

Clemson University Standard Terms of Purchase – Revision D

Effective August 1, 2017

This document contains standard terms and conditions that apply to all solicitations and procurements made by Clemson University. Any Contractor terms and conditions included with Contractor's invoice or any other document provided by Contractor shall be of no effect. Instructions and terms specific to an individual solicitation will also apply and are considered in addition to these standard terms. In case of conflict between terms of a specific solicitation and this document, the terms of the specific solicitation take precedence.

DEFINITIONS - EXCEPT AS OTHERWISE PROVIDED HEREIN, THE FOLLOWING DEFINITIONS ARE APPLICABLE TO ALL PARTS OF THE CONTRACT.

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

BUYER – means the Procurement Officer.

BVB – means Best Value Bid [Section 11-35-1528].

CHANGE ORDER - means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties to the contract.

CONTRACT - See clause entitled "Contract Documents & Order of Precedence."

CONTRACT MODIFICATION – means a written order signed by the Procurement Officer, directing Contractor to make changes as explained in the clause "Changes," if included herein, and authorizes the Procurement Officer to order without the consent of Contractor.

CONTRACT OFFICER – means the Procurement Officer

CONTRACTOR - means the Offeror receiving an award as a result of a solicitation or the entity providing good or services to the University.

FPB – means Fixed Price Bid [Section 11-35-1525].

IFB – means Invitation For Bid [Section 11-35-1550].

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

OFFEROR – means the single legal entity submitting the offer. The term "Bidder" is used interchangeably with the term "Offeror." See bidding provision entitled "Bid/Proposal As Offer To Contract."

ORDERING ENTITY - Clemson University.

PROCUREMENT OFFICER – means the person, or his successor, identified as such in the solicitation, award or PO.

RFP – means Request For Proposal [Section 11-35-1530].

RFQ – means Request For Qualification [Section 11-35-1530(4)].

YOU and YOUR – means Offeror.

SEALED BID – means Competitive Sealed Bid [Section 11-35-1520].

SOLICITATION – means the online solicitation, to include all parts, attachments, and any Amendments of the specific IFB, BVB, FPB, RFP, or RFQ which includes the Clemson University Standard Bidding Terms and Conditions and Clemson University Standard Terms of Purchase.

SUBCONTRACTOR – means any person having a contract to perform work or render service to Contractor as a part of the Contractor's agreement arising from this solicitation.

UNIVERSITY – means Clemson University.

WORK - means all labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations under the Contract.

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

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.

BACKGROUND CHECK: If Contractor must bring one or more of its employees on to the Clemson University campus or other property in order to fulfill the terms of this agreement, Contractor is required to conduct a criminal background check on said employee(s) prior to bringing or sending the employee(s) to the Clemson University campus or other property. Contractor agrees that any employee with a criminal history that Contractor reasonably believes poses a threat to property or persons, will not be brought or sent to the Clemson University campus or other property. Contractor agrees to impose this same criminal background

check requirement on any subcontractors used by Contractor to fulfill its responsibilities under this agreement. Clemson University reserves the right to verify compliance by Contractor upon request.

BANKRUPTCY: (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 University. 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 University 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 University upon Contractor's insolvency, including the filing of proceedings in bankruptcy.

CHANGES:

(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 University 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 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 Contractor from proceeding with the contract as changed, provided that the University promptly and duly make such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, 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, Contractor shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar Contractor's claim unless the University is prejudiced by the delay in notification.

(4) Claim Barred After Final Payment. No claim by Contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this contract.

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. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation.

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

COMPLIANCE WITH LAWS: During the term of the contract, Contractor shall comply with all applicable provisions of laws, codes, ordinances, rules, regulations, and tariffs.

CONFIDENTIALITY: Any information or materials provided by the University should be considered to be confidential and/or proprietary to Clemson University. Contractor shall hold all such information or materials in confidence until University publicly releases the information or grants Contractor written permission to disclose.

CONTRACT ADMINISTRATION: Questions or problems arising after award of this contract shall be directed to the Procurement Officer, Clemson University, Procurement Services, Administrative Services Building, Silas N. Pearman Blvd., Clemson, SC 29634.

CONTRACT DOCUMENTS & ORDER OF PRECEDENCE: (a) Any contract resulting from this solicitation, or purchase order where solicitation was not conducted, 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, which includes the Clemson University Standard Bidding Terms and Conditions and Clemson University Standard Terms of Purchase documents (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 any other document, including without limitation, (i) a purchase order or other instrument submitted by the University, (ii) any invoice or other document submitted by Contractor, or (iii) any privacy policy, terms of use, or end user agreement. Except as otherwise allowed herein, the terms and conditions of all such documents shall be void and of no effect. (c) No contract, license, or other agreement containing contractual terms and conditions will be signed by the University. Any document signed or otherwise agreed to by persons other than the Procurement Officer shall be void and of no effect.

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.

CONTRACTOR PERSONNEL: (for service contracts only): The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

CONTRACTOR'S OBLIGATION – GENERAL (for service contracts only): Contractor shall provide and pay for all materials, tools, equipment, labor and professional and non-professional services, and shall perform all other acts and supply all other things necessary, to fully and properly perform and complete the work. Contractor must act as the prime contractor and assume full responsibility for any subcontractor's performance. Contractor will be considered the sole point of contact with regard to all situations, including payment of all charges and the meeting of all other requirements.

CONTRACTOR'S USE OF UNIVERSITY PROPERTY: Upon termination of the contract for any reason, the University shall have the right, upon demand, to obtain access to, and possession of, all University properties, including, but not limited to, current copies of all University application programs and necessary documentation, all data, files, intermediate materials and supplies held by Contractor. Contractor shall not use, reproduce, distribute, display, or sell any data, material, or documentation owned exclusively by the University without the University's written consent, except to the extent necessary to carry out the work.

CONTRACTOR'S LIABILITY INSURANCE: (a) Without limiting any of the obligations or liabilities of Contractor, Contractor shall procure from a company or companies lawfully authorized to do business in South Carolina and with a current A.M. Best rating of no less than A: VII, and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work and the results of that work by Contractor, his agents, representatives, employees or subcontractors.

(b) Coverage shall be at least as broad as:

(1) Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 12 07 covering CGL on an "occurrence" basis, including products-completed operations, personal and advertising injury, with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, the general aggregate limit shall be twice the required occurrence limit. This contract shall be considered to be an "insured contract" as defined in the policy.

(2) Auto Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limits no less than \$1,000,000 per accident for bodily injury and property damage.

(3) Worker's Compensation: As required by the State of South Carolina, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

(c) Every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them, must be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used.

(d) For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the State, every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them. Any insurance or self-insurance maintained by the State, every applicable Using Governmental Unit, or the officers, officials, employees and volunteers of any of them, shall be excess of the Contractor's insurance and shall not contribute with it.

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

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

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

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

(i) The State reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

DATA SECURITY: If Contractor has access to, receives, maintains, processes or transmits personally-identifiable data associated with a cardholder's payment ("Cardholder Data") that is processed, stored, or transmitted by Contractor on behalf of Clemson University, Contractor shall adhere to the requirements set forth in the Service Provider Security Agreement, the terms of which are incorporated herein by reference and which is attached hereto as an addendum. Cardholder Data covered by this provision include but are not limited to primary account number, expiration date, card type, name, address, social security number, and card validation code.

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

DELIVERY: Deliveries shall be made and all services provided to the location specified by the University in its purchase order. All items shall be delivered, or services completed, no later than the date specified on the purchase order or best delivery date indicated by Offeror in the associated solicitation, unless there is a delivery date specified in Section III of the Scope of Work document or noted specifically in the online solicitation, in which case that date becomes the required delivery date. If the University requests delivery sooner than the time specified, Contractor may invoice the ordering entity any additional shipping charges approved by the ordering entity on the purchase order.

DISCOUNT FOR PROMPT PAYMENT:

(a) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a discount for prompt payment in conjunction with the offer, offerors awarded contracts may include discounts for prompt payment on individual invoices.

(b) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. If the Contractor has not placed a date on the invoice, the due date shall be calculated from the date the designated billing office receives a proper invoice, provided the state annotates such invoice with the date of receipt at the time of receipt. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or, for an electronic funds transfer, the specified payment date. When the discount date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day.

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. (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 (see NOTICE clause) 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.

DRUG FREE WORK PLACE CERTIFICATION: By entering into this contract, Contractor certifies that Contractor will comply with all applicable provisions of The Drug-free Workplace Act, Title 44, Chapter 107 of the South Carolina Code of Laws, as amended.

EQUAL OPPORTUNITY: Contractor is referred to and shall comply with all applicable provisions, if any, of Title 41, Part 60 of the Code of Federal Regulations, including but not limited to Sections 60-1.4, 60-4.2, 60-4.3, 60-250.5(a), and 60-741.5(a), which are hereby incorporated by reference.

EXPORT CONTROL: If Contractor is providing any items, data or services under this order that are controlled by the Department of State, Directorate of Defense Trade Controls, International Traffic in Arms Regulations (ITAR), it must notify Clemson (by fax at 864-656-4475), and receive prior authorization from, the University's Office of Export Controls before delivery. The notification provided by Contractor shall include the name of the Clemson University point of contact, identify each ITAR controlled commodity, provide the associated U.S. Munitions List (USML) category number(s), and indicate whether or not the determination was reached as a result of a commodity jurisdiction or self-classification process. Contractor agrees that if it fails to notify the University that it is providing ITAR-controlled items, data or services, it shall reimburse the University for any fines, legal costs and other fees imposed by the above-named regulatory agency for any violation of export controls regarding the provided items, data or services.

ESTIMATED QUANTITY - PURCHASES FROM OTHER SOURCES: The University may bid separately any unusual requirements or large quantities of supplies covered by this contract.

FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA): (a) Contractor warrants that it will not make available or distribute any student education records it receives from Clemson University in violation of the federal Family Educational Rights and Privacy Act (FERPA) 20 U.S.C. section 1232g. Contractor agrees to limit access to records provided by Clemson University to its employees with a legitimate need to know in order for Contractor to fulfill its obligations under this agreement. Contractor warrants that it has procedures in place to prevent unauthorized access to data provided by Clemson University, and the procedures will be documented and available to Clemson University upon request. Contractor will notify Clemson University immediately in the event of a security breach that could or does impact Clemson University records or data. (b) Contractor agrees that Clemson University data will not be shared or sold to third parties without prior written authorization from Clemson University. Contractor agrees to notify Clemson University immediately if it receives a subpoena, court order or other request for Clemson University data so Clemson University can take appropriate action if needed.

FALSE CLAIMS: According to the S.C. Code of Laws § 16-13-240, "a person who by false pretense or representation obtains the signature of a person to a written instrument or obtains from another person any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud a person of that property is guilty" of a crime.

FIXED PRICING REQUIRED: Any pricing provided by Contractor shall include all costs for performing the work associated with that price. Except as otherwise provided in this solicitation, Contractor's price shall be fixed for the duration of this contract, including option terms. This clause does not prohibit Contractor from offering lower pricing after award.

FORCE MAJURE: Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of Contractor. Such causes may include, but are not restricted to acts of God or of the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, pandemics, strikes, freight embargoes, and unusually severe weather but in every case the failure to perform must be beyond the control and without the fault or negligence of Contractor. If the failure to perform is caused by default of a subcontractor, and if such default arises out of causes beyond the control of both Contractor and subcontractor, and without the fault or negligence of either of them, Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the contractor to meet required delivery schedule.

HOLD HARMLESS: Clemson University, its officers, agents, and employees shall be held harmless from liability from any claims, damages, and actions of any nature arising from the use of any materials furnished by Contractor, provided that such liability is not attributable to negligence on the part of the University or failure of the University to use the materials in the manner outlined by Contractor in descriptive literature or specifications submitted with Contractor's proposal.

ILLEGAL IMMIGRATION: (An overview is available at www.procurement.sc.gov) By signing your offer, you certify that you will comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws and agree to provide to the State upon request any documentation required to establish either: (a) that Title 8, Chapter 14 is inapplicable to you and your subcontractors or sub-subcontractors; or (b) that you and your subcontractors or sub-subcontractors are in compliance with Title 8, Chapter 14. Pursuant to Section 8-14-60, "A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony, and, upon conviction, must be fined within the discretion of the court or imprisoned for not more than five years, or both." You agree to include in any contracts with your subcontractors language requiring your subcontractors to (a) comply with the applicable requirements of Title 8, Chapter 14, and (b) include in their contracts with the sub-subcontractors language requiring the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14. [07-7B097-1]

INDEMNIFICATION - THIRD PARTY CLAIMS: Notwithstanding any limitation in this agreement, and to the fullest extent permitted by law, Contractor shall defend and hold harmless Indemnitees for and against any and all suits or claims of any character (and all related damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities) by a third party which are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property arising out of or in connection with the goods or services acquired hereunder or caused in whole or in part by any act or omission of Contractor, its subcontractors, their employees, workmen, servants, agents, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by an Indemnitee, and whether or not such claims are made by a third party or an Indemnitee; however, if an Indemnitee's negligent act or omission is subsequently determined to be the sole proximate cause of a suit or claim, the Indemnitee shall not be entitled to indemnification hereunder. Contractor shall be given timely written notice of any suit or claim. Contractor's obligations hereunder are in no way limited by any protection afforded under workers' compensation acts, disability benefits acts, or other employee benefit acts. This clause shall not negate, abridge, or reduce any other rights or obligations of indemnity which would otherwise exist. The obligations of this paragraph shall survive termination, cancelation, or expiration of the parties' agreement. This provision shall be construed fairly and reasonably, neither strongly for nor against either party, and without regard to any clause regarding insurance. As used in this clause, "Indemnitees" means the State of South Carolina, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees.

INSPECT/REJECT: Clemson University reserves the right to inspect any equipment offered or completed service and to reject equipment or service if it is not acceptable as determined by Clemson University.

INTELLECTUAL PROPERTY INFRINGEMENT: (a) Without limitation and notwithstanding any provision in this agreement, Contractor shall, upon receipt of notification, defend and indemnify the University, 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. University shall allow Contractor to defend such claim so long as the defense is diligently and capably prosecuted. University 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 University. University shall reasonably cooperate with Contractor's defense of such claim. (b) In the event an injunction or order shall be obtained against University'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 University 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 University. If neither (1) nor (2), above, is practical, University may require that Contractor remove the acquired item from University, refund to University any charges paid by University therefore, and take all steps necessary to have University 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 University unless Contractor knew its compliance with the University's specifications would infringe an IP right, or (ii) that the claim is caused by Contractor's compliance with specifications furnished by the University if the University knowingly relied on a third party's IP right to develop the specifications provided to Contractor and failed to identify such product to Contractor. (d) As used in this paragraph, these terms are defined as follows: "IP right(s)" means a patent, copyright, trademark, trade secret, or any other proprietary right. "Acquired item(s)" means the rights, goods, or services furnished under this agreement. "Specification(s)" means a detailed, exact statement of particulars such as a statement prescribing materials, dimensions, and quality of work. (e) Contractor's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of this Agreement.

IRAN DIVESTMENT ACT - CERTIFICATION: (a) The Iran Divestment Act List is a list published by the Board pursuant to Section 11-57-310 that identifies persons engaged in investment activities in Iran. Currently, the list is available at the following URL: <http://procurement.sc.gov/PS/PS-iran-divestment.phtm>. Section 11-57-310 requires the government to provide a person ninety days written notice before he is included on the list. The following representation, which is required by Section 11-57-330(A), is a material inducement for the State to award a contract to you. (b) By submitting your Offer, or accepting a Purchase Order from the University, you certify that, as of the date you submit an Offer or accept a Purchase Order, you and your subcontractors are not on the then-current version of the Iran Divestment Act List. (c) You must notify the Procurement Officer immediately if, at any time before posting of a final statement of award, you or any of your subcontractors are added to the Iran Divestment Act List.

LICENSES AND PERMITS: During the term of the contract, the Contractor shall be responsible for obtaining, and maintaining in good standing, all licenses (including professional licenses, if any), permits, inspections and related fees for each or any such licenses, permits and /or inspections required by the State, county, city or other government entity or unit to accomplish the work specified in this solicitation and the contract.

MATERIAL AND WORKMANSHIP: Unless otherwise specifically provided in this contract, all equipment, material, and articles incorporated in the work covered by this contract are to be new and of the most suitable grade for the purpose intended.

NO INDEMNITY OR DEFENSE: Any term or condition is void to the extent it requires the University to indemnify, defend or pay attorney's fees to anyone for any reason.

NOTICE: (A) After award, any notices shall be in writing and shall be deemed duly given (1) upon actual delivery, if delivery is by hand, (2) upon receipt by the transmitting party of automated confirmation or answer back from the recipient's device if delivery is by telex, telegram, facsimile, or electronic mail, or (3) upon deposit into the United States mail, if postage is prepaid, a return receipt is requested, and either registered or certified mail is used. (B) Notice to contractor shall be to the address identified as the Notice Address by the contractor. Notice to the state shall be to the Procurement Officer's address at 108 Perimeter Rd., Clemson, SC 29634. Either party may designate a different address for notice by giving notice in accordance with this paragraph.

OPEN TRADE REPRESENTATION: Contractor represents that Contractor is not currently engaged 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. 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.

OWNERSHIP OF DATA & MATERIALS: All data, material and documentation either prepared for the state pursuant to this contract shall belong exclusively to the University.

PARKING PERMIT: Contractor must comply with university parking regulations. Vendors, Service Contractors and Construction Workers must obtain a visitors permit at the Parking Services Office prior to attending a scheduled pre-bid meeting or a required site visit for bidding purposes. All awarded bidders are required to adhere to the university parking rules and regulations. Costs associated with parking permits must be included in the bid proposal and are Contractor's responsibility for paying and arranging for. The Parking Services Office is located at G-01 Edgar Brown Union Clemson, SC 29634. Parking Services is open Monday through Friday from 7:30 until 4:30. If you have additional questions, call 864-656-2270.

PAYMENT & INTEREST: (a) Unless otherwise provided in this Solicitation, the State shall pay 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 University. (b) Unless prearranged by Clemson University Procurement Services, all payments will be NET 30. Payments will be issued 30 days from the date the goods were received by the ordering department, or 30 days from the date a valid original invoice is received by the University, whichever is later. (c) In addition, unless prearranged by Clemson University Procurement Services, all payments made by paper check may incur an administrative fee of .5% of the payment amount. This fee will be automatically deducted from the overall payment amount of any Contractor payment made by the University via paper check in the same manner as providing discount payment terms. (d) (Notwithstanding any other provision, payment shall be made in accordance with S.C. Code Section 11-35-45, 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. (e) 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. (f) Any other basis for interest, including but not limited to general (pre- and post-judgment) or specific interest statutes, including S.C. Code Ann. § 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 (d) and (e) 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. (g) The State shall have all of its common law, equitable and statutory rights of set-off.

PRICE ADJUSTMENT - LIMITED - AFTER INITIAL TERM ONLY: Unless otherwise prohibited in the solicitation, upon approval of the Procurement Officer, prices may be adjusted for any renewal term. Prices shall not be increased during the initial term. Any request for a price increase must be received by the Procurement Officer at least ninety (90) days prior to the expiration of the applicable term and must be accompanied by sufficient documentation to justify the increase. If approved, a price increase becomes effective starting with the term beginning after approval. Contractor may terminate this contract at the end of the then current term if a price increase request is denied. Notice of termination pursuant to this paragraph must be received by the Procurement Officer no later than fifteen (15) days after the Procurement Officer sends Contractor notice rejecting the requested price increase.

PRICE ADJUSTMENTS – LIMITED BY CPI “All Items”: Unless otherwise prohibited in the solicitation, upon request and adequate justification, the Procurement Officer may grant a price increase up to, but not to exceed, the unadjusted percent change for the most recent 12 months for which data is available, that is not subject to revision, in the Consumer Price Index (CPI) for all urban consumers (CPI-U), “all items” for services, as determined by the Procurement Officer. The Procurement Officer, at their sole discretion, may choose an alternate index if it is deemed more appropriate to the specific procurement. The Bureau of Labor and Statistics publishes this information on the web at www.bls.gov.

PRICING DATA – AUDIT – INSPECTION: [Clause Included Pursuant to § 11-35-1830, - 2210, & -2220] (a) Cost or Pricing Data. Upon Procurement Officer's request, you shall submit cost or pricing data, as defined by 48 C.F.R. § 2.101 (2004), prior to either (1) any award to Contractor pursuant to 11-35-1530 or 11-35-1560, if the total contract price exceeds \$500,000, or (2) execution of a change order or contract modification with Contractor which exceeds \$100,000. Your price, including profit or fee, shall be adjusted to exclude any significant sums by which the state finds that such price was increased because you furnished cost or pricing data that was inaccurate, incomplete, or not current as of the date agreed upon between parties. (b) Records Retention. You shall maintain your records for three years from the date of final payment, or longer if requested by the chief Procurement Officer. The state may audit your records at reasonable times and places. As used in this subparagraph (b), the term "records" means any books or records that relate to cost or pricing data submitted pursuant to this clause. In addition to the obligation stated in this subparagraph (b), you shall retain all records and allow any audits provided for by 11-35-2220(2). (c) Inspection. At reasonable times, the state may inspect any part of your place of business which is related to performance of the work. (d) Instructions – Certification. When you submit data pursuant to subparagraph (a), you shall (1) do so in accordance with the instructions appearing in Table 15-2 of 48 C.F.R. § 15.408 (2004) (adapted as necessary for the state context), and (2) submit a Certificate of Current Cost or Pricing Data, as prescribed by 48 CFR § 15.406-2(a) (adapted as necessary for the state context). (e) Subcontracts. You shall include the above text of this clause in all of your subcontracts. (f) Nothing in this clause limits any other rights of the state.

PUBLICITY: Contractor shall not publish any comments or quotes by University employees, or include the University in either news releases or a published list of customers without the prior written approval of the Procurement Officer or University's Office of Creative Services. Contractor shall only use Clemson University wordmarks and other brand identity assets on its website and otherwise, only when it has received prior written permission from Clemson University's Office of Creative Services for each wordmark or brand asset that it intends to use. Use of said wordmarks and brand identity assets shall be permissive only so long as there is a valid, effective Agreement between the parties and in a manner explicitly approved by Creative Services. Failure to obtain appropriate permission for use of protected wordmarks and brand identity assets may result in Clemson pursuing any and all available remedies available by law for misuse of said marks. Branding guidelines may be found at <http://www.clemson.edu/brand>.

PURCHASE ORDERS: Contractor shall not perform any work prior to the receipt of a purchase order from the using governmental unit. The University 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. Although no particular form is required, Clemson University is able to process the standard electronic Clemson University form more quickly than nonstandard forms.

No particular form is required. An order placed pursuant to the purchasing card provision qualifies as a purchase order. Purchase order requirement may be waived if approved in writing by University Procurement Services.

PURCHASING CARD: Contractor agrees to accept payment by the South Carolina Purchasing Card for no extra charge. The Purchasing Card is issued by Visa. The purchasing card allows state agencies to make authorized purchases from a vendor without the requirement to issue a purchase order.

RELATIONSHIP OF THE PARTIES: 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.

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

(b) Unless expressly provided in the solicitation, public contracts are not intended to provide contractors an opportunity to market additional products and services; accordingly, in performing the work, Contractor shall not – for itself or on behalf of any third party –

offer citizens or public employees (other than the procurement officer) any additional products or services not required by the contract.

(c) Any reference to Contractor in items (a) or (b) also includes any subcontractor at any tier. Contractor is responsible for compliance with these obligations by any person or entity that Contractor authorizes to take any action related to the work.

(d) Any violation of this clause is a material breach of contract. The parties acknowledge the difficulties inherent in determining the damage from any breach of these restrictions. Contractor shall pay the state liquidated damages of \$1,000 for each contact with a citizen or end user that violates this restriction.

RIGHT TO AUDIT: Contractor agrees to have an independent third party audit performed at least once a year. The audit results (generally provided in a SOC report) and the Contractor's plan for addressing audit issues shall be shared with the Institution upon request.

SETOFF: The state shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, the University's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the state with regard to this contract, any other contract with any state department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the state for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto.

SHIPPING / RISK OF LOSS: F.O.B. Destination. Destination is the shipping dock of the University's designated receiving site, or other location, as specified herein. (See Delivery clause)

STORAGE OF MATERIALS: Absent approval of the using governmental unit, Contractor shall not store items on the premises of the using governmental unit prior to the time set for installation.

SUBSTITUTIONS PROHIBITED - END PRODUCT PREFERENCES: If you receive the award as a result of the South Carolina end product or United States end product preference, you may not substitute a nonqualifying end product for a qualified end product. If you violate this provision, the State may terminate your contract for cause and you may be debarred. In addition, you shall pay to the State an amount equal to twice the difference between the price paid by the State and your evaluated price for the item for which you delivered a substitute.

SUBCONTRACTOR SUBSTITUTION PROHIBITED - RESIDENT SUBCONTRACTOR PREFERENCE: If you receive an award as a result of the subcontractor preference, you may not substitute any business for the subcontractor upon which you relied to qualify for the preference, unless first approved in writing by the procurement officer. If you violate this provision, the State may terminate your contract for cause and you may be debarred. In addition, the procurement officer may require you to pay the State an amount equal to twice the difference between the price paid by the State and the price offered by the next lowest bidder, unless the substituted subcontractor qualifies for the preference.

SURVIVAL OF OBLIGATIONS: 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.

TAXES: Any tax Contractor may be required to collect or pay upon the sale, use or delivery of the products shall be paid by the University, and such sums shall be due and payable to Contractor upon acceptance. Any personal property taxes levied after delivery shall be paid by the University. It shall be solely the University'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 Contractor fails to pay, or delays in paying, to any taxing authorities, sums paid by the University to Contractor, Contractor shall be liable to the University 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 Contractor.

TERM OF CONTRACT – EFFECTIVE DATE/INITIAL CONTRACT PERIOD: The effective date of this contract is the first day of the Maximum Contract Period as specified on the final statement of award. For bids where award statement is not required, the effective date of the contract will be the issue date on the Purchase Order. For continuing contracts, the initial term of this agreement is years, months, days from the effective date. Regardless, this contract expires no later than the last date stated on the final statement of award.

TERM OF CONTRACT – OPTION TO RENEW: (a) At the end of the initial term, and at the end of each renewal term, this contract shall automatically renew for a period one year, unless Contractor receives notice that the University elects not to renew the contract at least thirty (30) days prior to the date of renewal. Said renewals may be less than, but will not exceed, four (4) additional one year periods. Regardless, this contract expires no later than the last date stated on the final statement of award.(b) Contractor acknowledges that, unless excused by Section 11-57-320, if Contractor is on the then-current Iran Divestment Act List as of the date of any contract renewal, the renewal will be void ab initio .

TERM OF CONTRACT – TERMINATION BY CONTRACTOR: Contractor may terminate this contract at the end of the initial term, or any renewal term, by providing the Procurement Officer notice of its election to terminate under this clause at least ninety (90) days prior to the expiration of the then current term.

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.

TERMINATION FOR CONVENIENCE – SHORT FORM: The Procurement Officer may terminate this contract in whole or in part, for the convenience of the University. In such a termination, the Procurement Officer may require Contractor to transfer title and deliver to the University in the manner and to the extent directed by the Procurement Officer: (a) any completed supplies; and (b) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the contractor has specifically produced or specially acquired for the performance of the terminated part of this contract. Upon such termination, Contractor shall (a) stop work to the extent specified, (b) terminate any subcontracts as they relate to the terminated work, and (c) be paid the following amounts without duplication, subject to the other terms of this contract: (i) contract prices for supplies or services accepted under the contract, (ii) costs incurred in performing the terminated portion of the work, and (iii) any other reasonable costs that Contractor can demonstrate to the satisfaction of the University, using its standard record keeping system, have resulted from the termination. Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided. As a condition of payment, Contractor shall submit within three months of the effective date of the termination a claim specifying the amounts due because of the termination. The absence of an appropriate termination for convenience clause in any subcontract shall not increase the obligation of the University beyond what it would have been had the subcontract contained such a clause.

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.

TIGERONE ID CARD: Certain Contracts may require Contractor personnel to be on campus for extended periods of time without being under supervision of a Clemson employee and as such, Contractors may be required to obtain TigerOne Cards for their employees. The TigerOne ID Card is the University ID card that is issued to all students, employees and certain affiliates and retirees. Contractors are responsible for the cost for obtaining these cards through the TigerOne office and for replacement cards if necessary. Upon completion of the contract or if an Contractor's employee is no longer working at Clemson for whatever reason and they were issued a TigerOne Card, the card must be turned into the appropriate Clemson representative or contract officer and destroyed immediately. More information on obtaining TigerOne Card and costs can be found online at: www.clemson.edu/tigerone

UNIFORM COMMERCIAL CODE: The applicable provisions of the Uniform Commercial Code shall govern this contract.

WAIVER: The University 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 University's rights under this Contract. Any waiver must be in writing.

WARRANTY: Contractor warrants all items acquired shall conform to all contractor's representations, the requirements of this contract, and all published documentation.

WARRANTY – STANDARD: Contractor must provide the manufacturer's standard written warranty upon delivery of product. Contractor warrants that manufacturer will honor the standard written warranty provided.

WEB ACCESSIBILITY: Clemson University is committed to providing equitable access to electronic information, information technology, technology services, and the environments that use the information technology. Vendor will provide electronic and information technology that meets the applicable accessibility requirements of Sections 504 and 508 of the Rehabilitation Act of 1973, as amended; complies with the Americans with Disabilities Act of 1990, as amended; and is in reasonable compliance with applicable university standards, including conformation to WCAG 2.0 A and AA standards.

In addition, all college and system office web sites shall be designed to be accessible, so that people with disabilities have access to online information, data, and services comparable to those provided to individuals who do not have disabilities. Vendor agrees to collaborate with Clemson's Office of Web Services and/or other designees to design and implement necessary minimum initial and medium enhancements surrounding compliance.

Vendor shall: (1) upon request, provide the university with its accessibility testing results and written documentation verifying accessibility; (2) promptly respond to and resolve accessibility complaints; and (3) indemnify and hold the university harmless in the event of claims arising from inaccessibility.

ADD if this is a BLANKET PURCHASE AGREEMENT:

(a) Pursuant to S.C. Regulation 19-445.2100(B), this purchase order establishes a blanket purchase agreement to facilitate filling repetitive needs for small quantities of miscellaneous supplies or services. Contractor shall furnish the supplies or services described herein in general terms, if and when requested by authorized personnel during the specified period and within the stipulated aggregate amount, if any. The State is obligated only to the extent of authorized calls actually placed against this blanket purchase agreement. Only those individuals expressly identified herein, by organizational component, and within any dollar

limitations identified herein, may place calls under the agreement. Calls against this blanket purchase agreement generally will be made orally, except that informal correspondence may be used when ordering against agreements outside the local trade area. Written calls may be executed. Acceptance of supplies, services, or information technology shall be indicated by signature and date on the appropriate form by authorized personnel after verification and notation of any exceptions. This agreement shall be issued for a period of no longer than 12 months.

(b) All shipments under the agreement, except subscriptions and other charges for newspapers, magazines, or other periodicals, shall be accompanied by delivery tickets or sales slips which shall contain the following minimum information: (1) name of supplier; (2) blanket purchase agreement number; (3) date of call; (4) call number; (5) itemized list of supplies or services furnished; (6) quantity, unit price, and extension of each item less applicable discounts (unit price and extensions need not be shown when incompatible with the use of automated systems, provided that the invoice is itemized to show this information); and (7) date of delivery or shipment.

The State shall choose one of the following statements:

A summary invoice shall be submitted at least monthly or upon expiration of the blanket purchase agreement, whichever occurs first, for all deliveries made during a billing period, identifying the delivery tickets covered therein, stating their total dollar value, and supported by receipted copies of the delivery tickets.

An itemized invoice shall be submitted at least monthly or upon expiration of the blanket purchase agreement, whichever occurs first, for all deliveries made during a billing period and for which payment has not been received. Such invoices need not be supported by copies of delivery tickets.

When billing procedures provide for an individual invoice for each delivery, these invoices shall be accumulated provided that a consolidated payment will be made for each specified period; and the period of any discounts will commence on final date of billing period or on the date of receipt of invoices for all deliveries accepted during the billing period, whichever is later. This procedure should not be used if the accumulation of the individual invoices materially increases the administrative costs of this purchase method.