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May 15, 2015

VIA ELECTRONIC MAIL AND HAND DELIVERY

Mr. Michael Spicer
Chief Procurement Officer for Information Technology
1201 Main Street, Suite 600
Columbia, South Carolina 29201

**Re: Request for Debarment of New Venue Technologies, Inc.,
Terris S. Riley, Jacque P. Riley, NewVenue Technologies, New Venue Technologies
II, LLC, NVT, LLC, Terris Riley, LLC, and La'Fem Empowered, Inc.
Case No.: 2015-
Our File No. 2135598**

Dear Mr. Spicer:

Enclosed herewith please find a Petition for Debarment and Request for Hearing involving the above referenced individuals and entities. They are being personally served with this Petition. We will provide appropriate certificates of service upon receipt of the same from the process server.

Due to the seriousness of the allegations contained in the Petition, and for the reasons enumerated in the Petition, we would respectfully request that you grant an expedited hearing in this matter. Thank you in advance for your attention to this matter.

With kind regards, I am

Very truly yours,

MONTGOMERY WILLARD, LLC



Michael H. Montgomery

MHM:mkf

MAY 15 2015 4:48 PM

RECV'D BID CONTROL

cc: (via e-mail only) Dixon Robertson, Esq. Attorney for the CPO
Elizabeth Crum, Esq. Attorney for the CPO
Keith McCook, Esquire
Frank S. Potts, Esquire
David Avant, Esquire

STATE OF SOUTH CAROLINA)	BEFORE THE CHIEF PROCUREMENT
)	OFFICER
COUNTY OF RICHLAND)	CASE NO: 2015-
)	
In re:)	
New Venue Technologies, Inc.,)	PETITION FOR DEBARMENT
New Venue Technologies II, LLC,)	AND
Terris Riley, LLC,)	REQUEST FOR HEARING
NVT, LLC,)	
La’Fem Empowered, Inc.,)	
NewVenue Technologies,)	
Terris S. Riley, and)	
Jacque P. Riley,)	
Parties to be Debarred.)	
)	
)	

South Carolina Budget and Control Board, Petitioner, as a party aggrieved by conduct of New Venue Technologies, Inc., its Principals, including, but not limited to Terris Riley and Jacque P. Riley and their other entities and affiliates including New Venue Technologies II, LLC; Terris Riley, LLC; NVT, LLC; La’Fem Empowered, Inc.; and NewVenue Technologies, said conduct subjecting these parties to debarment pursuant to *S.C. Code Ann.* §11-35-4220(2), hereby moves that the Chief Procurement Officer (“CPO”) conduct an administrative review, afford a reasonable opportunity to New Venue and its principals to respond, schedule a hearing and institute debarment proceedings pursuant to *S.C. Code Ann.* §11-35-4220 against the named parties, related entities and their principals.

The Board respectfully requests that the CPO commence this process and schedule a hearing as soon as possible.

The grounds for the Board’s request for debarment are included in this Petition.

In support of this Petition, Petitioner would show the CPO as follows:

1. New Venue Technologies, Inc. is a South Carolina Domestic Corporation with a registered address of 8 Burberry Lane, Columbia, SC 29229. Upon information and belief, the Corporation operates out of the home of Jacque and Terris Riley at 497 Langford Road, Blythewood, South Carolina and the Burberry Lane address is outdated. Terris S. Riley and Jacque P. Riley have served as Principals and Officers of New Venue Technologies, Inc. at all relevant times during New Venue Technologies, Inc.'s involvement with the Software Acquisition Manager Contract entered between New Venue and the State of South Carolina Budget and Control Board.

2. Terris S. Riley is, upon information and belief, the President and CEO of New Venue Technologies, Inc. Ms. Riley resides at 497 Langford Road, Blythewood, South Carolina.

3. Jacque P. Riley is, upon information and belief, an officer of New Venue Technologies, Inc. Mr. Riley resides at 497 Langford Road, Blythewood, South Carolina.

4. New Venue Technologies II, LLC is a South Carolina Limited Liability Company filed on July 30, 2010. Jacque Riley, is the Registered Agent of New Venue Technologies II, LLC . His address as registered agent is 222 Talon Way, Bythewood, SC 29016. Upon

information and belief, the Company is owned and or operated by Terris and/or Jacque Riley, Principals of New Venue.

5. Terris Riley, LLC was organized on September 7, 2012. Terris Riley, is listed as the Registered Agent for Terris Riley, LLC. Terris Riley, LLC has a registered address of 222 Talon Way, Blythewood, South Carolina 29016. Upon information and belief, Terris Riley, LLC is owned and/or operated by Terris and/or Jacque Riley, Principals of New Venue.

6. NVT, LLC was organized on November 5, 2014. Martha Baker, who was and is New Venue Technologies' bookkeeper is listed as the Registered Agent for NVT, LLC. NVT, LLC has a registered address of 989 Knox Abbott Dr., Cayce, SC 29033. Upon information and belief, NVT, LLC is, upon information and belief owned and/or operated by Terris and/or Jacque Riley, Principals of New Venue.

7. La'Fem Empowered, Inc. was organized as an Eleemosynary Corporation on September 22, 2011. Terris S. Riley is listed as the Registered Agent for La'Fem Empowered, Inc. The registered agent address is 222 Talon Way, Blythewood, SC 29016. Upon information and belief, Terris S. Riley is a principal and involved in the operation of the Corporation.

8. NewVenue Technologies is, upon information and belief, a sole proprietorship sometimes operated by Terris S. Riley and/or Jacque P. Riley as a separate entity and as an alter-ego of New Venue Technologies, Inc.

9. Upon information and belief, NewVenue Technologies, Inc; Terris Riley, LLC; New Venue Technologies II, LLC; NewVenue Technologies; NVT, LLC, and La’Fem Empowered, Inc. are all affiliates and entities related to Terris S. Riley and New Venue Technologies, Inc..

10. New Venue Technologies, Inc. was a party to a State Term Contract arising from Solicitation No. 5400001873 for a Software Acquisition Manager Project. The contract was cancelled by the State for Cause on or about October 8, 2013.

11. New Venue Technologies, Inc. initiated a contract controversy proceeding before the Chief Procurement Officer for Information Technology. That case was heard as Case No. 2014-204. After a lengthy hearing the CPO issued a decision on July 18, 2014 addressing the issues presented in the contract controversy. A copy of that decision is attached as Exhibit “A”.

12. By Decision filed July 30, 2014 the CPO, *sua sponte*, found probable cause to suspend New Venue Technologies, Inc.; New Venue Technologies II, LLC; NewVenue Technologies; Terris Riley LLC; Terris S. Riley and Jacque P. Riley from “consideration for award of contracts or subcontracts pending completion of investigations conducted by the Board or any other State agency the Board requests to assist in the investigation to determine if debarment is warranted”.

13. The CPO's Order (attached hereto as Exhibit "B") sets forth the basis for the CPO's determination of probable cause for suspension of New Venue.

14. New Venue has appealed the decision underlying the CPO's determination of probable cause for suspension of New Venue.

15. Notably, New Venue's more than 8600 word appeal letter (attached hereto as Exhibit "C") does not contest a number of relevant findings of the CPO, to wit:

- a. New Venue failed to remit payment to software providers in accordance with the contract.
- b. New Venue intentionally mislead PPUs as to the status of their orders.
- c. New Venue withheld funds from Vendors remitted to it specifically to make pass through payments to those vendors.
- d. New Venue remains indebted to Vendors in an amount in excess of Two Million dollars, which funds were remitted to it in full payment of obligations by the State, State Agencies and PPUs.
- e. New Venue never contests or denies its use of funds as enumerated in the CPO's Decision and the Suspension Order.

16. In fact, New Venue, in its Appeal to the Panel failed to contest any of the findings of the CPO relating to New Venue's fiscal malfeasance with regard to honoring its contractual obligation to remit 97.5 % of its receipts from State Agencies and PPUs to software resellers on the then existing State Term Contracts.

17. In its Appeal to the Panel, New Venue fails to offer any justification for its conversion of these vendor funds to its own use.

18. Upon information and belief, New Venue's failure to contest these factual findings in its Protest letter constitutes an admission of the same.

19. The Acts identified in the CPO's Decision and in the Suspension Order evince a violation of contract provisions of a character to be so serious as to require debarment of New Venue and its affiliates. These include a deliberate failure to perform and a recent record of unsatisfactory performance in accordance with the terms of the SAM contract.

20. Since the CPO's order suspending New Venue, it (and Terris S. Riley, its principal) has continued to engage in conduct that should invoke debarment pursuant to *S.C. Code Ann.* §11-35-4220 including, but not limited to:

- a. Violation of an order of the Chief Procurement Officer by seeking and attempting to be considered for the award of contracts with the Medical University of South Carolina. Upon information and belief, Terris S. Riley acting in the name of New Venue Technologies, Inc. delivered a consulting proposal to MUSC. That proposal is attached hereto as Exhibit "D".
- b. Neither in the Proposal nor in any other communication with MUSC did Riley disclose that she and New Venue were ineligible for the award of a contract by MUSC due to the CPO's Order.
- c. Upon information and belief, Riley's misrepresentation of this fact was willful and knowing and done with intent to deceive MUSC into awarding her the contract in violation of the CPO's suspension order.
- d. Riley acted to induce MUSC to enter a contract with her, while she knew that she and New Venue were subject to the Order of Suspension and were "suspended from consideration for award of contracts or subcontracts. . ."

- e. Riley's conduct included e-mail communications wherein when she learned that her proposal was over \$50,000 and required higher level approval, she attempted to engage MUSC over a shorter term so as to keep the Contract Award at a level below the \$50,000.00. See the e-mails attached hereto as Exhibit "E".
- f. Upon information and belief, Riley induced her bookkeeper, Martha Baker, to set up or cooperate with her in setting up a new entity, NVT, LLC, in an effort to conceal her involvement from the Board upon receipt of the proposed Contract from MUSC.
- g. Upon information and belief, Riley engaged in this conduct in an effort to avoid MUSC learning of her suspension and in an effort to obtain a contract that she knew New Venue could not legally be awarded using fraudulent means.
- h. Upon information and belief, Riley further engaged in this conduct in an effort to conceal her identity and avoid detection by the State that she was involved in and operating as a State Contractor or Subcontractor in direct violation of the CPO's suspension Order.

21. Riley and New Venue attempted to induce MUSC to violate the Chief Procurement Officer's suspension Order.

22. While Riley may argue that she was not obligated to disclose her suspension, her failure to do so violates implied covenants of good faith and fair dealing contained in the Procurement Code and evinces evidence of her making material misrepresentations by way of omission in attempting to obtain contracts with State agencies.

23. Riley's (and New Venue's) conduct in this matter reflects a proclivity for misrepresentation and dishonesty which seriously and compellingly affects responsibility as a state contractor as codified in *S.C. Code Ann.* §11-35-4220(f).

24. Riley and New Venue have further been subject to additional litigation for failure to pay debts. For example, on December 1, 2014, Branch Banking and Trust instated Civil Action No. 2014-CP-40-07403 alleging that New Venue and Terris Riley had failed to pay monies owed the Bank. This and a lengthy list of prior litigation shown in the Richland County index, attached as Exhibit "F" further demonstrates her and New Venue's lack of responsibility and supports debarment.

25. Terris S. Riley has been charged with criminal acts and a True Bill was issued by the Richland County Grand Jury on November 12, 2014 indicting her on charges including Embezzlement and Embezzlement of public funds in an amount greater than 10,000.00. A copy of the indictments is attached hereto as Exhibit "G".

26. The Grand Jury's indictment is, as a matter of law, a finding of probable cause to charge Ms. Riley with the criminal acts referenced on the indictments.

27. New Venue Technologies was administratively dissolved on May 7, 2015 by the South Carolina Secretary of State. This administrative dissolution further reflects a lack of responsibility that should be considered by the CPO in addressing the debarment request. (Exhibit "H")

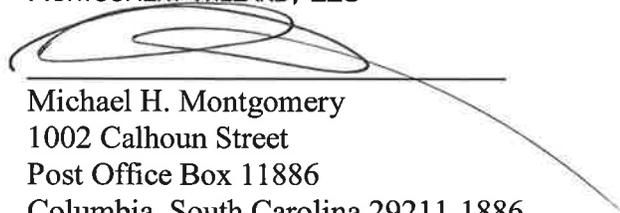
28. New Venue's uncontested failure to perform in accordance with the terms of the SAM contract coupled with the further and subsequent examples of the proclivity of New Venue

and its Principals to withhold and misrepresent material facts to the State, State Agencies and PPU's, to fail to honor its contracts and agreements constitute appropriate cause for debarment pursuant to S.C. Code Ann. 11-35-4220(2).

29. Based upon the information included in the record of this matter as well as this Petition, the Board requests that the CPO commence and complete an administrative review of this matter, and schedule a hearing to conduct his review and provide New Venue, its affiliated entities and the Riley's a reasonable opportunity to be heard on the earliest available date and that the CPO make an appropriate finding regarding the debarment of New Venue Technologies, Inc., its affiliated entities, as identified herein and Terris S. and Jacque P. Riley.

Respectfully Submitted,

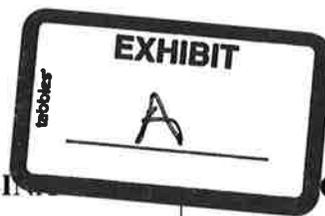
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*ATTORNEYS FOR THE STATE OF SOUTH
CAROLINA BUDGET AND CONTROL BOARD*

May 15, 2015
Columbia, South Carolina

MONTGOMERY WILLARD, LLC



STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

BEFORE THE CHIEF PROCUREMENT
OFFICER
DECISION

In Re: Request for Resolution of Contract
Controversy by New Venue Technologies,
Inc. Counterclaim by South Carolina Budget
and Control Board

CASE NO.: 2014-206

Contract Controversy: New Venue
Technologies, Inc. vs. South Carolina
Budget and Control Board
Solicitation No. 5400001873 - Software
Acquisition Manager
Contract No. 4400003161

POSTING DATE: July 18, 2014

MAILING DATE: July 18, 2014

The South Carolina Consolidated Procurement Code (the "Code") authorizes a contracting state agency or the contractor or subcontractor, when the subcontractor is the real party in interest, to initiate resolution proceedings before the appropriate chief procurement officer of controversies that arise under or by virtue of a contract between them including, but not limited to, controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or recession. S.C. Code Ann. § 11-35-4230. New Venue Technologies, Inc. (New Venue / NVTI) requested resolution of issues related to State Term Contract Number 4400003161 for a Software Acquisitions Manager (Exhibit 46). The State of South Carolina, by and through the Budget and Control Board (B&CB), subsequently filed Answers and Counter Claims (Exhibit 47). The CPO held an administrative review of the issues from May 19, through May 29, 2014. The CPO took nine days of testimony and accepted 465 exhibits comprising more than 25,000 pages of evidence into the record. In lieu of oral closings, the parties agreed to submit written closing arguments which are included as attachments two and three. New Venue was represented by John E. Schmidt, III, Esquire of Schmidt and Copeland, LLC and Geoffrey K. Chambers, Esquire of CPERL Group, LLC. The B&CB was represented by Michael H. Montgomery, Esquire of Montgomery Willard, LLC. The CPO was represented by Shawn Lavery DeJames, Esquire of the Office of General Counsel, South Carolina Budget and Control Board, M. Elizabeth Crum, Esquire of the McNair Law Firm, P.A. and Amber B. Carter, Esquire of the McNair Law Firm, P.A.

Background

This controversy emanates from a state term contract for a Software Acquisition Manager (SAM) (Solicitation No. 5400001873). The SAM contractor, New Venue, was to provide and maintain a real-time, web-based, vendor hosted system and to act as an order fulfillment, distribution, and tracking system to monitor software licenses, license transfers, license redistribution, support, maintenance, maintenance renewals, and warranty transactions as well as invoicing and payment from acquisition to the end of the life cycle. No funds were appropriated for this project so offerors were asked to propose a self-funded model to pay for this service.

The solicitation was issued on August 5, 2010¹. Amendment One to the solicitation was issued on August 20, 2010² answering questions from prospective bidders. Proposals were received from New Venue and Dell on September 13, 2010 (Exhibit 11, P. 1, Record P. 84). Dell's proposal was subsequently rejected and proposal clarifications and modifications were sought from New Venue. Negotiations with New Venue began on October 15, 2010 and concluded on December 21, 2010 with the execution of the Record of Negotiations³ and issuance of an Intent to Award⁴. The Intent to Award was to become the final award on January 4, 2011 and contract performance was to begin on February 15, 2011.

Prior to awarding the SAM contract, state term software contracts included a 1% ITMO admin fee. The SAM contract resulted in an increase of the admin fee to 2.5%. Because this increased admin fee was not reflected in the existing state term software contracts, the contracts needed to be modified to comport with the new admin fee. In addition, there were other documents that contractually defined the relationship between the SAM and the software contractors which were necessary to incorporate into the state term software contracts. Upon award of the SAM contract, ITMO prepared a change order (Exhibit 62, P. 2, Record P. 697) modifying the existing state term software contracts to incorporate the new admin fee, the SAM Vendor Participation Agreement (Exhibit 34, P. 3, Record P. 450), the MySAM Services Agreement (Exhibit 34, P. 8, Record P. 455), and to relieve the software vendors of their existing obligation to remit the ITMO admin fee and the monthly report of contract usage. The software vendors were advised that failure to agree to a modification to the existing contracts would result in cancellation and re-solicitation to incorporate the SAM process. The software vendors refused to modify the existing contracts and ITMO

¹ Exhibit 8, P. 1, Record P. 29 New Venue claims that the Board violated the contract from the outset as no transactions were tracked and processed through the SAM by New Venue until September 2011. New Venue contends that the Board had a duty to require all state agencies and participating local public procurement units to place all software orders for software of any type through the SAM.

² Exhibit 10, P. 1, Record P. 77

³ Exhibit 29, P. 1, Record P.402

⁴ Exhibit 32, P.1, Record P. 445

began a process of cancelling and re-soliciting existing state term software contracts to incorporate the SAM.

Under the SAM contract, participating Public Procurement Units (PPUs) would send purchase orders to New Venue. New Venue would send the order to the software vendor. The software vendor would fulfill the order and invoice New Venue. New Venue would invoice the PPU. The PPU would pay New Venue. New Venue would deduct 2.5% from the PPU's payment as an administration fee and remit the balance to the software vendor. New Venue would then remit .5% of the retained 2.5% admin fee to ITMO, leaving 2% to New Venue for operation of the SAM.

Change Order One⁵ was executed on March 2, 2011 adding additional services to the SAM contract. Microsoft software products were made available through the SAM on July 25, 2011 through reseller CompuCom Systems, Inc. (CompuCom). New Venue (SAM) received the first purchase order from a PPU in July of 2011⁶. Change Order Two⁷ was executed on August 10, 2011, deferring the ITMO administration fee for 12 months. The record reflects that Oracle products were made available in February 2012 through reseller Mythics, Inc.; IBM Middleware products were made available in March 2012 through IBM Public Sector Solutions; Citrix products were made available in March 2012 through reseller Advantec Global Systems; and Microsoft EES (School and Campus) products were made available in December 2012 through reseller Software House International Corp. (SHI).

On January 28, 2013, ITMO sent New Venue a Show Cause⁸ letter citing failure to remit payment to the software contractors in a timely manner. New Venue responded⁹ on February 19, 2013, with assurances that the delinquent payments would be brought current. The record reflects that Symantec products were made available on February 4, 2013 through reseller CDW Government LLC and Corel products were made available on June 11, 2013 through reseller En Point Technologies Sales, Inc.

Contract Modification One, modifying the order and payment process, became effective on September 1, 2013¹⁰. As a result of Contract Modification One, PPUs would send orders directly to the software vendor and copy New Venue; the software vendor would invoice and receive payment from the PPU; New Venue would collect the appropriate data, invoice the software vendor for the 2.5% admin fee, receive payment from the software vendor, retain 2% and remit .5% to ITMO.

⁵ Exhibit 37, P. 1, Record P. 491

⁶ Exhibit 232, P. 1, Record P. 10779

⁷ Exhibit 39, P. 1, Record P. 502

⁸ Exhibit 40, P. 1, Record P. 503

⁹ Exhibit 42, P. 1, Record P. 506

¹⁰ Exhibit 43, P. 1, Record P. 508

On September 30, 2013 ITMO sent New Venue a Notice of Default¹¹ citing continued delinquent payments to the software vendors. There was testimony that the B&CB began an audit of the contract on October 2, 2013, which is still incomplete. According to the testimony, the auditors examined 20 New Venue bank accounts to account for funds paid to New Venue by PPUs. On October 8, 2013, ITMO terminated the contract¹². The B&CB filed request for resolution of a contract controversy on September 30, 2013. The B&CB requested the CPO make a determination whether probable cause existed for New Venue's debarment on October 8, 2013. The B&CB withdrew its request for resolution of a contract controversy without prejudice on November 7, 2013. New Venue requested resolution¹³ of the contract controversy on November 14, 2013.¹⁴ New Venue petitioned the South Carolina Procurement Review Panel to sanction the B&CB for a frivolous filing on November 22, 2013. The Panel dismissed New Venue's motion for sanctions and remanded the case to the CPO suggesting that the CPO combine the State's request for review with New Venue's request for review. An unsuccessful settlement conference was held on February 19, 2014, and the B&CB responded on April 23, 2014 with Answers and Counter Claims¹⁵.

Findings of Fact

Solicitation Issued	August 5, 2010
Amendment One Issued	August 20, 2010
Opening Date	September 13, 2010
Responsibility Check Performed	October 2010
Record of Negotiations Executed	December 21, 2010
Intent To Award Issued	December 21, 2010
Award Effective Date	January 4, 2011
Contract Commencement Date	February 15, 2011
Change Order One	March 2, 2011
Change Order Two	August 10, 2011
Show Cause Letter	January 28, 2013
Response to Show Cause	February 19, 2013
Contract Modification One	September 1, 2013
Notice of Default	September 30, 2013
Contract Termination	October 8, 2013
New Venue Request for Resolution	November 14, 2013
Settlement Conference	February 19, 2014
Answer and Counter Claims	April 23, 2014

¹¹ Exhibit 44, P. 2, Record P. 513

¹² Exhibit 45, P. 1, Record P. 515

¹³ Exhibit 46, P. 1, Record P. 518

¹⁴The Board initially filed a request for resolution on September 30, 2013, and withdrew on November 7, 2013. The Board also filed a request for Suspension on September 30, 2013, that is still pending. New Venue requested sanctions against the Board at the Panel on November 22, 2013. Panel remanded to CPO on January 21, 2014.

¹⁵ Exhibit 47, P. 1, Record P. 585

Discussion

Prior to commencement of the hearing, the parties made several motions which the CPO addressed in writing (Attachment 1) at the beginning of the hearing.

To meet its burden in this contract controversy, New Venue must demonstrate by a preponderance of the evidence that there was a binding contract entered into by the parties, that there was a breach or unjustifiable failure to perform an element of the contract and that New Venue suffered damages as a result of the breach. The B&CB must meet the same burden of proof in its counterclaim in this contract controversy. *See e.g. Fuller v. Eastern Fire & Cas. Ins. Co.*, 240 S.C. 75, 124 S.E.2d 602 (1962), Baughman v. Southern Railway Co., 127 S.C. 493, 1121 S.E. 356 (1924).

I. New Venue's Allegations of Breach of Contract

New Venue alleges the B&CB breached the contract by failing to require all PPUs to process all software purchases through the SAM; by failing to process any orders through the SAM for the first five months of the contract; and by failing to ensure New Venue received a 2.5% admin fee from every software purchase made by a PPU. New Venue further alleges that it was damaged by the B&CB's alleged breach and is entitled to a monetary reward.

A. New Venue alleges breach for failure to process all PPUs' software purchases through the SAM.

New Venue alleges that the contract required all state agencies and participating Public Procurement Units¹⁶ to process ALL software purchases from any source through the SAM beginning on February 15, 2011, and that the State breached that requirement by failing to process any software orders through the SAM until August of 2011 and then only from select state term contracts.¹⁷ New Venue relies on a sentence from the Purpose published in the solicitation which states:

It is the intent of the State to have participating Public Procurement Units submit all software purchase orders through the SAM.

(Emphasis added) (Exhibit 8, P. 20, Record P 48)

¹⁶ The term Public Procurement Unit is a defined term in the Code that includes both State agencies and local public procurement units. Section 11-35-4610(5) "Public procurement unit" means either a local public procurement unit or a state public procurement unit."

¹⁷ New Venue's case relied solely on the testimony of its Chief Executive Officer, Ms. Terris Riley and the documentary evidence in the record.

The B&CB argues that, when taken in the context of the contract as a whole, the only reasonable interpretation of the contract is that the B&CB only intended to process software purchases from state term contracts through the SAM and then only after existing contracts could be modified or re-solicited and new contracts created to require processing software orders through the SAM. See, S.C. CONST. art. I, § 4. I find NewVenue's interpretation is not supported by the plain language of the contract.

The contract anticipated software purchases outside the SAM and purchases through the SAM were limited to software purchased through state term contracts. The contract is comprised of the Record of Negotiations, any clarifications of New Venue's proposal (Exhibit 19), the solicitation as amended, any modifications to New Venue's proposal (Exhibit 18), New Venue's proposal, the Intent to Award and purchase orders, in that order.¹⁸

The Record of Negotiations was executed by both parties on December 21, 2010, and includes a list of Frequently Asked Questions and Answers. There is no explanation as to why these Q and As were included, but their inclusion makes them part of the contract and reflective of the agreement of the parties. Several of these Q and As offer some insight.

Q 6. What if I purchase software outside MySAM – will MySAM automatically know to update my organization's inventory?

A. No. It is the responsibility of the organization to manually update/add any inventory obtained outside of MySAM

(Exhibit 29, P. 8, Record P. 409). Amendment One to the solicitation included the following:

Q28. Will procurement code be changed to make it mandatory for all agencies to order items 1-8 on page 20 through SAM?

¹⁸ Exhibit 8, P. 30, Record P. 58:

CONTRACT DOCUMENTS and ORDER OF PRECEDENCE

(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) documentation regarding the clarification 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) 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 (6) above shall apply notwithstanding any additional or different terms and conditions in either (i) a purchase order or other instrument submitted by the State or (ii) any invoice or other document submitted by Contractor. 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]

A28. No, the procurement code will not be changed; however, the Chief Procurement Officer may in time decide to make this a mandatory project. This cannot be determined without historical data.

(Exhibit 10, P. 5, Record P. 81)

There existed numerous state term contracts for various software, including but not limited to: Microsoft products from CompuCom and Citrix products through reseller Advantec Global Systems. The state term contracts for software, however, did not encompass every piece of software a PPU may have need to purchase. The contract explicitly stated that PPUs may purchase some software outside of the SAM: "In addition, each Public Procurement Unit may have their own individual term contracts that may include software licenses/maintenance and agencies can purchase software from local retailers and catalog sales" (Exhibit 8, P. 20, Record P. 48). Thus not all software was required to be purchased through state term contracts. Only state term contract software was to be purchased through the SAM, and only where the state term contract had been modified or amended to provide for utilization of the SAM.

Taken together, utilization of the SAM was not mandatory for every purchase of software, and purchases outside the SAM were anticipated and recognized by the parties in the Record of Negotiations. The primary purpose of this contract was to track software related inventory. The invoicing and payment of purchases through the SAM was a method of paying for the inventory tracking with some incidental data collection. The primary purpose of the contract is clearly stated in first three paragraphs of the scope of the solicitation:

BACKGROUND

The State of South Carolina is comprised of 97 Agencies statewide with 61,956 employees (see Appendix B). ITMO does not have access to other Public Procurement Unit employment counts and Offeror can request this information from the individual Public Procurement Units.

The State, as a whole, does not have a software tracking/inventory system. Public Procurement Units purchase software from state or agency term contracts or from the retail market. Each Public Procurement Unit is responsible for maintaining its own software inventory and employs at least one person, on a full or part-time basis, to track its software licenses and maintenance. There is no prescribed inventory tracking methodology. The current situation limits the state's ability to aggregate its software requirements and consequently limits its ability to negotiate cost effective contracts, prevents the state transferring unused licenses from agency to agency to maximize its investment, and limits that state's ability to track license compliance.

PURPOSE

The South Carolina Information Technology Management Office (ITMO) is soliciting proposals for a state term contract for the fulfillment and tracking of software licenses and maintenance purchases, warranty information, license and maintenance expiration dates,

and support services purchase and expiration dates. Since no funds have been appropriated for this project, a self-funded system is required (see Section III., Budget). It is the intent of the State to have participating Public Procurement Units submit all software purchase orders through the SAM. The SAM will maintain the following information and make it available to each Public Procurement Unit as it applies to that Public Procurement Unit, and to ITMO as it applies to a specific Public Procurement Unit or the state as a whole:

1. Software License Purchases
2. Software License Expiration Dates
3. Software License Renewals
4. Software Maintenance Purchases
5. Software Maintenance Expiration Dates
6. Software Support Purchases
7. Software Support Contract Expiration Dates
8. Volume Discount Transactions for Software & Maintenance

INTRODUCTION

The State intends to award a state term contract to one Offeror for use by all State Agencies. Use by cities, counties, school districts and other political subdivisions are optional under Section 11-35-4810. - Cooperative purchasing. As stated earlier, Public Procurement Units purchase software from state or agency term contracts or from the retail market. Some software products currently on state term contract can be found at:

<http://www.cio.state.sc.us/itmo/contract/osp/Software/software.htm>.

State term contracts are issued by ITMO and are typically one-year contracts with four optional one-year renewal options for a total potential duration of five (5) years. Warranty periods on software purchased off the state term contract vary from manufacturer to manufacturer. Usually, support is purchased at same time licenses are purchased. Generally, maintenance is purchased before the warranty period expires. In addition, each Public Procurement Unit may have their own individual term contracts that may include software licenses/maintenance and agencies can purchase software from local retailers and catalog sales. It is the State's intent to have all of the above tracked.

(Exhibit 8, P. 20, Record P. 48) It is important to note that no funds were appropriated for the inventory tracking project so an administration fee collected through the invoicing and payment of certain software purchases was designed as a means to fund the project. The contract is clear that the admin fee only was intended to be assessed on purchases that were made through the SAM.

The solicitation required this contract be self-funded contract:

Since no funds have been appropriated for this project, a self-funded system is required (see Section III., Budget).

(Exhibit 8, P. 20, Record P. 48)

The solicitation defined a self-funded model as:

SELF FUNDED BUSINESS MODEL

Contract is self-funded. Offer shall retain a fee (a percentage of the total invoice less returns & taxes) that will be charged to the software provider (LAR, VAR, etc.). The fee will then be deducted from that software provider's invoice prior to SAM's payment to software provider. 1% will be submitted to the State as an administrative fee. For example, if the SAM fee is 3% then 2% remains with the SAM and 1% is submitted to ITMO as an administrative fee.

The fee must be the same for all transactions. Transactions include, but are not limited to, software licenses, license transfers, license redistribution, software maintenance transactions, and training and support costs and all changes that require monetary transactions.

(Exhibit 8, P. 39, Record P. 67)

In addition to the fee to be assessed to fund the project, the successful contractor was also responsible for remitting an admin fee to ITMO/MMO.

ADMINISTRATIVE FEE – ITMO

The Information Technology Management Office (ITMO) issues and maintains State term contracts for the benefit of Using Governmental Units within the State of South Carolina. In order to maintain and enhance the quality and quantity of its State term contracts an administrative fee of one percent (1%) of the total actual sales and services will be assessed of the Software Acquisition Manager. Total actual sales will be equal to gross sales less return goods and taxes as stated on the invoice.

(Exhibit 8, P. 33, Record P. 61)

Once the successful proposal was identified, the parties modified and clarified fees to be collected in the Record of Negotiations:

38. This contract is self-funded. The first year of the Software Acquisition Manager (SAM) the SAM fee will be 2.5% for each software purchase submitted through the SAM. Two percent (2%) remains with the SAM and one half percent (0.5 %) is submitted to ITMO as an administrative fee. At the end of any 12 month period, the State may negotiate the SAM fee.

(Exhibit 29, P. 6, Record P. 407)

The contract limits the purchases to be processed through the SAM to software purchases made from state term contracts. Delbert Singleton, Director of the Division of Procurement Services, testified that administrative fees are only imposed on state term contracts. ITMO Procurement Manager Debbie Lemmon testified that the software purchased through the SAM was to be software on state term contract. Amendment One to the solicitation included a number of questions and answers that clearly indicate that purchases processed through the SAM were limited to software purchases from state term contracts:

Q5. How will this contract affect or be affected by the current state term contracts in place? Will they continue, and if so, will endusers purchase from the SAM, and the SAM will purchase from the state contracted vendors?

A5. At this time, the current contract holders will perform as usual. If changes need to be made to current contracts to work with the SAM, ITMO will make this determination.

End users will only process their Purchase Orders through the SAM, not purchase from the SAM. Purchase orders can be viewed as a pass-through.

(Exhibit 10, P. 2, Record P. 78)

Q6. How will this affect current discount structures for state contracts, if the SAM can add an admin fee for the SAM, and an admin fee for the state? Will the state contract vendor also have to pay the admin fee for the state, if 2 contracts are used (the SAM contract, and the Microsoft contract for instance)? Or will the SAM pay the state the admin fee once?

A6. It depends upon the solution that is received. The State will make every effort to work with current contract holders.

(Exhibit 10, P. 2, Record P. 78)

Q30. Will all the checks/payments issued by SAM to vendors for items 1-8 on page 20 say State of SC?

A30. The checks/payments do not have to say State of SC but must include the following information:

- A. The purchasing agency name with delivery information.
- B. The State Term Contract Number
- C. Purchase Order information
- D. Reseller Quote and Quote number
- E. Reseller Invoice/Billing number

(Exhibit 10, P. 5, Record P. 81)

This contract required the SAM to be able to track software whether the purchase was processed through the SAM or through some other method, and it anticipated that other methods would be used. The contract limited software returns to software purchased from state term contracts. The ITMO admin fee was only included in state term contracts. There was no contractual basis for collecting an ITMO admin fee unless purchases were made through state term contracts. This contract did not require the purchase of all software by all participating PPU's through the SAM. Only software purchases from state term contracts were to be processed through the SAM. The contract clearly indicates that the purpose of the contract was to track and report the PPU's software. The processing of purchases and collection of an admin fee was not the purpose of the contract but a means of paying for the tracking and reporting of software inventory. The

contract does not require all state agencies and participating PPUs to process ALL software purchases from any source through the SAM. There is no material breach of the contract by the B&CB for failure to force all PPUs to process all software purchases through the SAM.

B. New Venue alleges breach for failure to process any orders through the SAM for the first five months of the contract

New Venue alleges that the State breached the contract by failing to process any orders through the SAM between February 15, 2011 and August 2011 and breached its obligation of good faith under Section 11-35-30¹⁹ by failing to do everything in its power to insure that all software purchases were processed through the SAM beginning on February 15, 2011.

Delbert Singleton, Director of the Division of Procurement Services, and Debbie Lemmon, ITMO Procurement Manager, testified that the state term software vendors refused to agree to change the state term contracts to provide that software vendors be required to process orders through SAM, at least in part based on the financial strength of New Venue. The software vendors were delivering product to the PPUs with the understanding that the PPU would pay New Venue and New Venue would pay the software vendors. It is only reasonable to expect that when one business contemplates entering into an agreement with another business that involves millions of dollars, that both businesses would exercise due diligence in evaluating their prospective partner.

The Code requires a determination of responsibility prior to contract award that would include whether the potential awardee has the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to meet all contractual requirements. The record reflects ITMO's efforts to determine New Venue's responsibility, including a listing with the South Carolina Secretary of State showing that New Venue was in "Good Standing" (Exhibit 25, P. 1, Record P. 388), a Dunn and Bradstreet report (Exhibit 26, P. 1, Record P. 390), satisfactory reference verifications (Exhibit 22, P. 1, Record P. 364), and two and a half years of financial statements in October 2010. (As of June 30, 2010, New Venue's balance sheet showed \$99.00 in checking/savings and \$17,928.00 in total assets [Exhibit 24, P. 4, Record P. 381]). ITMO determined that New Venue was a responsible bidder based on the information it obtained in October 2010 and awarded it the contract. There is nothing in the record indicating New Venue's financial situation in February 2011 when the software vendors cited that New Venue's financial strength was a problem.

¹⁹ Section 11-35-30. Obligation of good faith.

Every contract or duty within this code imposes an obligation of good faith in its negotiation, performance or enforcement. "Good faith" means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing.

Decision, page 11

In the Matter of New Venue vs. State of South Carolina, Case 2014-206

The record reflects New Venue's attempts to secure loans and lines of credit, with mixed results, beginning in March 2011 through the end of the contract (Exhibit 72, P. 3, Record P. 757). New Venue complains that these efforts to secure loans and lines of credit were imposed on it by the B&CB at the insistence of the software vendors as a precondition to implementation of the contract and were not part of the SAM contract. The SAM contract did not require New Venue to undergo credit worthiness checks and secure loans or lines of credit at the insistence of the software vendors and there is no indication that the B&CB imposed these requirements as part of the contract. Ms. Riley understood this on July 26, 2011 when she emailed Debbie Lemmon about a request from CompuCom:

He also requested that I fill out a credit application with CompuCom. I responded that New Venue will not complete a credit application and we will not apply for any kind of line of credit with CompuCom for any reason. This is not apart (sic) of our agreement with the State of SC.

(Exhibit 282, P. 1, Record P. 24774)

The record does not support New Venue's assertion that the B&CB forced it to seek loans and lines of credit as a precondition of contract implementation. The record does reflect that New Venue's quest for loans and lines of credit continued throughout the contract, and in some cases the loans and lines of credit were secured to bring accounts with the software contractors current.

On March 2, 2011, ITMO and New Venue agreed to Change Order One (Exhibit 37, P. 1, Record P. 491), which added Asset Inventory Management services and Current State Discovery services to the contract. These services were not dependent on the underlying software contracts and were available to agencies immediately. ITMO assisted in making the availability of these services known to all PPUs (Exhibit 273, P. 1, Record P. 24753).

The record reflects that the first, and most lucrative, contract re-solicited was the contract for Microsoft software products. The IFB issued on May 27, 2011 with award final July 25, 2011. New Venue began to receive orders from PPUs at the end of July 2011 and on August 10, 2011, ITMO and New Venue agreed to Change Order Two (Exhibit 39, P. 1, Record P. 502), which deferred the remittance of the ITMO portion of the admin fee for 12 months.

While one can understand that a vendor would like to be able to generate revenue on day one of the contract, that is typically not the case. Most state term contracts experience some ramp up time to make PPUs aware of the contract and for PPUs to get purchase orders in the pipeline. Due to the unanticipated

reaction from the software vendors to modifying the existing contracts²⁰, the ramp up time for this contract was a little longer than normal. Further, as the clear language of the solicitation shows, New Venue could not reasonably expect any amount of revenue from this contract. The solicitation put contractors on notice that the quantity of purchases was unknown and that the contractor was not guaranteed any amount of revenue, or any revenue at all:

ESTIMATED QUANTITY - UNKNOWN

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]

(Exhibit 8, P. 35, Record P. 63) (emphasis added).

Thus, there was no guarantee of orders on the effective date of the contract and New Venue could not reasonably expect any amount of revenue, and certainly not on any particular date. Given the circumstances, the B&CB took every reasonable step to begin processing software orders through the SAM as soon as possible. There was no material breach of the contract by the B&CB.

C. New Venue alleges breach for failure to ensure New Venue received a 2.5% fee from all PPUs' software purchases.

New Venue also claims the B&CB breached the contract in that it “failed and refused to permit and require all software orders and purchases to be submitted to the SAM so that NVTI could receive its 2.5% fee.” Essentially, New Venue claims that it was entitled to a payment of two and one-half percent of every software purchase made by every PPU – regardless of whether the acquisition was made under a state term contract or subject to an administrative fee. As discussed earlier, the SAM admin fee was limited to purchases from software state term contracts. The purpose of this contract was for the tracking of software licenses, maintenance, support, and to facilitate license transfers. The admin fee was not the primary purpose of the contract, but rather was a means of paying for the tracking related services.

D. New Venue's claim for damages.

New Venue claimed damages including: the costs of analysts, developers and testers to build the solution to meet the State's requests; the costs of training, staffing, and paying a help desk team; the costs of

²⁰ There was testimony that the software vendors were amendable to the concept of a SAM prior to the award of the contract. It was not until New Venue was identified as the awarded vendor that the software vendors raised objections and concerns.

graphic design for marketing material required by the Contract; the costs of engaging support to assist in designing and building the online training tutorial under the Contract; the costs of all hardware, software, equipment, space, materials, supplies and personnel necessary for the implementation of the Contract; the cost of disaster recovery systems required for performance of the Contract; and other damages.

The burden of proving damages for breach of a contract rests on the plaintiff. Jackson v. Midlands Human Resources Center, 296 S.C. 526, 528, 374 S.E.2d 505, 506 (Ct. App. 1988). The proof of damages must pass the realm of conjecture, speculation or opinion not founded on facts, and must consist of actual facts from which a reasonably accurate conclusion regarding the cause and the amount of the loss can be logically and rationally drawn. Sterling Dev. Co. v. Collins, 309 S.C. 237, 242, 421 S.E.2d 402, 405 (1992); Drews So. v. Ledwith-Wolfe Assoc., 296 S.C. 207, 371 S.E.2d 532 (1988).

In its effort to prove damages, New Venue relied solely on the testimony of Ms. Riley who either deferred the particulars of New Venue's claims to the accountant, Martha, or refused to provide names and contact information for persons who could corroborate her testimony. Martha was not called as a witness. While the record did reflect that there was one order placed by a PPU that should have been submitted through SAM but was not so placed, New Venue failed to prove it suffered any damages because the record reflects that the admin fee was paid to New Venue for this acquisition outside of SAM. New Venue failed to meet any minimum standard of proof as to the amount of any damages it allegedly sustained.

II. The Board's Allegations of Breach of Contract

The B&CB alleges that New Venue failed to deliver the online software tracking and management tool required by the contract; that New Venue failed to properly account for and remit administrative fees to the B&CB as required by the contract; that New Venue failed to timely place orders with the software resellers as required by the contract; that New Venue failed to timely remit payments to the software resellers as required by the contract; that New Venue collected funds for orders that it never placed; and that New Venue improperly diverted funds belonging to the resellers to its own use all in violation of contract requirements.

The B&CB also alleges that New Venue made material misrepresentations to the B&CB, to using governmental units of the State and to resellers regarding the status and collection of payments. The B&CB alleges that New Venue made these misrepresentations in order to further a scheme to defraud the B&CB, using governmental units and resellers, of funds remitted to New Venue by the PPUs that were to pass through to the resellers. The B&CB alleges that it is entitled to actual and punitive damages because of New Venue's fraudulent conduct.

A. Failure to deliver the online software tracking and management tool required by the contract

The B&CB alleges that New Venue failed to deliver the online software tracking and management tool required by the contract. The contract called for New Venue to provide and maintain a real-time, web-based, vendor hosted system (Exhibit 8, P. 8, Record P. 36). The Record of Negotiations included some specific requirements for the web-based system:

16. MySAM Central™ will support SSL (Secured Socket Layer) protocol for encrypted communications across the Web server.
17. MySAM Central will support the following Internet Browser:
 - 1.1 IE 7 and higher
 - 1.2 Foxfire 3.6 and higher
 - 1.3 Safari 4.0 and higher
20. The Upload Documents functionality on MySAM Central will not scrutinize content of the uploaded file(s) – the individual user is responsible for all content uploaded and/or faxed to the SAM
21. MySAM Central will allow multiples Quote uploads. However only ONE Purchase Order can be uploaded per order
22. The State Term Contract Number will be included as a field on the MySAM Central application. The primary and intended functionality for the end-user includes the following: Enter Order, Upload Documents, Confirm Order, and Submit Order.
23. MySAM Central will be load balance tested to ensure stability for a peak-time use of 100 concurrent connections. As we implement new phases and new functionality to MySAM Central, the number of concurrent users will increase. This will be based on data obtained from trend usage reports. The system will be modified to ensure maximum response times, stability and functionality. In addition, MySAM Central will utilize automatic log-out functionality due to no activity. This internal system monitoring will minimize concurrent connections ensuring best system performance.

(Exhibit 29, P. 1, Record P. 405)

The contract required the online system to act as an order fulfillment, distribution, and tracking system to monitor software licenses, license transfers, license redistribution, software maintenance and renewals, and warranty transactions as well as invoicing and payment from acquisition to the end of the life cycle (Exhibit 8, P. 8, Record P. 36). More specifically, New Venue was to track software licenses and maintenance purchases, warranty information, license and maintenance expiration dates, and support services purchase and expiration dates. ... New Venue was to maintain the following information and make it available to each PPU as it applied to that PPU, and to ITMO as it applied to a specific PPU or the State as a whole:

1. Software License Purchases
2. Software License Expiration Dates
3. Software License Renewals
4. Software Maintenance Purchases

5. Software Maintenance Expiration Dates
6. Software Support Purchases
7. Software Support Contract Expiration Dates
8. Volume Discount Transactions for Software & Maintenance

(Exhibit 8, P. 20, Record P. 48).

Ms. Riley testified that New Venue could not track the required information because the State did not insist that the software manufacturers provide New Venue with the Software License Key IDs. Amendment One does indicate that the manufacturer is to send the Software License Key IDs or key code to New Venue:

Public Procurement Unit (PPU) sends Purchase Order to SAM. SAM sends the purchase order to the manufacturer. The manufacturer sends the key code to the PPU. SAM sends invoices as well.

Notes:

1. PO from PPU must be cut to SAM notating the Manufacturer's quote and billing address & State Term Contract # if applicable
2. Manufacturer sends key code & invoice to SAM
3. SAM sends key code & invoice to procuring PPU
4. PPU sends payment to SAM who pays the manufacturer

(Exhibit 10, P. 7, Record P. 83). However, this requirement was changed in the Record of Negotiations:

2. New Venue is not responsible for delivering software orders, nor for delivering vendor KeyIDs for software downloads unless this is decided upon by the State.

(Exhibit 29, P. 2, Record P. 403)

The contract required a web reporting tool and specific reports to make the information "available to each Public Procurement Unit as it applies to that Public Procurement Unit, and to ITMO as it applies to a specific Public Procurement Unit or the state as a whole." The Record of Negotiations included requirements for the web reporting tool:

25. The web reporting tool will be intuitive and user-friendly with standard and customizable reports. (February Release)
26. The web reporting will reflect current contract usage details as required by the State's Reporting Manager. (February Release)
27. The web reporting tool will include real-time trending as well as 'snap-shot' of Web trending for a given date. (May Release)
28. The web reporting tool will be used to trend 'Peak/Low' time usage. (May Release)
29. The web reporting tool will include trending by Agency. (May Release)

30. The web reporting tool will trend the average time it takes to submit an order. (May Release)
31. The web reporting will trend by Agency and MySAM Central holistically. (May Release)
32. The web reporting tool will trend the average number of line items per order. (May Release)
33. The web reporting tool will trend to average total cost per order. (May Release)

(Exhibit 29, P. 5, Record P. 406).

Ms. Riley testified that the functionality that was to be available in February 2011, according to the contract, was not available because of the State's failure to make the software manufacturers provide New Venue with the software Key IDs:

"A web reporting tool will be intuitive and user friendly with standard and customizable reports". That would be available with the February release, but several things had to happen. The first thing that had to happen was that I had to have the Software License Key ID. I did not have that. If I had that information, then I could make sure that I would have made that account available, at a least at Debbie's, which is the State super admin user.

Ms. Riley also testified that the functionality scheduled for the May release in the contract was delayed until a June 7, 2013 meeting when it was decided by ITMO and New Venue that all development of the MySam Central system should be discontinued. The CPO notes that there is no change order or other contractual documentation to this effect in the record.

The contract also required "MySAM Central™ will provide Usernames and Passwords for each user" (Exhibit 29, P. 3, Record P. 404). When questioned about usernames and passwords Ms. Riley provided the following answers:

Q: Well, I just want to make sure I understand, Ms. Riley. Is it true that no user name or password was ever issued to any State user to be able to access MySAM Central?

A: The accounts were created, but they were not issued, because role-based security was not implemented.

Q: So, there was never a situation where any State user was able to log into this system from February of 2015 -- or excuse me, February of 2011 through today using that system?

A: They could from my office, but they declined that offer.

The contract also requires New Venue to facilitate license transfers:

The SAM will facilitate the transfer (including cross-agency transfer) of any kind of software licenses. It shall be the State's responsibility to inform the SAM of any instances in which a transfer of license is permissible. SAM will advertise available transfers via the MySAM Central applications and Agencies may obtain information from the SAM.

(Exhibit 29, P 2. Record P. 403)

On August 27, 2013, Debbie Lemmon emailed Terris Riley:

Terris,

We have an agency that has requested the following:

“Has anyone actually transferred licenses between agencies or done any analytics regarding statewide licensing that the SAM was intended to address?”

Request an account with MySAM Central to review with our customer.

Can you provide me an account with MySAM Central by close of business on Wednesday, August 28, 2013?

(Exhibit 423, P. 3, Record P. 25186) Terris Riley replied by email that same day:

We can create user accounts, but there are some areas that we need to talk through first... Also, in light of this, we must redefine the roles of each user. So before we create any roles for any users, we need to schedule a meeting with you to determine how the user roles will be set up... The answer to your question is no, we cannot have an account created for a user by COB 8/28. Reports are available, but I would request that you allow us to get through this 'end-of-the-month' rush. As you know, we have less staff now. If you'd like, the Agency can call me or Anthony for a one-on-one consult regarding licensing information for their agency only...I will be in a mandatory GSA training class on Wednesday, Thursday & Friday of this week, but I am available next week to come in and discuss how we should proceed with 1) the User Accounts and 2) License Transfers. I'll keep an eye out for your invite! Thanks, Debbie!

(Exhibit 423, P. 2, Record P. 25185) Mr. Emmett Kirwan of ITMO sought access to the MySAM system on September 24, 2013:

Terris,

As the contract administrator for ITMO I need to have access to the reports available to the State of South Carolina in MySAM Central as an ITMO Super-user. Please provide me with a username and password that will gain me access to all South Carolina's MySAM Central reports. I understand you are out of the office until Friday, however I need this access no later than Thursday, September 26, 2013 at noon.

(Exhibit 431, P. 2, Record P. 25201) On September 24, 2013 Ms. Riley responded:

Hi Emmett,

I hope you are doing well.

Thanks for contacting me. I contacted Debbie about a similar request a few weeks ago. When Jacque & I met with Norma, Delbert, and Debbie along with our attorney, Geoff Chambers, (back in June), we were in the midst of preparing to roll out the next phase of development for the MySAM system (which includes the implementation of the State Admin User role). However, the State explained the need to modify the SAM contract

ASAP. We discussed the great challenges this would present for NewVenue from the applications development perspective as well as from a financial perspective (most importantly). In order to transition, we collectively agreed on certain strategies to help minimize impact, expenses & costs immediately. Some of these adjustments included downsizing our staff as well as halting development work for MySAM (for now).

... As I previously explained to Debbie, this feature is currently not available in MySAM, but we will be happy to provide you with custom reports with the information you require. To properly set your expectations, Emmett, we will not be able to provide you with access to our system until we have worked through this modification and have regained the financial stability to resume development work.

(Exhibit 431, P. 3, Record P. 25200) Mr. Kirwan made an additional request for access to the system on September 25, 2013:

Terris,

Thank you for your response. Since this feature is not available would you at least be able to provide me a login so that I can see what State Agencies and other Using Governmental Units see when they receive their login credentials and are able to login?

(Exhibit 431, P.2, Record P. 25199) Ms. Riley responded a short time later that day:

Hi Erwin,

My apologies, let me be more clear. This feature--State Admin level access--(technically called **role-based security**) is simply not available because it's not in the production environment. This has not been coded yet.

What is it that you are wanting to accomplish? Do you want to test-drive the system? If so, I will check to see if our demo environment is still accessible. It's an exact replica of MySAM but there is no real data.

Otherwise, I will be happy to provide a live demo of the actual production environment for you at my office when I return. What days/times look good for you next week?

(Exhibit 431, P. 1, Record P. 25198)

Ms. Riley's email refers to a June 2013 meeting with MMO alleging that a decision was made to temporarily halt future development of the MySAM application. That decision is not memorialized in the contract and even if it were, the password and login function was supposed to be available on February 15, 2011 when the contract started. There is no evidence that New Venue provided the real-time, web-based, vendor hosted system to act as an order fulfillment, distribution, and tracking system to monitor software licenses, license transfers, license redistribution, support, maintenance, maintenance renewals, and warranty transactions as well as invoicing and payment from acquisition to the end of the life cycle.

B. New Venue failed to properly account for and remit administrative fees to the Board as required by the contract

The testimony of Jimmy Aycock, the B&CB's auditor, established that New Venue failed to properly account for and remit the administrative fees due the B&CB under the contract. Mr. Aycock found that gross software sales by New Venue totaled \$29,511,226.03 (Exhibit 181, P. 48, Record P. 743). The MMO admin fee of .5% should have been \$147,556.13. New Venue only reported the sum of \$22,392,132.95 to the B&CB (Exhibit 181, P. 48, Record P. 743). This resulted in an underreporting of over seven million dollars in gross software sales. Based on New Venue's reported sales, New Venue should have remitted \$111,965.66 to MMO. However, New Venue only remitted \$111,247.39 to MMO (Exhibit 233, P. 1, Record P. 10782). New Venue underpaid administrative fees to the State in the amount of \$36,308.74.

C. New Venue failed to timely place orders with the software resellers as required by the contract

The Record of Negotiations required:

All orders are processed the next business day. For orders received after 5 PM, that order will be processed within the next 2 business days. Note all required documents (the PO and either a quote or a contract number) must be received by the SAM before an order can be processed.

(Exhibit 29, P. 2, Record P. 403)

Emmett Kirwan, a Contract Administrator with the B&CB, testified about his analysis of New Venue's timely transmission of orders under the contract and concluded that New Venue regularly failed to transmit orders within the time required by the contract. Exhibit 453 in the record demonstrates this failure (Exhibit 453, P. 1, Record P. 25408). Moreover, Mr. Kirwan determined that in many cases, New Venue was not even placing the purchase orders until after it received payment from the state agencies and PPU's. There was also evidence that in some cases, New Venue required pre-payment by PPU's in violation of the contract.

D. New Venue collected funds for orders that it never placed

New Venue invoiced PPU's for orders totaling \$88,208.85, received payment, but never forwarded the orders to the software vendors (Exhibit 454, P. 1, Record P. 25665).

E. New Venue failed to timely remit payments to the software resellers as required by the contract

The B&CB asserts that New Venue did not remit payments within 3 business days as required by the contract, and instead often took 45 days or more to remit payments. The contract clearly requires the software resellers to be paid within 3 business days after the SAM receives payment from the PPU.

The State will ensure that all Vendors participating in SAM understand that all invoices will be paid from the SAM to the Vendor within 3 business days after the SAM has received payment from the State.

(Exhibit 29, P. 3, Record P. 404) In spite of the fact that she signed the Record of Negotiations that included this requirement, Mrs. Riley characterized this as a “desire of the State” that was not a binding contractual requirement on New Venue. However on February 9, 2012, Debbie Lemmon emailed Terris Riley and a number of CompuCom employees stating:

According to the contract, CompuCom has agreed to accept payment from the Software Acquisition Manager within three (3) business days after the Software Acquisition Manager (New Venue) receives payment from the State.

(Exhibit 305, P. 1, Record P. 24833)

When the B&CB’s auditors reviewed New Venue’s banking transactions they discovered that the average time between the time the PPUs paid New Venue and the time New Venue remitted the funds to the software vendors was:

CompuCom	49.59 days with a high of 153 days (Exhibit 256, P. 23, Record P. 24692)
Advantec	60.73 days with a high of 378 days (Exhibit 256, P. 25, Record P. 24694)
SHI	50.89 days with a high of 127 days (Exhibit 256, P. 27, Record P. 24696)
Mythics	45.40 days with a high of 58 days (Exhibit 256, P. 29, Record P. 24698)

Exhibit 456 shows numerous examples where NVTI received payment from the PPU and failed to remit payment to the software vendors in accordance with the contract (Exhibit 256, P. 15, Record P. 24684). Exhibit 425 shows that SC Judicial Department paid New Venue on 5/20/2013 and New Venue deposited the payment in its account on 5/22/2013. On September 11, 2013 Ms. Riley emailed Norma Hall that the PO was showing as unpaid. New Venue paid CompuCom for the Judicial Department’s software order from CompuCom on September 20, 2013 (Exhibit 256, P. 17, Record P. 24686).

Mrs. Riley referred to an agreement with CompuCom to allow for summary billing on a thirty or forty-five day basis, and while there are emails on the subject in the record, the CPO finds no executed agreement. Regardless, no such agreement between CompuCom and New Venue was ever incorporated into the contract, the B&CB was not a party to any such agreement, and an agreement between CompuCom and New Venue does not alter the contract between New Venue and the B&CB. Further, it is apparent from the

Decision, page 21

In the Matter of New Venue vs. State of South Carolina, Case 2014-206

record that CompuCom believed that New Venue was to remit payment within three days of receiving payment from the PPU.

In an email from Earl Fajkus of CompuCom to David Williams of CompuCom dated November 1, 2012:

When we initially reviewed, discussed and approved this opportunity with the State, the understanding and agreement with New Venue and the State was clear in that New Venue would pay us within 3 days of being funded by the State.

(Exhibit 321, P. 1, Record P. 24902) In an email from CompuCom's Earl Fajkus to Terris Riley dated January 25, 2013:

A review indicates that at this point you have past due invoices totaling \$1,464,218, on accounts with a total balance of \$2,810,148. That delinquent balance of \$1.46 Million represents 52% of your total balance, with the majority of invoices being severely delinquent, (i.e. more than 30 days past due, with a large portion of those invoices are from the September – November 2012 time frame!). Further review of your accounts show that they have been chronically delinquent for the last 12 months, with examples, month after month, of invoices paid by the State of South Carolina to New Venue not being forwarded to CompuCom in a timely manner. The agreement is that payments are to be forwarded to CompuCom within 3 days of receipt, Not 30 or 60 days as has been typical over the history of this account.

(Exhibit 359, P. 1, Record P. 25025) In a September 27, 2013 email from Mrs. Riley to Earl Fajkus of CompuCom:

To date, New Venue Technologies, Inc. owes approximately \$2.5M...Earl, now that the modifications are in effect, we will need to work with you and your team at CompuCom to agree on (semi) long-term solution for us to repay this debt.

(Exhibit 181, P. 46, Record P. 741)

Ms. Riley's testimony regarding New Venue's failure to remit payment to the software contractors within three days of receipt of payment from the PPUs is informative:

Q: Ms. Riley, if you could direct me to any authority within the contract documents that provides you the ability to withhold moneys other than administration fee from the vendors?

A: Well, I would answer, if I'm understanding you, Mr. Montgomery, that it's not a matter of withholding money, but more of a matter of when money is remitted, and I believe that is addressed in the Summary Billing Agreement between CompuCom and I, and I believe that is established in the way in which we performed and the way in which we submitted our payments to CompuCom, so I won't say that there's anything that says I have a right to withhold money, but I don't believe there's anything that defines any terms that I did not comply with throughout the contract.

Q: But your contention is that the State was bound by your Summary Billing agreement with CompuCom?

A: Well, I'll say it this way. New Venue Technologies and CompuCom had an agreement, because the State Solicitation, nor does my Record of Negotiations explicitly describe exactly when I would make my payment. It placed no duty on me as to when I would remit my payment. That was governed by and established agreement between New Venue and CompuCom, because at the vendor's request, they simply did not want payments every day. That was with their request. That's what they asked for.

Q: Do you contend that you had any entitlement to the use of the 97.5 percent of the funds that you collected and were to remit to the resellers?

A: I contend that I have entitlement to any revenue that comes into my company for the use of productivity in my business, for the use of moving our business forward, and especially for the use of adhering to new contract requirements that were not in place before I was awarded the contract.

Q: Okay. Did you ever notify the State in any way that "I'm keeping money as part of that 97.5 percent that I'm supposed to be delivering to the vendor"?

A: Well, that would mean keeping -- keeping to me -- this is what "keeping" means. "Keeping" means that I am -- I've taken some money. I've stashed some money away, and I have the intent to keep that money stashed away and never to pay anybody, never to remit anything and never to inform you of what it is I intend to do or what it is I'm trying to accomplish ever. That's what "keep" means. So, my answer to you is that, no, I did not contact the State to tell them what I'm keeping, because that's not what I did.

On November 2, 2012, Ms. Norma Hall contacted New Venue about delinquent accounts with CompuCom. On January 28, 2013 the B&CB served New Venue with a show cause letter addressing the late payments to the software contractors and possible termination of the contract (Exhibit 40, P. 1, Record P. 503). New Venue responded on February 19, 2013:

Ms. Hall, when you notified me on November 2, 2012, we immediately began to aggressively attack the situation. At that time CompuCom's aging report reflected \$1.8M as delinquent invoices. As of today, we have reduced this amount to \$318,551.55 (which we anticipate clearing up by later February/early March). To date, our payments to CompuCom since our November 2nd conversation total \$2,225,044.24.

(Exhibit 42, P. 1, Record P. 506)

New Venue did not bring its accounts with CompuCom current as promised. On March 22, 2013, Voight Shealy, the Materials Management Officer, advised Norma Hall that:

According to CompuCom, New Venue owes CompuCom a total of \$2,825,608.66.
 According to CompuCom, \$1,376,024.13 of that is past due.

(Exhibit 392, P. 1, Record P. 25109) According to the auditors, as of October 2013, there is \$2,702,511.26 that was paid to New Venue that was not forwarded to the software vendors (Exhibit 256, P. 1, Record P. 24670).

From July of 2012 until February of 2013, the only software orders being processed through New Venue were for Microsoft products from CompuCom. Looking at New Venue's banking records for the first few months of the CompuCom contract indicate that New Venue received payments from PPUs for two months before it made the first payment to a software contractor and then only paid the software contractor slightly more than half (55%) of what New Venue had received from the PPUs.

	SAM Deposits	Payments to Software Resellers	Other NV Expenditures
8/31/2011	\$48,713.07	\$0.00	\$42,212.44
9/30/2011	\$950,149.34	\$0.00	\$69,293.11
10/31/2011	\$560,175.52	\$856,993.95	\$227,039.56
11/31/2011	\$299,115.79	\$249,138.02	\$81,943.59
12/31/2011	\$527,576.98	\$456,935.41	\$109,440.86
	Exhibit 182, P. 161, Record P. 988	Exhibit 183, P. 294, Record P. 1599	Exhibit 183, P. 294, Record P. 1599

There are numerous examples in the record of New Venue's failure to meet this requirement and it is clear from the chart above that New Venue was never in compliance with this requirement. This is a material breach of the contract.

F. New Venue improperly diverted funds belonging to the resellers to its own use all in violation of contract requirements

Mr. Aycock reported some of the audit findings in Exhibit 256 (Exhibit 256, P. 31, Record P. 24700) Showing Gross Expenses of \$34,977,362.74 of which \$28,393,436.01 could be directly tied to payments from PPUs for software. Software contractors were paid \$24,809,153.52 leaving a balance of \$3,584,282.49. New Venue was entitled an admin fee of 2% of the SAM deposits or \$567,868.72. The MMO admin fee of .5% of the SAM deposits equaled \$141,967.18. Subtracting the admin fees from the \$3,584,282.49 leaves a balance of \$2,874,446.59 still owing to the software contractors.

The auditors concluded that New Venue spent \$4,385,026.85 on things not related to the SAM contract. This included "Other Expenses" of \$3,511,260.94 and Miscellaneous expenses of \$873,765.91 (Exhibit 256, P. 32, Record P. 24701).

The auditor's testimony revealed that New Venue had appropriated more than \$2.7 Million, which was used to fund personal expenses of New Venue's owners. These expenses included more than \$711,000.00 to a contractor for construction of the personal residence of Terris and Jacque Riley, New Venue's owners, more than \$66,500.00 for the purchase of the land for that house, plans, a swimming pool and landscaping at the home totaling almost \$70,000.00. Mr. and Ms. Riley took more than \$600,000.00 in cash withdrawals from accounts; none of the cash was paid to any software resellers, and spent nearly \$200,000.00 in religious donations and consultant services. The Rileys spent more than \$564,000.00 in debit card transactions from New Venue accounts. New Venue was entitled to only 2% of the \$28,393,436.01 it received from the PPUs, \$567,868.72, far less than the amount of money retained and spent by Mr. and Mrs. Riley.

G. New Venue failed to comply with the End-of Life requirements of the contract

The contract required certain obligations to survive termination of the contract:

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.

(Exhibit 8, P. 32, Record P. 60)

STATEWIDE TERM CONTRACT (JAN 2006)

... 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 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.

(Exhibit 8, P. 37, Record P. 65) At item 41 in the Record of Negotiations (Exhibit 29), New Venue agreed to comply with the end of life requirements set forth in the solicitation. The solicitation provided:

Procedure for End of Contract Life

Software Acquisition Manager must agree at the end of their contract period, whether the State conducts a new procurement for this service or not, contractor must provide the State, within 30 days of contract end date the following information including but not limited to:

- All data in as mutually agreed upon in a industry common format such as ASCII
- Back-ups
- Report layouts
- Open Source Software
- Any other information obtained from the State pertaining to this contract.

At the conclusion of the contract, the Contractor will initiate a decommissioning procedure that will result in the shutting down of the existing site, export and delivery of the data using either Microsoft Excel or a CSV File (comma separate values). The data is to be accessible on a secure website within 60 days after the contract termination, and remain available on the site for a minimum of 90 calendar days at no additional cost.

The only information New Venue provided was bank statements, cancelled checks, purchase orders, and invoices in either PDF or picture format. An examination of Exhibit 462 does not demonstrate that the information required by contract to be provided to the B&CB has been provided to the B&CB. There were no registers showing what payments were for what invoices or what invoice payments were covered by what deposits. There were no record layouts. There was no inventory by manufacturer, product, agency, or accumulated totals. Mr. Aycock testified that he or his staff reviewed every document provided by New Venue and that neither the data nor the reports were included therein. New Venue breached the contract in this particular by failing to provide the data and information it agreed to provide in the contract. This is a material breach of the contract.

In addition, Mr. Aycock testified about the failure of New Venue to provide records required to conduct the audit pursuant to the contract and statute. He also testified that New Venue failed to cooperate as the contract required in the audit process and the resulting cost to the B&CB. The totality of documents provided by New Venue was entered into the record as Exhibit 462. The record shows that the absence of records and the condition of the records received resulted in the audit requiring about 2000 hours more than a typical audit of an agency of similar size. Exhibit 254 details the additional time and audit cost incurred by the Board as a result of New Venue's non-compliance with the audit requirements in the Contract. It reflects the total audit cost to be \$139,026.83. The average cost to audit an agency of similar size was \$14,250.33. The audit of New Venue cost \$124,776.50 more than the audit of an agency of similar size.

H. New Venue made material misrepresentations to defraud the State and software resellers

The B&CB also alleges that New Venue made material misrepresentations to the B&CB, to using governmental units of the State and to resellers regarding the status and collection of payments. The

Decision, page 26

In the Matter of New Venue vs. State of South Carolina, Case 2014-206

B&CB alleges that New Venue made these misrepresentations in order to further a scheme to defraud the B&CB, using governmental units and resellers, of funds remitted to New Venue by the PPUs that were to pass through to the resellers. The B&CB alleges that it is entitled to actual and punitive damages because of New Venue's fraudulent conduct.

One example is an email from Terris Riley to Debbie Lemmon dated February 17, 2012 in which Ms. Riley states:

Please see a copy of all payments made to CompuCom attached. (You may want to view the "Summary of CCpymnts" report first as it is a high-level overview. The other reports are highly detailed and include the details of each order placed.)

With CompuCom, Suzan and I agreed on Wednesday, that NewVenue currently has 0 purchase orders that are that are 60 days past due--with the exception of the \$359K. (As I mentioned before, there are several outstanding invoices (totaling approximately \$104,547.91) that we are collecting on that has already been paid to CompuCom. This was an error on our end because of misapplied payments.)

(Exhibit 309, P. 1, Record P. 24842) On February 17, 2012, Norma Hall reviewed the "Summary of CCpymnts" from Ms. Riley and made the following observation:

Debbie,
When I subtract the amount NewVenue has paid CompuCom I get a remaining balance of \$481,352.08. Terris states in the spreadsheet that "*Note* Awaiting payment for December \$359K invoice". The two amounts do not add up, even if you subtract 2.5% for NewVenue's admin fee (if it hadn't already been subtracted by Terris) – the amount would be \$469,318.28 if you subtracted the 2.5% (\$12,033.80). I'm a little confused by that.

If the amount is from a December invoice, then that payment is at least 45 days late if not longer. Help me understand what the spreadsheet is really saying.

(Exhibit 310, P. 1, Record P. 24844) On February 17, 2012, CompuCom emailed Ms. Riley requesting an update on 8 invoices delinquent 60 days or more and 10 more invoices that were at least 37 days late. Ms. Riley responded:

Liese,
Again, your reports are inaccurate. All of these except the one for \$359K have been paid via wire transfer and Suzan has those reports.

New Venue has 0 invoices that are 60 days past due. I do not know who/how payments are posted, but I have every wire transaction documented and my bank retains copies as well. My only suggestion is that you speak with Suzan as I am not re-hashing this again today.

Thanks & have a super weekend.

Terris

(Exhibit 451, P. 1, Record P. 25299)

“Fraud is an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to her or to surrender a legal right.” Regions Bank. V. Schmauch, 354 S.C. 648, 672, 582 S.E. 2d 432, 444 (2003). In South Carolina, “Fraudulent act” is broadly defined as “any act characterized by dishonesty in fact or unfair dealing. Connor v. City of Forest Acres, 348 S.C. 454, 466, 560 S.E. 2d 606, 612 (2002). In accordance with Unisys Corporation v. South Carolina Budget and Control Board, 346 S.C. 158, 551 S.E. 2d 263 (2001), a contract controversy is an appropriate place to award punitive damages where there has been fraud. “The CPO ... may award such relief as is necessary to resolve the controversy as allowed by the terms of the contract *or by applicable law*.... (punitive damages recoverable for fraudulent act independent of breach).” Id. at 273. In order to prove fraud, the following elements must be shown: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. See Regions Bank, 354 S.C. 648, 582 S.E. 2d 432.

Determination

New Venue’s claim that all software was to be purchased through the SAM is not supported by the language of the contract. The contract anticipated purchases outside the SAM. Consequently there is no breach of the contract by the B&CB.

New Venue’s claim that it was entitled to 2% of all software purchases made is not supported by the contract. New Venue was only entitled to 2% of the purchases processed through the SAM. Consequently, there is no breach of the contract by the B&CB.

The contract did not require the processing of any number of orders through the SAM on February 15, 2011, or at any time thereafter. In fact, the contract clearly stated that the quantity of purchases was unknown and there might be no purchases at all. The B&CB did not breach the contract by not processing software purchases through the SAM until August of 2011.

New Venue, was to provide and maintain a real-time, web-based, vendor hosted system and act as an order fulfillment, distribution, and tracking system to monitor software licenses, license transfers, license redistribution, support, maintenance, maintenance renewals, and warranty transactions as well as invoicing and payment from acquisition to the end of the life cycle. The SAM was supposed to track all software, in inventory, or acquired by participating PPUs during the term of the contract. No funds were appropriated for this project so a self-funding mechanism was established. New Venue was supposed to receive 2% of

the purchase of software licenses, maintenance, and support from state term contracts as compensation for providing the SAM.

New Venue failed to provide a real-time, web-based, vendor hosted system to track software related inventory. This is a material breach of the contract.

The only software tracking accomplished during this contract was incidental invoicing and payment. Ms. Riley testified that New Venue did not collect the required data because it did not receive the software Key ID. New Venue's claim that it could not track software license purchases or any related information including inventory because it did not receive the software Key ID is without merit in part because the Record of Negotiations relieved New Venue of responsibility for receiving and distributing the Key ID. There is no indication in the record that New Venue collected any data about software or sorted or segregated the purchase of licenses from maintenance or support by agency or in the aggregate. When asked by the auditors to provide all data, specific information about the software inventory was not provided and is assumed not to exist. This fails the essential purpose of the contract and is a material breach of the contract.

The only part of this contract New Venue made any effort to perform was the invoicing and payment portion and it failed to perform those functions in accordance with the contract. The contract required New Venue to forward all purchase orders from PPUs to the appropriate reseller in either 1 or 2 business days after receipt of the order. In multiple instances New Venue failed to forward the purchase orders even after receiving payment. This is a material breach of the contract. To accept payment without performing the required service is a fraudulent act and a breach of the obligation of good faith.

The contract required New Venue to forward 97.5% of every payment received from the B&CB or any PPU to the appropriate reseller within three (3) business days after receipt of the payment. On multiple occasions New Venue failed to comply with this requirement. This is a material breach of the contract. On multiple occasions, New Venue withheld payment to the appropriate reseller and appropriated more than \$2.7M of these funds for its own use and the use of its principles. This is a fraudulent act.

New Venue failed to provide all data, reports, backups, and records as required by the end-of-life provisions of the contract. This is a material breach of the contract.

New Venue collected funds from PPUs for software that it never ordered from the resellers. This is a material breach of the contract and a fraudulent act.

The record shows that New Venue represented that it would perform the contractual obligations, including but not limited to paying software vendors within three days of receipt of payment from the PPU. It was intended by the parties that this representation by New Venue that it would pay software vendors be relied upon by the B&CB, the PPUs and also the software vendors. The record shows that New Venue knew that payments had not in fact been made to software vendors as expected. The PPUs and the B&CB relied

upon these representations, including those representations that payments had in fact been made. Consequently, the B&CB was injured. The B&CB was required to re-solicit bids for software vendors at its inconvenience, time, and expense; the record shows that New Venue knew that the B&CB expected vendors to be paid within three days of receipt by New Venue of payment for software. Moreover, the record shows that New Venue knew that payments were not being made within three business days. In some cases, payments were received by New Venue and orders were not even placed, although New Venue told ITMO, the PPUs, and the software resellers no such situation had occurred. The record shows that the amounts that were not remitted to software vendors were material. The record shows that New Venue allowed PPUs to continue to place orders for software and pay for that software, all while falsely indicating that orders had been placed. New Venue's clear intention was for the B&CB to continue to act on its ignorant belief that New Venue was acting in accordance with the contract terms. The B&CB is allowed to rely upon a contractor's assertions as a party to the contract. All of this was to the detriment and injury of B&CB.

Damages

The primary purpose of this contract was to maintain information about the software inventory and make it available to each PPU as it applies to that PPU, and to ITMO as it applies to a specific PPU or the State as a whole.

New Venue processed approximately \$28,393,436.01 in net sales through the SAM and was contractually entitled to 2% or \$567,868.72, as a fee for performing the primary purpose of the contract.

Section 11-35-4320 of the Code of Laws of South Carolina allows the CPO to award such relief as is necessary to resolve the controversy as allowed by the terms of the contract or by applicable law. While the contract does not specifically address "disgorgement" or "damages," the South Carolina Supreme Court has held that:

Exemplary or punitive damages go to plaintiff, not as a fine or penalty for a public wrong, but in vindication of a private right which has been willfully invaded; and indeed, it may be said that such damages in a measure compensate or satisfy for the willfulness with which the private right was invaded, but, in addition thereto, operating as a deterring punishment to the wrongdoer, and as a warning to others...Punitive damages have now come, however, to be generally, though not universally, regarded, not only as a punishment for wrong, but as vindication of private right.

Smith v. Widener, 397 SC 468, 724 SE 2d 188 (2012). There are also the Mitchell guideposts to consider: (1) the reprehensibility of the defendant's conduct; (2) the disparity between the actual or potential harm to the plaintiff and the amount of the punitive damage award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. See, Mitchell v. Fortis, 385 SC 570, 686 SE 2d 176 (2009).

Not only did New Venue breach the contract in its performance, it failed to meet the primary objective of the contract for which it was paid. Because neither ITMO nor the PPU's ever received the ability to track or monitor software licenses, they received no benefit from New Venue's performance of this contract and New Venue is not entitled to the fee it received.

New Venue testified that the cost of ownership was \$715,550.00 (Exhibit 12, P. 76, Record P. 161). This is a reasonable estimate of the B&CB's cost to replicate the information that New Venue did not deliver.

The B&CB was damaged in the amount of \$36,308.74 by New Venue's failure to remit administrative fees owed to the B&CB.

The record reflects that B&CB conducted audits of agencies of similar size that cost the B&CB an average of \$14,250.33. Based on this average audit cost, the B&CB incurred an excess audit cost of \$124,776.53. The B&CB is also entitled to recover its excess audit costs.

New Venue remains indebted to the resellers in approximately the amount of \$2,700,000.00, which was paid to it by PPU's and never forwarded to the resellers even though the contract required such payments to be forwarded to the software vendor within three days of receipt by New Venue.

New Venue is indebted to various PPU's for at least \$88,208.85 for invoices paid by the PPU's for orders never forwarded to the software vendors (Exhibit 454, P. 1, Record P. 25665).

In summary I find:

1. New Venue is directed to return the \$567,868.72 to the B&CB for remittance to the PPU's.
2. The B&CB is awarded \$873,302.50 in actual damages.
3. New Venue is directed to make payment to such resellers for all software paid for by PPU's to New Venue which was to be forwarded to resellers and was not.
4. New Venue is directed to repay various PPU's all amounts paid by PPU's to New Venue for software orders paid for to New Venue but never placed by New Venue with software vendors.

For the Information Technology Management Office



Michael B. Spicer
Chief Procurement Officer

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised June 2013)

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: <http://procurement.sc.gov>

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 108.1 of the 2043 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410...Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of financial hardship, the party shall submit a completed Request for Filing Fee Waiver form at the same time the request for review is filed. [The Request for Filing Fee Waiver form is attached to this Decision.] If the filing fee is not waived, the party must pay the filing fee within fifteen days of the date of receipt of the order denying waiver of the filing fee. Requests for administrative review will not be accepted unless accompanied by the filing fee or a completed Request for Filing Fee Waiver form at the time of filing." PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, business entities organized and registered as corporations, limited liability companies, and limited partnerships must be represented by a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003); and *Protest of PC&C Enterprises, LLC*, Case No. 2012-1 (Proc. Rev. Panel April 26, 2012). However, individuals and those operating as an individual doing business under a trade name may proceed without counsel, if desired.

**South Carolina Procurement Review Panel
Request for Filing Fee Waiver
1105 Pendleton Street, Suite 202, Columbia, SC 29201**

Name of Requestor

Address

City

State

Zip

Business Phone

1. What is your/your company's monthly income? _____
2. What are your/your company's monthly expenses? _____
3. List any other circumstances which you think affect your/your company's ability to pay the filing fee:

To the best of my knowledge, the information above is true and accurate. I have made no attempt to misrepresent my/my company's financial condition. I hereby request that the filing fee for requesting administrative review be waived.

Sworn to before me this
_____ day of _____, 20 _____

Notary Public of South Carolina

Requestor/Appellant

My Commission expires: _____

For official use only: _____ Fee Waived _____ Waiver Denied

Chairman or Vice Chairman, SC Procurement Review Panel

This _____ day of _____, 20 _____
Columbia, South Carolina

NOTE: If your filing fee request is denied, you will be expected to pay the filing fee within fifteen (15) days of the date of receipt of the order denying the waiver.

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

**BEFORE THE CHIEF PROCUREMENT
OFFICER
DECISION**

In Re: Determination of Probable Cause to Suspend New Venue Technologies, Inc., New Venue Technologies II, LLC, NewVenue Technologies, Terris Riley LLC, Terris Riley, and Jacque Riley

CASE NO.: 2014-204

POSTING DATE: July 30, 2014

MAILING DATE: July 30, 2014

The South Carolina Consolidated Procurement Code (the "Code") authorizes the appropriate chief procurement officer to suspend a person or firm from consideration for award of contracts or subcontracts during an investigation where there is probable cause for debarment. S.C. Code Ann. § 11-35-4220. On October 8, 2013, the Information Technology Management Office ("ITMO") advised the Chief Procurement Officer ("CPO") that actions by New Venue Technology, Inc. ("New Venue") alleged in a contract controversy filed with the CPO on September 30, 2013, if proved, constitute cause for debarment under S.C. Code Ann. § 11-35-4220 (2011). Those actions include, but are not limited to, (1) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; (2) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; and (3) other acts so serious and compelling as to affect responsibility as a state contractor or subcontractor. By letter dated October 8, 2013, ITMO also requested the suspension of New Venue from consideration for award of contracts or subcontracts during an investigation whether such debarment be appropriate.

Section 11-35-4220(1) Authorizes the appropriate chief procurement officer to suspend a person or firm from consideration for award of contracts or subcontracts during an investigation where there is probable cause for debarment.

- (2) Causes for Debarment or Suspension. The causes for debarment or suspension shall include, but not be limited to:
- (d) violation of contract provisions, as set forth below, of a character regarded by the appropriate chief procurement officer to be so serious as to justify debarment action:
 - (i) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - (ii) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; except, that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor must not be considered a basis for debarment;
 - (f) any other cause the appropriate chief procurement officer determines to be so serious and compelling as to affect responsibility as a state contractor or subcontractor,

including debarment by another governmental entity for any cause listed in this subsection.

Background

New Venue was awarded a state term contract for a Software Acquisition Manager (SAM) (Solicitation No. 5400001873) to provide and maintain a real-time, web-based, vendor hosted system and to act as an order fulfillment, distribution, and tracking system to monitor software licenses, license transfers, license redistribution, support, maintenance, maintenance renewals, and warranty transactions as well as invoicing and payment from acquisition to the end of the life cycle. No funds were appropriated for this project so offerors were asked to propose a self-funded model to pay for this service.

The Budget and Control Board (“Board” or “State”) filed a request for contract resolution alleging multiple breaches of the SAM state term contract by New Venue Technologies, Inc. Shortly thereafter, the State petitioned the CPO to suspend and debar New Venue from consideration of contract award. The State subsequently withdrew its contract controversy resolution request, but left the suspension / debarment petition in place. Subsequently, New Venue requested resolution of a contract controversy alleging breach of contract by the State. The Board denied New Venue’s allegations of breach of contract and filed counter claims. The CPO held an administrative review of both sets of allegations from May 19, through May 29, 2014. The CPO took nine days of testimony and accepted 465 exhibits comprising more than 25,000 pages of evidence into the record. The CPO issued a decision in Case 2014-206 In Re: Request for Resolution of Contract Controversy by New Venue Technologies, Inc. Counterclaim by South Carolina Budget and Control Board, on July 18, 2014 which is incorporated herein by reference.

DISCUSSION

At the conclusion of the administrative review the CPO found that New Venue, not the Board, breached the contract. While the CPO’s decision in that matter is under appeal, the evidence and testimony presented during the administrative hearing revealed actions by New Venue that were so egregious as to compel the CPO to take immediate action on the Board’s petition to suspend New Venue its principal officers, and any business entities owned or operated by its principals pending the outcome of the State’s investigation to determine if debarment is warranted.

The CPO relies on the following findings of the administrative review in determining that there is probable cause for debarment. New Venue failed to perform any of the primary requirements of the contract including the establishment of a real-time, web-based, vendor hosted system to act as an order fulfillment, distribution, and tracking system to monitor software licenses, license transfers, license

redistribution, support, maintenance, maintenance renewals, and warranty transactions as well as invoicing and payment from acquisition to the end of the life cycle. New Venue failed to forward orders from Public Procurement Units (PPU) to the software providers within three days as required by the contract. New Venue intentionally mislead PPUs as to the status of their orders. In some cases, New Venue accepted payment from the PPUs without forwarding the order to the software providers. New Venue failed to remit payment to the software providers in accordance with the contract. New Venue intentionally mislead software providers and ITMO about the status of payments. New Venue appropriated more than \$2.7 million dollars that it received from PPUs that should have been remitted to the software vendors to fund personal expenses of New Venue's owners; Terris and Jacque Riley. These personal expenses included more than \$711,000.00 to a contractor for construction of the personal residence of Terris and Jacque Riley, more than \$66,500.00 for the purchase of the land for that house, plans, a swimming pool and landscaping at the home totaling almost \$70,000.00. Mr. and Ms. Riley took more than \$600,000.00 in cash withdrawals from accounts; none of the cash was paid to any software resellers and spent nearly \$200,000.00 in religious donations and consultant services. The Rileys spent more than \$564,000.00 in debit card transactions on New Venue accounts.

Ms. Riley's testimony regarding New Venue's failure to remit payment to the software contractors within three(3) days of receipt of payment from the PPUs, as required by the contract, is particularly troubling:

Q: Do you contend that you had any entitlement to the use of the 97.5 percent of the funds that you collected and were to remit to the resellers?

A: I contend that I have entitlement to any revenue that comes into my company for the use of productivity in my business, for the use of moving our business forward, and especially for the use of adhering to new contract requirements that were not in place before I was awarded the contract.

Q: Okay. Did you ever notify the State in any way that "I'm keeping money as part of that 97.5 percent that I'm supposed to be delivering to the vendor"?

A: Well, that would mean keeping -- keeping to me -- this is what "keeping" means. "Keeping" means that I am -- I've taken some money. I've stashed some money away, and I have the intent to keep that money stashed away and never to pay anybody, never to remit anything and never to inform you of what it is I intend to do or what it is I'm trying to accomplish ever. That's what "keep" means. So, my answer to you is that, no, I did not contact the State to tell them what I'm keeping, because that's not what I did.

Mrs. Riley inflated her educational achievements claiming minors in Business Administration, Early Childhood Education, and Computer Science in addition to a bachelor's degree in English. The evidence showed that her only degree is one in English.

The corporate profile in New Venue's proposal appears to be misleading in indicating that they had "Offices (including virtual) located in MD, NC, and GA." Testimony indicated that these were not New Venue offices but businesses with which New Venue did business.

Determination

New Venue Technologies, Inc., New Venue Technologies II, LLC, NewVenue Technologies, Terris Riley, LLC, Terris Riley, and Jacque Riley are suspended from consideration for award of contracts or subcontracts pending completion of investigations conducted by the Board or any other State agency the Board's requests to assist in the investigation to determine if debarment is warranted.

For the Information Technology Management Office



Michael B. Spicer
Chief Procurement Officer

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW
Suspension / Debarment Appeal Notice (Revised October 2013)

The South Carolina Procurement Code, in Section 11-35-4220, subsection 5, states:

(5) Finality of Decision. A decision pursuant to subsection (3) is final and conclusive, unless fraudulent or unless the debarred or suspended person requests further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1), within ten days of the posting of the decision in accordance with Section 11-35-4220(4). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel, or to the Procurement Review Panel, and must be in writing, setting forth the reasons why the person disagrees with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and any affected governmental body must have the opportunity to participate fully in any review or appeal, administrative or legal.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: <http://procurement.sc.gov>

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 108.1 of the 2043 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410...Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of financial hardship, the party shall submit a completed Request for Filing Fee Waiver form at the same time the request for review is filed. [The Request for Filing Fee Waiver form is attached to this Decision.] If the filing fee is not waived, the party must pay the filing fee within fifteen days of the date of receipt of the order denying waiver of the filing fee. Requests for administrative review will not be accepted unless accompanied by the filing fee or a completed Request for Filing Fee Waiver form at the time of filing." PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, business entities organized and registered as corporations, limited liability companies, and limited partnerships must be represented by a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003); and *Protest of PC&C Enterprises, LLC*, Case No. 2012-1 (Proc. Rev. Panel April 26, 2012). However, individuals and those operating as an individual doing business under a trade name may proceed without counsel, if desired.

**South Carolina Procurement Review Panel
Request for Filing Fee Waiver
1105 Pendleton Street, Suite 202, Columbia, SC 29201**

Name of Requestor

Address

City

State

Zip

Business Phone

1. What is your/your company's monthly income? _____

2. What are your/your company's monthly expenses? _____

3. List any other circumstances which you think affect your/your company's ability to pay the filing fee:

To the best of my knowledge, the information above is true and accurate. I have made no attempt to misrepresent my/my company's financial condition. I hereby request that the filing fee for requesting administrative review be waived.

Sworn to before me this
_____ day of _____, 20_____

Notary Public of South Carolina

Requestor/Appellant

My Commission expires: _____

For official use only: _____ Fee Waived _____ Waiver Denied

Chairman or Vice Chairman, SC Procurement Review Panel

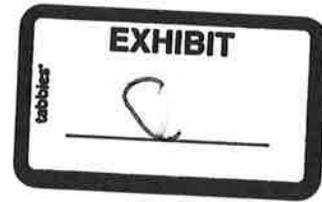
This _____ day of _____, 20_____
Columbia, South Carolina

NOTE: If your filing fee request is denied, you will be expected to pay the filing fee within fifteen (15) days of the date of receipt of the order denying the waiver.

Consumer Protection, Environmental, and Regulatory Law Group, LLC

Geoffrey K. Chambers
geoffrey@CPELGroup.com
(864) 508-0899

1201 Main Street
Suite 985
Columbia, SC 29201



Mr. Michael B. Spicer
Chief Procurement Officer
Information Technology Management Office
1201 Main Street, Suite 600
Columbia, South Carolina 29201

RE: Appeal of Decision Issued in Contract Controversy Case No. 2014-206

Dear Mr. Spicer:

This firm represents New Venue ("New Venue") in connection with this appeal and request for further administrative review of the Decision of the Chief Procurement Officer, Information Technology Management Office ("CPO"), posted on July 18, 2014 (the "Decision") regarding contract controversies asserted by New Venue and the South Carolina Budget and Control Board. **A copy of the Decision is attached hereto as Exhibit 1.** New Venue herewith respectfully appeals and requests review of the Decision, pursuant to S.C. Code Ann. Sections 11-35-4210(6) and 4410. New Venue requests a hearing before the South Carolina Procurement Review Panel in regard to this matter. New Venue has supplied you the \$250.00 filing fee made payable to the S.C. Procurement Review Panel. This request is timely filed within ten days of the posting of the Decision on July 18, 2014 as recited on the Decision.

This case involves a contract that was awarded to New Venue to perform services as a Software Acquisition Manager ("SAM"). Under the State's own language, the State clearly expressed the purpose and scope of this contract. The **INTENDED** scope of the contract is clear by express terms of the contract, which the state wrote, and is broader than the CPO found. A look at the actual contract words is in order:

It is the State's intent to solicit responses for a Software Acquisition Manager (SAM) to maintain a real-time web-based vendor hosted system for use by all Public Procurement Units. The SAM can be defined as a software acquisition manager acting as an order fulfillment, distribution, and tracking system designed to monitor software licenses, license transfers, license redistribution, software maintenance and renewals, and warranty transactions as well as invoicing and payment from acquisition to end of life cycle.

* * * *

It is the State's intent to solicit responses for a Software Acquisition Manager (SAM) to maintain a real-time web-based vendor hosted **system for use by all Public Procurement Units.**

* * * *

The State intends to award a state term contract to one Offeror **for use by all State Agencies.**

* * * *

It is the intent of the State to have participating Public Procurement Units submit all software purchase orders through the SAM.

* * * *

The State intends to award a state term contract to one Offeror for use by all State Agencies. Use by cities, counties, school districts and other political subdivisions are optional under Section 11-35-4810. - Cooperative purchasing

Regardless, even the CPO found that the contract was to cover ***at least all purchases of software from software resellers under statewide term contracts***, which are, like the SAM contract, mandatory for all agencies. This, the State never did.

The contract to perform this service commenced, by its terms, on February 15, 2011, the chosen implementation date, as documented. The contract was to renew each year unless notice was given. Notice was never given.

The State did not meet its obligation to commence full performance on February 15, 2011. During performance, and after the time for the State to have implemented the contract, in May of 2011, the State Purchasing Officer documented that the State, not New Venue, was "at fault" for not implementing on time. See Exhibit 2, attached (e-mail and reference from Debbie Lemmon, ITMO Procurement Officer, stating as follows:

**"#4 "What are some things you wish the vendor would do differently?"
None at this time.**

1. How smooth was your implementation? Did the system easily plug into your existing technology environment? Due to unforeseen delays on our (the State's) end, the application that NewVenue delivered is not fully implemented yet. The web solution (www.mysamcentral.com) is ready and has been fully tested. We also use it for demos during presentations. It was excellently designed and the NewVenue team exceeded our expectation.")

See also, Exhibit 3 e-mail from Debbie Lemmon, stating: "The anticipated "Go-Live" date of February 15, 2011 will be delayed.... I apologize for the delay of this project."

Here, the duty of the State to run all software (or *at least* all statewide term contract software, as the CPO found) through the SAM was essential. This was important because New Venue was to be paid 2% of all software cost that passed through the SAM.

Through the course of two years, the State simply never was in compliance with its contractual obligation to ensure that all software purchases (or *at least* all statewide term contract software, as the CPO found) were run through the SAM. *In fact, the State did not run the first order through the SAM for six months.* After that, though a reseller was added to the SAM by the state from time to time, never did the state come even close to its obligation to run all software purchases - even those under state term contracts - through the SAM.

This failure by the State was also a big deal, because as a result of this, and other costly wrongs by the State, New Venue incurred enormous, extra-contractual charges, and at the same time, earned zero revenue. Once some resellers were added to the SAM, some revenue was realized, but New Venue was never afforded the chance to earn the entire volume of revenue to which New Venue was entitled.

The CPO's decision overlooks these crucial and clear facts -- for good reason. The CPO was made well aware of the fact that the law simply does not permit the party first in breach to recover on a claim for a subsequent breach by the other party. **The first to commit material breach of the agreement is precluded them from recovering, even if there were a subsequent breach by the other party.** *Silver v. Abstract Pools & Spas, Inc.*, 376 S.C. 585, 594, 658 S.E.2d 539, 543 (Ct. App. 2008)("Where a contract is not performed, the party who is guilty of the first breach is generally the one upon whom all liability for the nonperformance rests." (internal quotation marks omitted)).

There is another reason that motivated the CPO to ignore the above, crucial facts. Because in fact, it was **the CPO's conduct and failures led to the delay in the State's performance** obligations under the New Venue contract. See 3, (select e-

mails of Debbie Lemmon regarding delays. Naturally, New Venue objected to the CPO being the official to hear and decide this case, as certainly he was not a disinterested or unbiased person in this context.

In this unique setting, the CPO actually had present on his behalf at the hearing more lawyers than any party - in fact, three lawyers for the CPO alone were in attendance, including two outside lawyers, contracted for this unprecedented role.

As a part of its Request for Review, New Venue incorporates by reference each and every allegation of its original Contract Controversy, **a copy of which is attached hereto as Exhibit 4**, and which is incorporated herein by reference.

To the extent that the CPO's Decision finds any facts contrary to those asserted in Exhibit 4, New Venue requests a review of those findings. To the extent the CPO's Decision makes any conclusions of law at variance from those asserted in Exhibit 4, New Venue requests a review of those conclusions of law. New Venue requests a review of every finding of fact and conclusion of law in the CPO's Decision related to the conclusion that New Venue breached its contract in any way, committed any wrongful act in any way, and New Venue requests review of the award of any remedy to any agency or subdivision of the State, including but not limited to the Budget and Control Board, and all of the four findings regarding remedies on page 31 of the CPO's Decision. New Venue also requests review of all rulings, orders and interlocutory and other decisions and determinations of the CPO in regard to the contract controversy asserted by New Venue and that asserted by the Budget and Control Board.

THE CPO WHO DECIDED THE CASE VIOLATED NEW VENUE'S DUE PROCESS RIGHTS TO A DISINTERESTED TRIBUNAL

The CPO Decision is flawed in its entirety and violated New Venue's Due Process rights as a consequence of the CPO, Michael D. Spicer, hearing and deciding the case. Mr. Spicer refused to recuse himself from the case even though he was a required witness, whose very conduct was in dispute among other things in the case, as shown only in part, above. See Exhibit 3, above. It is in fact curious that the CPO expresses uncertainty in his Decision about how the parties came to incorporate certain materials into the Record of Negotiations¹ - after all, the CPO reviewed, made notes, comments and changes to, and approved the Record of Negotiations. See, e.g. Exhibit 5, among numerous other documents. The Circuit Court in Richland County was informed of this violation, and ruled not that there was no Due Process violation, but only that any such violation of Due Process would be "cured" by the de

¹ Decision at 6: "The Record of Negotiations was executed by both parties on December 21, 2010, and includes a list of Frequently Asked Questions and Answers. There is no explanation as to why these Q and As were included, but their inclusion makes them part of the contract and reflective of the agreement of the parties. Several of these Q and As offer some insight."

novo appeal to the Panel. However, Mr. Spicer refuses to make himself available as a witness in the case, and so New Venue continues to be prejudiced by Mr. Spicer improperly hearing and deciding a case directly involving his own misconduct. Clearly, no member of the Panel would want any case they had to be heard and decided by a Judge who was actually interested in the outcome and the propriety of whose conduct was one of the things to be decided. The same is true for New Venue. While this case is de novo, New Venue does not waive its right to call all needed witnesses, including Mr. Spicer himself, on any and all issues. New Venue also asks that for the above reasons, Mr. Spicer's decision be disregarded entirely.

**THE CPO'S DECISION VIOLATES PLAIN CONTRACT LANGUAGE, UNLAWFULLY
MODIFIES THE CLEAR CONTRACT AS WRITTEN, AND DIRECTLY VIOLATES
NUMEROUS SOUTH CAROLINA LAWS AND COURT DECISIONS.**

The First Party to Breach May Not Recover In A Claim Under the Contract.

Among the other flaws as to which review is requested, the CPO's Decision is fundamentally flawed and is contrary to well-established law of South Carolina in a number of ways. The core flaw is the CPO failed to acknowledge that the State was the first to breach this contract, and as such, the State may not recovery in a claim under that contract. South Carolina law could not be more clear - the first to commit material breach of the agreement is precluded them from recovering, even if there were a subsequent breach by the other party. *Silver v. Abstract Pools & Spas, Inc.*, 376 S.C. 585, 594, 658 S.E.2d 539, 543 (Ct. App. 2008)("Where a contract is not performed, the party who is guilty of the first breach is generally the one upon whom all liability for the nonperformance rests.").

The CPO Impermissibly Re-Wrote the Contract to Try to Avoid the Legal Consequence of the State's Clear Breach In Which he Played an Instrumental Part.

Here, as New Venue showed in a way that could not be ignored by a fair and impartial tribunal (including through written admissions of the State's own contract officer) the State was not only the first to breach the contract - it was never in compliance with the contract from the first day until the last day of the contract.

The CPO erred also by completely re-writing the plain language of the parties' contract. This is impermissible as a matter of law. "The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions *as determined by the contract language.*" *Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003). "When a contract is unambiguous, clear, and explicit, it must be construed according to the terms the parties have used." *B.L.G. Enters., Inc. v. First Fin. Ins. Co.*, 334 S.C. 529, 535, 514 S.E.2d 327,330 (1999). "[T]erms in a contract provision must be construed using their plain, ordinary and popular meaning." *Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 64, 566 S.E.2d 863, 86,6 (Ct. App. 2002).

This contract placed unambiguous obligations on the State, which the State did not meet due to mere inconvenience. However, under South Carolina law, the court must enforce an unambiguous contract according to its terms, *regardless of the contract's wisdom or folly, or the parties' failure to guard their rights carefully*. *Ellis v. Taylor*, 316 S.C. 245, 248, 449 S.E.2d 487, 488 (1994); *Jordan v. Security Group, Inc.*, 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993).

"The judicial function of a court of law is to enforce a contract as made by the parties, and *not to rewrite or to distort, under the guise of judicial construction, contracts, the terms of which are plain and unambiguous*." *Hardee v. Hardee*, 355 S.C. 382, 387, 585 S.E.2d 501, 503 (2003) In a case such as this, neither the CPO nor the Court may re-write the parties' written contract. See *Gambrell v. Travelers Ins. Cos.*, 280 S.C. 69, 310 S.E.2d 814 (1983) (stating that it is not the function of the court to rewrite contracts for parties). Indeed, **if a contract's language is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required and its language determines the instrument's force and effect**. *Jordan v. Security Group, Inc.*, 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993); *Blakeley v. Rabon*, 266 S.C. 68, 72, 221 S.E.2d 767, 769 (1976).

Where an agreement is *ambiguous*, the court then should seek to determine the parties' intent. *Smith-Cooper v. Cooper*, 344 S.C. 289, 295, 543 S.E.2d 271, 274 (Ct. App. 2001); *Prestwick Golf Club, Inc. v. Prestwick Ltd. P'ship*, 331 S.C. 385, 390, 503 S.E.2d 184, 187 (Ct. App. 1998). Even then, to discover the intention of a contract, the court must first look to its language--if the language is perfectly plain and capable of legal construction, *it alone determines the document's force and effect*. *Superior Auto. Ins. Co. v. Maners*, 261 S.C. 257, 263, 199 S.E.2d 719, 722 (1973). "Parties are governed by their outward expressions and the court is not at liberty to consider their secret intentions." *Blakeley v. Rabon*, 266 S.C. 68, 73, 221 S.E.2d 767, 769 (1976); *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 93-94, 594 S.E.2d 485, 493-94 (Ct. App. 2004); *accord Kable v. Simmons*, 217 S.C. 161, 166, 60 S.E.2d 79, 81 (1950).

As one can see from the many decisions cited above, in a contract case, one would expect the actual contract language to be quoted, and relied upon as to the issues in dispute. Instead, the CPO "construes" at length about what the contract "means" and "intends" and quotes nothing (or external alleged "information") to support his statements of what the contract requires on the issues that are actually in dispute.

By contrast, New Venue relies on the simple, clear and express language of the contract - language that the State itself wrote. "Ambiguous language in a contract should be construed liberally and most strongly in favor of the party who did not write or prepare the contract and is not responsible for the ambiguity; and any ambiguity in a contract, doubt, or uncertainty as to its meaning should be resolved against the party who prepared the contract or is responsible for the verbiage." *Myrtle Beach Lumber Co., Inc. v. Willoughby*, 276 S.C. 3, 8, 274 S.E.2d 423, 426 (1981) (quoting 17A C.J.S. **Contracts** § 324)

Note from the *Willoughby* decision *supra*, that a key reason the CPO errantly proceeded to "construe" the contract without first finding ambiguity is that if he stated that he found the contract to be ambiguous, he was obliged to "construe" and "interpret" it against the State, not for the State, as he lavishly did, with abandon. In this case, the language contortions applied by the biased CPO all construed language in favor of the drafter, the State. This is legal error. Other construction rules were violated as well, but the prime violation is the plain meaning rule, which prohibits construction of the plainly worded contract meaning.

First, the CPO erred as a matter of law in "*interpreting and construing*" the clear and unambiguous contract language at issue. It is well-settled that Courts must not "construe" a contract unless and until it is first determined that the contract is somehow "ambiguous." *Jordan v. Security Group, Inc.*, 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993) (If a contract's language is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required and its language determines the instrument's force and effect). *See also Blakeley v. Rabon*, 266 S.C. 68, 72, 221 S.E.2d 767, 769 (1976).

Here, New Venue has proven in a way that would have been accepted by any neutral, disinterested judge, that the contract was unambiguous in the several particulars "construed" or "interpreted" by the CPO. Before the CPO may even begin to attempt to vary that express language (at risk of plain legal error) he must first find and conclude that the contract was ambiguous. That is a legal question. Here, the CPO did not so find.

The CPO makes a number of factual findings through interpretations of the contract without citing any contract provision at all to support, and these interpretations run afoul of South Carolina law. For example, the CPO states that "the contract anticipated software purchases outside the SAM² and purchases through the SAM were limited to software purchased through state term contracts."³ However, the

² This finding by the CPO is a misdirection. Because some State purchases are so small they do not fall within the scope of even purchasing laws, there would of course be some *de minimis* purchases initially made outside the SAM process. This case is not about the State's failure to process the *de minimis* small purchases through the SAM. It is about the State's complete non-compliance from day one till day last. In the solicitation process, vendors wanted to know, and therefore asked in a Q/A in the RFP how these and like exemptions would be handled, and whether changes would be made to the Procurement Code to require even such small purchases of software to be made through the system, despite the small purchase exemption. The CPO's use of this to attempt to contradict the primary "intent" statements of the RFP is disingenuous, and is an attempt to re-write the contract to make it illusory entirely. Again, legally forbidden.

³ This finding by the CPO is unsupported by any statement in the contract, and contradicts the quoted statement of the RFP/Contract's intent. The RFP provided:
"STATEWIDE TERM CONTRACT (JAN 2006)

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

contract itself as drafted by the State is clear - all software purchases by the State were covered. *See* various Contract provisions quoted verbatim herein. A statement of construction to say the contract is limited to state term contract software violates the plain language and impermissibly contradicts the clear statement of intent - "all software" - as drafted by the State.

One of the CPO's misconstructions was that it was NOT the **"intent of the State to have participating Public Procurement Units submit all software purchase orders through the SAM"** when that was in fact the express and clear, *verbatim language of intent in the contract* - even as quoted by the CPO. The CPO ignored and modified this plain and simple fundamental statement of intent by the State by resort to impermissible, extreme and convoluted "interpretation" to the contrary of this intent. Given this clear, verbatim statement of *intent* in the contract, every "interpretation" and "construction" by the CPO that did not effectuate this intent was clear legal error. *See* numerous decision cited *supra*.

The CPO also erred in that the contract was clear and legally obliged to be *mandatory* (not elective) for all State agencies. The solicitation and resulting contract expressly state that they were for a "statewide term contract." The Consolidated Procurement Code specifically defines a statewide term contract as one that is mandatory for all state agencies. See S.C. Code Ann. § 11-35-310(35) ("Term contract" means contracts established by the chief procurement officer for specific supplies, services, or information technology for a specified time **and for which it is mandatory that all governmental bodies procure their requirements during its term**. As provided in the solicitation, if a public procurement unit is offered the same supplies, services, or information technology at a price that is at least ten percent less than the term contract price, it may purchase from the vendor offering the lower price after first offering the vendor holding the term contract the option to meet the lower price. The solicitation used to establish the term contract must specify contract terms applicable to a purchase from the vendor offering the lower price. If the vendor holding the term contract meets the lower price, then the governmental body shall purchase from the contract vendor. All decisions to purchase from the vendor offering the lower price must be documented by the procurement officer in sufficient detail to satisfy the requirements of an external

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. 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. [07-7B225-1]"

audit. A term contract may be a multi-term contract as provided in Section 11-35-2030.")

The CPO also erred by evidently finding that the State had the right to decide when it would start to comply with the contract, and how much compliance it would undertake. The CPO states that "The contract did not require the processing of any number of orders through the SAM on February 15, 2011 [note: *the agreed implementation date*], or at any time thereafter." This conclusion is "slick" and is employed by the CPO in an absurd manner, which violates the clear contract language and the clear law. The contract says its intent is for *all software* to be purchased through the SAM, not for a "*number*" of orders. While this is not "*any number*" of orders, ***it still means all orders, not fewer than all***, whatever that *number* may be.

The contract required, at a minimum, all software purchases by all agencies to run through the SAM. It has a plain and written start date and end date. Even under the CPO's analysis, all state term contract software purchases were to be run through the SAM. When? *When the contract started*. When stop? *When the contract was over*. How many purchases? *Not some "number," but definitely ALL*.

By finding and holding as he did, that the State was under no obligation at all, and could participate when and to the extent it was convenient, the CPO impermissibly "interpreted" a clear and unambiguous contract. He also "interpreted" it in a way to render it illusory and meaningless - an interpretation approach that is simply unlawful. The law is plain - contracts are to be interpreted to give meaning to the terms thereof. *See decisions cited supra*.

A party, *even the State*, is bound by its contracts. Here, the CPO's decision asserts that the State can decide what parts of a contract it will honor and when. That sort of mindset has no place in this State, and has been historically reserved to petty dictators in banana republics.

All of these unlawful misinterpretations by a biased CPO are used in the Decision to "clean up" the horrendous and outrageous treatment by the State of this vendor - mistreatment that ultimately demolished a well regarded business that employed a number of South Carolina citizens, and supported South Carolina families and charities.

THE CPO IGNORED THE FACT THAT EVEN AS HE NARROWLY DESCRIBED THE STATE'S CONTRACT DUTY, THE STATE NEVER COMPLIED WITH THAT DUTY FOR TWO YEARS UNTIL IT WRONGLY TERMINATED.

Regardless, the State did not even uphold this limited aspect of its promise (as found by the CPO) to run all state term contract software purchases through the SAM. The State violated its promise to do that from day one until the last day of the contract when the State further breached by improperly terminating the contract. Never

during the entire two year contract period were all state term contract purchases run through the SAM. Thus, the State simply *never was in compliance with the contract*, from day one until day last.

THE CPO IGNORED THE FACT THAT THE STATE HAD THE READY ABILITY TO MEET EVEN ITS NARROW CONTRACT OBLIGATION AS FOUND BY THE CPO, BUT SIMPLY DID NOT DO IT.

The CPO also erred in evidently holding that the State was under no obligation whatsoever to timely take the lawful and required steps needed to bring it into compliance with its contract duties to which it voluntarily agreed. Here, there were many options available to the State to comply, all of which New Venue can show. At a minimum, in order to meet even the limited obligation that the CPO found regarding all state term contract software purchases, all the State had to do was a "unilateral contract modification" of those state term contracts for software, under Section 11-35-310(9).

The CPO himself asserted (and *argued* at the hearing held before him) that this section of the law allows the State to make unilateral changes to state contracts without the consent of the contractor. While this changes/modification law and standard changes clause did in fact allow the State to make the very simple changes that the State needed to make to its state term contracts for software bring it into immediate compliance with its contract duties - at least to the extent that even the CPO recognized them - the State simply did not do so, in complete violation of New Venue's contract rights. Indeed, during the solicitation process, as documented in the contract, the State specifically assured vendors that it would address such changes, and that any need for such changes should not concern the vendors, as the State was to handle the conformity of the resellers to the SAM:

Q17. Have you already received authorizations from manufacturers/vendors that will allow these indirect agreements to be set up through the SAM? Most manufacturers/vendors only allow the reseller to sell directly the customer. Adobe Education, for example, does not allow indirect relationships - have you already worked with Adobe to allow this SAM-reseller-enduser relationship?

A17. Since the Purchase Order will read in care of (c/o SAM) SAM, this should not be a problem. The state will make every effort to work with manufacturers/vendors to help them understand our processes.

See Exhibit 4 at 62 (from Amendment 1 of the RFP).

Even more, once it became evident to the State that it would not do what it took to comply with its contract obligations (as all of the rest of us must do - why the State is an exception is not at all clear) the State had perfectly good and reasonable options that would have done no harm to New Venue. If it was not going to honor the contract, the State could, and should have terminated it for convenience as permitted by law and the contract. This would have required the State to pay some costs to New Venue, but it would have been better that what the State, under the direction of the CPO, chose to do - get abusive of its vendor. This alone shows that there are no equities that can favor the State. It is nothing short of a villain in this matter.

THE CPO'S CONCLUSIONS OF NEW VENUE'S ALLEGED SUBSEQUENT BREACH AND MISFEASANCE PURPOSEFULLY IGNORED THE DOCUMENTED CONTEMPORANEOUS EVIDENCE, INCLUDING EVIDENCE OF THE CPO'S OWN INVOLVEMENT IN STATE MISCONDUCT THAT RESULTED IN THE COMPLAINED OF "DEFICIENCIES."

The CPO essentially held that the contract was to track software, and that New Venue did not track the software, and so New Venue breached.⁴ The problem with this conclusion, is that the State breached first *by not even providing New Venue the opportunity to track the software*. This breach by the state took place in two ways. First, as described above, by not implementing the contract fully, ever, the State made it impossible to track software - New Venue could not track software that was bought outside the SAM in contravention of New Venue's contract rights. Never was the State in compliance with its duty to do that. Never did the State even comply with the more narrow duty that the CPO found it had to run all state term contract software purchases through the SAM. By not running purchases through the SAM, the State not only deprived New Venue of needed revenue to which it was entitled (2% of the price of all software sold) it also made it impossible for New Venue to track that software. This is exactly why the first to breach rule exists. It is embarrassingly shameful for the CPO to conclude that New Venue breached by not tracking software, given that gargantuan volumes of State software was never run through the SAM at all.

The State's second way in which it "forced" the "breach" found in the CPO's Decision was that New Venue consistently bid, contracted for and demanded that the State supply or cause the software vendors to supply New Venue the very license key or "code" that is needed and used to uniquely identify and track that software. At the hearing before the CPO, New Venue supplied various *contemporaneous documents* between New Venue and the State in which New Venue expressed that this data

⁴ In making this finding, the CPO ignored the fact that when New Venue pressed repeatedly to get the agencies and vendors to supply this data so that it could be tracked, the requests were ignored. (See Exhibit 6). After asking a vendor, ITMO officials told New Venue, in writing, to "butt out."

needed to be supplied in order for tracking to be done. Only a biased and interested hearing officer could have ignored that documentary evidence. And only a biased and interested hearing officer could have decided that New Venue was in breach for not tracking software when the State refused to do its contractually required part to provide or cause to be provided the data needed to track the software. New Venue will provide to the Panel the exact pages of the record that show these contemporaneous documents.

THE CPO ERRED BY RULING THAT THE STATE HAD THE RIGHT TO FORCE NEW VENUE, WITHOUT CONSENT, TO UNDERTAKE COSTLY CHANGES IN PERFORMANCE TO MEET THE WHIMS OF EACH OF THE STATE TERM CONTRACT HOLDERS FOR SOFTWARE, INSTEAD OF THE STATE REQUIRING THE SOFTWARE SELLERS TO COMPLY WITH THE SAM CONTRACT, AS PER THE SAM CONTRACT.

The CPO seems to rule that once software term contract resellers found out that New Venue won the SAM contract, they changed their requirements and insisted on changes in the SAM that made compliance by New Venue costly, and ultimately impossible, *and that this somehow excuses the State's breach*. This is not the law.

The State undertook by contract and told proposers that it would handle the software resellers and make them comply with the SAM provisions - not the other way around. *See Exhibit 4, above quoted Q and A from Amendment 1 to RFP*. If the finding of fact by the CPO were true, it is irrelevant, but also, New Venue was never told if it. Certainly the State could have worked with New Venue at that stage to terminate for convenience, and pay New Venue appropriate costs for such termination. Perhaps the State was motivated by injudicious frugality in not wanting to pay such charges for termination, but that, too, is no excuse. New Venue was entitled to fair and true performance by the State, as promised. If the State would not, or could not do that (which is denied, as all the state had to do was a unilateral contract modification to each software reseller term contract, as discussed above) the State should have notified New Venue in the first months, and paid the cost of that termination. Rather than oppress, and bury a woman owned minority business into near bankruptcy, and to follow that course with aggressive and uncalled for attacks on the company. Sadly, all of this could have been avoided if the State had dealt with New Venue fairly and in good faith.

In no world known to any practitioner of contract law is it an excuse or defense that one party's separate contractor's conduct can excuse that same party's performance. This is akin to "well, I'd like to pay for the Buick, but my employer did not pay me this month, so I won't." By improperly excusing the State's breach due to software seller recalcitrance, the CPO not only ignored the State's plain breach, he also failed to grant an award to New Venue of the numerous costs proved by New Venue incurred by New Venue's extraordinary efforts to comply with the numerous, unilateral changes to the contract that imposed expensive new conditions on New

Venue - all incurred while the State was not implementing per its own contract obligation.

THE CPO IMPROPERLY DETERMINED THAT THE STATE HAD THE RIGHT TO UNILATERALLY MODIFY THE NEW VENUE CONTRACT TO MAKE AN "ADMINISTRATIVE CHANGE" AS WAS DONE, WITHOUT COMPENSATION AND WITHOUT NEW VENUE'S CONSENT.

At the hearing, the CPO improperly rendered an oral conclusion - before presentation of the evidence was even complete. He asserted that the State had the right to make the unilateral modification of the New Venue contract as it did under S.C. Code Ann. Section 11-35-310 (9) and the "Changes" clause of the New Venue contract.

However, a simple look at the changes clause, the law, and the modification document itself shows that the change in question was not at all permitted. Such a change is specifically not permitted as to the change specified in the Modification document itself. On the face of it, the unilateral modification the State made near the end of the contract - intended to put a "squeeze" on New Venue - was not permitted, and was an unlawful, further breach by the State.

AFTER THE STATE DID NOT SUCCEED IN FORCING NEW VENUE TO ABANDON ITS CONTRACT, THE STATE BREACHED BY WRONGFULLY TERMINATING THE CONTRACT.

The State, not wanting to terminate for convenience and pay costs to New Venue, finally terminated the contract, though it lacked cause to do so. The CPO erred in not so finding and concluding.

THE CPO IMPROPERLY HEARD AND RELIED ON EVIDENCE ABOUT AN AUDIT, BUT REFUSED TO PERMIT NEW VENUE TO SEE THE AUDIT OR RELATED DOCUMENTS.

Reaching the apex of unfairness, the CPO refused to allow New Venue to have access to the supposed "audit" performed by or for the State in order to prepare for the case, or even during the case when the "auditor" testified, so that he could be cross examined and challenged. This too violated New Venue's Due Process rights, and points to the serious wrong that was done to New Venue by the CPO's refusal to recuse himself.⁵

⁵ Naturally, once the State chose to have a witness to testify about the "audit," the "audit" was no longer privileged, if it were privileged to begin with. *See Floyd v. Floyd*, 365 S.C. 56 (S.C. App. 2005). *See also S.C. State Highway Dept v. Booker*, 260 S.C. 245 (1973) The Federal case of *United States v. 23-76 Acres of Land*, 32 F.R.D. 593 (D. Md., 1963) has squarely faced these

The Panel will recall that years ago, in a similar situation, not nearly so egregious, CPO Ron Moore recused himself and had Voight Shealy hear the *Unisys* case because of allegations of personal involvement in the activities by Mr. Moore in that matter. That did not happen here. New Venue demands access to the audit and associated documents.

All of the "findings" and conclusions of the CPO's decision rest on this undisclosed "audit." The audit was sought under FOIA. It is a public record. It is owned by the public, not by the Budget and Control Board, or by some State employees. These persons work for taxpayers, including New Venue. It is nothing short of shameful that the records of this public information are at once used against New Venue, and at the same time, New Venue is refused access to them. Again such government oppression is like that found in a Dictatorship, and has no place in this State. New Venue denies, challenges, and requests review of each and every fact and conclusion asserted as a part of the government's claim and the CPO's Decision on that claim. This includes all findings and conclusions of contract breach, fraud, and other alleged wrongdoing.

THE CPO'S "INTERPRETATIONS" OF THE CONTRACT VIOLATED AND RENDERED
MEANINGLESS NUMEROUS CLEAR AND UNAMBIGUOUS CONTRACT CLAUSES AND
IGNORED GOVERNING LAW AND PRECEDENT.

The CPO's Decision is contradicts the Contract language in a number of ways, and is "loose" in making sweeping statements about the contract and what it intended, without quoting contract provisions to support those sweeping, general statements.

This approach by the CPO violates clear and applicable South Carolina law. "The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language." *Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003). "When a contract is unambiguous, clear, and explicit, it must be construed according to the terms the parties have used." *B.L.G. Enters., Inc. v. First Fin. Ins. Co.*, 334 S.C. 529, 535, 514 S.E.2d 327,330 (1999). "[T]erms in a contract provision must be construed using their plain, ordinary and popular meaning." *Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 64, 566 S.E.2d 863, 86,6 (Ct. App. 2002).

"The judicial function of a court of law is to enforce a contract as made by the parties, and *not to rewrite or to distort, under the guise of judicial construction, contracts, the terms of which are plain and unambiguous.*" *Hardee v. Hardee*, 355 S.C. 382, 387, 585 S.E.2d 501, 503 (2003) In a case such as this, neither the CPO nor the Court may re-write the parties' written contract. *See Gambrell v. Travelers Ins. Cos.*, 280 S.C. 69, 310

issues. In what has been called a "well-reasoned decision", the Court attacked the various defenses that have arisen in pre-trial discovery procedures. See Pre-Trial Discovery in Condemnation Proceedings: An Evaluation, 42 St. John's L. Rev., 52, 60 (1967).

S.E.2d 814 (1983) (stating that it is not the function of the court to rewrite contracts for parties).

By contrast, the law requires, and New Venue believes it is important to look - as the above quoted cases clearly require - at the actual contract language that applies. Below, quoted verbatim, are just some of the numerous, actual, written and clear contract provisions that the CPO's Decision ignores and renders meaningless, all in violation of law:

Contract Provisions The CPO's Decision Ignores Or Renders Meaningless

It is the State's intent to solicit responses for a Software Acquisition Manager (SAM) to maintain a real-time web-based vendor hosted system **for use by all Public Procurement Units**. The SAM can be defined as a software acquisition manager acting as an order fulfillment, distribution, and tracking system designed to monitor software licenses, license transfers, license redistribution, software maintenance and renewals, and warranty transactions as well as invoicing and payment from acquisition to end of life cycle.

USING GOVERNMENTAL UNIT means the unit(s) of government identified as such on the Cover Page. **If the Cover Page names a 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 South Carolina Public Procurement Units [11-35-4610(5)].**

The State intends to award a state term contract to one Offeror **for use by all State Agencies**.

The South Carolina Information Technology Management Office (ITMO) is soliciting proposals for a **state term contract** for the fulfillment and tracking of software licenses and maintenance purchases, warranty information, license and maintenance expiration dates, and support services purchase and expiration dates.

It is the intent of the State to have participating Public Procurement Units submit all software purchase orders through the SAM. The SAM will maintain the following information and make it available to each Public Procurement Unit as it applies to that Public Procurement Unit, and to ITMO as it applies to a specific Public Procurement Unit or **the state as a whole**:

1. Software License Purchases
2. Software License Expiration Dates
3. Software License Renewals
4. Software Maintenance Purchases
5. Software Maintenance Expiration Dates

6. Software Support Purchases
7. Software Support Contract Expiration Dates
8. Volume Discount Transactions for Software & Maintenance

The State intends to award a state term contract to one Offeror for use by all State Agencies. Use by cities, counties, school districts and other political subdivisions are optional under Section 11-35-4810. - Cooperative purchasing. As stated earlier, Public Procurement Units purchase software from state or agency term contracts or from the retail market.

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]

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]

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]

CONTRACT DOCUMENTS and ORDER OF PRECEDENCE (JAN 2006)

(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) documentation regarding the clarification 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) 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.**

Billing/Payment Requirements

For both Public Procurement Unit and Software Manufacturer billing and payment requirements see Section III Specifications for detailed explanation.

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]

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:

- (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 CPO Violated Clear Governing And Applicable Legal Precedent.

Some of the many governing laws and precedents that the CPO ignored are set forth below:

S.C. Code Ann. § 11-35-310 (35) "Term contract" means contracts established by the chief procurement officer for specific supplies, services, or information technology for a specified time and for which it is mandatory that all governmental bodies procure their requirements during its term. As provided in the solicitation, if a public procurement unit is offered the same supplies, services, or information technology at a price that is at least ten percent less than the term contract price, it may purchase from the vendor offering the lower price after first offering the vendor holding the term contract the option to meet the lower price. The solicitation used to establish the term contract must specify contract terms applicable to a purchase from the vendor offering the lower price. If the vendor holding the term contract meets the lower price, then the governmental body shall purchase from the contract vendor. All decisions to purchase from the vendor offering the lower price must be documented by the procurement officer in sufficient detail to satisfy the requirements of an external audit. A term contract may be a multi-term contract as provided in Section 11-35-2030.

Silver v. Abstract Pools & Spas, Inc., 376 S.C. 585, 594, 658 S.E.2d 539, 543 (Ct. App. 2008)("Where a contract is not performed, the party who is guilty of the first breach is generally the one upon whom all liability for the nonperformance rests." (internal quotation marks omitted)).

"The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language." *Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003). "When a contract is unambiguous, clear, and explicit, it must be construed according to the terms the parties have used." *B.L.G. Enters., Inc. v. First Fin. Ins. Co.*, 334 S.C. 529, 535, 514 S.E.2d 327,330 (1999). "[T]erms in a contract provision must be construed using their plain, ordinary and popular meaning." *Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 64, 566 S.E.2d 863, 86,6 (Ct. App. 2002).

"The judicial function of a court of law is to enforce a contract as made by the parties, and *not to rewrite or to distort, under the guise of judicial construction, contracts, the terms of which are plain and unambiguous.*" *Hardee v. Hardee*, 355 S.C. 382, 387, 585 S.E.2d 501, 503 (2003) In a case such as this, neither the CPO nor the Court may re-write the parties' written contract. See *Gambrell v. Travelers Ins. Cos.*, 280 S.C. 69, 310 S.E.2d 814 (1983) (stating that it is not the function of the court to rewrite contracts for parties).

11-35-310(9)

Contract Modification - (9) "Contract modification" means 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 11-35-3410. Contract clauses and their administration.

(1) Contract Clauses. The board may promulgate regulations requiring the inclusion in state supplies, services, and information technology contracts of clauses providing for adjustments in prices, time of performance, or other contract provisions, as appropriate, and covering the following subjects:

(a) the unilateral right of a governmental body to order in writing changes in the work within the scope of the contract and temporary stopping of the work or delaying performance...

The CPO's refusal to apply the well established law of South Carolina, not just once, but over and over, evidences clear disregard for the law and the rights of New Venue. Without a doubt, the CPO's thumb was firmly on the scales in this case. This is exactly what New Venue sought to avoid when it asked for the appointment of a fair, impartial, neutral and disinterested hearing officer.

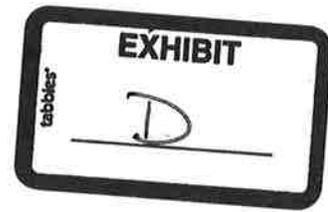
CONCLUSION

Based on the matters herein, as well as in the original contract controversy asserted by New Venue, New Venue asks that the Panel reverse the Decision of the CPO, and Order that the State has breached its contract with New Venue, that the State was the first to breach the contract, and that the State's breach was ongoing, and caused New Venue damages, and that as a consequence New Venue shall be awarded its damages as proven at the hearing before the Panel, and for all such further and other relief as may be permitted to New Venue by law, and that the State and its subdivisions shall take and recover nothing on their claims as required by South Carolina law.

Sincerely,



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Columbia, SC 29201
Counsel for New Venue Technologies



**STRATEGIC CONSULTING
PROPOSAL**

prepared for

The Dean of the College of Dental Medicine
Dr. John J. Sanders

Purpose of this Project

The Medical University of South Carolina, under the leadership of Dr. David Cole, is aggressively creating an academic healthcare community where every member of that community is included, respected, and valued. The purpose of this project is to further advance the University's initiatives towards the implementation of the upcoming Diversity & Inclusion Strategic Plan.

The goal of this project is to ensure that the Dental College, specifically, is properly aligned with the University's ultimate mission of establishing awareness, understanding, and mutual respect within the organization and community. *The intent of this project is to identify where we are already succeeding and then chart a course to take that success to the next level!* Together, we can ensure that the Dental College moves *in harmony* with President Cole and the entire Diversity & Inclusion team as we propel MUSC forward in this amazing journey.

Scope of Project

In discussions with key leadership, we have identified that in order to successfully implement the University's Diversity & Inclusion Strategic Plan, it is important for the Dental College to address 3 key areas (which are the targeted components for this phase):

1. **Assess (and document) the current temperament of:**
 - a) Dental College Faculty
 - b) Dental College Students
 - c) Dental College Employees
 - d) Local Community & Business Leaders

It's difficult to know where you're going if you're not sure where you are. The information we discover during this phase will point to key determining factors that will be necessary for charting the proper plan of action.

2. **Strengthen & Bridge relationships with other Colleges & Universities (with an emphasis on HBCUs)**

Opening up the path for meaningful conversations is vital for many reasons. Perhaps the most important reason is to ensure that SC students are put in the absolute best position for future success. Open communication will help to prepare the way for the University to implement the Diversity & Inclusion Strategy. This will not happen overnight, but the anticipation is building and "timing is everything"!

3. **Establish new relationships with new stakeholders**

This focus area is a key strategy for helping the Dental College cultivate strong and lasting relationships that will ultimately impact and increase private funding to be used towards recruitment and scholarships. We understand that this element requires a rare and unique mix of skills and relationship savvy, but with the right team assembled, this will become a reality over time.

Expectations & Deliverables

We believe the best approach may be to "test the waters" so we are proposing a short-term, low-risk engagement of 90 days. The expected deliverables for this approach are as follows:

PROPOSAL FOR STRATEGIC CONSULTING—PHASE 1

- A consolidated report (and measurement tool) with a proposed strategy for:
 - a) increasing minority student population
 - b) increasing minority faculty & staff
 - c) recommendations for shifting the perception overall
 - d) identify areas that are already making great strides towards Diversity & Inclusion
- Enhanced alliances & relationships with other colleges & universities
- New prospects & stakeholders who are willing to partner with the Dental College for private funding

Projected Costs

We propose the following:

Start Date: October 1, 2014
Total Project Hours: 320
Hourly Rate: \$225.00
Total Projected Cost: \$72,000.00 (Divided in 3 payments of \$24,000.00 each)
Terms: Payment 1: Due October 1, 2014
Payment 2: Due November 15, 2014 (mid-point)
Payment 3: Due December 31, 2014 (completion of phase 1)

At the completion of Phase 1, we can re-evaluate to determine if both parties are pleased with this engagement. At that time, we can decide if we will continue in a more long-term arrangement.

Additional Assumptions:

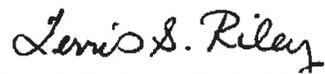
1. On-site office space is not required, but may be beneficial to the students and faculty.
2. The Client is not required to provide equipment (hardware/software).
3. The Client will provide necessary marketing material for distribution when needed.
4. The Client will provide necessary access to buildings, resources, faculty, communications, etc. as needed for successful events, discussions, meetings, etc.
5. The Consultant will prepare monthly reports and distribute as requested/required.
6. State rates will prevail for travel and lodging expenses and will be invoiced separately. Additional travel requested by the Client will be negotiated/discussed on a case-by-case basis.

A Personal Note...

Dear Dean Sanders,

I am excited about this project and the bright future that lies ahead for the College of Dental Medicine as well as the entire MUSC family. My passion is helping people relate to each other so that we can ultimately change and impact the world in which we live. My own life events & experiences have afforded me the unique ability to see life from many different perspectives. Achieving diversity & inclusion will not be easy, but then again, our true accomplishments in life are never easy. Thank you for your lifetime commitment and I am delighted to join you and do my part!

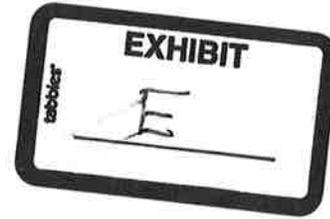
Kindest regards,



Terris S. Riley | Strategist
Phone: (803) 429-0924
Fax : (800) 992-3727
Email : triley@newvenue.tech

Michael H. Montgomery

From: LaTrace, Michael E. <latrace@musc.edu>
Sent: 12/18/2014 2:34 PM
To: Stamp, Velma G.; Sanders, John J.
Subject: FW: Following Up



4 of 5

Michael LaTrace, CRA
Chief Financial Officer
Medical University of South Carolina
James B. Edwards College of Dental Medicine
173 Ashley Avenue
Basic Science Building
Suite 437
Charleston, S.C. 29425
MSC 507
Office: 843-792-1659
Cell : 843-412-4245

From: <LaTrace>, Michael LaTrace <latrace@musc.edu>
Date: Thursday, December 18, 2014 at 2:15 PM
To: Michael LaTrace <latrace@musc.edu>
Subject: Fwd: Following Up

Begin forwarded message:

From: "Sanders, John J." <sanderjj@musc.edu>
Date: October 20, 2014 at 3:48:53 PM EDT
To: "LaTrace, Michael E." <latrace@musc.edu>
Subject: FW: Following Up

FYI

From: "Terris S. Riley" <triley@newvenuetech.com>
Date: Monday, October 20, 2014 at 1:52 PM
To: Jack Sanders <sanderjj@musc.edu>
Cc: Mark Sweatman <sweatmmc@musc.edu>
Subject: Re: Following Up

Well, Dean Sanders, that contract was based on a projected start date of Oct 1. Now that October is pretty much over, these hours would be lowered by 1/3 (at least) bringing the contract amount to an estimated \$38-44K.

If we were able to agree to a start date of Nov 1, would we then be able to engage? Please let me know your thoughts on this possible arrangement.

Thanks,
Terris

Terris. S. Riley
NewVenue Technologies, Inc.
www.newvenueotech.com
ph 803.386.1036

CONFIDENTIAL & PRIVILEGED

Unless otherwise indicated or obvious from the nature of the following communication, the information contained herein is privileged and confidential information/work product. The communication is intended for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error or are not sure whether it is privileged, please immediately notify us by return e-mail and destroy any copies, electronic, paper or otherwise, which you may have of this communication.



Please consider the environment before printing this e-mail.

From: "Sanders, John J." <sanderjj@musc.edu>
Date: Monday, October 20, 2014 at 1:37 PM
To: Terris Riley <triley@newvenueotech.com>
Cc: Mark Sweatman <sweatmmc@musc.edu>
Subject: Re: Following Up

Terris.

I have looked at the contract. Because it is over 50K I have been informed that it needs higher level approval including and most importantly Board of Trustees approval. It will be on the December agenda.

We were not in time for the prefile for the October meeting.

Please. Keep in touch.

JJS

John J. Sanders, D.D.S.
Professor and Dean
James B. Edwards College of Dental Medicine
Medical University of South Carolina
173 Ashley Avenue, MSC 507
Charleston, SC 29425
Ph: (843) 792-3811
Fax: (843) 792-1376

From: "Terris S. Riley" <triley@newvenueotech.com>
Date: Monday, October 20, 2014 at 1:16 PM
To: Jack Sanders <sanderjj@musc.edu>

Cc: Mark Sweatman <sweatmmc@musc.edu>

Subject: Following Up

Hi Dr. Sanders-

I hope you enjoyed the beautiful weather this weekend!

I was checking in to see if you've had the opportunity to review the proposal I sent you a few weeks ago. Please let me know your thoughts when you have a moment.

Thank you, Dr. Sanders—I look forward to hearing back from you.

Have a great afternoon,
terris

Terris. S. Riley
NewVenue Technologies, Inc.
www.newvenuetech.com
ph 803.386.1036

CONFIDENTIAL & PRIVILEGED

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Please consider the environment before printing this e-mail.

Michael H. Montgomery

From: LaTrace, Michael E. <latrace@musc.edu>
Sent: 12/18/2014 2:33 PM
To: Stamp, Velma G.
Cc: Sanders, John J.
Subject: FW: MUSC Dental Medicine Contract.

3 of 5

Michael LaTrace, CRA
Chief Financial Officer
Medical University of South Carolina
James B. Edwards College of Dental Medicine
173 Ashley Avenue
Basic Science Building
Suite 437
Charleston, S.C. 29425
MSC 507
Office: 843-792-1659
Cell : 843-412-4245

From: <O'Brien>, Laine O'Brien <obrieme@musc.edu>
Date: Thursday, December 18, 2014 at 2:15 PM
To: Michael LaTrace <latrace@musc.edu>
Subject: Fwd: MUSC Dental Medicine Contract.

Begin forwarded message:

From: <triley@newvenuetech.com>
Date: November 4, 2014 at 10:43:12 AM EST
To: <obrieme@musc.edu>
Cc: <triley@newvenuetech.com>
Subject: Re: MUSC Dental Medicine Contract.

Hi Laine!

I don't know how this message was routed to my spam folder but please forgive my delayed response!

I am on the road this morning but I (or our bookkeeper, Martha) will get our paperwork completed and back to you today.

I will also try calling you again shortly to follow up as well.

I hope you're having a fantastic day!

Terris

----- Original Message -----

Subject: MUSC Dental Medicine Contract.

From: "O'Brien, Laine" <obrieme@musc.edu>

Date: Oct 31, 2014 10:36 AM

To: "triley@newvenuetech.com" <triley@newvenuetech.com>

CC:

Ms. Riley, I'm working with procurement to set up the contract for payment however, we are unable to locate you or New Venue as a vendor in our system please complete the attached forms and return. Many thanks and have a wonderful weekend.

Laine O'Brien

Accountant & RCM Specialist

Medical University of South Carolina

James B. Edwards College of Dental Medicine

173 Ashley Avenue, MSC507

Basic Science Building 440

Charleston, S.C. 29425

Office: 843-792-7216

Cell : 843-412-4116

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND



THE COURT OF COMMON PLEAS

Branch Banking and Trust Company

Plaintiff(s)

CIVIL ACTION COVERSHEET

2014-CP-40-7403

v.

New Venue Technologies, Inc. and Terris S. Riley

Defendant(s)

Submitted By: Paul H. Hoefler
Address: Robinson, McFadden & Moore, P.C.
Post Office Box 944
Columbia, SC 29202

SC Bar #: 77506
Telephone #: (803) 779-8900
Fax #: (803) 771-9411
E-mail: phoefler@robinsonlaw.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts**
- Constructions (100)
 - Debt Collection (110)
 - Employment (120)
 - General (130)
 - Breach of Contract (140)
 - Other (199)

- Torts - Professional Malpractice**
- Dental Malpractice (200)
 - Legal Malpractice (210)
 - Medical Malpractice (220)
 - Previous Notice of Intent Case #
20__-NI-____
 - Notice/ File Med Mal (230)
 - Other (299)

- Torts - Personal Injury**
- Assault/Slander/Libel (300)
 - Conversion (310)
 - Motor Vehicle Accident (320)
 - Premises Liability (330)
 - Products Liability (340)
 - Personal Injury (350)
 - Wrongful Death (360)
 - Other (399)

- Real Property**
- Claim & Delivery (400)
 - Condemnation (410)
 - Foreclosure (420)
 - Mechanic's Lien (430)
 - Partition (440)
 - Possession (450)
 - Building Code Violation (460)
 - Other (499)

- Inmate Petitions**
- PCR (500)
 - Mandamus (520)
 - Habeas Corpus (530)
 - Other (599)

- Administrative Law/Relief**
- Reinstat Driver's License (800)
 - Judicial Review (810)
 - Relief (820)
 - Permanent Injunction (830)
 - Forfeiture-Petition (840)
 - Forfeiture-Consent Order (850)
 - Other (899)

- Judgments/Settlements**
- Death Settlement (700)
 - Foreign Judgment (710)
 - Magistrate's Judgment (720)
 - Minor Settlement (730)
 - Transcript Judgment (740)
 - Lis Pendens (750)
 - Transfer of Structured Settlement Payment Rights Application (760)
 - Confession of Judgment (770)
 - Petition for Workers Compensation Settlement Approval (780)
 - Other (799)

- Appeals**
- Arbitration (900)
 - Magistrate-Civil (910)
 - Magistrate-Criminal (920)
 - Municipal (930)
 - Probate Court (940)
 - SCDOT (950)
 - Worker's Comp (960)
 - Zoning Board (970)
 - Public Service Comm. (990)
 - Employment Security Comm (991)
 - Other (999)

- Special/Complex /Other**
- Environmental (600)
 - Automobile Arb. (610)
 - Medical (620)
 - Other (699)
 - Sexual Predator (510)

- Pharmaceuticals (630)
- Unfair Trade Practices (640)
- Out-of State Depositions (650)
- Motion to Quash Subpoena in an Out-of-County Action (660)

Submitting Party Signature:

Date: December 1, 2014

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Branch Banking and Trust Company,)

Plaintiff,)

v.)

New Venue Technologies, Inc. and)
Terris S. Riley,)

Defendants.)

IN THE COURT OF COMMON PLEAS

Case No.: 2014-CP-

SUMMONS

RICHLAND COUNTY
FILED
2014 DEC - 1 PM 3:40
JEN STEPHENSON
CLERK OF COURT

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer on the subscribers at Post Office Box 944, Columbia, South Carolina 29202, within thirty (30) days of the date of service, exclusive of such day. In the event you fail to answer within the stated time, judgment by default will be rendered against you for the relief demanded in the Complaint.



Paul H. Hoefler [SC Bar #77506]
ROBINSON, MCFADDEN & MOORE, P.C.
Post Office Box 944
Columbia, SC 29202
Email: phoefler@robinsonlaw.com
(803) 779-8900
Attorneys for the Plaintiff

December 1, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

Branch Banking and Trust Company,)
Plaintiff,)

v.)

New Venue Technologies, Inc. and)
Terris S. Riley,)

Defendants.)

IN THE COURT OF COMMON PLEAS

Case No.: 2014-CP-

COMPLAINT
(Collection; Claim and Delivery)
(Verified)
NON-JURY

FILED
2014 DEC -1 PM 4:40
RICHLAND COUNTY

The Plaintiff above named, complaining of the Defendants herein, alleges that:

1. Plaintiff Branch Banking and Trust Company ("Bank") is a banking institution duly organized and existing under the laws of the State of North Carolina.
2. Upon information and belief, Defendant New Venue Technologies, Inc. ("New Venue") is a corporation organized and existing under the laws of the State of South Carolina, with a principal place of business in Richland County.
3. Upon information and belief, Defendant Terris S. Riley ("Riley") is a resident of Richland County, South Carolina.

FOR A FIRST CAUSE OF ACTION
(Collection)

4. Plaintiff incorporates and references the foregoing allegations of the Complaint.
5. On or about June 10, 2013, New Venue executed a Promissory Note, a copy of which is made part of this Complaint as **Exhibit A**, in favor of Bank for Three Hundred Thousand Fifty Dollars & 00/100 (\$350,000.00), plus interest as set forth therein ("Note #1").

6. On or about June 11, 2014, New Venue executed a Note Modification Agreement in favor of Bank associated with Note #1, a copy of which is made part of this Complaint as **Exhibit B**. Note #1 and the modification thereof shall be referred to hereafter collectively as "Note #1."

7. In and by the terms of the Note, the failure to pay any installment of either principal or interest or any portion thereof when due shall be a material default of the Note, and the whole principal sum and accrued interest shall at the option of the legal holder thereof become at once due and payable without notice.

8. In and by the terms of the Note, in the event of default, Bank has the right to increase the interest rate on the Note to a variable rate equal to the Bank's Prime Rate plus 5.00% per annum ("the Default rate").

9. In and by the terms of the Note, the maker shall pay all costs of collection, including reasonable attorneys' fees, if the Note is placed in the hands of an attorney for collection after default.

10. For good and valuable consideration, Defendant Riley unconditionally guaranteed all indebtedness of New Venue to Bank, whether then existing or thereafter arising. A copy of the Guaranty Agreement executed by Defendant Riley is made part of this Complaint as **Exhibit C** (the "Guaranty").

11. The Note matured on September 5, 2014, and outstanding balances remain due and owing to Bank.

12. Defendant New Venue is in default under the terms of the Note.

13. Defendant Riley is in default under the terms of the Guaranty.

14. Bank has and does hereby elect to declare the entire balance of said principal and interest due and payable at once. As of November 11, 2014, Defendants New Venue and Riley jointly and severally owe Bank the principal amount of \$263,144.44 plus interest of \$4,988.77, plus fees of \$47.59, for a total amount due of \$268,180.80, plus interest accruing thereafter at \$38.37 per diem.

FOR A SECOND CAUSE OF ACTION
(Claim and Delivery)

15. Plaintiff incorporates and references the foregoing allegations of this Complaint.

16. As security for Defendant New Venue's present and future indebtedness to Bank, New Venue granted Bank security interests in its Accounts (including all contract rights and health-care-insurance receivables), General Intangibles, Supporting Obligations, and all proceeds and products of the foregoing (hereinafter the "Collateral"), as more fully described in the Security Agreement made part of this Complaint as **Exhibit D**.

17. Bank perfected the foregoing security interests by filing a UCC Financing Statement, a copy of which is made part of this Complaint as **Exhibit E**.

18. Pursuant to the Note, Bank has the right of a secured party including the right to take possession of the Collateral.

19. Plaintiff is informed and believes that it is entitled to an order granting it permanent possession of the Collateral, including requiring New Venue to direct all monies received from its accounts and contract rights to the Plaintiff, preserving Plaintiff's right to a deficiency including all expenses of collection plus legal fees and costs. Should New Venue fail or refuse to surrender the Collateral to Plaintiff, Plaintiff is

informed and believes that it would be entitled to an order requiring New Venue to show cause why it should not be held in contempt for failing to deliver the Collateral to the Plaintiff.

WHEREFORE, Plaintiff demands:

- A. Judgment on its First Cause of Action against Defendants, jointly and severally, in the amount of \$268,180.80, plus interest at the default rate, plus costs and attorney's fees, and what other relief might be proper.
- B. That the Court inquire into the matters alleged in the Second Cause of Action, and award Judgment against New Venue for possession of any of the Collateral, including requiring New Venue to direct all monies received from its accounts and contract rights to the Plaintiff, preserving Plaintiff's right to a deficiency including all expenses of collection plus legal fees and costs. Should New Venue fail or refuse to surrender the Collateral, Plaintiff demands an order requiring New Venue to show cause why it should not be held in contempt for failing to deliver the Collateral to the Sheriff.
- C. Plaintiff demands such other and further relief to which it is entitled.


Paul H. Hofer [SC Bar #77506]
ROBINSON, MCFADDEN & MOORE, P.C.
Post Office Box 944
Columbia, SC 29202
Email: phoefer@robinsonlaw.com
(803) 779-8900
Attorneys for the Plaintiff

December 1, 2014

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Branch Banking and Trust Company,)
)
 Plaintiff,)
)
 v.)
)
 New Venue Technologies, Inc. and)
 Terris S. Riley,)
)
 Defendants)
)

IN THE COURT OF COMMON PLEAS

Case No. 2014-CP-40-7403

ANSWER

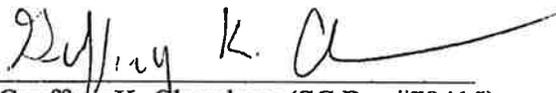
2015 JAN 21 AM 9:48
 JEANNETTE W. MCBRIDE
 C.C.P. & S.G.S.
 RICHLAND COUNTY
 FILED

Defendants New Venue Technologies, Inc. and Terris S. Riley respectfully answer the Complaint and would show this Honorable Court as follows:

1. The defendants would defer to the public record to answer the allegations of paragraph 1. Any allegations of paragraph 1 not fully supported by the public record are denied for lack of sufficient information to form a belief.
2. The allegations of paragraph 2 are admitted.
3. The allegations of paragraph 3 are admitted.
4. Paragraph 4 does not warrant response, however any allegations of paragraph 4 not addressed previously is denied.
5. The allegations of paragraph 5 are admitted.
6. The allegations of paragraph 6 are admitted.
7. Defendants would defer to the documents on record for answer to paragraph 7. Any allegation not clearly and conspicuously stated in the documents on record is denied.
8. Defendants would defer to the documents on record for answer to paragraph 8. Any allegation not clearly and conspicuously stated in the documents on record is denied.
9. Defendants would defer to the documents on record for answer to paragraph 9. Any allegation not clearly and conspicuously stated in the documents on record is denied.
10. The allegations of paragraph 10 are denied.
11. The allegations of paragraph 11 are denied for lack of sufficient information to form a belief.

12. The allegations of paragraph 12 are denied for lack of sufficient information to form a belief.
13. The allegations of paragraph 13 are denied.
14. The allegations of paragraph 14 are denied for lack of sufficient information to form a belief.
15. Paragraph 15 does not warrant response, however any allegations of paragraph 15 not addressed previously is denied.
16. Defendants would defer to the documents on record for answer to paragraph 16. Any allegation not clearly and conspicuously stated in the documents on record is denied.
17. Defendants would defer to the public record for answer to paragraph 17.
18. Defendants would defer to the documents on record for answer to paragraph 18. Any allegation not clearly and conspicuously stated in the documents on record is denied.
19. The allegations and demand for relief in paragraph 19 is denied.
20. The demands for relief listed as paragraph A, B, and C are denied.

Respectfully Submitted:


Geoffrey K. Chambers (SC Bar #78415)
Counsel for New Venue Technologies
1201 Main Street
Suite 985
Columbia, SC 29201
Phone: 864-508-0899
Email: Geoffrey@cperlgroup.com

This 14th day of January, 2015
Columbia, SC

***Consumer Protection, Environmental, and Regulatory
Law Group, LLC***

Geoffrey K. Chambers
geoffrey@CPERLGroup.com
(864) 508-0899

1201 Main Street
Suite 985
Columbia, SC 29201

January 14, 2015

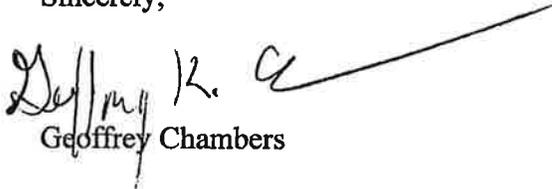
Richland County Clerk of Court
Richland County Judicial Center
1701 Main Street, Room 205 (29201)
Post Office Box 2766
Columbia, South Carolina 29202

Re: Case Number 2014-CP-40-7403

Please find enclosed an answer to the complaint in the above referenced case. Please return a clocked copy to me in the envelope I have enclosed.

By copy of this letter, I am serving opposing counsel with a copy of the same.

Sincerely,


Geoffrey Chambers

WITNESSES

S/A CASEY COLLIER, SLED

ARREST WARRANT NUMBER

Docket Number 2014-GS-40- 07332

The State of South Carolina
County of Richland

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Direct presentment

DP 14-294

COURT OF GENERAL SESSIONS

NOVEMBER Term: 2014
AG

I, _____ hereby appear in my own proper person and plead guilty to the within indictment or to _____

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury NOV 13 2014
Date:

Terris Shirelle Riley
DEFENDANT

THE STATE

vs.

Defendant

VERDICT

Indictment for
Breach of Trust

Witness:

C.C.C. Pls. And G.S.

Foreperson
Date:

SC Code: § 16-13-230(B)(3)
CDR Code: 3424



STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on NOVEMBER 12, 2014 the Grand Jurors of Richland County present upon their oath:

BREACH OF TRUST

That Terris Shirelle Riley did, in Richland County, on or about the period between July 2011 and August 2013, while acting as President of New Venue Technologies, Inc., commit the crime of Breach of Trust in an amount greater than ten-thousand dollars or more, in that the Defendant, while acting as President of New Venue Technologies, Inc., did, with fraudulent intent, convert funds entrusted to her in her capacity as President of New Venue Technologies, Inc., to her personal use. To wit, the Defendant did receive funds from governmental entities for the purpose of paying Compucom, Inc. for software supplied to governmental entities within South Carolina and did convert those funds to her own use, such conversion being in an amount in excess of ten-thousand dollars, this in violation of §16-13-230 of the Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ALAN WILSON (WAM)

WITNESSES

S/A CASEY COLLIER, SLED

ARREST WARRANT NUMBER

Docket Number 2014-GS-40-07331

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS

NOVEMBER Term: 2014
AG

Direct presentation

DP 14-293

ACTION OF GRAND JURY

TRUE BILL

[Handwritten Signature]

Foreperson of Grand Jury NOV 13 2014
Date:

VERDICT

Foreperson of Petit Jury
Date:

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I, _____
hereby appear in my own proper person and plead guilty to the within indictment or to _____

Defendant

Witness:

C.C.C. Pls. And G.S.

THE STATE

vs.

Terris Shirelle Riley
DEFENDANT

Indictment for
Breach of Trust

SC Code: § 16-13-230(B)(3)
CDR Code: 3424

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on NOVEMBER 12, 2014 the Grand Jurors of Richland County present upon their oath:

BREACH OF TRUST

That Terris Shirelle Riley did, in Richland County, on or about the period between February 2013 and August 2013, while acting as President of New Venue Technologies, Inc., commit the crime of Breach of Trust in an amount greater than ten-thousand dollars or more, in that the Defendant, while acting as President of New Venue Technologies, Inc., did, with fraudulent intent, convert funds entrusted to her in her capacity as President of New Venue Technologies, Inc., to her personal use. To wit, the Defendant did receive funds from governmental entities for the purpose of paying CDW Government, LLC for software supplied to governmental entities in South Carolina and did convert those funds to her own use, such conversion being in an amount in excess of ten-thousand dollars, this in violation of §16-13-230 of the Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ALAN WILSON (WAM)

WITNESSES

S/A CASEY COLLIER, SLED

ARREST WARRANT NUMBER

Docket Number 2014-GS-40-07330

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS

NOVEMBER Term: 2014
AG

Direct presentation

DP 14-292

ACTION OF GRAND JURY

TRUE BILL

[Signature]

Foreperson of Grand Jury

Date: NOV 13 2014

VERDICT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I, _____ hereby appear in my own proper person and plead guilty to the within indictment or to _____

Defendant

Witness:

C.C.C. Pls. And G.S.

THE STATE

vs.

Terris Shirelle Riley
DEFENDANT

Indictment for

Breach of Trust

SC Code: § 16-13-230(B)(3)
CDR Code: 3424

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on NOVEMBER 12, 2014 the Grand Jurors of Richland County present upon their oath:

BREACH OF TRUST

That Terris Shirelle Riley did, in Richland County, on or about the period between February 2012 and August 2013, while acting as President of New Venue Technologies, Inc., commit the crime of Breach of Trust in an amount greater than ten-thousand dollars or more, in that the Defendant, while acting as President of New Venue Technologies, Inc., did, with fraudulent intent, convert funds entrusted to her in her capacity as President of New Venue Technologies, Inc., to her personal use. To wit, the Defendant did receive funds from governmental entities for the purpose of paying Mythics, Inc. for software supplied to governmental entities within South Carolina and did convert those funds to her own use, such conversion being in an amount in excess of ten-thousand dollars, this in violation of §16-13-230 of the Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ALAN WILSON (WAM)

WITNESSES

S/A CASEY COLLIER, SLED

ARREST WARRANT NUMBER

Docket Number 2014-GS-40-07329

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS

NOVEMBER Term: 2014
AG

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I, _____
hereby appear in my own proper person and plead guilty to the within indictment or to

ACTION OF GRAND JURY

Direct presentment
DP 14-291

TRUE BILL

[Handwritten Signature]

Foreperson of Grand Jury
Date: NOV 13 2014

VERDICT

THE STATE

vs.

Terris Shirelle Riley
DEFENDANT

Indictment for

Breach of Trust

Defendant

Witness:

C.C.C. Pls. And G.S.

Foreperson of Petit Jury
Date:

SC Code: § 16-13-230(B)(3)
CDR Code: 3424

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on NOVEMBER 12, 2014 the Grand Jurors of Richland County present upon their oath:

BREACH OF TRUST

That Terris Shirelle Riley did, in Richland County, on or about the period between December 2012 and August 2013, while acting as President of New Venue Technologies, Inc., commit the crime of Breach of Trust in an amount greater than ten-thousand dollars or more, in that the Defendant, while acting as President of New Venue Technologies, Inc., did, with fraudulent intent, convert funds entrusted to her in her capacity as President of New Venue Technologies, Inc., to her personal use. To wit, the Defendant did receive funds from governmental entities for the purpose of paying Software House International Corporation for software supplied to governmental entities within South Carolina and did convert those funds to her own use, such conversion being in an amount in excess of ten-thousand dollars, this in violation of §16-13-230 of the Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ALAN WILSON (WAM)

WITNESSES

S/A CASEY COLLIER, SLED

ARREST WARRANT NUMBER

Direct presentment

DP 14-295

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: NOV 13 2014

VERDICT

Foreperson of Petit Jury
Date:

Docket Number 2014-GS-40-07335

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS

NOVEMBER Term: 2014
AG

THE STATE

vs.

Terris Shirelle Riley
DEFENDANT

Indictment for
Embezzlement

SC Code: § 16-13-210(A) and (B)(1)
CDR Code: 3459

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I, _____ hereby appear in my own proper person and plead guilty to the within indictment or to _____

Defendant

Witness:

C.C.C. PIs. And G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

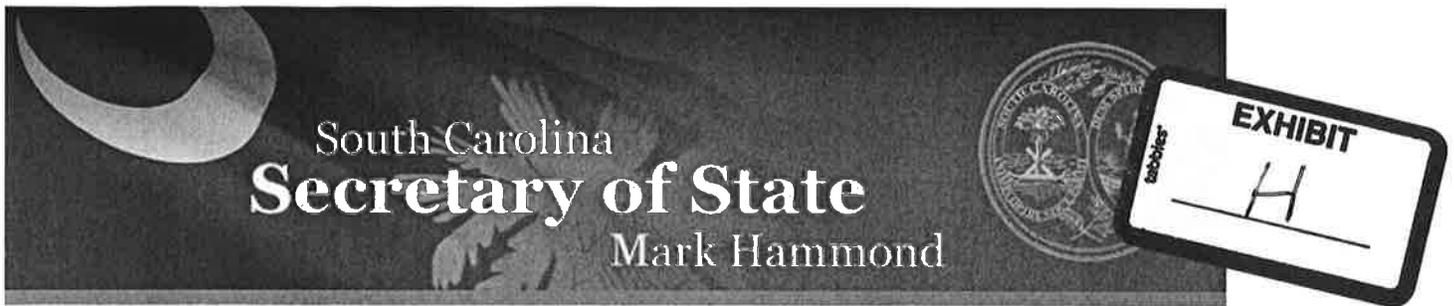
INDICTMENT

At a Court of General Sessions, convened on NOVEMBER 12, 2014 the Grand Jurors of Richland County present upon their oath:

EMBEZZLEMENT

That Terris Shirelle Riley did, in Richland County, on or about the period between September 2011 and August 2013, while acting as President of New Venue Technologies, Inc., commit the crime of Embezzlement of Public Funds in an amount greater than ten-thousand dollars or more, in that the Defendant, while acting as President of New Venue Technologies, Inc., did, having been charged with the safekeeping, transfer, and disbursement of public funds, embezzle those funds. To wit, the Defendant did receive funds from governmental entities for the purpose of paying various software resellers for software supplied to governmental entities in South Carolina and did embezzle those funds by converting them to her own use, such conversion being in an amount greater than \$2,000,000.00 (an amount in excess of ten-thousand dollars), this in violation of §16-13-210 of the Code of Laws of South Carolina (1976), as amended. Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ALAN WILSON (WAM)



NEW VENUE TECHNOLOGIES, INC.

*Note: This online database was last updated on 5/15/2015 3:05:53 AM.
See our Disclaimer.*

DOMESTIC / FOREIGN:	Domestic
STATUS:	Forfeiture
STATE OF INCORPORATION / ORGANIZATION:	SOUTH CAROLINA Profit

REGISTERED AGENT INFORMATION

REGISTERED AGENT NAME:	TERRIS S RILEY
ADDRESS:	8 BURBERRY LN
CITY:	COLUMBIA
STATE:	SC
ZIP:	29229
SECOND ADDRESS:	STE 100
FILE DATE:	02/14/2005
EFFECTIVE DATE:	02/14/2005
DISSOLVED DATE:	05/07/2015

Corporation History Records

CODE	FILE DATE	COMMENT	Document
Forfeiture	05/07/2015	SCBOS Filing: ADMINISTRATIVE DISSOLUTION #2	
Reinstatement	11/29/2012	REINSTATEMENT	
Forfeiture	07/25/2012	SCBOS Filing: ADMINISTRATIVE DISSOLUTION #2	
Incorporation	02/14/2005		

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