

Participating Addendum Number 4400040115
For
Procurement Assistance and Support Services (PASS) (Lot 1)
between
State of South Carolina
and
Ernst & Young

This Participating Addendum is entered into by **The State of South Carolina** (“Participating Entity”) and the following Contractor (each a “Party” and collectively the “Parties”) for the purpose of participating in NASPO ValuePoint Master Agreement Number **DPC-1428523190-SA-18-PASS**, executed by Contractor and the State of North Carolina (“Lead State”) for Procurement Assistance Support Services (PASS) and IT Research, Advisory, and Consulting (IT RAC) services (“Master Agreement”):

Ernst & Young
325 N Salisbury St.
Raleigh, NC 27603

I. PARTICIPATING ADDENDUM CONTACTS.

Contractor’s contact for this Participating Addendum is:

Chris Estes
Title
Chris.C.Estes@ey.com
919-981-2800

Participating Entity’s contact for this Participating Addendum is:

Clifton Sanders
Procurement Manager II
[cgsanders@mmo.sc.gov](mailto:cdsanders@mmo.sc.gov)
803-737-1959

- II. TERM.** This Participating Addendum is effective as of the date of the last signature below or **January 19, 2026**, whichever is later, and will terminate upon termination of the Master Agreement, as amended, unless the Participating Addendum is terminated sooner in accordance with the terms set forth herein.
- III. PARTICIPATION AND USAGE.** This Participating Addendum may be used by all state agencies, institutions of higher education, cities, counties, districts, and other political subdivisions of the state, and nonprofit organizations within the state if authorized herein and by law. Participating Entity has sole authority to determine which entities are eligible to use this Participating Addendum. If Contractor becomes aware that an entity’s use of this Participating Addendum is not authorized, Contractor will notify NASPO ValuePoint to initiate outreach to the appropriate parties.
- IV. GOVERNING LAW.** The construction and effect of this Participating Addendum and any Orders placed hereunder will be governed by, and construed in accordance with, Participating Entity’s laws.
- V. SCOPE.** Except as otherwise stated herein, this Participating Addendum incorporates the scope, pricing, terms, and conditions of the Master Agreement and the rights and obligations set forth therein as applied to Contractor and Participating Entity and Purchasing Entities. **Contractor may provide any products and/or services it was awarded and as described in the Master Agreement.**
- a. Products.** All products available through the Master Agreement may be offered and sold by Contractor to Purchasing Entities *with the exclusion of those identified in [Attachment B]*.
 - b. Services.** All services available through the Master Agreement may be offered and sold by Contractor to Purchasing Entities *with the exclusion of those identified in [Attachment B]*.
 - c. Contractor Partners.** All subcontractors, dealers, distributors, resellers, and other partners identified on Contractor’s NASPO ValuePoint webpage as authorized to provide Products and Services to

Participating Entity may provide Products and Services to users of this Participating Addendum. Contractor will ensure that the participation of Contractor's subcontractors, dealers, distributors, resellers, and other partners is in accordance with the terms and conditions set forth in the Master Agreement and in this Participating Addendum.

Any amendment to the Master Agreement shall be deemed incorporated into this Participating Addendum unless the amendment is rejected by Participating Entity in writing to Contractor within ten (10) calendar days of the amendment's effective date and is documented thereafter via written amendment hereto.

Any conflict between this Participating Addendum and the Master Agreement will be resolved in favor of the Participating Addendum. The terms of this Participating Addendum, including those modifying or adding to the terms of the Master Agreement, apply only to the Parties and shall have no effect on Contractor's participating addenda with other participating entities or Contractor's Master Agreement with the Lead State.

VI. ORDERS. Purchasing Entities may place orders under this Participating Addendum by referencing the Participating Addendum Number on an Order. Each Order placed under this Participating Addendum is subject to the pricing and terms set forth herein and in the Master Agreement, including applicable discounts, reporting requirements, and payment of administrative fees to NASPO ValuePoint and Participating Entity, if applicable.

VII. PARTICIPATING ENTITY REPORTING REQUIREMENTS AND ADMINISTRATIVE FEE.

ADMINISTRATIVE SERVICES FEE - COLLECTION AND REPORTING

(a) Procurement Services (PS) establishes and maintains master State contracts for the benefit of all South Carolina state and local public entities. These contracts allow all public entities both to maximize the State's purchasing power by aggregating their requirements and to benefit from increased efficiencies in the acquisition process. Procurement Services' cost for this central purchasing activity is offset by an administrative fee which each contractor includes in its contract pricing (though not separately itemized or invoiced) and is paid to the vendor by each participating public entity. The contractor collects the fee as a fiduciary for the State and remits the same as calculated in accordance with the clause titled "ADMINISTRATIVE SERVICES FEE - CALCULATION." The price stated in the contractor's bid or proposal must include all amounts necessary for contractor to meet this obligation.

(b) As used in this clause, the term "reporting period" means each full calendar quarter (Jan. - Mar., Apr. - Jun., Jul. - Sep., and Oct. - Dec.) and any remaining periods less than a full calendar quarter during the term of this contract. For each reporting period, contractor shall report to PS its total sales pursuant to this contract for the period and shall remit the fee to the PS Reports Manager. Payment for each reporting period is due no later than the last day of the month immediately following the end of the reporting period (Example: payment for the reporting period ending March 31 is due April 30). If the amount due for a reporting period is less than \$10.00, no payment is required.

The procurement officer will provide contractor an information packet, including a detailed explanation of reporting and payment requirements, within fifteen (15) calendar days following contract award. You may contact the Reports Manager at:
Procurement Services Division

Attn: Reports Manager
1333 Main Street, Suite 700
Columbia, SC 29201
Phone: (803) 737-1254 (ask to speak to the Reports Manager)

Failure to receive the information packet does not relieve contractor from its obligations hereunder.

(c) Contractor shall submit a usage report for each reporting period, even if no payment is due for the reporting period. The usage report shall include any information requested by PS to verify the amount due. At a minimum, each usage report shall reflect the following information for the applicable reporting period: contractor's name, contract number, contract description, reporting period/quarter, total dollar value of sales (excluding sales taxes and showing any adjustments for credits or refunds), total number of units (if practicable), and the number, date, and amount of contractor's check to PS. Unless otherwise specified by the reports manager, the usage report shall be submitted electronically according to instructions in the information packet. If the reports manager requires the contractor to provide a more detailed usage report, the reports manager will work directly with the contractor to determine the appropriate content and format of the report.

(d) During the term of this contract and for a period of three years thereafter, PS or its authorized representatives shall be afforded access at reasonable times to contractor's records (including, without limitation, bank statements, deposits, checks; invoices; correspondence; ledgers; receipts; transmittals) in order to audit all transactions involving goods sold, work performed, or fees due pursuant to this contract. If the audit indicates that contractor has materially underpaid PS, then contractor shall remit the balance found to be due (including any amounts assessed pursuant to subparagraph (e)) and reimburse PS for all costs of the audit.

(e) Payments of the fee which are due and unpaid by the contractor (including amounts disclosed by audit) shall accrue interest as provided in the Payment and Interest clause for amounts due to the State. In addition to the fee and interest, contractor agrees to pay to PS its reasonable expenses of collection, including costs and attorneys' fees (and fees for inside counsel), whether or not PS commences legal action.

(f) If the contractor fails to (i) timely submit accurate usage reports; (ii) remit to PS the fee when due; or (iii) promptly and fully cooperate with an audit request, the State may, without prejudice to any other remedy available to the State, take any one or more of the following actions:

- (1) direct the contractor to not accept any further orders under the contract until PS determines that the cause for such direction has been eliminated;
- (2) terminate this contract;
- (3) direct the contractor to not accept any further orders under any other master State contract established by PS until PS determines that the cause for such direction has been eliminated.

(g) For purposes of this clause, PS is intended as a third-party beneficiary of this contract.

ADMINISTRATIVE SERVICES FEE - CALCULATION - ITMO (MODIFIED)

For each reporting period, Contractor shall pay to PS a fee equal to one and one quarter (**1.25%**) percent of the total dollar amount (excluding sales taxes and adjusted for credits or refunds) of purchases made by any public procurement unit from Contractor pursuant to this contract.

- VIII. FEDERAL FUNDING REQUIREMENTS.** Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. When applicable, a Purchasing Entity will identify in the Order any alternative or additional requirements related to the use of federal funds. By accepting the Order, Contractor agrees to comply with the requirements set forth therein.

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- IX. ATTACHMENTS.** This Participating Addendum includes the following attachments:
- a. Attachment A: Participating Entity Modifications and Additions to Master Agreement Terms and Conditions
 - b. Attachment B: Participating Entity Product and Service Exclusions

- X. NOTICE.** Any notice required herein shall be sent to the following:

For Contractor:

Chris Estes
Title
Chris.C.Estes@ey.com
919-981-2800

For Participating Entity:

Clifton Sanders
Procurement Manager II
[cgsanders@mmo.sc.gov](mailto:cdsanders@mmo.sc.gov)
803-737-1959

- XI. SUBMISSION OF PARTICIPATING ADDENDUM TO NASPO VALUEPOINT.** Upon execution, Contractor shall promptly email a copy of this Participating Addendum and any amendments hereto to NASPO ValuePoint at pa@naspovaluepoint.org. The Parties acknowledge and agree that the Participating Addendum, as amended, may be published on the NASPO ValuePoint website.

SIGNATURE

The undersigned for each Party represents and warrants that this Participating Addendum is a valid and legal agreement binding on the Party and enforceable in accordance with the Participating Addendum's terms and that the undersigned is duly authorized and has legal capacity to execute and deliver this Participating Addendum and bind the Party hereto.

IN WITNESS WHEREOF, the Parties have executed this Participating Addendum.

CONTRACTOR:

Chris Estes

Signature

Chris Estes

Printed Name

SC Public Sector Leader

Title

06/01/2026

Date

PARTICIPATING ENTITY:

Clifton Sanders

Signature

Clifton Sanders

Printed Name

Procurement Manager

Title

6/2/2026

Date

Attachment A: Participating Entity Modifications and Additions to Master Agreement Terms and Conditions

1. **AUTHORIZED AGENT:** All authority regarding this procurement is vested solely with the responsible Procurement Officer. Unless specifically delegated in writing, the Procurement Officer is the only government official authorized to bind the government with regard to this procurement or the resulting contract.
2. **AUTHORITY AS PROCUREMENT AGENT :** The Procurement Officer is an employee of the Authority acting on behalf of the Using Governmental Unit(s) pursuant to the Consolidated Procurement Code. Any contracts awarded as a result of this procurement are between the Contractor and the Using Governmental Units(s). The Authority is not a party to such contracts, unless and to the extent that the Authority is a using governmental unit and bears no liability for any party's losses arising out of or relating in any way to the contract.
3. **VENDOR REGISTRATION MANDATORY:** You must have a state vendor number to be eligible to submit an offer. To obtain a state vendor number, visit www.procurement.sc.gov and select Doing Business with Us. Then select New Vendor Registration. (To determine if your business is already registered, go to "Vendor Search"). Upon registration, you will be assigned a state vendor number. Note that your vendor registration submission may take up to 30 days to process due to high numbers of registrants. Vendors must keep their vendor information current. If you are already registered and know your User ID and Password, you can update your information by selecting Update Vendor Registration. If you need to update information but do not have your User ID/Password, you must complete a new vendor registration and On Step 9 – Messages to Administration indicate "Update vendor number" with your existing 10-digit vendor number. (Please note that vendor registration does not substitute for any obligation to register with the S.C. Secretary of State or S.C. Department of Revenue. You can register with the agencies at South Carolina Business One Stop, <http://scbos.sc.gov>)
4. **ASSIGNMENT, NOVATION, AND CHANGE OF NAME, IDENTITY, OR STRUCTURE:** (a) Contractor shall not assign this contract, or its rights, obligations, or any other interest arising from this contract, or delegate any of its performance obligations, without the express written consent of the responsible procurement officer. The foregoing restriction does not apply to a transfer that occurs by operation of law (e.g., bankruptcy; corporate reorganizations and consolidations, but not including partial asset sales). Notwithstanding the foregoing, contractor may assign monies receivable under the contract provided that the state shall have no obligation to make payment to an assignee until thirty days after contractor (not the assignee) has provided the responsible procurement officer with (i) proof of the assignment, (ii) the identity (by contract number) of the specific state contract to which the assignment applies, and (iii) the name of the assignee and the exact address or account information to which assigned payments should be made. (b) If contractor amends, modifies, or otherwise changes its name, its identity (including its trade name), or its corporate, partnership or other structure, or its FEIN, contractor shall provide the procurement officer prompt written notice of such change. (c) Any name change, transfer, assignment, or novation is subject to the conditions and approval required by Regulation 19-445.2180, which does not restrict transfers by operation of law.
5. **BANKRUPTCY - GENERAL:** (a) Notice. In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Using Governmental Unit. This notification shall be furnished within two (2) days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of all State contracts against which final payment has not been made. This obligation remains in effect until final payment under this Contract. (b) Termination. This contract is voidable and subject to immediate termination by the State upon the contractor's insolvency, including the filing of proceedings in bankruptcy.

6. **CHOICE-OF-LAW:** The Agreement, any dispute, claim, or controversy relating to the Agreement, and all the rights and obligations of the parties shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina, except its choice of law rules.
7. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation.
8. **DISPUTES:** (1) Choice-of-Forum. All disputes, claims, or controversies relating to the Agreement shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Richland County, State of South Carolina. Contractor agrees that any act by the government regarding the Agreement is not a waiver of either the government's sovereign immunity or the government's immunity under the Eleventh Amendment of the United States Constitution. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation. The government does not consent to the jurisdiction of any judicial or administrative tribunals in any other state or to any forum of alternative dispute resolution.
(2) Service of Process. Contractor consents that any papers, notices, or process necessary or proper for the initiation or continuation of any disputes, claims, or controversies relating to the Agreement; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on Contractor by certified mail (return receipt requested) addressed to Contractor at the address provided as the Notice Address on Page Two or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given upon deposit in the United States mail.
9. **ETF INFORMATION:** The Contractor must furnish to the State Treasurer's Office information necessary for making a payment by electronic funds transfer (EFT). Additional information is available at the STO's website at <https://treasurer.sc.gov> (.) The Contractor is responsible for the currency, accuracy and completeness of the EFT information. Updating EFT information may not be used to accomplish an assignment of the right to payment, does not alter the terms and conditions of this contract, and is not a substitute for a properly executed contractual document.
10. **NO INDEMNITY OR DEFENSE:** Any term or condition is void to the extent it requires the State to indemnify, defend, or pay attorney's fees to anyone for any reason.
11. **OPEN TRADE:** During the contract term, including any renewals or extensions, Contractor will not engage in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code Section 11-35-5300.
12. **PAYMENT AND INTEREST:** The State shall pay the Contractor, after the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified herein, including the purchase order, payment shall not be made on partial deliveries accepted by the Government. (b) Unless otherwise provided herein, including the purchase order, payment will be made by electronic funds transfer (EFT). See clause titled " EFT Information." (c) Notwithstanding any other provision, payment shall be made in accordance with S.C. Code Section 11-35-45, or Chapter 6 of Title 29 (real property improvements) when applicable, which provides the Contractor's exclusive means of recovering any type of interest from the Owner. Contractor waives imposition of an interest penalty unless the invoice submitted specifies that the late penalty is applicable. Except as set forth in this paragraph, the State shall not be liable for the payment of interest on any debt or claim arising out of or related to this contract for any reason. (d) Amounts due to the State shall bear interest at the rate of interest established by the South Carolina Comptroller General pursuant to Section 11-35-45 (" an amount not to exceed fifteen percent each year "), as amended, unless otherwise required by Section 29-6-30. (e) Any other basis for interest, including but not limited to general (pre- and post-judgment) or specific interest statutes, including S.C. Code Ann. Section 34-31-20, are expressly waived by both parties.

- If a court, despite this agreement and waiver, requires that interest be paid on any debt by either party other than as provided by items (c) and (d) above, the parties further agree that the applicable interest rate for any given calendar year shall be the lowest prime rate as listed in the first edition of the Wall Street Journal published for each year, applied as simple interest without compounding. (f) The State shall have all of its common law, equitable and statutory rights of set-off.
13. **PUBLICITY:** Contractor shall not publish any comments or quotes by State employees or include the State in either news releases or a published list of customers, without the prior written approval of the Procurement Officer.
 14. **PURCHASE ORDER:** 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.
 15. **SURVIVAL OF OBLIGATION:** 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.
 16. **TAXES:** Any tax the contractor may be required to collect or pay upon the sale, use or delivery of the products shall be paid by the State, and such sums shall be due and payable to the contractor upon acceptance. Any personal property taxes levied after delivery shall be paid by the State. It shall be solely the State's obligation, after payment to contractor, to challenge the applicability of any tax by negotiation with, or action against, the taxing authority. Contractor agrees to refund any tax collected, which is subsequently determined not to be proper and for which a refund has been paid to contractor by the taxing authority. In the event that the contractor fails to pay, or delays in paying, to any taxing authorities, sums paid by the State to contractor, contractor shall be liable to the State for any loss (such as the assessment of additional interest) caused by virtue of this failure or delay. Taxes based on Contractor's net income or assets shall be the sole responsibility of the contractor.
 17. **TERMINATION DUE TO UNAVAILABILITY OF FUNDS:** Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled. In the event of a cancellation pursuant to this paragraph, contractor will be reimbursed the resulting unamortized, reasonably incurred, nonrecurring costs. Contractor will not be reimbursed any costs amortized beyond the initial contract term.
 18. **THIRD PARTY BENEFICIARY:** 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.
 19. **WAIVER:** The State does not waive any prior or subsequent breach of the terms of the Contract by making payments on the Contract, by failing to terminate the Contract for lack of performance, or by failing to strictly or promptly insist upon any term of the Contract. Only the Procurement Officer has actual authority to waive any of the State's rights under this Contract. Any waiver must be in writing.

20. **BANKRUPTCY GOVERNMENT INFORMATION:** (a) All government information (as defined in the clause herein entitled "Information Security - Definitions") shall belong exclusively to the State, and Contractor has no legal or equitable interest in, or claim to, such information. Contractor acknowledges and agrees that in the event Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, government information in its possession and/or under its control will not be considered property of its bankruptcy estate. (b) Contractor agrees to notify the State within forty-eight (48) hours of any determination that it makes to file for bankruptcy protection, and Contractor further agrees to turn over to the State, before such filing, all government information that is in Contractor's possession in a format that can be readily utilized by the State. (c) In order to protect the integrity and availability of government information, Contractor shall take reasonable measures to evaluate and monitor the financial circumstances of any subcontractor that will process, store, transmit or access government information.
21. **CISG:** The parties expressly agree that the UN Convention on the International Sale of Goods shall not apply to this agreement.
22. **COMPLIANCE WITH LAWS:** During the term of the contract, contractor shall comply with all applicable provisions of laws, codes, ordinances, rules, regulations, and tariffs.
23. **CONTRACT LIMITATIONS:** No sales may be made pursuant to this contract for any item or service that is not expressly listed. No sales may be made pursuant to this contract after expiration of this contract. Violation of this provision may result in termination of this contract and may subject contractor to suspension or debarment.
24. **CONTRACTOR'S LIABILITY INSURANCE:** (a) Without increasing or limiting any of the obligations or liabilities of Contractor, Contractor shall procure from a company or companies lawfully authorized to do business in South Carolina and with a current A.M. Best rating of no less than A: VII, and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work and the results of that work by the contractor, his agents, representatives, employees or subcontractors.
(b) Coverage shall be at least as broad as:
(1) Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 12 07 or equivalent covering CGL on an "occurrence" basis, including products-completed operations, personal and advertising injury, with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, the general aggregate limit shall be twice the required occurrence limit. This contract shall be considered to be an "insured contract" as defined in the policy. (h) Every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them, must be covered as additional insureds on the policy or policies of insurance required by this clause. The additional insured status may be satisfied by blanket endorsement.
25. **CONTRACTOR'S LIABILITY INSURANCE – INFORMATION SECURITY AND PRIVACY:** For products providing the coverages required by this clause, the insurance market is evolving. Our research indicates that the requirements stated herein reflect commercially available insurance products. Any offeror having concerns with any specific requirements of this clause should communicate those concerns to the procurement officer well in advance of opening.]
(a) Without increasing or limiting any other obligations or liabilities of Contractor, Contractor shall procure from a company or companies lawfully authorized to do business in South Carolina and with a current A.M. Best rating of no less than A: VII, and maintain for the duration of the contract, a policy or policies of insurance against claims which may arise from or in connection with the performance of the work and the results of that work by the contractor, his agents, representatives, employees, subcontractors or any other entity for which the contractor is legally responsible.
(b) Coverage must include claims for:
(i) professional liability that includes coverage for information security risks, including without limitation, failure to prevent unauthorized access to, tampering with or unauthorized use of a computer system; introduction of malicious codes, computer viruses, worms, logic

bombs, etc., into data or systems; or theft, damage, unauthorized disclosure, destruction, or corruption of information in whatever form;

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

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

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

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

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

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

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

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

26. **DEFAULT:** (a) (1) The State may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to:
- (i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;
 - (ii) Make progress, so as to endanger performance of this contract (but see paragraph (a)(2) of this clause); or
 - (iii) Perform any of the other material provisions of this contract (but see paragraph (a)(2) of this clause).
- (2) The State's right to terminate this contract under subdivisions (a)(1)(ii) and (1)(iii) of this clause, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Procurement Officer) after receipt of the notice from the Procurement Officer specifying the failure.
- (b) If the State terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Procurement Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.
- (c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the State in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.
- (d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources under commercially reasonable terms in sufficient time for the Contractor to meet the required delivery schedule.

- (e) If this contract is terminated for default, the State may require the Contractor to transfer title and deliver to the State, as directed by the Procurement Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Provided, however, that any partially completed materials shall be provided on an "as-is" basis not subject to any warranty whether express or implied. Any use of such partially completed materials by the State shall be at its sole risk. Upon direction of the Procurement Officer, the Contractor shall also protect and preserve property in its possession in which the State has an interest.
- (f) The State shall pay contract price for completed supplies delivered and accepted. The Contractor and Procurement Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property; if the parties fail to agree, the Procurement Officer shall set an amount subject to the Contractor's rights under the Disputes clause. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the Procurement Officer determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.
- (g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the termination had been issued for the convenience of the State. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the State, the contract shall be adjusted to compensate for such termination and the contract modified accordingly subject to the contractor's rights under the Disputes clause.
- (h) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this contract.

27. **IDEMNIFICATION-THIRD PARTY CLAIMS-GENERAL:** Notwithstanding any limitation in this agreement, and to the fullest extent permitted by law, Contractor shall defend and hold harmless Indemnitees for and against any and all suits or claims of any character (and all related damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities) by a third party which are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property **directly from the performance of this Agreement that is alleged to have resulted, in whole or in part, from the negligence or willful misconduct of the Contractor or its subcontractors, directors, officers, employees or authorized agents** however, if an Indemnitee's negligent act or omission is subsequently determined to be the sole proximate cause of a suit or claim, the Indemnitee shall not be entitled to indemnification hereunder. Contractor shall be given timely written notice of any suit or claim. Contractor's obligations hereunder are in no way limited by any protection afforded under workers' compensation acts, disability benefits acts, or other employee benefit acts. This clause shall not negate, abridge, or reduce any other rights or obligations of indemnity which would otherwise exist. The obligations of this paragraph shall survive termination, cancellation, or expiration of the parties' agreement. This provision shall be construed fairly and reasonably, neither strongly for nor against either party, and without regard to any clause regarding insurance. As used in this clause, "Indemnitees" means the State of South Carolina, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees.
28. **IDEMNIFICATION-THIRD PARTY CLAIMS -DISCLOSURE OF INFORMATION:** (a) Without limitation, Contractor shall defend and hold harmless Indemnitees from and against any and all suits, claims, investigations, or fines (hereinafter "action") of any character (and all related damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities) by a third party which arise out of or in connection with a disclosure of government information (as defined in the clause titled Information Security - Definitions) caused in whole or in part by any act or omission of contractor, its subcontractors at any tier, their employees, workmen, servants, agents, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by an Indemnitee, and whether or not such action is brought by a third party or an Indemnitee, but only if the act or omission constituted a failure to perform some

obligation imposed by the contract or the law. (b) Indemnitee must notify contractor in writing within a reasonable period of time after Indemnitee first receives written notice of any action.

Indemnitee's failure to provide or delay in providing such notice will relieve contractor of its obligations under this clause only if and to the extent that such delay or failure materially prejudices contractor's ability to defend such action. Indemnitee must reasonably cooperate with contractor's defense of such actions (such cooperation does not require and is without waiver of an Indemnitee's attorney/client, work product, or other privilege) and, subject to Title 1, Chapter 7 of the South Carolina Code of Laws, allow contractor sole control of the defense, so long as the defense is diligently and capably prosecuted. Indemnitee may participate in contractor's defense of any action at its own expense. Contractor may not, without Indemnitee's prior written consent, settle, compromise, or consent to the entry of any judgment in any such commenced or threatened action unless such settlement, compromise or consent (i) includes an unconditional release of Indemnitee from all liability related to such commenced or threatened action, and (ii) is solely monetary in nature and does not include a statement as to, or an admission of fault, culpability or failure to act by or on behalf of, an Indemnitee or otherwise adversely affect an Indemnitee. Indemnitee's consent is necessary for any settlement that requires Indemnitee to part with any right or make any payment or subjects Indemnitee to any injunction. (c) Notwithstanding any other provision, contractor's obligations pursuant to this clause are without any limitation whatsoever. Contractor's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of the contract. This provision shall be construed fairly and reasonably, neither strongly for nor against either party, and without regard to any clause regarding insurance. (d) "Indemnitee" means the State of South Carolina, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees.

Notwithstanding anything to the contrary herein, Contractor's liability for damages to any Using Governmental Unit under this, Section 28, shall not exceed equal to the greater of \$5 million dollars (\$5M) or five (5) times the contract amount. The foregoing limitation shall apply to each Using Governmental Unit independently.

29. **INDEMNIFICATION-INTELLECTUAL PROPERTY:** (a) Without limitation and notwithstanding any provision in this agreement, Contractor shall, upon receipt of notification, defend and indemnify the State, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees against all actions, proceedings or claims of any nature (and all damages, settlement payments, attorneys' fees (including inside counsel), costs, expenses, losses or liabilities attributable thereto) by any third party asserting or involving an IP right related to an acquired item. State shall allow Contractor to defend such claim so long as the defense is diligently and capably prosecuted. State shall allow Contractor to settle such claim so long as (i) all settlement payments are made by Contractor, and (ii) the settlement imposes no non-monetary obligation upon State. State shall reasonably cooperate with Contractor's defense of such claim. (b) In the event an injunction or order shall be obtained against State's use of any acquired item, or if in Contractor's opinion, the acquired item is likely to become the subject of a claim of infringement or violation of an IP right, Contractor shall, without in any way limiting the foregoing, and at its expense, either:
- (1) procure for State the right to continue to use, or have used, the acquired item, or
 - (2) replace or modify the acquired item so that it becomes non-infringing but only if the modification or replacement does not adversely affect the specifications for the acquired item or its use by State. If neither (1) nor (2), above, is practical, State may require that Contractor remove the acquired item from State, refund to State any charges paid by State therefor, and take all steps necessary to have State released from any further liability.

(c) Contractor's obligations under this paragraph do not apply to a claim to the extent (i) that the claim is caused by Contractor's compliance with specifications furnished by the State unless Contractor knew its compliance with the State's specifications would infringe an IP right, or (ii) that the claim is caused by Contractor's compliance with specifications furnished by the State if the State knowingly relied on a third party's IP right to develop the specifications provided to Contractor and failed to identify such product to Contractor. Additionally, Contractor's obligations under this section will not extend to any combination of the an acquired item with any other product, system or method, unless the item, system or method is: a) provided by the Contractor or the Contractor's subsidiaries or affiliates; b) specified by the Contractor to work with the acquired item; c) reasonably required to use the acquired item in its intended manner, and the infringement could not have been avoided by substituting

another reasonably available product, system or method capable of performing the same function; or d reasonably expected to be used in combination with the acquired item. (d) As used in this paragraph, these terms are defined as follows: "IP right(s)" means a patent, copyright, trademark, trade secret, or any other proprietary right. "Acquired item(s)" means the rights, goods, or services furnished under this agreement. "Specification(s)" means a detailed, exact statement of particulars such as a statement prescribing materials, dimensions, and quality of work. (e) Contractor's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of this Agreement.

30. **INFORMATION SECURITY-DEFINITIONS:** The following definitions are used in those clauses that cross reference this clause. **Compromise** means disclosure of information to unauthorized persons, or a violation of the security policy of a system in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object may have occurred. Without limitation, the term "compromise" includes copying the data through covert network channels, or copying the data to unauthorized media, or disclosure of information in violation of any obligation imposed by this contract. **Data** means a subset of information in an electronic format that allows it to be retrieved or transmitted. Government information means information (i) provided to Contractor by, or generated by Contractor for, the using governmental unit, or (ii) acquired or accessed by Contractor as a result of performing the Work. Without limiting the foregoing, government information includes any information that Contractor acquires or accesses by software or web based services, which includes, without limitation, any metadata or location data. Government information excludes unrestricted information. **Information** means any communication or representation of knowledge such as facts, statistics, or opinions, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual. Information system means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information. **Public information** means any specific information, regardless of form or format, that the State has actively and intentionally disclosed, disseminated, or made available to the public. Information is not public information solely because it may be subject to inspection pursuant to an unfulfilled public records request. **Software** means any computer program accessed or used by the Using Governmental Unit or a third party pursuant to or as a result of this contract. **Third party** means any person or entity other than the Using Governmental Unit, the Contractor, or any subcontractors at any tier. **Unrestricted information** means (1) public information acquired other than through performance of the work, (2) information acquired by Contractor prior to contract formation, (3) information incidental to your contract administration, such as financial, administrative, cost or pricing, or management information, and (4) any ideas, concepts, know-how, methodologies, processes, technologies, techniques which Contractor develops or learns in connection with Contractor's performance of the work. **Web-based service** means a service accessed over the Internet and acquired, accessed, or used by the using governmental unit or a third party pursuant to or as a result of this contract, including without limitation, cloud services, software-as-a-service, and hosted computer services.
31. **INFORMATION SECURITY-SAFEGUARDING REQUIREMENTS:** (a) Definitions. The terms used in this clause shall have the same meaning as the terms defined in the clause titled Information Security – Definitions. In addition, as used in this clause— Clearing means removal of data from an information system, its storage devices, and other peripheral devices with storage capacity, in such a way that the data may not be reconstructed using common system capabilities (i.e., through the keyboard); however, the data may be reconstructed using laboratory methods. Intrusion means an unauthorized act of bypassing the security mechanisms of a system. Media means physical devices or writing surfaces including but not limited to magnetic tapes, optical disks, magnetic disks, portable hard drives, "thumb" drives, large scale integration memory chips, and printouts (but not including display media, e.g., a computer monitor, cathode ray tube (CRT) or other (transient) visual output) onto which information is recorded, stored, or printed within an information system. Safeguarding means measures or controls that are prescribed to protect information. Voice means all oral information regardless of transmission protocol.

(b) Safeguarding Information. Without limiting any other legal or contractual obligations, contractor shall implement and maintain reasonable and appropriate administrative, physical, and technical safeguards (including without limitation written policies and procedures) for protection of the security, confidentiality and integrity of the government information in its possession. In addition, contractor shall apply security controls when the contractor reasonably determines that safeguarding requirements, in addition to those identified in paragraph (c) of this clause, may be required to provide adequate security, confidentiality and integrity in a dynamic environment based on an assessed risk or vulnerability. (c) Safeguarding requirements and procedures. Contractor shall apply the following basic safeguarding requirements to protect government information from unauthorized access and disclosure:

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

Access control may be provided by the intranet (versus the Web site itself or the application it hosts). (2) Transmitting electronic information. Transmit email, text messages, blogs, and similar communications that contain government information using technology and processes that provide the generally accepted level of security and privacy among similarly situated service providers, given facilities, conditions, and environment. (3) Transmitting voice and fax information. Transmit government information via voice and fax only when the sender has a reasonable assurance that access is limited to authorized recipients. (4) Physical and electronic barriers. Protect government information by at least one physical and one electronic barrier (e.g., locked container or room, login and password) when not under direct individual control. (5) Sanitization. At a minimum, clear information on media that have been used to process government information before external release or disposal. Overwriting is an acceptable means of clearing media in accordance with National Institute of Standards and Technology 80088, Guidelines for Media Sanitization, at http://csrc.nist.gov/publications/nistpubs/800-88/NISTSP800-88_with-errata.pdf. (6) Intrusion protection. Provide at a minimum the following protections against intrusions and compromise: (i) Current and regularly updated malware protection services, e.g., anti-virus, antispyware. (ii) Prompt application of security-relevant software upgrades, e.g., patches, service packs, and hot fixes. (7) Transfer limitations. Transfer government information only to those subcontractors that both require the information for purposes of contract performance and provide at least the same level of security as specified in this clause. (d) Subcontracts. Any reference in this clause to Contractor also includes any subcontractor at any tier. Contractor is responsible for and shall impose by agreement requirements at least as secure as those imposed by this clause on, any other person or entity that contractor authorizes to take action related to government information. (e) Other contractual requirements regarding the safeguarding of information. This clause addresses basic requirements and is subordinate to any other contract clauses or requirements to the extent that it specifically provides for enhanced safeguarding of information or information systems.

32. **INFORMATION USE AND DISCLOSURE:** Except to the extent necessary for performance of the work, citizens should not be required to share information with those engaged by the government in order to access services provided by the government and such information should be used by those engaged by the government only to the extent necessary to perform the work acquired; accordingly, this clause addresses basic requirements for the Contractor's use and disclosure of government information, which expressly includes, but is not limited to, information provided by or obtained from the citizens. Anonymizing information does not resolve the foregoing concern. This clause should be broadly interpreted to effectuate this intent. Every obligation in this clause is material. Absent express reference to this clause, this clause supersedes any other clause to the extent of any inconsistency unless and to the extent the other clause provides greater protection for government information. (a) Definitions. The terms used in this clause shall have the same meaning as the terms defined in the clause titled Information Security – Definitions. (b) Legal mandates. Contractor shall be permitted to use, disclose, or retain government information to the limited extent necessary to comply with any requirement imposed on

Contractor by law. If it is necessary for Contractor to use, disclose, or retain government information in order to comply with a law, Contractor shall provide using governmental unit with written notice, including a description of the circumstances and applicable law, in advance of such use, disclosure or retention except to the extent expressly prohibited by law. (c) Flow down. Any reference in this clause to Contractor also includes any subcontractor at any tier. Contractor is responsible for and shall impose by agreement the requirements of this clause on, any other person or entity that contractor authorizes to take action related to government information. (d) Collecting Information. Contractor must gather and maintain government information only to the minimum extent necessary to accomplish the work. (e) Rights, Disclosure and Use.

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

The notice shall be provided no later than fifteen (15) business days in advance of the disclosure. (f) Return. Notwithstanding the using governmental unit's failure to perform or the pendency of a dispute, Contractor agrees to promptly deliver to the using governmental unit (or destroy, at the using governmental unit's option) all government information in its possession as and upon written request of using governmental unit (provided that, if the contract has not expired or been terminated, Contractor shall be excused from the performance of any work reasonably dependent on Contractor's further access to such government information). (g) Privacy Policy & Applicable Laws. Without limiting any other legal or contractual obligations imposed by this contract or the law, Contractor shall (a) comply with its own privacy policies and written privacy statements relevant to the work, and (b) comply with (1) all laws applicable to Contractor regarding government information, and (2) all laws and standards identified in the clause, if included, entitled Information Use and Disclosure – Standards. (h) Actions Following Disclosure. Immediately upon discovery of a compromise or improper use of government information, Contractor shall take such action as may be necessary to preserve forensic evidence and eliminate the cause of the compromise or improper use. As soon as practicable, but no later than twenty-four hours after discovery, Contractor shall notify using governmental unit of the compromise or improper use, including a description of the circumstances of the use or compromise. As soon as practicable after discovery, Contractor shall undertake a thorough forensic investigation of any compromise or improper use and provide the using governmental unit all information necessary to enable the using governmental unit to fully understand the nature and extent of the compromise or improper use. With regard to any compromise or improper use of government information, Contractor shall: (1) provide any notification or notice to third parties (e.g. individuals, government entities, regulatory entities) legally required to be provided such notice by Contractor, Contractor and UGU confer about provide such notice, and if there is disagreement as to method of notification Contractor will provide notices as directed by the UGU. If Contractor does not provide notifications and notice (e.g., if legally required of the using governmental unit), Contractor shall reimburse using governmental unit for the cost of providing such notifications; (2) pay all costs and expenses for at least two years of identity theft monitoring services (including without limitation, credit monitoring) and identity theft restoration services for any such affected individuals receiving notice where such services are appropriate given the circumstances of the incident and the nature of the information compromised; (3) undertake any other measures that are customary and reasonable for an entity to take when experiencing a similar disclosure, (4) pay any related fines or penalties imposed on the using governmental unit, and (5) reimburse the Using Governmental Unit all costs reasonably incurred for communications and public relations services involved in responding to the compromise or improper use. Notwithstanding any other provision, contractor's obligations pursuant to this item (h) are without limitation.

(i) Survival & Remedy. All the obligations imposed by this paragraph are material. The obligations of this section shall survive termination or expiration of the contract. Without limiting any rights the using governmental unit may have, and notwithstanding any other term of this contract, Contractor agrees that using governmental unit may

have no adequate remedy at law for a breach of Contractor's obligations under this clause and therefore the using governmental unit shall be entitled to pursue equitable remedies in the event of a breach of this clause.

33. **LIMITATION OF LIABILITY:** (1) Contractor's liability for damages to any Using Governmental Unit shall not exceed two (2) times the contract amount. (2) The foregoing limitation shall apply to each Using Governmental Unit independently.
- (3) The parties waive claims against each other for (i) exemplary or punitive damages and (ii) special or consequential damages. (4) The foregoing limitations shall not apply: (a) to claims for physical damage to real or tangible personal property, (b) to claims regarding bodily injury, sickness, disease or death, (c) to claims arising from gross negligence or intentional misconduct, (d) to amounts due or obligations under a clause (regardless of how named) providing for liquidated damages, or if such a clause is ruled unenforceable as a penalty, (e) to amounts due or obligations under the following clauses, if included: (i) Indemnification-Third Party Claims-General, (ii) Indemnification-Third Party Claims-Disclosure of Information, (iii) Indemnification-Intellectual Property, (iv) Information Security-Safeguarding Requirements, (v) Information Security-Location of Data, (vi) Information Use and Disclosure-Standards, or (vii) Service Provider Security Representations; (f) to amounts due or obligations under a clause imposing a duty to defend or indemnify, or (g) to any loss or claim to the extent the loss or claim is covered by a policy of insurance required by this contract to be maintained, by contractor up to the required coverage amount.
- (5) The absence in any subcontract of a similar clause limiting contractor's liability shall not effectively increase the obligation of the Using Governmental Unit beyond what it would have been had the subcontract contained such a clause.
- (6) The Using Governmental Unit's liability for damages, if any, shall in no event exceed two **(2) times the contract amount**. Nothing herein shall be construed to waive any law or clause regarding the availability or appropriation of funds, sovereign immunity, or any other immunity, restriction, or limitation on payment or recovery provided by law.
- (7) The State of South Carolina's total liability for any obligation under any clause imposing any duty of confidentiality or non-disclosure shall not exceed an amount equal to fifty thousand dollars.
34. **OFFSHORE CONTRACTING PROHIBITED:** Absent written consent from the State, no part of the resulting contract from this solicitation may be performed offshore of the United States by persons located offshore of the United State or by means, methods, or communications that, in whole or in part, take place offshore of the United States.
35. **OWNERSHIP OF DATA AND MATERIALS:** All data, material and documentation prepared for the state pursuant to this contract shall belong exclusively to the State. Provided, however, Contractor shall retain all rights to its pre-existing and independently developed intellectual property ("Pre-Existing IP") and may retain any internal working papers created in the course of providing the Services. To the extent Pre-Existing IP is incorporated into any engagement materials, Contractor grants to the State a limited, royalty-free, paid up, worldwide, perpetual, non-exclusive, non-transferable license to such Pre-Existing IP solely to the extent necessary for the State to utilize the engagement materials consistent with their intended purpose as set forth herein.

37. **TERMINATION FOR CONVENIENCE:** (1) Termination. The Procurement Officer may terminate this contract in whole or in part, for the convenience of the State. The Procurement Officer shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective.
- (2) Contractor's Obligations. The contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the contractor will stop work to the extent specified. The contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Procurement Officer may direct the contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to the State. The contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so. (3) Right to Supplies. The Procurement Officer may require the contractor to transfer title and deliver to the State in the manner and to the extent directed by the Procurement Officer: (a) any completed supplies; and (b) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the contractor has specifically produced or specially acquired for the performance of the terminated part of this contract. Provided, however, that any partially completed materials shall be provided on an "as-is" basis not subject to any warranty whether express or implied. Any use of such partially completed materials by the State shall be at its sole risk. The contractor shall, upon direction of the Procurement Officer, protect and preserve property in the possession of the contractor in which the State has an interest.
- If the Procurement Officer does not exercise this right, the contractor shall use best efforts to sell such supplies and manufacturing materials in accordance with the standards of Uniform Commercial Code Section 2-706. Utilization of this Section in no way implies that the State has breached the contract by exercise of the Termination for Convenience Clause. (4) Compensation. (a) The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data required by Section 11-35-1830 bearing on such claim. If the contractor fails to file a termination claim within one year from the effective date of termination, the Procurement Officer may pay the contractor, if at all, an amount set in accordance with Subparagraph (c) of this Paragraph.
- (b) The Procurement Officer and the contractor may agree to a settlement and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the State, the proceeds of any sales of supplies and manufacturing materials under Paragraph (3) of this clause, and the contract price of the work not terminated; (c) Absent complete agreement under Subparagraph (b) of this Paragraph, the Procurement Officer shall pay the contractor the following amounts, provided payments agreed to under Subparagraph (b) shall not duplicate payments under this Subparagraph: (i) contract prices for supplies or services accepted under the contract; (ii) costs reasonably incurred in performing the terminated portion of the work less amounts paid or to be paid for accepted supplies or services; (iii) reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Paragraph (2) of this clause. These costs must not include costs paid in accordance with Subparagraph (c)(ii) of this paragraph; (iv) any other reasonable costs that have resulted from the termination. The total sum to be paid the contractor under this Subparagraph shall not exceed the total contract price plus the reasonable settlement costs of the contractor reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under Subparagraph (b) of this Paragraph, and the contract price of work not terminated. (d) Contractor must demonstrate any costs claimed, agreed to, or established under Subparagraphs (b) and (c) of this Paragraph using its standard record keeping system, provided such system is consistent with any applicable Generally Accepted Accounting Principles. (5) Contractor's failure to include an appropriate termination for convenience clause in any subcontract shall not (i) affect the State's right to require the termination of a subcontract, or (ii) increase the obligation of the State beyond what it would have been if the subcontract had contained an appropriate clause.

The Following terms and conditions only apply to SC Department of Health & Human Services

DEBARMENT NON-PROCUREMENT/SCREENING REQUIREMENTS (SCDHHS)

Contractor agrees to comply with all applicable provisions of [2 CFR Part 180](#) (2024, as amended) as supplemented by [2 CFR Part 376](#) (2024, as amended), pertaining to debarment and/or suspension and to require its Subcontractors to comply with these same provisions to ensure that no party receiving funds from this Contract are listed on the government-wide exclusions in the System for Award Management (SAM).

RESTRICTIONS FOR LOBBYING (SCDHHS)

In accordance with 31 U.S.C. 1352, funds received under this Contract may not be expended to pay any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. This restriction is applicable to all Subcontractors and shall be included in all subcontracts.

SAFETY PRECAUTIONS (SCDHHS)

The State and U.S. Department of Health and Human Services (U.S. DHHS) assume no responsibility with respect to accidents, illness, or claims arising out of any work undertaken with the assistance of funds paid under the Contract. Contractor shall take necessary steps to insure or protect itself and its personnel.

APPLICABLE LAWS AND REGULATIONS (SCDHHS)

Contractor agrees to comply with all applicable federal laws and regulations including constitutional provisions regarding due process and equal protection of the laws and including, but not limited to:

- (i) All applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970, as amended ([42 U.S.C. §7401](#), et seq.) and the Federal Water Pollution Control Act, as amended ([33 U.S.C. §1251](#), et seq.).
- (ii) Title VI of the Civil Rights Act of 1964 as amended ([42 U.S.C. §2000d](#) et seq.) and regulations issued pursuant thereto, ([45 CFR Part 80](#), 2024 as amended), which provide that Contractor must take adequate steps to ensure that persons with limited English skills receive free of charge the language assistance necessary to afford them meaningful and equal access to the benefits and services provided under this Contract.
- (iii) Title VII of the Civil Rights Act of 1964, as amended ([42 U.S.C. §2000e](#)) in regard to employees or applicants for employment.
- (iv) Section 504 of the Rehabilitation Act of 1973, as amended, ([29 U.S.C. §794](#)), which prohibits discrimination on the basis of disability in programs and activities receiving or benefiting from federal financial assistance, and regulations issued pursuant thereto ([45 CFR Part 84](#), 2024, as amended).
- (v) The Age Discrimination Act of 1975, as amended, ([42 U.S.C. §6101](#) et seq.), which prohibits discrimination on the basis of age in programs or activities receiving or benefiting from federal financial assistance.

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Between **The State of South Carolina** and
Ernst & Young

- (vi) The [Omnibus Budget Reconciliation Act of 1981, as amended P.L. 97-35](#), § 1908(a)(2), 95 Stat. 483, 542 (1981), which prohibits discrimination on the basis of sex and religion in programs and activities receiving or benefiting from federal financial assistance.
- (vii) The Americans with Disabilities Act, ([42 U.S.C. §12101](#) et. seq.), and regulations issued pursuant thereto.
- (viii) Title IX of the Education Amendments of 1972, ([20 U.S.C. § 1681](#) et seq.).
- (ix) The Hatch Act, as amended, ([5 U.S.C. § 1501-1508](#)), and regulations issued pursuant thereto.
- (x) Section 6002 of the Solid Waste Disposal Act of 1965 as amended by the Resource Conservation and Recovery Act of 1976 ([42 U.S.C. §6962](#)).

See Associated Attachment – **HIPPA BUSINESS ASSOCIATE AGREEMENT**

Attachment B: Participating Entity Product and Service Exclusions

N/A

HIPAA BUSINESS ASSOCIATE AGREEMENT

A. Purpose

The South Carolina Department of Health and Human Services, SCDHHS, (Covered Entity) and Business Associate agree to the terms of this Agreement for the purpose of protecting the privacy of individually identifiable health information under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) in performing the functions, activities, or services for, or on behalf of, Covered Entity as specified in the Contract between the parties.

B. Definitions

General Statement

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, protected health information, Required by Law, Secretary, Subcontractor, Unsecured protected health information, and Use.

Specific Definitions

(a) Business Associate. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this Agreement, shall mean [Insert Name of Business Associate].

(b) Covered Entity. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this Agreement, shall mean SCDHHS.

(c) HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

(d) Security incident. "Security incident" shall generally have the same meaning as the term "security incident" at 45 CFR 164.304.

C. Obligations and Activities of Business Associate

Business Associate agrees to:

(a) Not use or disclose protected health information other than as permitted or required by the Agreement or as required by law;

(b) Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by the Agreement;

(c) Submit system and program information to the Privacy Official, upon request, to document and verify compliance with federal and state privacy rules and regulations;

(d) Report to the Privacy Official of the Covered Entity any use or disclosure of protected health information not provided for by the Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410, and any security incident of which it becomes aware as follows:

(1) If the Business Associate receives or accesses Social Security Administration (SSA) owned data from the Covered Entity, the Business Associate will report any breaches of which it becomes aware of within 1 hour of discovery.

(a) SSA owned data is any data the Covered Entity receives from SSA directly. Data that is collected by a source other than SSA is not considered SSA data, such as an individual providing a Social Security Number to the Covered Entity or Business Associate.

(2) If the Business Associate does not receive or access SSA owned data, the Business Associate will report any breaches of which it becomes aware of within 24 hours of discovery.

(e) Notwithstanding the requirements of 45 CFR 164.410, Business Associate shall notify the Privacy Official of the Covered Entity of potential breaches as follows:

(1) If the Business Associate receives or accesses SSA owned data from the Covered Entity, the Business Associate will report any potential breaches of which it becomes aware of within 1 hour of discovery.

(a) SSA owned data is any data the Covered Entity receives from SSA directly. Data that is collected by a source other than SSA is not considered SSA data, such as an individual providing a Social Security Number to the Covered Entity or Business Associate.

(2) If the Business Associate does not receive or access SSA owned data, the Business Associate, as soon as practicable, but no later than 24 hours after discovery will notify the Department of any potential breach of PHI/PII. Additionally, the Contractor shall take such action as maybe necessary to preserve forensic evidence and eliminate the cause of the potential breach.

(f) Unless otherwise directed by Covered Entity, Business Associate shall be responsible for the cost incurred by the Covered Entity for breach notifications to individuals, the US DHHS Office of Civil Rights (OCR), the media, and Consumer Affairs. Information for breach notifications shall be submitted within 15 calendar days of discovery to the Privacy Official of the Covered Entity by email to privacyoffice@scdhhs.gov ;

(g) For breaches resulting from the action or inaction of Business Associate, or its subcontractors, surrounding the use, receipt, storage, and/or transmission of PHI and PII under this Agreement, be responsible for any and all costs, damages, liabilities, expenses, fines, and/or penalties as determined by SCDHHS, and state and federal laws;

(h) In accordance with 45 CFR 164.502(e)(1) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements, to include reporting and notification requirements, that apply to the Business Associate with respect to such information;

(i) All reporting or notifications requirements pursuant to letters (d), (e), (f), (g) and (h) above, should be submitted using the "Incident Reporting for Business Associates" form, addressed to the Privacy Official of the Covered Entity, by email to privacyoffice@scdhhs.gov. Additional contact information for the Privacy Official is:

South Carolina Department of Health and Human Services
Privacy Office
Post Office Box 8206
Columbia, SC 29202-8206
Phone: (803) 898-2034
Fax: (803) 255-8276

(j) Make available protected health information in a designated record set to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524;

(k) Make any amendment(s) to protected health information in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526;

(l) Maintain and make available the information required to provide an accounting of disclosures to Covered Entity, or an individual if directed by Covered Entity, as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528;

(m) Notify Covered Entity within five (5) business days of receipt of any request covered under paragraphs (j), (k) or (l) above;

(n) To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s); and

(o) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

D. Permitted Uses and Disclosures by Business Associate

(a) Business Associate may only use or disclose protected health information as necessary to perform the services set forth in the Contract to which this Agreement is appended, including, if applicable, authorization to use protected health information to de-identify the information in accordance with 45 CFR 164.514(a)-(c) and follow additional guidance provided by US DHHS in "Guidance Regarding Methods for De-identification of protected health information in accordance with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule" found at <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/index.html>.

(b) Business Associate may use or disclose protected health information as required by law.

(c) Business Associate agrees to limit uses, disclosures, and requests for protected health information to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request according to the HIPAA Privacy Rule.

(d) Business Associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity.

(e) Business Associate may disclose protected health information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the individual to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the individual, and the individual notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(f) Business Associate may not disclose or duplicate protected health information identified by Covered Entity as provided by the SSA without written approval and permission from SSA. If the need for such disclosure and/or duplication arises, Business Associate must notify Covered Entity and work with Covered Entity to obtain approval and permission from SSA.

E. Term and Termination

(a) Term. The Term of this Agreement shall be effective as of _____ and shall terminate on the effective and termination dates of the Contract to which this Agreement is appended, or on the date Covered Entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.

(b) Termination for Cause. Business Associate authorizes termination of this Agreement by Covered Entity, if Covered Entity determines Business Associate has violated a material term of the Agreement and Business Associate has not cured the breach or ended the violation within thirty (30) calendar days.

(c) Obligations of Business Associate Upon Termination.

(1) Upon termination of this Agreement for any reason, Business Associate shall return to Covered Entity, or, if agreed to by Covered Entity, destroy all protected health information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity that the Business Associate still maintains in any form. Business Associate shall retain no copies of the protected health information.

(2) In the event that Business Associate determines that returning or destroying the protected health information is not practical or possible, Business Associate shall notify Covered Entity of the conditions and reasons return of the protected health information is not practical or possible. Upon concurrence by Covered Entity that return is not practical, Business Associate shall:

- i. Retain only that protected health information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
- ii. Return to Covered Entity or, if agreed to by Covered Entity, destroy the remaining protected health information that the Business Associate still maintains in any form;
- iii. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as Business Associate retains the protected health information; and
- iv. Not use or disclose the protected health information retained by Business Associate other than for the purposes for which such protected health information was retained and subject to the same conditions set out at Section D of this Appendix.

(3) Business Associate shall obtain or ensure the destruction of protected health information created, received, or maintained by any subcontractors.

(4) Business Associate shall transmit the protected health information to another Business Associate of the Covered Entity at termination, upon receipt of a written request from the Covered Entity.

(d) Survival. The obligations of Business Associate under this Section shall survive the termination of this Agreement.

F. Miscellaneous

(a) Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

(b) Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

(c) Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.

Authorized Contract Representative (Print): _____

Authorized Contract Representative (Sign): _____