Clemson University Standard Terms of Purchase – Revision F Effective November 15, 2020

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 a 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.

ADDENDUM – means a document issued by the University to supplement the original solicitation document.

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 - means any transaction or agreement arising out of, relating to, or contemplated by the solicitation. *See also*, clause entitled "Contract Documents & Order of Precedence."

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

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

OFFER – means the bid submitted in response to this solicitation. The terms "Bid" is used interchangeably with the term "Offer."

OFFEROR – means the single legal entity submitting the offer. *See* bidding provision entitled "Bid As Offer To Contract."

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

SOLICITATION – means the online solicitation, to include all parts, attachments, and any Addenda of the specific Invitation For Bid, Best Value Bid, Fixed Price Bid, Request For Proposal, or Request For Qualifications including 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 for a Contractor as a part of the Contractor's Contract arising from this solicitation.

UNIVERSITY – means Clemson University and its officers, affiliates, representatives, agents, and employees.

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 the Contractor has made the applicable changes in the University's electronic payment system (not the assignee).

(b) If the 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 promptly make such changes in the University's electronic payment system.

(c) Any name change, transfer, assignment, or novation is subject to the conditions and approval required by S.C. 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 onto the University campus or other property in order to perform a service, Contractor is required to conduct a criminal background check on said employee(s) prior to bringing or sending the employee(s) to the 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 University campus or other University property. Contractor agrees to impose this same criminal background check requirement on any subcontractors used by Contractor to fulfill its responsibilities under this Contract. 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 the bankruptcy petition was filed, the identity of the court where the bankruptcy petition was filed, and a listing of all University Contracts that have not had final payment issued. 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: (a) 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: (i) drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for the University in accordance

therewith; (ii) method of shipment or packing; place of delivery; (iii) description of work to be performed; (iv) time of performance (i.e., hours of the day, days of the week, etc.); (v) or place of performance of the work.
(b) 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 makes such provisional adjustments in payment or time for performance as may be reasonable.
(c) 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.
(d) Time Period for Claim. Within 30 days after receipt of a written Contract modification under paragraph (a) 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.
(e) 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: Any disputes, transactions, claims, or controversies relating to, arising out of, or contemplated by the solicitation or Contract, 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.

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 Contract 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: (a) Any information or materials provided by the University should be considered to be confidential and/or proprietary to University ("Confidential Information"). Contractor shall hold all such information or materials in confidence until University publicly releases the information or grants Contractor written permission to disclose. Contractor agrees to hold Confidential Information in strictest confidence and not to make use of it for any purpose other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without University's express written consent or as provided by law. Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.
(b) Immediately upon expiration or termination of this Contract, Contractor shall, at University's option: (i) certify to University that Contractor has destroyed all Confidential Information; (ii) return all Confidential Information to University; or ((iii) take whatever other steps University requires of Contractor to protect the Confidential Information.
(c) University reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Contractor through this Contract. Violation of this clause by Contractor or its Subcontractors may result in termination of this Contract and demand for return of all Confidential Information, monetary damages, or penalties.

CONTRACT ADMINISTRATION: Questions or problems arising after award of this Contract shall be directed to the Procurement Officer, Clemson University, Procurement and Business Services, Clemson Centre, 391 College Avenue, Suite 203, Clemson, SC 29634 or by email to supplierr@clemson.edu.

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 in the following order of precedence: (i) a Record of Negotiations, if any, executed by the Contractor and the Procurement Officer; (ii) documentation regarding the clarification of an offer [e.g., S.C. Code §§ 11-35-1528(6), 11-35-1530(6), or 11-35-1535(l)(2)], if applicable; (iii), the solicitation, as amended, which includes the University Standard Bidding Terms and Conditions and University Standard Terms of Purchase documents; (iv) modifications, if any, to the offer, if accepted by the Procurement Officer; (v) the offer including any licensing agreement; (vi) any statement reflecting the State's final acceptance ("award"), and (vii) purchase orders.
(b) The documents in paragraph (a) shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above.
(c) The terms and conditions of documents (i) through (vi) in paragraph (a) 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.
(d) 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 work 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.

DATA SECURITY AND REPORTS: 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 University, Contractor shall adhere to the requirements set forth in the Service Provider Security Agreement which is incorporated herein by reference and attached to the Contract 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. Service Provider agrees to make available to University at least annually all material relevant to its compliance with PCI DSS with respect to Cardholder Data consistent with § 12.8.4 of PCI DSS.

DEBARMENT/SUSPENSION CERTIFICATION: Contractor certifies and warrants that its organization and its principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from doing business with the Federal Government or by the State of South Carolina.

DEFAULT: The state may terminate this Contract for cause, 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 work 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. 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

DELIVERY: Deliveries shall be made, and all work provided to the location specified by the University in its purchase order. All items shall be delivered, or work completed, no later than the date specified on the purchase order or best delivery date indicated by Contractor 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 University any additional shipping charges approved by the University on the purchase order.

DEMOGRAPHIC PORTRAYAL: If the work depicts University students, staff, and/or faculty, then the depiction must accurately represent University demographics.

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 Clemson University or Government business is not expected to be conducted, payment may be made on the following business day.

DISPUTES: (a) Choice-of-Forum. All disputes, transactions, claims, or controversies relating to, arising out of, or contemplated by the solicitation or Contract, shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the S.C. 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.
(b) Contractor agrees that any act by the Government regarding the Contract 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. Contractor recognizes that University is governed by the law of South Carolina, and those laws, including, but not limited to any provision pertaining to or implicating liability, indemnification, arbitration or mediation, payment of attorneys' fees and costs, the Tort Claims Act, budget limitations, the South Carolina Freedom of Information Act, and governing law or venue, may supersede provisions of the Contract. Nothing in the Contract shall be construed as an express or implied waiver by University of any express or implied acceptance by University of liabilities arising as a result of actions that lie in tort or could lie in tort in excess of any liabilities allowable under applicable state law, as a pledge of the full faith and credit of any state, or as the assumption by University of a debt, Contract or liability in violation of applicable law.
(c) 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 Contract; 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 WORKPLACE CERTIFICATION: By entering into this Contract, Contractor certifies that Contractor will comply with all applicable provisions of The Drug-free Workplace Act, S.C. Code, Title 44, Chapter 107.

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 that do not require an award statement, the effective date of the Contract will be the issue date on the Purchase Order. For continuing Contracts, the initial term of this Contract is years, months, and days from the effective date. Regardless, this Contract expires no later than the last date stated on the final statement of award.

EQUAL OPPORTUNITY: Contractor shall comply with all applicable provisions, if any, of Title 41, Part 60 of the Code of Federal Regulations, including but not limited to §§ 60-1.4, 60-4.2, 60-4.3, 60-3005(a), and 60-741.5(a), which are hereby incorporated by reference, and shall not discriminate on the basis of color, religion, national origin, disability, veteran status, sexual orientation, gender identity, sex, genetic information, or age.

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 University(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 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.

FALSE CLAIMS: According to the S.C. Code§ 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.

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

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 MAJEURE: A party 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 the party. That party will only be liable for non-cancellable, reasonable, actual documented costs incurred. 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 or pandemics, quarantine restrictions, strikes, freight embargoes, shortages, riots, war, terrorism, unusually severe weather, and declared state and federal emergencies. In every case the failure to perform must be beyond the control and without the fault or negligence of that party. 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 work to be furnished by the subcontractor was obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

GDPR COMPLIANCE: Contractor hereby affirms that it is compliance with the General Data Protection Regulation (GDPR) of the European Union if the Contract involves the processing of Personal Data within the jurisdiction of the GDPR. Contractor represents that is has implemented appropriate technical and organizational measures in relation to the Processing of Personal Data intended to ensure the level of security suitable for Personal Data Processing, including the ability to ensure confidentiality, integrity, availability, and resilience of processing systems and a procedure for regularly testing, assessing and evaluating the effectiveness of these measures. Contractor shall ensure that its sub-processors are contractually obligated to protect Personal Data in compliance with Data Protection Laws and consistent with the obligations imposed on the Contractor. Contractor shall remain responsible for the acts and omissions of each sub-processor. Contractor will notify University within 72 hours of a Personal Data security breach that could or does impact University records or data.

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA): If applicable, Contractor will comply with all confidentiality obligations under the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, and its implementing regulations at 45 C.F.R. Parts 160, 162, and 164, as amended by the Health Information Technology for Economic and Clinical Health (HITECH) Act of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (collectively, "HIPAA").

HOLD HARMLESS: Contractor shall hold the University, its officers, agents, and employees harmless from liability from any claims, damages, and actions of any nature arising from the use of any work 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 offer.

ILLEGAL IMMIGRATION: (a) (An overview is available at www.procurement.sc.gov) The Contractor agrees to comply with the applicable requirements of S.C. Code, Title 8, Chapter 14, and agrees to provide upon request by the University any documentation required to establish either: (i) that S.C. Code, Title 8, Chapter 14 is inapplicable to the Contractor and its subcontractors or sub-subcontractors; or (ii) that the Contractor and its subcontractors or sub-subcontractors are in compliance with S.C. Code, Title 8, Chapter 14.
(b) Pursuant to S.C. Code §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."
(c) Contractor agrees to include language in all Contracts with its subcontractors requiring subcontractors to (a) comply with the applicable requirements of S.C. Code, Title 8, Chapter 14, and (b) include in their Contracts with the sub-subcontractors language requiring sub-subcontractors to comply with the applicable requirements of S.C. Code, Title 8, Chapter 14.

INDEMNIFICATION - THIRD PARTY CLAIMS: (a) Notwithstanding any limitation in this Contract, 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 that are attributable to bodily injury, sickness, disease or death, disclosure of information, or to injury to or destruction of tangible property arising out of or in connection with the work acquired hereunder or caused in whole or in part by any act or omission of Contractor, its subcontractors, its 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.
(b) 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.
(c) This clause shall not negate, abridge, or reduce any other rights or obligations of indemnity that would otherwise exist. The obligations of this clause shall survive termination, cancelation, or expiration of the parties' 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) 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: 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 University.

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 that 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:

(i) 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.

(ii) 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.

(iii) 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.

(iv) Privacy and Cyber Security: For Software Contracts greater than $10,000, Contractor will maintain insurance coverage for privacy and cyber security claims. The policy limits for each must be at least a minimum of $5,000,000 for each occurrence, $10,000,000 aggregate.

(c) Coverage must include claims for: (i) information security risks, including without limitation, failure to prevent unauthorized access to, tampering with or unauthorized use of a computer system; introduction of malicious codes, computer viruses, worms, logic bombs, etc., into data or systems; or theft, damage, unauthorized disclosure, destruction, or corruption of information in whatever form; (ii) privacy risks, including (A) failure to properly handle, manage, store, destroy, or otherwise control non-public personally identifiable information in any format; (B) loss or disclosure of confidential information; and (C) any form of invasion, infringement or interference with rights of privacy, including breach of security/privacy laws or regulations; (iii) contractual liability for the contractor's obligations described in the clauses titled "Indemnification - Third Party Claims" and "Confidentiality;" 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.
(d) 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.
(e) If the work includes software, coverage must also include claims for intellectual property infringement arising out of software and/or content.
(f) If the insurance 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. 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.
(g) 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.
(h) 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) Upon request, the Contractor shall furnish the State with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. The State reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by this clause, at any time.
(i) Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. In addition, the Contractor shall notify the State immediately upon receiving any information that any of the coverages required by this clause are or will be changed, cancelled, or replaced.
(j) 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 for 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.
(k) 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.
(l) 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.

INTELLECTUAL PROPERTY INFRINGEMENT: (a) Without limitation and notwithstanding any provision in this Contract, 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.
(b) University shall allow Contractor to defend such claim to the extent allowed by law 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 obligation upon University. University shall reasonably cooperate with Contractor's defense of such claim.
(c) 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: (i) procure for University the right to continue to use, or have used, the acquired item, or (ii) 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 option, 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.
(d) Contractors obligations under this clause 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.
(e) As used in this clause, 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 Contract. "Specification(s)" means a detailed, exact statement of particulars such as a statement prescribing materials, dimensions, and quality of work.
(f) Contractor's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of this Contract.

INTELLECTUAL PROPERTY USE: This software/hardware may be used by the University for academic, research and development, or commercial purposes.

LIABILITY OF UNIVERSITY. (A) UNIVERSITY SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (i) FOR ERROR OR INTERRUPTION OF USE, (ii) FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; OR (iii) FOR ANY INDIRECT OR NON-OBJECTIVELY MEASURABLE, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES.
(B) UNIVERSITY’S TOTAL LIABILITY TO CONTRACTOR WILL NOT EXCEED THE TOTAL AMOUNT OF FEES PAID TO CONTRACTOR UNDER THIS CONTRACT FOR THE 12-MONTH PERIOD PRIOR TO THE DATE OF THE CLAIM, WHETHER OR NOT THE CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
(C) ANY TERM OR CONDITION IS VOID TO THE EXTENT IT REQUIRES THE UNIVERSITY TO PAY LIQUIDATED DAMAGES TO ANYONE FOR ANY REASON.

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 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 BY UNIVERSITY: 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. If the work contains software, the Contractor will not create a logon or any other access statement that requires the user to indemnify or hold the Contractor harmless.

NOTICE: (a) After award, any notices shall be in writing and shall be deemed duly given (i) upon actual delivery, if delivery is by hand, (ii) upon receipt by the transmitting party of automated confirmation or answer back from the recipient's device if delivery is by facsimile, or electronic mail, or (iii) 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 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 Clemson Centre, 391 College Avenue, Suite 203, SC 29634 or to the address indicated in the Contract. Either party may designate a different address for notice by giving notice in accordance with this clause.

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 S.C, Code § 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 S.C, Code § 11-35-5300.

OPTION TO RENEW: 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.

OWNERSHIP OF DATA & MATERIALS: This is a work-for-hire Contract. All data, material and documentation prepared for or developed by the State pursuant to this Contract shall belong exclusively to the University. Contractor shall retain all copyright and other proprietary rights in any of its software or hardware. University does not acquire any rights, express or implied, in the software/hardware, other than those specified in the Contract.

PARKING PERMIT: Contractor must comply with university parking regulations. Contractors must obtain a visitor's permit at the Parking Services Office or online (https://www.clemson.edu/campus-life/parking/visitors/index.html). Contractor may also park at metered parking. Contractors are required to adhere to the University parking rules and regulations. Costs associated with parking permits 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) University is not responsible for interest if Contractor has not completed registration in University's online payment system.
(b) Unless otherwise provided in this Solicitation, the State shall pay Contractor, after the submission of a proper invoice, 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.
(c) The Contractor is responsible for paying any bank or conversion fees incurred for an international payment.
(d) Unless prearranged by University Procurement and Business Services, all payments will be NET 30. Payments will be issued 30 days from the date the goods are accepted as satisfactory by the ordering department and a proper invoice has been received, whichever is later. To be considered a proper invoice, the invoice must contain the correct Purchase Order number.
(e) In addition, unless prearranged by University Procurement and Business 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.
(f) Notwithstanding any other provision, payment shall be made in accordance with S.C. Code § 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.
(g) Any other basis for interest, including but not limited to general (pre- and post -judgment) or specific interest statutes, including S.C. Code § 34-31-20, are expressly waived by both parties. If a court, despite this clause, requires that interest be paid on any debt by either party other than as provided by paragraph (f), 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.

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

PROHIBITION ON CERTAIN EQUIPMENT AND SERVICES: Contractor certifies and warrants that it complies with Public Law 115-232, § 889 and 2 C.F.R. § 200.216 regarding the prohibition of certain Telecommunications and Video Surveillance Services and Equipment and will provide services and/or equipment that do not contain a substantial or essential component of any system, or as critical technology as part of any system parts, componentry, or software from any of the following prohibited entities or any subsidiary or affiliate of these entities: Huawei Technologies Co., ZTE Corp., Hytera Communications Corp., Hangzhou Hikvision Digital Technology Co., and Dahua Technology Co, and any other entity designated by the Secretary of Defense. The Contractor is required to monitor the prohibited parties related to Public Law 115-232, § 889 to ensure compliance with all related prohibitions, including among any subcontractors. *See also*, FAR 52.204-25.

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 University's Office of Creative Services. Contractor shall only use University trademarks and other brand identity assets on its website and otherwise, only when it has received prior written permission from University's Office of Creative Services for each trademark or brand asset that it intends to use. Use of University trademarks and brand identity assets shall be permissive only so long as there is a valid, effective Contract between the parties and in a manner explicitly approved by the Office of Creative Services. Failure to obtain appropriate permission for use of protected trademarks and brand identity assets may result in University pursuing any and all available remedies available by law for misuse of the 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 work 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, University is able to process the standard electronic University form more quickly than nonstandard forms. The Purchase order requirement may be waived if approved in writing by University Procurement and Business 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 Contractor without the requirement to issue a purchase order.

RELATIONSHIP OF THE PARTIES: Neither party is an employee, agent, partner, or joint venture of the other. Neither party has the right or ability to bind the other to any Contract 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 paragraphs (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 this 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: (a) By University. 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.
(b) By Contractor. If Contractor requires University to sign a provision that allows the Contractor to audit the University, then those audits must be paid for by Contractor and cannot be required or performed more than once a year.

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)

SOFTWARE UPGRADES AND ENHANCEMENTS: Contractor shall supply at no additional cost: (i) updated versions of the software to operate on upgraded versions of operating systems, upgraded versions of firmware, or upgraded versions of hardware; (ii) updated versions of the software that encompass improvements, extensions, maintenance updates, error corrections, or other changes that are logical improvements or extensions of the original software supplied to University; and (iii) interface modules that are developed by Contractor for interfacing the software to other software products.

SOFTWARE MAINTENANCE AND SUPPORT SERVICES: Contractor shall provide a replacement copy or correction service at no additional cost to University for any error, malfunction, or defect in software that, when used as delivered, fails to perform in accordance with the Specifications and that University shall bring to Contractor's attention. Contractor shall undertake such correction service as set forth below and shall use its best efforts to make corrections in a manner that is mutually beneficial. Contractor shall disclose all known defects and their detours or workarounds to University. In addition, Contractor shall provide the following services:
(a) Help Desk Services. Contractor shall provide Help Desk Services for reporting errors and malfunctions and trouble-shooting problems. Contractor's Help Desk Services shall be web-based and/or by toll-free telephone lines and/or via e-mail. The Help Desk Services shall include but are not limited to the following services: (i) assistance related to questions on the use of the subject software; (ii) assistance in identifying and determining the causes of suspected errors or malfunctions in the software; (iii) advice on detours or workarounds for identified errors or malfunctions, where reasonably available; (iv) information on errors Information on errors previously identified and reported to Contractor and detours to these where available; and (v) advice on the completion and authorization for submission of the required form(s) reporting identified problems in the software.
(b) On-line Support. Contractor may execute on-line diagnostics from a remote location solely to assist in the identification and isolation of suspected software errors or malfunctions.
(c) Error and Malfunction Service. Within two (2) Business Days of receiving oral or written notification by University of identified errors or malfunctions in the software, Contractor will either: (i) provide detour or code correction to the software error or malfunctions. Each detour or code correction will be made available in the form of either a written correction notice or machine-readable media and will be accompanied by a level of documentation adequate to inform the user of the problem resolved and any significant operational differences resulting from the correction that is known by Contractor; or (ii) provide a written response describing Contractor's then-existing diagnosis of the error or malfunction and generally outlining Contractor's then-existing plan and timetable, subject to University's approval, for correcting or working around the error or malfunction.
(d) On-Call Support. If a problem occurs that significantly impacts usage of the software and remains unidentified or unresolved after University has utilized the detour or code correction prescribed, Contractor will dispatch a qualified representative to the system location during Business Days and Hours. The representative must arrive within 24 Business Hours. This representative shall have the qualifications necessary to provide: (i) advice and assistance in diagnosis and identification of software errors or malfunctions; and (ii) on-site consultation on correction or detour of identified errors or malfunctions.
(e) When Contractor performs services pursuant to the Contract that require the use of University's equipment, University agrees to make the equipment available at reasonable times and in reasonable time increments, and in no event will University charge Contractor for such use.

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: This clause does not apply if a single unit has a price in excess of $50,000 or a single award has a potential value exceeding $500,000 because the preference does not apply. If Contractor received the award as a result of the South Carolina end product or United States end product preference, it may not substitute a nonqualifying end product for a qualified end product. If a Contractor violates this provision, the State may terminate the Contract for cause and debar the Contractor. In addition, the Contractor shall pay the State an amount equal to twice the difference between the price paid by the State and the Contractor's evaluated price for the item.

SUBCONTRACTOR SUBSTITUTION PROHIBITED - RESIDENT SUBCONTRACTOR PREFERENCE: This clause does not apply if a single unit has a price in excess of $50,000 or a single award has a potential value exceeding $500,000 because the preference does not apply. If Contractor received an award as a result of the subcontractor preference, Contractor may not substitute any business for the subcontractor , unless the substitution is first approved in writing by the procurement officer. If a Contractor violates this provision, the State may terminate the Contract for cause and debar the Contractor. In addition, the procurement officer may require the Contractor 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 offer, unless the substituted subcontractor qualifies for the preference.

SUPERSEDE: These Terms and Conditions supersede all prior negotiations, preliminary agreements, correspondence or understandings, written or oral.

SURVIVAL OF OBLIGATIONS: The Parties' rights and obligations that 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 infringement, and any provisions regarding warranty or audit.

TAXES: (a) Any sale or use tax that Contractor may be required to collect or pay 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.
(b) S.C. Code § 12-8-550 requires persons hiring or Contracting with a nonresident taxpayer to withhold 2% of each payment made to the nonresident under a Contract that exceeds $10,000 for services unless the Contractor provides the University with proof of registration with the South Carolina Department of Revenue by submitting a completed SC I-312 Form to the University. Failure to provide the SC I-312 Form may delay payment.
(c) A non-U.S. Citizen (Nonresident Alien) may be subject to a 30% Federal Income Tax Withholding unless the Contractor provides proper documentation for tax exempt status to the University.

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 clause, 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: (a) The Procurement Officer may terminate this Contract in whole or in part, for the convenience of the University with thirty (30) days' notice. 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: (i) any completed supplies; and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and Contract rights as the Contractor has specifically produced or specially acquired for the performance of the terminated part of this Contract.
(b) Upon such termination, Contractor shall (i) stop work to the extent specified, (ii) terminate any subcontracts as they relate to the terminated work, and (iii) be paid the following amounts without duplication, subject to the other terms of this Contract: (1) Contract prices for work accepted under the Contract, (2) costs incurred in performing the terminated portion of the work, and (3) 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.
(c) 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.

TERMS AND CONDITIONS: Contractor agrees that these Terms and Conditions will govern any future related Contract such as a Contract for maintenance or service except that the Terms or Conditions may change to comply with the operation of law.

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 University 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 of obtaining these cards through the TigerOne office and for replacement cards if necessary. Upon completion of the Contract or if a Contractor's employee is no longer working at the University for whatever reason and they were issued a TigerOne Card, the card must be turned into the appropriate University representative or Procurement 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.

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.

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.

WARRANTIES: Contractor warrants all items acquired shall conform to all Contractor's representations, the requirements of this Contract, and all published documentation. Contractor warrants it will meet the performance standards, benchmarks, and delivery schedule specified.

WARRANTY – STANDARD: (a) Contractor must provide the manufacturer's standard written warranty upon delivery of product and warrants that the work is consistent with industry standards. Contractor warrants that the software shall be in good operating condition and shall conform to the specifications for a period of ninety (90) days or other time period specified by University. This Warranty Period begins the first day after the Acceptance Date. Contractor shall replace all software that is defective or not performing in accordance with the specifications, at Contractor's sole expense.
(b) Ownership. Contractor warrants and represents that Contractor is the owner of the software licensed hereunder or otherwise has the right to grant to the licensed rights to the software to University through the Contract without violating any rights of any third party worldwide. Contractor represents and warrants that it has the right to license the software as provided in the Contract and that University's use of the software and documentation within the terms of the Contract will not infringe upon any copyright, patent, trademark, or other intellectual property right worldwide or violate any third party's trade secret, Contract, or confidentiality rights worldwide. Contractor represents and warrants that it: (i) is not aware of any claim, investigation, litigation, action, suit or administrative or judicial proceeding pending or threatened based on claims that the software infringes any patents, copyrights, or trade secrets of any third party; and (ii) has no actual knowledge that the software infringes upon any patents, copyrights, or trade secrets of any third party.
(c) Written Representations. Any written commitment by Contractor within the scope of the Contract shall be binding upon it. Failure to fulfill such a commitment may constitute breach and shall render Contractor liable for damages under the terms of the Contract. For purposes of this clause, a commitment by Contractor includes: (i) prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made in its Response or contained in any Contractor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its Response or used to effect this sale.
(d) Date Warranty. Contractor warrants that all software provided under the Contract: (i) does not have a life expectancy limited by date or time format; (ii) will correctly record, store, process, and present calendar dates; (iii) will lose no functionality, data integrity, or performance with respect to any date; and (iv) will be interoperable with other software used by University that may deliver date records from the software, or interact with date records of the software ("Date Warranty").
(e) Date Warranty Report. In the event a Date Warranty problem is reported to Contractor and such problem remains unresolved after three (3) calendar days, at University's discretion, Contractor shall send, at its's sole expense, at least one (1) qualified and knowledgeable representative to University's premises. This representative will continue to address and work to remedy the failure, malfunction, defect, or nonconformity on this premises. This Date Warranty shall last perpetually.
(f) Physical Media Warranty. Contractor warrants that each licensed copy of the software provided by Contractor is and will be free from physical defects in the media that tangibly embodies the copy (the "Physical Media Warranty"). The Physical Media Warranty does not apply to defects discovered more than thirty (30) calendar days after the date of acceptance of the software copy by University. Contractor shall replace, at Contractor's expense including shipping and handling costs, any software copy provided that does not comply with this warranty.
(g) No Surreptitious Code Warranty. Contractor warrants that no licensed copy of the software provided University contains or will contain any Self-Help Code nor any Unauthorized Code as defined below. Contractor further warrants that it will not introduce, via modem or otherwise, any code or mechanism that electronically notifies it of any fact or event, or any key, node, lock, time-out, or other function, implemented by any type of means or under any circumstances, that may restrict University's use of or access to any program, data, or equipment based on any type of limiting criteria, including frequency or duration of use for any copy of the software provided under the Contract. As used in the Contract, "Self-Help Code" means any back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than a licensee of the Software. Self-Help Code does not include software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g., remote access via modem) solely for purposes of maintenance or technical support. As used in the Contract, "Unauthorized Code" means any virus, Trojan horse, worm or other software routines or equipment components designed to permit unauthorized access, to disable, erase, or otherwise harm Software, equipment, or data; or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code. No limitation of liability, whether Contractual or statutory, shall apply to a breach of this warranty.
(h) Breach. In the event of a breach of any of these representations and warranties, Contractor shall indemnify and hold harmless University from and against any and all harm, injury, damages, costs, and expenses incurred by University arising out of said breach.

(i) Manufacturer Warranty. Contractor warrants that manufacturer will honor the standard written warranty provided.

WEB ACCESSIBILITY: (a) University is committed to providing equitable access to electronic information, information technology, technology services, and the environments that use the information technology. Contractors will provide electronic and information technology that meets the applicable accessibility requirements of §§ 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.
(b) 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. Contractor agrees to collaborate with University's Office of Web Services and/or other designees to design and implement enhancements surrounding compliance.
(c) Contractor shall: (i) upon request, provide the University with its accessibility testing results and written documentation verifying accessibility; (ii) promptly respond to and resolve accessibility complaints; and (iii) indemnify and hold the University harmless in the event of claims arising from inaccessibility.
(d) University may perform an accessibility audit at any point during the project, including early planning, design, development, testing, or after delivery. If the audit determines that the software is not accessible, then Contractor will pay the cost of the audit.
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ADD if this is a BLANKET PURCHASE CONTRACT:
(a) Pursuant to S.C. Regulation 19-445.2100(B), this purchase order establishes a blanket purchase Contract to facilitate filling repetitive needs for small quantities of miscellaneous work. 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 Contract. Only those individuals expressly identified herein, by organizational component, and within any dollar limitations identified herein, may place calls under the Contract. Calls against this blanket purchase Contract generally will be made orally, except that informal correspondence may be used when ordering against Contracts outside the local trade area. Written calls may be executed. Acceptance of work shall be indicated by signature and date on the appropriate form by authorized personnel after verification and notation of any exceptions. This Contract shall be issued for a period of no longer than 12 months.
(b) All shipments under the Contract, 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: (i) name of supplier; (ii) blanket purchase order number; (iii) date of call; (iv) call number; (v) itemized list of supplies or services furnished; (vi) 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 (vii) 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 Contract, 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 Contract, 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.

If the contract involves the payment of federal monies, then the following clauses apply:

DEFINITIONS - THE FOLLOWING DEFINITIONS ARE APPLICABLE TO FEDERAL CONTRACTS.

CONSTRUCTION WORK - means the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction (41 C.F.R. § 60-1.3).

FEDERALLY ASSISTED CONSTRUCTION CONTRACT – means any agreement or modification thereof between the University and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work (41 C.F.R. § 60-1.3).

BYRD ANTI-LOBBYING AMENDMENT: Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

CHANGES: The cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope.

CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT (42 U.S.C. §§ 7401-7671q.) and (33 U.S.C. §§ 1251-1387). This clause applies to contracts awarded in excess of $150,000 under a federal grant. (a) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air and Federal Water Pollution Acts, as amended, 42 U.S.C. § 7401 et seq. (b) The Contractor agrees to report each violation to the University and understands and agrees that the University will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. (c) The Contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA.

COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS: This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

COPELAND ANTI-KICKBACK ACT: In all contracts for construction or repair work above $2,000 in situations where the Davis-Bacon Act also applies, the Contractor shall:
(a) Comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
(b) The Contractor or Subcontractor shall insert in any subcontracts paragraph (a) of this clause and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts.
(c) The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
(d) A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

DAVIS-BACON ACT: All transactions regarding prime construction contracts in excess of $2,000 related to the Emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program, must comply with the following:
(a) All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable.
(b) Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
(c) Additionally, contractors are required to pay wages not less than once a week.

DEBARMENT AND SUSPENSION (a) This clause applies to the following contracts for goods or services: (i) The contract is in the amount of at least $25,000, (ii)) The contract requires the approval of FEMA, regardless of amount, (iii) The contract is for federally-required audit services; or (iv) it is a subcontract and requires either the approval of FEMA or is in excess of $25,000.
(b) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
(c) The Contractor must comply with 2 C.F.R. pt. 180, subpart C and2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. (c) This certification is a material representation of

fact relied upon by University. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to University and its recipient/subrecipient/applicant, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
(d) The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

DRUG-FREE WORKPLACE. The Contractor will comply with the Drugfree Workplace Act, 41 U.S.C. Chapter 81.

EQUAL EMPLOYMENT OPPORTUNITY: During the performance of this contract, the Contractor agrees as follows: (a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
(b) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
(c) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
(d) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.
(e) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
(f) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
(g) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
(h) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
(i) The Contractor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS: The Contractor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor’s actions pertaining to this contract.

RECORDS ACCESS: (a) The Contractor agrees to provide University and the federal agency funding this Contract or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
(b) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
(c) The Contractor agrees to provide the federal agency or its authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
(d) In compliance with the Disaster Recovery Act of 2018, the University and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the federal government.

RECOVERED MATERIAL PROCUREMENT: (a) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired (i) competitively within

a timeframe providing for compliance with the contract performance schedule; (ii) meeting contract performance requirements; or (iii) at a reasonable price.

(b) Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, https://www.epa.gov/smm/comprehensive- procurement-guideline-cpg-program.

(c) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. §§ 3701-3708, 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II(E)): The following provisions apply for all contracts in excess of $100,000 that involve the employment of mechanics or laborers: (a) No Contractor or Subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(b) In the event of any violation of the clause set forth in paragraph (a) of this clause the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of paragraph (a) of this clause, in the sum of $27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this clause.

(c) The University shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this clause.

(d) The contractor or subcontractor shall insert in any subcontracts the language set forth in paragraphs (a) through (c) of this clause and also a clause requiring the subcontractors to include this language in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor as set forth in paragraphs (a) through (c) of this clause.