-1]	Optional. As needed.
7B150-1	PERFORMANCE BOND REQUIRED – ITMO (JAN 2006): As a condition of the execution of the contract, the contractor shall supply a performance bond; certificate of deposit; cash; an unconditional, irrevocable, standby letters of credit; or marketable securities, or provide other financial arrangements whereby funds are pledged to the benefit of the State, are not under the control of the contractor, are payable to the State upon written demand to the holder of the security, and are subject to the direction of the State if any of the circumstances set forth in sub-sections below occur. This security will protect, indemnify, and save harmless the State from all costs and damages by reason of the contractor's default, breach, or failure to satisfactorily complete any of the following terms: Payment to all entities, individuals, and the like furnishing of labor or materials in connection with this contract; and/or The successful execution of the final implementation plan, including satisfactorily meeting the performance or test requirements on the dates specified in the final	Consult with management and/or legal counsel.

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	implementation plan and the acceptance requirements and/or Full and satisfactory performance of the ongoing obligations contained in this RFP, any amendments and any subsequent contract between the State and the contractor. In the event of any condition of breach or other circumstance, such as those set forth above, attributable to the contractor, the State shall have the right to draw against the security such sums as are necessary to make the State whole, to secure and compensate the State for substituted services or other forms of relief made necessary by the breach. Nothing herein shall be construed to mean that the security provided for herein is exclusive or constitutes any limitation or restriction on any remedies to which the State may be entitled. The security shall be for the benefit of the State, payable only to the State at its discretion pursuant to the terms of this section, shall be in the face amount of the contract and shall be non-exclusive and in addition to all other remedies available to the State under this RFP or the contract, or by law. The contractor shall establish the security not later than ten (10) days after execution of the contract, and failure to satisfy this requirement will void the contract. Any interest or other income resulting from the security shall become and remain the property and possession of the contractor and shall be payable to the contractor. The contractor may request a reduction in the security on an annual basis, no earlier than twelve (12) months after the first anniversary date of acceptance of the service, and the State's consideration of such request shall take into account performance, and likelihood of the need for future protection provided by the security to the State. [07-7B150-1]	
7B155-1	PERFORMANCE BOND REQUIRED (JAN 2006): Within ten (10) days after award, contractor shall provide a performance bond in the full amount of the contract sum, issued by a surety company licensed in South Carolina, with an "A" minimum rating of performance as stated in the most current publication of "best's key rating guide, property liability" which shall show a financial strength rating of at least five (5) times the contract amount. Each bond must be accompanied by a "power of attorney" authorizing the attorney infact to bind the surety and certified to include the date of the performance bond. [07-7B155-1]	Consult with management and/or legal counsel.
7B160-1	PRICE ADJUSTMENTS (JAN 2006): (1) Method of Adjustment. Any adjustment in the contract price made pursuant to a clause in this contract shall be consistent with this Contract and shall be arrived at through whichever one of the following ways is the most valid approximation of the actual cost to the Contractor (including profit, if otherwise allowed): (a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable; (b) by unit prices specified in the Contract or subsequently agreed upon; (c) by the costs attributable to the event or situation covered by the relevant clause, including profit if otherwise allowed, all as specified in the Contract; or subsequently agreed upon;	Mandatory for any solicitation if either (a) the solicitation includes a changes clause; or (b) the potential value exceeds $100,000. Any adjustment to the price after final award must be made in accordance with the terms of this clause.

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	(d) in such other manner as the parties may mutually agree; or, (e) in the absence of agreement by the parties, through a unilateral initial written determination by the Procurement Officer of the costs attributable to the event or situation covered by the clause, including profit if otherwise allowed, all as computed by the Procurement Officer in accordance with generally accepted accounting principles, subject to the provisions of Title 11, Chapter 35, Article 17 of the S.C. Code of Laws. (2) Submission of Price or Cost Data. Upon request of the Procurement Officer, the contractor shall provide reasonably available factual information to substantiate that the price or cost offered, for any price adjustments is reasonable, consistent with the provisions of Section 11-35-1830. [07-7B160-1]	
7B165-1	PRICE ADJUSTMENT - LIMITED -- AFTER INITIAL TERM ONLY (JAN 2006): Upon approval of the Procurement Officer, prices may be adjusted for any renewal term. Prices shall not be increased during the initial term. Any request for a price increase must be received by the Procurement Officer at least ninety (90) days prior to the expiration of the applicable term and must be accompanied by sufficient documentation to justify the increase. If approved, a price increase becomes effective starting with the term beginning after approval. A price increase must be executed as a change order. Contractor may terminate this contract at the end of the then current term if a price increase request is denied. Notice of termination pursuant to this paragraph must be received by the Procurement Officer no later than fifteen (15) days after the Procurement Officer sends contractor notice rejecting the requested price increase. [07-7B165-1]	Use of this clause must be accompanied by another clause which specifies how price increase will be evaluated, e.g., against some commercially published index, like PPI or CPI, or pursuant to data submitted by the contractor. This clause does not apply, and should not be used, when the price fluctuates because price was bid as either a percentage discount off a published catalog price or a function of some price, cost, or industry index.
7B170-1	PRICE ADJUSTMENTS – LIMITED BY CPI “ALL ITEMS” (JAN 2006): Upon request and adequate justification, the Procurement Officer may grant a price increase up to, but not to exceed, the unadjusted percent change for the most recent 12 months for which data is available, that is not subject to revision, in the Consumer Price Index (CPI) for all urban consumers (CPI-U), “all items” for services, as determined by the Procurement Officer. The Bureau of Labor and Statistics publishes this information on the web at www.bls.gov [07-7B170-1]	In multi-term contracts, vendors often seek price increases due to increase costs. If such requests are justified, this clause provides guidance on how much the price may be adjusted. Cross reference the Price Adjustments clause.
7B175-1	PRICE ADJUSTMENTS – LIMITED BY CPI “OTHER GOODS & SERVICES” (JAN 2006): Upon request and adequate justification, the Procurement Officer may grant a price increase up to, but not to exceed, the unadjusted percent change for the most recent 12 months for which data is available, that is not subject to revision, in the Consumer Price Index (CPI) for all urban consumers (CPI-U), “Other Goods & Services” for services, as determined by the Procurement Officer. The Bureau of Labor and Statistics publishes this information on the web at www.bls.gov [07-7B175-1]	In multi-term contracts, vendors often seek price increases due to increase costs. If such requests are justified, this clause provides guidance on how much the price may be adjusted. Cross reference the Price Adjustments clause.
7B180-1	PRICE ADJUSTMENTS – LIMITED BY PPI (JAN 2006): Upon request and adequate justification, the Procurement Officer may grant a price increase up to, but not to exceed, the unadjusted percent change for the most recent 12 months for which data is available, that is not subject to revision, in the Producer Price Indexes (PPI) for the	In multi-term contracts, vendors often seek price increases due to increase costs. If such requests are justified, this clause provides guidance on how much the price may be adjusted. Cross reference the Price Adjustments clause.

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	applicable commodity, as determined by the Procurement Officer. The Bureau of Labor and Statistics publishes this information on the web at www.bls.gov [07-7B180-1].	
7B185-1	PRICING DATA – AUDIT – INSPECTION (JAN 2006): [Clause Included Pursuant to Section 11-35-1830, - 2210, & -2220] (a) Cost or Pricing Data. Upon Procurement Officer's request, you shall submit cost or pricing data, as defined by 48 C.F.R. Section 2.101 (2004), prior to either (1) any award to contractor pursuant to 11-35-1530 or 11-35-1560, if the total contract price exceeds $500,000, or (2) execution of a change order or contract modification with contractor which exceeds $100,000. Your price, including profit or fee, shall be adjusted to exclude any significant sums by which the state finds that such price was increased because you furnished cost or pricing data that was inaccurate, incomplete, or not current as of the date agreed upon between parties. (b) Records Retention. You shall maintain your records for three years from the date of final payment, or longer if requested by the chief Procurement Officer. The state may audit your records at reasonable times and places. As used in this subparagraph (b), the term "records" means any books or records that relate to cost or pricing data submitted pursuant to this clause. In addition to the obligation stated in this subparagraph (b), you shall retain all records and allow any audits provided for by 11-35-2220(2). (c) Inspection. At reasonable times, the state may inspect any part of your place of business which is related to performance of the work. (d) Instructions Certification. When you submit data pursuant to subparagraph (a), you shall (1) do so in accordance with the instructions appearing in Table 15-2 of 48 C.F.R. Section 15.408 (2004) (adapted as necessary for the state context), and (2) submit a Certificate of Current Cost or Pricing Data, as prescribed by 48 CFR Section 15.406-2(a) (adapted as necessary for the state context). (e) Subcontracts. You shall include the above text of this clause in all of your subcontracts. (f) Nothing in this clause limits any other rights of the state. [07-7B185-1]	1. Mandatory for contracts with a total potential value in excess of $100,000. 2. Why to Request Cost or Pricing Data: Procurement officers have a basic responsibility for evaluating the reasonableness of an offer's price. For most procurements, this evaluation is facilitated by adequate price competition. However, in sole source procurements, many RFPs, and all change orders, little or no true price competition exists. Regardless of the reason, cost or pricing data provides the information needed to perform that evaluation. In addition, such data can be exceedingly valuable when developing a negotiation position (say, when negotiating on an RFP, sole source, or change order). Essentially, this data allows you to determine the offeror's / contractor's actual cost and profit margin prior to completing negotiations over what to pay. Private firms would welcome the opportunity to get such data. Take advantage of it! 3. When to Request Cost or Pricing Data: You should request cost or pricing data when, and only when, Section 11-35-1830 requires its submission. As reflected in this clause, we do not ask for such information pursuant to this clause if either (a) the total contract price does not exceed $500,000, [$1,000,000 / $2,000,000] or (b) the value of a contract change does not exceed $100,000. Generally, request this information prior to awarding on an RFP, sole source, change order, or contract modification. 4. CFR References. Portions of the CFR may be accessed at: www.gpoaccess.gov/cfr/index.html 5. Table 15-2, Instructions for Submitting Cost-Price Data (from 48 C.F.R. § 15.408 (2004) , is reprinted in an appendix to this compendium. 6. 48 C.F.R. §2.101: Cost or pricing data (10 U.S.C. 2306a(h)(1) and 41 U.S.C. 254b) means all facts that, as

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		of the date of price agreement or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price, prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are data requiring certification in accordance with 48 CFR 15.406–2. Cost or pricing data are factual, not judgmental; and are verifiable. While they do not indicate the accuracy of the prospective contractor's judgment about estimated future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred. They also include such factors as— (1) Vendor quotations; (2) Nonrecurring costs; (3) Information on changes in production methods and in production or purchasing volume; (4) Data supporting projections of business prospects and objectives and related operations costs; (5) Unit-cost trends such as those associated with labor efficiency; (6) Make-or-buy decisions; (7) Estimated resources to attain business goals; and (8) Information on management decisions that could have a significant bearing on costs. 7. Certificate Modified for State Context: CERTIFICATE OF CURRENT COST OR PRICING DATA This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined by 48 C.F.R. 2.101) submitted, either actually or by specific identification in writing, to the Procurement Officer in support of _____* are accurate, complete, and current as of _____**. Firm _____ Signature _____ Name _____

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		Title _____ Date *** _____ * Insert information to identify the solicitation and/or change order. **Insert the day, month, and year when price negotiations were concluded and price agreement was reached or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price. *** Insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to. (END OF CERTIFICATE)
7B190-1	PRINTING MANUAL (JAN 2006): The South Carolina Government Printing Services manual, dated January 1, 1998, governs both the procurement and any resulting contract and is hereby incorporated by reference. You are responsible for obtaining a copy of the manual. This manual is available at www.procurement.sc.gov [07-7B190-1]	Include this clause in all procurements for printing services.
7B195-1	PRIVACY – WEB SERVICES (JAN 2006): You agree that any information acquired by you about individuals or businesses that is available to you as a result of your performance of this contract shall not be retained beyond the end of the term of the contract without the express written consent of the government. Such information shall never be sold, traded, or released to another entity, including affiliates, and shall not be used for any purpose other than performing this contract. Upon request, contractor shall provide written confirmation of compliance with this clause. [07-7B195-1]	Use only when the contract may involve the contractor providing services for the state (to the state or the public) through the internet. So much personal information can be captured by vendors we hire to provide web-based services, that it seems appropriate to contractually provide privacy for those visiting government web sites – the public and employees alike.
7B200-1	PURCHASING CARD (JAN 2006): Contractor agrees to accept payment by the South Carolina Purchasing Card for no extra charge. The Purchasing Card is issued by Visa. The purchasing card allows state agencies to make authorized purchases from a vendor without the requirement to issue a purchase order. [07-7B200-1]	Use only in procurements for supplies unless approved by your supervisor.
7B205-1	RELATIONSHIP OF THE PARTIES (JAN 2006): Neither party is an employee, agent, partner, or joint venturer of the other. Neither party has the right or ability to bind the other to any agreement with a third party or to incur any obligation or liability on behalf of the other party. [07-7B205-1]	Recommended for most services contracts. Occasionally, the state retains a contractor that acts in a manner that suggest that the state has authorized the vendor to act on its behalf, when in fact, the vendor is acting on its own behalf. For example, an advertising firm might acquire film production services to develop a TV ad for the state. The film production company might mistakenly believe that the vendor is acquiring its services for the state rather than for the vendor. This clause makes clear that the vendor does not have authority to act as an agent, or enter into a contract for the state.
7B210-1	RELATIONSHIP OF USING GOVERNMENTAL UNITS (JAN 2006): Each Using	Include in all statewide and multi-agency contracts!

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	Governmental Unit's obligations and liabilities are independent of every other Using Governmental Unit's obligations and liabilities. No Using Governmental Unit shall be responsible for any other Using Governmental Unit's act or failure to act. [07-7B210-1]	
7B212-1	RESTRICTIONS ON PRESENTING TERMS OF USE OR OFFERING ADDITIONAL SERVICES (FEB 2015) (a) Citizens, as well as public employees (acting in their individual capacity), should not be unnecessarily required to agree to or provide consent to policies or contractual terms in order to access services acquired by the government pursuant to this contract (hereinafter "applicable services") or, in the case of public employees, to perform their job duties; accordingly, in performing the work, contractor shall not require or invite any citizen or public employee to agree to or provide consent to any end user contract, privacy policy, or other terms of use (hereinafter "terms of use") not previously approved in writing by the procurement officer. Contractor agrees that any terms of use regarding applicable services are void and of no effect. (b) Unless expressly provided in the solicitation, public contracts are not intended to provide contractors an opportunity to market additional products and services; accordingly, in performing the work, contractor shall not – for itself or on behalf of any third party – offer citizens or public employees (other than the procurement officer) any additional products or services not required by the contract. (c) Any reference to contractor in items (a) or (b) also includes any subcontractor at any tier. Contractor is responsible for compliance with these obligations by any person or entity that contractor authorizes to take any action related to the work. (d) Any violation of this clause is a material breach of contract. The parties acknowledge the difficulties inherent in determining the damage from any breach of these restrictions. Contractor shall pay the state liquidated damages of $1,000 for each contact with a citizen or end user that violates this restriction. [07-7B212-1]	1. Recent experience reflects that some businesses are using their public contracts to either sell additional services to or acquire additional data from those they interact with while performing the work. The most common scenario involves a contract in which citizens or state employees are interacting with the government or the contractor over the internet via a computer-based service provided by the contractor. In some instances, contractors are requiring citizens and/or state employees to enter into a contract with the vendor as a condition of accessing the service the agency contracted the vendor to provide. This clause is intended to forbid such activity. 2. If you are acquiring an off-the-shelf service, the following additional paragraph may be one that helps potential vendors to find practical ways to accommodate this requirement: (d) Notwithstanding item (a) above, contractor may require or invite a citizen or public employee to provide consent or agree to an end user contract, privacy policy, or other terms of use (collectively referred to hereinafter as "terms of use") if every person presented with terms of use during performance of the work will also be presented with a statement to the effect that, notwithstanding anything in those terms of use to the contrary, the terms of use apply only to the extent [Option 1: "they are not inconsistent with this contract. Without limiting the generality of the foregoing, terms of use may not address dispute resolution, choice of forum, choice of law, limitations of liability, remedies, or use of government information (as defined in the Information Use and Disclosure clause) by Contractor or those for whom it is responsible (e.g., subcontractors)." Option 2: "they do not add to, remove from, or modify this contract."
7B215-1	SOFTWARE LICENSES (JAN 2006): Proprietary Software: Proprietary software is non-custom written, non-made for hire computer software supplied by the contractor and documentation used to describe, maintain and use the software.	For use only by ITMO!

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	License: The State is hereby granted a non-exclusive, fully paid perpetual license to use the proprietary software acquired hereunder. Title: Title to any proprietary software provided by the Contractor to the State will remain with the Contractor. Trade Secrets: The State agrees that the proprietary software is a trade secret of the contractor. The State agrees to take reasonable precautions to protect the trade secret nature of the proprietary software and to prevent its disclosure to unauthorized personnel. The license herein granted cannot be transferred, assigned, or made available by the State for use by any other individual, firm, partnership, or legal entity not affiliated, associated, or connected with the State without the prior expressed written consent of the contractor, which consent will not be unreasonably withheld. Such transfer shall also be conditioned upon the execution by the transferee of a written declaration agreeing to be bound by the terms and conditions of confidentiality provided for in this section. Source Code: Source code includes files used by assembly, basic, c or other language compatibles to produce object modules for linkage into applications programs. The source code media will contain source code, files for compiling and linking software, and any other files and documentation available in machine-readable form to facilitate compiling and linking the code. In the event the contractor, at any point during the continued installation and operation of the products acquired under this contract, discontinues the conduct of business, or for any reason fails to continue to support its proprietary software, it will either make provision for the continued support under the same terms and conditions or provide the State with a copy of the source code for said proprietary software, at no expense to the State. Export Control: The State acknowledges that the products acquired hereunder may be licensable by the U. S. Government. It further acknowledges that a valid export license must be obtained from the Department of Commerce prior to export of said products. Customized Software: Customized software is made-for-hire, custom written and customer specific software or customizations to proprietary software developed for the State by contractor and documentation used to describe, maintain and use the software. Title: Title to the customized software vests in the State as set forth herein. Contractor shall thereafter have no right, title or interest in any customized software. As herein used, title includes providing to the State all intellectual elements of the customized software including, but not limited to, developmental work product, notes, object and source codes, documentation, and any other items which would aid the State in understanding, using, maintaining, and enhancing said customized software. Software Tools: The contractor shall provide to the STATE, simultaneous with its initial installation, and any subsequent enhancements, upgrades, fixes, etc., software tools (including, but not limited to compilers, editors, etc.) that the STATE would require to maintain or enhance the customized software. The price for said tools and the cost to	

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	train State personnel to maintain and/or to enhance the customized software shall be noted separately and included in the contractor's cost proposal submitted to the State in response to the State's solicitation. Escrow for Source Code: In the event the contractor at any point during the continued installation and operation of the software herein acquired discontinues the conduct of business or for any other reason fails to continue to support the software, the state shall be provided a copy of the source code for said software within thirty days at no expense to the State. For the effective term of this contract, contractor will provide, to a mutually agreed upon escrow agent in the United States, the most recent version of the source code on magnetic media. Proprietary source code shall be deposited into the escrow account within fifteen (15) days of the initiation of the contract, or any major update, non-customized enhancement, version or release of said licensed software. The source code may be accessed only upon the following conditions: a. Contractor refuses to provide software maintenance, bug fixes, upgrades, updates and/or enhancement services under the terms set forth in this contract or as generally provided similarly situated customers; or b. Contractor ceases to do business or exist as a valid business entity, as evidenced by an adjudication of bankruptcy or other definitive measure of cessation of operations. With regards to proprietary software, the state may not sell, assign lease, or otherwise provide said source code(s) to any other person or entity, regardless of modification, without the express written consent of contractor, its successors, and assigns. [07-7B215-1]	
7B217-1	SERVICE PROVIDER SECURITY REPRESENTATION (FEB 2015) The following obligations are subordinate to any other contract clause to the extent the other clause specifically provides for enhanced safeguarding of government information, applicable information systems, or applicable organizations. Offeror (i) warrants that the work will be performed, and any applicable information system (as defined in the clause titled "Information Security - Definitions") will be established and maintained in substantial conformity with the information provided in Offeror's Response to SPSAQ; (ii) agrees to provide the Using Governmental Unit with prompt notice of any material variation in operations from that reflected in the Response to SPSAQ; and (iii) agrees to comply with all other obligations involving either information security or information use and disclosure imposed by the contract, notwithstanding any inconsistent statement in Offeror's Response to SPSAQ. To the extent Offeror's Response to SPSAQ does not conform to any other contractual requirements, the Using Agency's lack of objection does not constitute a waiver [07-7B217-1]	This clause should be used with the **Service Provider Security Assessment Questionnaire - Required** clause (4027). Consider for use in all services procurements which involve either contractor's computerized interface with state systems or contractor's direct possession of important agency or citizen data. Due to critical cross-references, you must also use both the **Information Security - Definitions** clause (7B104) and the **Service Provider Security Assessment Questionnaire** attachment (9025) if this clause is used. Agencies are cautioned that they should take steps to insure that the representations provided by an Offeror are applicable to the computerized infrastructure that will be used by Contractor to collect, manage, store, process or access government information.
7B220-1	SHIPPING / RISK OF LOSS (JAN 2006): F.O.B. Destination. Destination is the shipping dock of the Using Governmental Units' designated receiving site, or other	This clause should be used in contracts for the acquisition of goods. This clause makes the Contractor solely

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	location, as specified herein. (See Delivery clause) [07-7B220-1]	responsible for all transportation costs involved in getting the items acquired to the destination point. This clause also makes the Contractor responsible for any loss or damage to the item acquired prior to the time the item is properly delivered to the destination point. In a transaction for the sale of goods (i.e., a transaction covered by the Uniform Commercial Code), the title to any item acquired vests in the State once the seller properly delivers conforming goods. Once title vests, the State has an insurable interest. If the solicitation does not address shipping costs (i.e., no "Shipping / Risk of Loss" clause is included), risk of loss may be addressed in a separate clause: "Unless the loss or damage is caused by Contractor, State accepts the risk of loss upon taking physical possession."
7B223-1	SOFTWARE LICENSING AGREEMENTS FOR ~~COTS~~ STATEWIDE TERM CONTRACTS (~~SEPT 2008~~FEB 2015): ~~(a) As used in this paragraph, these terms are defined as follows: "Software" means any computer program or computer database which you have, or should have, identified in your offer pursuant to this clause. "COTS Piggyback" means the document attached to this solicitation and entitled South Carolina Standard Amendment To End User License Agreements For Commercial Off-The-Shelf Software, which serves as South Carolina's standard amendment to a licensor's standard licensing agreement (regardless of how denominated, e.g., master software licensing agreement, end-user license agreement) for commercial off-the-shelf software.~~ ~~(b) If your offer involves the licensing of software by the state, your offer should specifically identify each item of software and explain whether you propose to license the software directly, to sublicense the software, or to resell software licensed directly by a third party. If a third party licensor is involved, please identify the licensor. Regardless of your licensing model, for each software publisher whose software is identified, please include that publisher's standard complete product list and all licensing agreements applicable to the software identified on that product / price list. Any licensing agreements submitted should be the standard version, not a version customized for South Carolina. Notwithstanding any other provision of this contract, if you are not licensing the software directly, the state may elect to acquire the software from a third party. (The state has, and continues to enter, a number of standing, statewide, software licensing agreements directly with software licensors. At any time, a software publisher may ask the state to enter such a statewide agreement. Such requests should be directed to ITMO.)~~ ~~(c) Software will be licensed under a separately executed agreement, regardless of whether the license is acquired through you or a third party. Any documents included in your offer, to the extent they address the licensing of software and any services~~	~~For use only by ITMO!~~ - For use only for Statewide Term Contracts acquiring brand-name software and only if all software to be acquired is covered by a pre-existing statewide software licensing agreement such as the COTS Piggyback. - For every item of software to be acquired, determine whether the COTS Piggyback for the applicable Licensor included an Enrollment Agreement for South Carolina Public Entities. If it did, identify the software in your Enrollment Agreement Applicability List. - FOR ALL LICENSORS IDENTIFIED IN YOUR ENROLLMENT AGREEMENT APPLICABILITY LIST, MAKE SURE TO ATTACH THAT LICENSOR'S UNIQUE ENROLLMENT AGREEMENT, WHICH SHOULD APPEAR AS AN ATTACHMENT TO THAT LICENSOR'S COTS PIGGYBACK.

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	~~provided pursuant to the COTS Piggyback, will not form part of any contract resulting from this solicitation. Notwithstanding the foregoing, to the extent your offer address the pricing, payment, or resale of a license of software or any services provided pursuant to the COTS Piggyback, those terms will form part of the contract resulting from this solicitation. For any software for which the state and a licensor have not already executed a COTS Piggyback (or other similar standard state agreement), you may be asked, after opening but prior to award, to acquire and submit an executed copy of the COTS Piggyback. If a COTS Piggyback cannot be timely executed for all software, the state may reject your offer. You should communicate with your proposed licensors well in advance of submitting a proposal; Licensors should be informed that few, if any, changes will be made to the COTS Piggyback.~~ ~~(d) Notwithstanding the clause entitled "Contract Documents & Order of Precedence," but consistent with paragraph (c) above, any contract arising out of this solicitation shall not include either (i) the direct licensing of software by the state or (ii) technical support or software maintenance services which the state must acquire in order to continue licensing such Software (hereinafter "mandatory support services"). Notwithstanding the clause entitled "Contract Documents & Order of Precedence," any contract arising out of this solicitation shall not include a separately executed COTS Piggyback or any documents attached to a COTS Piggyback.~~ (a) Definitions. As used in this paragraph, these terms are defined as follows: "Software" means any computer program identified by the solicitation. "Licensor" means an entity that owns the intellectual property rights for an item of Software or has the authority to license or sublicense the Software directly to the state. "Software licensing agreement" means any agreement, regardless of how designated, pertaining to the intellectual property rights for or the right to use any Software, including, but not limited to, any such agreement proposed prior to or after award, including without limitation any such agreement that either is affixed to (e.g., shrink-wrap), imbedded in (e.g., click-wrap), or in any way accompanies the Software upon delivery. (b) Separate Agreement for License and Services. This contract will address all Work (excluding the right to use the Software) and all terms regarding pricing, payment, and delivery of all Software. An independent Software Licensing Agreement has already been entered between the state and each applicable Licensor for all Software identified herein. Pursuant to this contract, the state intends to pay contractor in order to acquire license rights from Licensor under terms governed by the applicable Software Licensing Agreement. **ACCORDINGLY, YOU MUST NOT SUBMIT ANY SOFTWARE LICENSING AGREEMENTS WITH YOUR OFFER.** (c) Political Subdivisions. You agree not to fulfill an order or provide any software to a local public procurement unit (see "Statewide Term Contract" provision) unless and until you have first presented to the unit a copy of the "Enrollment Agreement for South Carolina Public Entities" (Exhibit A of the COTS Piggyback), for execution, and if signed, delivered a copy to the applicable Licensor. For each Licensor, a unique version of the Enrollment Agreement for South Carolina Public Entities form is	

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	attached. This requirement does not apply to software licensed by a Licensor not identified on the list attached and entitled Enrollment Agreement Applicability List. [07-7B223-~~1~~2]	
7B224-1	SOFTWARE LICENSING AGREEMENTS–SINGLE SOLICITATION (FEB 2015) (a) Definitions. As used in this clause, these terms are defined as follows: "Commercial Off-The-Shelf (COTS) Software" means software used with no customization and for which source code is not made available to licensees. "Configuration" means any customer-specific modification to software that does not require changes to the software's source code, such as rules-based, rules engine based, or parameter driven modifications to configure the software. "Customization" means any customer-specific modification to software that requires changes to the software's source code. "Firmware" means software sold or licensed only in conjunction with machines, designed for execution only on a machine with which it is provided, designed only for machines other than a dedicated computer, and embedded into or installed on the machine by the machine's manufacturer or seller. "Licensor" means an entity that owns the intellectual property rights for an item of software or has the authority to license or sublicense the software directly to the using governmental unit. "Piggyback" means the document attached to this solicitation and entitled *South Carolina Standard Amendment To End User License Agreements For Commercial Off-The-Shelf Software – Single Agency*, which serves as South Carolina's standard amendment to a licensor's standard software licensing agreement (regardless of how denominated, e.g., master software licensing agreement, end user license agreement) for COTS. [Note: While the piggyback is generally indicative of what the State finds acceptable, terms in a Licensor's standard software licensing agreement may need to be negotiated.] "Software" means a combination of computer instructions and data definitions that enable computer hardware to perform computational or control functions, excluding firmware. "Software licensing agreement" means any agreement, regardless of how designated, that defines the intellectual property rights for, or the rights to use, any software product. A software licensing agreement must address only terms directly associated with licensing the right to use the software and must not address any of the work governed by the contract or any services (other than warranty services regarding the software code or associated documentation). "Software maintenance" means the process of modifying software after delivery to correct faults, improve performance or other attributes, or adapt to a changed environment. (Reference ISO/IEC 14764:2006, as amended or superseded.) Software maintenance does not include any customization or configuration. "Software product" means any COTS which you propose to provide pursuant to the contract.	*1. Only for use with an RFP. Do not use in any type of bid.* *2. If you use this clause, you must (a) include the clause titled "Contract Documents & Order of Precedence–Software Licensing–Single Agency (FEB 2015)," and (b) attached both the Single Agency version of the Piggyback and the "Software Table" to the solicitation as exhibits.* *3. For every software product identified in the highest-ranked offeror's proposal, you must determine whether the State needs to have a negotiated software licensing agreement executed with pen-and-ink. For each such agreement, you must have the software licensing agreement executed prior to posting an intent to award. (Do not attach a Software Licensing Agreement to a Record of Negotiations.) You may request a copy of the vendor's standard form software licensing agreement from either the contractor or the licensor. You should confirm that the licensor has been provided a copy of the piggyback. Any negotiations regarding a software licensing agreement should be conducted under the same general rules applicable to negotiations conducted pursuant to Section 11-35-1530.* *4. Use the single agency piggyback only for COTS. Its use is not appropriate for licensing modifiable off-the-shelf software (MOTS), which – as used here – includes software that involves either (a) a source code license, or (b) any modification to the software that requires changes to the software's source code. The piggyback is not appropriate for any type of services (e.g., customization or configuration) other than warranty services regarding software code or documentation. As used above, the concept of software maintenance does not include any customer-specific software support services.* *5. If the acquisition involves limited custom software acquired to facilitate use of COTS (e.g., interface, as defined in IEEE Std 610.12-1990), you might consider whether the solicitation can be drafted to provide that such custom software will be acquired under a clause such as*

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	"Source code" means computer instructions and data definitions expressed in a form suitable for input into an assembler, compiler or other translator. (b) Contract and Software Licensing Agreement are Separate. The State seeks to establish related but independent agreements, one with each applicable licensor of COTS and one with the contractor - regardless of whether the licensor and the contractor are the same or different entities. As provided in the clause titled "Bid / Proposal As Offer To Contract," a contract between the State and the contractor results from an award made pursuant to this solicitation. In contrast, the State's acceptance of your offer does not serve as the State's acceptance of any software licensing agreement; rather, software licensing agreements must be separately executed in order to be binding, regardless of whether the license to use the software will be granted by you or a third party. The contract, as defined in the clause titled "Definitions," will address all work (excluding the use rights for any software product) and all terms regarding pricing, payment, and delivery of any software product. Accordingly, the State intends to pay contractor in order to acquire license rights for any software product, but the license rights will be governed by a software licensing agreement with the licensor. (c) **Critical Instructions**. (1) Your offer must identify each software product you propose to provide, identify the licensor, and explain which of the following licensing models apply: (i) you intend to license (or sublicense) the item directly to the State, or (ii) you intend to "resell" or distribute the item to the State (with licensing handled directly with the third-party licensor). You should use the Software Table attached to this solicitation to assist you in providing this information. **(2) Your offer must NOT include any software licensing agreements; however, for any software product identified in your offer, you must submit a software licensing agreement upon request of the procurement officer.** You must be prepared to provide any requested software licensing agreement within one business day of receiving a request. (3) Regardless of your licensing model, your price must include the cost of providing every software product you propose to provide to the State and those terms will form part of the contract. (d) Pre-Condition of Award. If the work you are offering to perform is dependent upon the licensing of a software product by the State and the State is unsuccessful in negotiating an acceptable software licensing agreement for any software product for which it finds such an agreement necessary, your offer will be rejected. To facilitate the timely and successful negotiation of a software licensing agreement deemed necessary by the State, the State may ask you, after opening but prior to award, to acquire from the licensor an executed copy of the piggyback. You should communicate with the licensors for any major or critical software product well in advance of submitting a proposal, and licensors should be informed that few changes will be made to the piggyback. [The State already has, and continues to enter into, standing, statewide, licensing agreements for a variety of computer programs. Without limiting any of the above requirements, an applicable agreement may already exist for one or more items	*Software Licenses, Clause No. 7B215-1.* *6. Bankruptcy* *Prior to issuing a solicitation, and no later than negotiations, an agency may wish to consider the implications of bankruptcy by the licensor of any software to be acquired that is expensive and mission-critical. Some bankruptcy-related risks can be addressed in the procurement contract, but some must be addressed in the software licensing agreement. To that end, the following may be of interest:* *In broad, general terms, the bankruptcy code allows a bankrupt business to avoid its unperformed contractual obligations by "rejecting" executory contracts, i.e., contracts that have not been fully performed on both sides. In 1985, the Fourth Circuit Court of Appeals held that a technology license could be rejected unilaterally by a licensor, thus eliminating the licensee's right to use the intellectual property. Lubrizol Enter., Inc. v. Richmond Meal Finishers, Inc., 756 F.2d 1043 (4th Cir. 1985). In response, Congress enacted the Intellectual Property Bankruptcy Protection Act of 1988, which appears in section 365(n) of the U.S. Bankruptcy Code. Section 365(n) was enacted to ensure that an intellectual property licensee would not be denied the benefit of its bargain with the licensor following the licensor's bankruptcy. It prevents a bankrupt licensor from rejecting licensing agreements and depriving a licensee of the intellectual property rights it acquired in the licensing contract, and does so by validating and making self-enforcing any agreement which the parties may have regarding access to the intellectual property prior to the bankruptcy.* *Section 365(n) provides the non-debtor licensee two options when the debtor-licensor rejects the license contract. First the licensee can treat the contract as terminated if rejection of the contract would constitute a breach of the agreement were the licensor is not in bankruptcy. Under this option, the licensee may assert a claim against the licensor's bankruptcy estate for damages, but it might forfeit all right to continue use of the intellectual property. Second, the licensee can retain its right to use the license to the intellectual property for the contract period, and "any period for which such contract*

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	of COTS you have identified.] [07-7B224-1]	*may be extended by the licensee as of right under applicable non-bankruptcy law." While a licensee cannot force the licensor to specifically perform any of its contractual obligations, it can maintain its right to continue using the intellectual property. So, for example, the licensee may no longer acquire any maintenance (patches, fixes, and updates), but can continue using the software. To take advantage of Section 365(n) licensees need to address this issue in its license agreement. We do so in Piggyback paragraph 12.2, particularly the last sentence which provides the State with the option of using the software for either the original term of the authorized EULA or a period of five years after the licensor seeks to reject the software license. The concept is to prevent the State from an immediately loss of the right to use the intellectual property as a result of the licensor's business failure. To date, we have not agreed to any modifications to this clause.* *Section 365(n) provides that, if the licensee chooses to retain its rights under the license notwithstanding its rejection by the debtor, "then on the written request of the licensee the trustee shall – (A) to the extent provided in such contract . . . provide to the licensee any intellectual property (including such embodiment) held by the trustee . . .." (Also see additional language in 365(n).) We lack internal expertise in bankruptcy, but this may well provide a means by which the licensee – despite bankruptcy and despite the debtor's efforts to reject the lease – can force the bankruptcy trustee to honor a source code escrow agreement, provided one has been negotiated into the contract. Accordingly, the procurement officer may wish to discuss this option with the using agency on the front end. Having the source code and a license to use it may be a valuable parachute for expensive, mission-critical software that would be challenging to replace.* *Along the same lines, and according to at least one article, a licensee that elects to retain its rights under a rejected IP license should be aware that a later sale of the debtor's assets free and clear of interests and liens under section 363(f) can extinguish the licensee's rights. (This risk exists even if the license is not rejected.) The*

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		interplay between 265(n) and 363(f) is unclear, and case law is limited, but agencies acquiring expensive mission-critical software should consider negotiating for rights beyond the five year – such as a separate escrow agreement that, if the licensee acquires the source code under 365(n), provides the licensee a perpetual right to use that source code. For a case addressing the topic, and reaching a good outcome for the licensee, see In re Dynamic Tooling Systems, Inc., 349 B.R. 847 (Bkrtcy. D. Kan. 2006) at http://chapter11cases.com/2012/07/01/in-re-dynamic-tooling-systems-inc-349-br-847-bankr-court-d-kansas-2006/
7B225-1	STATEWIDE TERM CONTRACT (~~JAN 2006~~FEB 2015): (a) With this solicitation, the state seeks to establish a term contract (as defined in Section 11-35-310(35)) available for use by all South Carolina public procurement units (as defined in Section 11-35-4610(5)). Use by state governmental bodies (as defined in Section 11-35-310(18)), which includes most state agencies, is mandatory except under limited circumstances, as provided in Section 11-35-310(35). See clause entitled "Acceptance of Offers 10% Below Price" in Part VII.B. of this solicitation. Use by local public procurement units is optional. Section 11-35-4610 defines local public procurement units to include any political subdivision, or unit thereof, which expends public funds. Section 11-35-310(23) defines the term political subdivision as all counties, municipalities, school districts, public service or special purpose districts. (b) The State shall be entitled to audit the books and records of you and any subcontractor to the extent that such books and records relate to the performance of the work. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the ~~prime~~ contract and by the subcontractor for a period of three years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing by the Chief Procurement Officer. (c) As used herein, "additional contract terms" means additional terms not otherwise allowed by the "Purchase Orders" clause. Notwithstanding the "Purchase Orders" clause, a purchase order may include additional contract terms but only if and to the extent necessary (i) to comply with a requirement directly related to the work and imposed on the Using Governmental Unit either by law or as a condition of using state or federal assistance, grant, or contract funds, or (ii) for the Using Governmental Unit to impose organizational, operational, or technical security measures designed to protect the integrity, availability, or confidentiality of the Using Governmental Unit's data. Contractor may decline to honor a purchase order including additional contract terms. [07-7B225-~~1~~2]	Include this base clause in all statewide term contracts. Whenever this clause is used, you must also use the clause entitled "Statewide Term Contract - Acceptance of Offers 10% Below Price".
7B227-1	STATEWIDE TERM CONTRACT - ACCEPTANCE OF OFFERS 10% BELOW PRICE	This clause should be used in conjunction with clause

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	(NOV 2012): Pursuant to Section 11-35-310(35), the state may purchase items available on this contract from a third party (an "alternate vendor") if the alternate vendor offers a price that is at least ten percent less than the price established by this contract and, after being offered an opportunity, you decline to meet the alternate vendor's price. With regard to the items acquired, the alternate vendor must agree to be bound by all the terms and conditions of this contract. All acquisition pursuant to this clause must be documented by the procurement officer using the attached form. [07-7B227-1]	7B225. Use of clause 7B227 should be accompanied by the Purchase Order Attachment, identified as clause 9020. Include this clause in all, and only in, statewide term contracts. This clause reflects the rule created by Section 11-35-310(35), in the definition of "term contract".
7B230-1	STATEWIDE TERM CONTRACT – SCOPE (JAN 2006): The scope of this contract is limited by the Bidding Schedule / Cost Proposals and by the description included in Part I, Scope of Solicitation. Sales of supplies or services not within the scope of this contract are prohibited. See clause entitled Contract Limitations. [07-7B230-1]	See guidance on Part 1.
7B235-1	STORAGE OF MATERIALS (JAN 2006): Absent approval of the using governmental unit, Contractor shall not store items on the premises of the using governmental unit prior to the time set for installation. [07-7B235-1]	Optional. Use as appropriate.
7B236-1	SUBSTITUTIONS PROHIBITED - END PRODUCT PREFERENCES (SEP 2009): If you receive the award as a result of the South Carolina end product or United States end product preference, you may not substitute a nonqualifying end product for a qualified end product. If you violate this provision, the State may terminate your contract for cause and you may be debarred. In addition, you shall pay to the State an amount equal to twice the difference between the price paid by the State and your evaluated price for the item for which you delivered a substitute. [11-35-1534(B)(4)] [07-7B236-1]	
7B237-1	SUBCONTRACTOR SUBSTITUTION PROHIBITED-RESIDENT SUBCONTRACTOR PREFERENCE (SEP 2009): If you receive an award as a result of the subcontractor preference, you may not substitute any business for the subcontractor upon which you relied to qualify for the preference, unless first approved in writing by the procurement officer. If you violate this provision, the State may terminate your contract for cause and you may be debarred. In addition, the procurement officer may require you to pay the State an amount equal to twice the difference between the price paid by the State and the price offered by the next lowest bidder, unless the substituted subcontractor qualifies for the preference. [11-35-1524(D)(5)(c)] [07-7B237-1]	
7B240-1	TERM OF CONTRACT – EFFECTIVE DATE / INITIAL CONTRACT PERIOD (JAN 2006): The effective date of this contract is the first day of the Maximum Contract Period as specified on the final statement of award. The initial term of this agreement is years, months, days from the effective date. Regardless, this contract expires no later than the last date stated on the final statement of award. [07-7B240-1]	By default, the clause sets the initial term at one year. You should modify this number as appropriate. Vending Facilities: Procurement Officers are reminded that the Commission for the Blind has an option to operate any vending facility operated on state land (certain exclusions apply). At least 90 days prior to the expiration of the initial contract term, consult with your management regarding agency compliance with Title 43, Chapter 26. See particularly Section 43-26-60(c) & (e).

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7B245-~~1~~2	TERM OF CONTRACT – OPTION TO RENEW (JAN ~~2006~~2015): (a) At the end of the initial term, and at the end of each renewal term, this contract shall automatically renew for a period of year(s), month(s), and day(s), unless contractor receives notice that the state elects not to renew the contract at least thirty (30) days prior to the date of renewal. Regardless, this contract expires no later than the last date stated on the final statement of award. (b) Contractor acknowledges that, unless excused by Section 11-57-320, if the contractor is on the then-current Iran Divestment Act List as of the date of any contract renewal, the renewal will be void ab initio. [07-7B245-~~1~~2]	Optional. Use as appropriate.
7B250-1	TERM OF CONTRACT – TERMINATION BY CONTRACTOR (JAN 2006): Contractor may terminate this contract at the end of the initial term, or any renewal term, by providing the Procurement Officer notice of its election to terminate under this clause at least days prior to the expiration of the then current term. [07-7B250-1]	Optional. Use as appropriate. For larger, or more complex contracts, use a longer time period than 90 days.
7B255-1	TERMINATION FOR CONVENIENCE – INDEFINITE DELIVERY / INDEFINITE QUANTITY CONTRACTS (JAN 2006): Unless the termination so provides, a termination for convenience shall not operate to terminate any purchase orders issued prior to the effective date of termination. [07-7B255-1]	Include this clause in all Indefinite Quantity Contracts (including multi-agency and statewide term). Do not use this clause without also using one of the other two termination-for-convenience clauses.
7B260-1	TERMINATION FOR CONVENIENCE – SHORT FORM (JAN 2006): The Procurement Officer may terminate this contract in whole or in part, for the convenience of the State. In such a termination, the Procurement Officer may require the contractor to transfer title and deliver to the State in the manner and to the extent directed by the Procurement Officer: (a) any completed supplies; and (b) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the contractor has specifically produced or specially acquired for the performance of the terminated part of this contract. Upon such termination, the contractor shall (a) stop work to the extent specified, (b) terminate any subcontracts as they relate to the terminated work, and (c) be paid the following amounts without duplication, subject to the other terms of this contract: (i) contract prices for supplies or services accepted under the contract, (ii) costs incurred in performing the terminated portion of the work, and (iii) any other reasonable costs that the contractor can demonstrate to the satisfaction of the State, using its standard record keeping system, have resulted from the termination. The contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided. As a condition of payment, contractor shall submit within three months of the effective date of the termination a claim specifying the amounts due because of the termination. The absence of an appropriate termination for convenience clause in any subcontract shall not increase the obligation of the state beyond what it would have been had the subcontract contained such a clause. [07-7B260-1]	Optional. Ordinarily, this clause should be used for contracts with an expected value of $100,000 or less. See general guidance under Termination for Convenience (August 2005).
7B265-1	TERMINATION FOR CONVENIENCE (JAN 2006): (1) Termination. The Procurement Officer may terminate this contract in whole or in part, for the convenience of the State. The Procurement Officer shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective.	Use the provision entitled Termination for Convenience – Short Form (JAN 2006) for contracts with an expected value of $100,000 or less. Use this clause for contracts in excess of that value.

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	(2) Contractor's Obligations. The contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the contractor will stop work to the extent specified. The contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Procurement Officer may direct the contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to the State. The contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so. (3) Right to Supplies. The Procurement Officer may require the contractor to transfer title and deliver to the State in the manner and to the extent directed by the Procurement Officer: (a) any completed supplies; and (b) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the contractor has specifically produced or specially acquired for the performance of the terminated part of this contract. The contractor shall, upon direction of the Procurement Officer, protect and preserve property in the possession of the contractor in which the State has an interest. If the Procurement Officer does not exercise this right, the contractor shall use best efforts to sell such supplies and manufacturing materials in a accordance with the standards of Uniform Commercial Code Section 2-706. Utilization of this Section in no way implies that the State has breached the contract by exercise of the Termination for Convenience Clause. (4) Compensation. (a) The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data required by Section 11-35-1830 bearing on such claim. If the contractor fails to file a termination claim within one year from the effective date of termination, the Procurement Officer may pay the contractor, if at all, an amount set in accordance with Subparagraph (c) of this Paragraph. (b) The Procurement Officer and the contractor may agree to a settlement and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the State, the proceeds of any sales of supplies and manufacturing materials under Paragraph (3) of this clause, and the contract price of the work not terminated; (c) Absent complete agreement under Subparagraph (b) of this Paragraph, the Procurement Officer shall pay the contractor the following amounts, provided payments agreed to under Subparagraph (b) shall not duplicate payments under this Subparagraph: (i) contract prices for supplies or services accepted under the contract; (ii) costs reasonably incurred in performing the terminated portion of the work less amounts paid or to be paid for accepted supplies or services; (iii) reasonable costs of settling and paying claims arising out of the termination of	Comments: (1) The contractual right to terminate for convenience may not be exercised in bad faith. S.C. Code Ann. § 11-35-30 (requiring good faith in the performance of all contractual obligations). (2) Section 11-35-4310 states "(b) the contract may be terminated and the payment of such damages, if any, as may be provided in the contract, may be awarded." If a contract is terminated by the CPO or Panel, the termination should be effectuated by exercising any termination right granted by contract.

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	subcontracts or orders pursuant to Paragraph (2) of this clause. These costs must not include costs paid in accordance with Subparagraph (c)(ii) of this paragraph; (iv) any other reasonable costs that have resulted from the termination. The total sum to be paid the contractor under this Subparagraph shall not exceed the total contract price plus the reasonable settlement costs of the contractor reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under Subparagraph (b) of this Paragraph, and the contract price of work not terminated. (d) Contractor must demonstrate any costs claimed, agreed to, or established under Subparagraphs (b) and (c) of this Paragraph using its standard record keeping system, provided such system is consistent with any applicable Generally Accepted Accounting Principles. (5) Contractor's failure to include an appropriate termination for convenience clause in any subcontract shall not (i) affect the state's right to require the termination of a subcontract, or (ii) increase the obligation of the state beyond what it would have been if the subcontract had contained an appropriate clause. [07-7B265-1]	
7B275-1	WARRANTY – ONE YEAR (JAN 2006): Contractor warrants all items acquired shall conform to all contractor's representations, the requirements of this contract, and all published documentation. [07-7B275-1]	Optional. Use as appropriate.
7B280-1	WARRANTY – STANDARD (JAN 2006): Contractor must provide the manufacturer's standard written warranty upon delivery of product. Contractor warrants that manufacturer will honor the standard written warranty provided. [07-7B280-1]	Optional. Use as appropriate.
7B285-1	YEAR 2000 WARRANTY (JAN 2006): Contractor represents and warrants that the equipment is designed to be used prior to, during, and after the calendar year 2000 A.D., and that the equipment will operate during each such time period without error relating to date data, specifically including any error relating to, or the product of, date data which represents or references different centuries or more than one century. [07-7B285-1]	Optional. Use as appropriate.
	PART 7C- MISCELLANEOUS CLAUSES	
7C005-1	BLANKET PURCHASE AGREEMENTS (NOV 2007): (a) Pursuant to S.C. Regulation 19-445.2100(B), this purchase order establishes a blanket purchase agreement to facilitate filling repetitive needs for small quantities of miscellaneous supplies or services. Contractor shall furnish the supplies or services described herein in general terms, if and when requested by authorized personnel during the specified period and within the stipulated aggregate amount, if any. The State is obligated only to the extent of authorized calls actually placed against this blanket purchase agreement. Only those individuals expressly identified herein, by organizational component, and within any dollar limitations identified herein, may place calls under the agreement. Calls against this blanket purchase agreement generally will be made orally, except that informal correspondence may be used when ordering against agreements outside the local trade area. Written calls may be executed.	

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	Acceptance of supplies, services, or information technology shall be indicated by signature and date on the appropriate form by authorized personnel after verification and notation of any exceptions. This agreement shall be issued for a period of no longer than 12 months. (b) All shipments under the agreement, except subscriptions and other charges for newspapers, magazines, or other periodicals, shall be accompanied by delivery tickets or sales slips which shall contain the following minimum information: (1) name of supplier; (2) blanket purchase agreement number; (3) date of call; (4) call number; (5) itemized list of supplies or services furnished; (6) quantity, unit price, and extension of each item less applicable discounts (unit price and extensions need not be shown when incompatible with the use of automated systems, provided that the invoice is itemized to show this information); and (7) date of delivery or shipment. The State shall choose one of the following statements: ___ A summary invoice shall be submitted at least monthly or upon expiration of the blanket purchase agreement, whichever occurs first, for all deliveries made during a billing period, identifying the delivery tickets covered therein, stating their total dollar value, and supported by receipted copies of the delivery tickets. ___ An itemized invoice shall be submitted at least monthly or upon expiration of the blanket purchase agreement, whichever occurs first, for all deliveries made during a billing period and for which payment has not been received. Such invoices need not be supported by copies of delivery tickets. ___ When billing procedures provide for an individual invoice for each delivery, these invoices shall be accumulated provided that a consolidated payment will be made for each specified period; and the period of any discounts will commence on final date of billing period or on the date of receipt of invoices for all deliveries accepted during the billing period, whichever is later. This procedure should not be used if the accumulation of the individual invoices materially increases the administrative costs of this purchase method. [07-7C005-1]	
7C010-1	STANDARD PURCHASE ORDER CLAUSE SET (NOV 2007)	See Appendix S.
	PART 8	
8001	VIII. BIDDING SCHEDULE / PRICE-BUSINESS PROPOSAL	Mandatory. Include this header at the beginning of the appropriate part of the Uniform Solicitation Format. See guidance on the Uniform Solicitation Format at the beginning of this document.
8002-1	BIDDING SCHEDULE (NOV 2007): Insert Bid Invitation Line Item Schedule here	
8005-1	SECTION NOT APPLICABLE -- INTENTIONALLY OMITTED [08-8005-1]	This should only be used if no price or cost information is sought.
8010-1	BUSINESS PROPOSAL (JAN 2006): Offerors are to submit a Business Proposal as a separate document from the Technical Proposal. The Business Proposal may include the following considerations: (a) Total Cost of Ownership -- What is the anticipated cost of purchasing, owning,	Use as appropriate in RFPs.

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	leasing, operating, maintaining, and/or supporting the proposed solution for the total potential term of the contract? Provide a detailed accounting. (b) Risk Analysis -- What internal or external factors could significantly impact the probability of completing this project on time and within budget? (c) Risk Mitigation -- What actions can be taken to mitigate the identified risks? (d) Risk Sharing -- Are there opportunities for mutually beneficial risk sharing? (e) Performance Incentives -- Are there opportunities for performance-based incentives? (f) Financing Options -- Are there alternative financing options available to the State? [08-8010-1]	
8015-1	PRICE PROPOSAL (JAN 2006): Notwithstanding any other instructions herein, you shall submit the following price information as a separate document: [08-8015-1]	The clause entitled Contents of Offer (RFP) – SPO states that "Each copy of your offer should be bound in a single volume where practical. All documentation submitted with your offer should be bound in that single volume." Use this clause if you need the cost / price proposal to be separate. Use as appropriate in RFPs.
	PART 9	
9001	IX. ATTACHMENTS TO SOLICITATION	Mandatory. Include this header at the beginning of the appropriate part of the Uniform Solicitation Format. See guidance on the Uniform Solicitation Format at the beginning of this document. Current Attachments appear in the Appendix of this Compendium.
9002-1	ATTACHMENTS LIST [09-9002-1] The following documents are attached to this solicitation:	Use this clause to identify attachments to the solicitation.
9005-1	NONRESIDENT TAXPAYER REGISTRATION AFFIDAVIT INCOME TAX WITHHOLDING	See Appendix H.
9010-1	OFFEROR'S CHECKLIST (JUN 2007)	See Appendix I.
9015-1	Please see the Attachment containing the State of South Carolina "Standard Equipment Agreement". [09-9015-1]	See Appendix J.
9020-1	PURCHASE ORDER ATTACHMENT - ACCEPTANCE OF OFFERS 10% BELOW STATEWIDE TERM CONTRACT PRICE	See Appendix __.
9025-1	SERVICE PROVIDER SECURITY ASSESSMENT QUESTIONNAIRE (FEB 2015)	You must attach the Service Provider Security Assessment Questionnaire if your solicitation includes the **Service Provider Security Assessment Questionnaire - Required (**4027) and **Service Provider Security Representation** (7B217) clauses.
9030-1	SOUTH CAROLINA STANDARD AMENDMENT TO END USER LICENSE AGREEMENTS FOR COMMERCIAL OFF-THE-SHELF SOFTWARE - SINGLE AGENCY (FEB 2015)	You must attach the South Carolina Standard Amendment to End User License Agreements for Commercial Off-The-Shelf Software - Single Agency if your solicitation includes

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		the **Software Licensing Agreements–Single Solicitation** (7B224) clause.
9035-1	SOFTWARE TABLE (FEB 2015)	You must attach the Software Table if your solicitation includes the **Software Licensing Agreements–Single Solicitation** (7B224) clause.
	Award Statement Clauses	
A140-1	The State intends to award contract(s) noted below. Unless otherwise suspended or canceled, this document becomes the final Statement of Award effective , . Unless otherwise provided in the solicitation, the final statement of award serves as acceptance of your offer.	Standard language of notice of intent to award a contract.
A150-1	The State awards the contract(s) noted below. This document is the final Statement of Award, effective , . Unless otherwise provided in the solicitation, the final statement of award serves as acceptance of your offer.	Statement of award.
A160-1	Contractor should not perform work on or incur any costs associated with the contract prior to the effective date of the contract. Contractor should not perform any work prior to the receipt of a purchase order from the using governmental unit. The State assumes no liability for any expenses incurred prior to the effective date of the contract and issuance of a purchase order.	Use this clause if the contractor should delay beginning work until receipt of a purchase order or other notice to proceed.
A205-1	THE INTENT TO AWARD IS CANCELLED. CPO'S WRITTEN DETERMINATION INCLUDED.	If a procurement activity is terminated after posting of the intent to award, but prior to final award, the termination should be effectuated by re-posting your award statement, annotated with this clause to reflect its cancellation. Include the CPO's written determination under R. 19-445.2085(C). If the procurement activity is terminated after the award has gone final, the award need not be cancelled. The matter is one of contract administration.
A210-1	THE INTENT TO AWARD IS CANCELLED. REFERENCE CHIEF PROCUREMENT OFFICER'S PROTEST DECISION.	Use for awards terminated pursuant to a decision issued by a CPO or Panel to cancel.
A215-1	AWARD - ONE RESPONSE RECEIVED: IN ACCORDANCE WITH SC PROCUREMENT CODE 11-35-1520(10) AWARD, "WHEN ONLY ONE RESPONSE IS RECEIVED, THE NOTICE OF INTENT TO AWARD AND THE DELAY OF AWARD MAY BE WAIVED."	Use when only one response received.
A220-1	NO AWARD IS MADE ON ITEM(S): . AWARD TO BE MADE AT A LATER DATE.	Use if not awarding all items at one time.
A225-1	REINSTATEMENT NOTICE THE INTENT TO AWARD IS HEREBY REINSTATED	Use to reinstate a previously suspended award, e.g., a protest is denied and unappealed.
A230-1	RESIDENT VENDOR PREFERENCE (AS DEFINED IN SECTION 11-35-1524) HAS BEEN APPLIED IN THIS AWARD.	Add to indicate the award was determined by the preference.
A235-1	SOUTH CAROLINA / UNITED STATES MADE, MANUFACTURED OR GROWN PREFERENCE (AS DEFINED IN SECTION 11-35-1524) HAS BEEN APPLIED IN	Add to indicate the award was determined by the preference.

Clause #	Text	Guidance on Use
	THIS AWARD.	
A240-1	SUSPENSION NOTICE PROTEST: IN RESPONSE TO A PROTEST, THE INTENT TO AWARD IS HEREBY SUSPENDED PENDING THE ADMINISTRATIVE REVIEW BY THE CHIEF PROCUREMENT OFFICER.	Use this when the award process is suspended under 11-35-4210(7).
A250-1	CERTIFICATES OF INSURANCE COVERAGE TO BE FURNISHED PRIOR TO COMMENCEMENT OF SERVICES UNDER CONTRACT.	This clause is nothing more than a reminder to the contractor to provide the certificate prior to performance.
A260-1	NO OFFERS RECEIVED MET SOLICITATION REQUIREMENTS.	Use if all offers are non-responsive.
A265-1	NO AWARD IS MADE ON ITEM(S): . FUNDS HAVE EXPIRED.	Use if funds expired. Requires written determination under R. 19-445.2065.
A270-1	NO AWARD IS MADE ON ITEM(S): . NO LONGER REQUIRED.	After opening, requires written determination under R. 19-445.2065(b).
A275-1	NO AWARD IS MADE ON ITEM(S): . NO BIDS RECIEVED.	Use if no bids received.
A280-1	NO AWARD-NO AWARD IS MADE ON ITEM(S): . PRICE IS CONSIDERED EXCESSIVE.	Requires written determination of price unreasonableness under either R. 19-445.2065(b)(6) or 19-445.2070(d).
A285-1	NO AWARD IS MADE ON ITEM(S): . WILL BE RE-SOLICITED WITH REVISED SPECIFICATIONS.	Requires written determination under R. 19-445.2065(b).
A290-1	OFFERS FOR ITEMS, , AT PRICES LOWER THAN THAT OF AWARD ARE NON-RESPONSIVE AS THEY DID NOT MEET THE SOLICITATION REQUIREMENTS.	Optional Note: This note may be used to inform one or more unsuccessful low Offerors that they were non-responsive or non-responsible. Use is optional.
A300-1	REVIEW PERIOD EXTENSION NOTICE THE STATE REQUIRES ADDITIONAL TIME TO REVIEW THE OFFERS; ACCORDINGLY, THE REVIEW TIME IS EXTENDED. INFORMATION REGARDING THE AWARD WILL BE POSTED ON .	Use when additional time is required to evaluate offers.
A400-1	Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest within ten days of the date notification of award is posted in accordance with this code. A protest shall be in writing, shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided, and must be received by the appropriate Chief Procurement Officer within the time provided. [Section 11-35- 4210]	
A410-1	PROTEST - CPO ADDRESS - ITMO: Any protest must be addressed to the Chief Procurement Officer, Information Technology Management Office, and submitted in writing (a) by email to protest-itmo@itmo.sc.gov , (b) by facsimile at 803-737-0102 , or (c) by post or delivery to 1201 Main Street, Suite 430, Columbia, SC 29201	
A420-1	PROTEST - CPO ADDRESS - MMO: Any protest must be addressed to the Chief Procurement Officer, Materials Management Office, and submitted in writing (a) by email to protest-mmo@mmo.sc.gov , (b) by facsimile at 803-737-0639 , or (c) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201.	