



THE CITADEL

Solicitation Number	RFP 27006-CC
Addendum #	1
Date Issued	9/23/2026
Procurement Officer	Caroline Connolly
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SOLICITATION TITLE: RFP 27006-CC Wargaming Software

TYPE OF ADDENDUM:

- ☒ Change or clarification to the Solicitation's specifications, requirements, or scope of work.
- ☒ Questions posed regarding the Solicitation and their respective answers by The Citadel.

Questions:

1. Please define the required level of fidelity for automated and hybrid adjudication, including whether configurable business rules, probability tables, and human controller decisions are sufficient, or whether the platform must provide physics-based modeling, force-on-force calculations, order-of-battle models, or integration with an external simulation engine.

Response: *The Citadel has not established a specific required level or methodology for automated or hybrid adjudication beyond the requirements stated in the solicitation. Offerors should describe the adjudication capabilities of their proposed solution, including the methods available for automated and human-controlled adjudication and any additional modeling, simulation, or integration capabilities provided.*

2. Please provide the anticipated number of named faculty/designers, peak concurrent participants, teams per exercise, simultaneous exercises, and exercises conducted annually, and confirm which of these measures the State expects vendors to use for subscription pricing.

Response: *The Citadel has not established fixed numbers of named users, concurrent participants, teams per exercise, simultaneous exercises, or exercises conducted annually. Offerors should describe the capacity and licensing structure of their proposed solution, including any user, concurrent-user, team, exercise, or other usage limitations and identify the factors upon which their proposed pricing is based.*

3. Please confirm whether SOC 2 Type 2 or ISO 27001 certification is mandatory for award or supporting evidence where available.

Response: *No specific third-party security certification is mandatory for award. Offerors must demonstrate adequate security controls in accordance with the solicitation and provide a complete response to the Service Provider Security Assessment Questionnaire. ISO 27001, SOC 2 Type II, SOC 3, and similar third-party reports or certifications may be provided as supporting documentation but are not individually required.*

4. Clarify whether the two-hour technical-assistance requirement means acknowledgment or resolution, the applicable severity levels, and required coverage hours.

Response: *The two-hour technical assistance requirement is deleted. Offerors shall describe the technical support services included with their proposed solution, including standard support hours, methods for requesting assistance, response times, escalation procedures, and any additional support options available. The solicitation will be amended accordingly.*

5. For a commercial multi-tenant or single-tenant SaaS solution, please confirm that source-code escrow, transfer, or State ownership would apply only to separately identified, State-funded custom deliverables and would not transfer ownership of the vendor's pre-existing platform, reusable components, configurations, or general product enhancements.

Response: *The Citadel is seeking access to a wargaming and decision-experimentation platform and does not intend to acquire ownership of an Offeror's pre-existing proprietary platform, reusable components, or other pre-existing intellectual property. Offerors should clearly identify any pre-existing proprietary components included in their proposed solution and separately identify any custom development proposed specifically for The Citadel. The ownership and licensing provisions of the solicitation will apply based on those distinctions.*

6. The cover page identifies the solicitation type as "Invitation for Bid," while the solicitation number, proposal clauses, optional negotiations, and weighted best-value criteria describe an RFP; additionally, the listed evaluation factors total 95%. Please confirm the governing procurement method and identify the remaining 5% of evaluation weight, if any.

Response: *This solicitation is a Request for Proposals (RFP). The "Invitation for Bid" designation appearing on the cover page is corrected to "Request for Proposals." The Cost Proposal evaluation factor is revised from 20% to 25%, resulting in a total evaluation weighting of 100%. The solicitation is amended accordingly.*

7. May a UK-incorporated company submit directly, and what foreign-vendor documentation is required? As South Carolina vendor registration may take up to 30 days, is an expedited route available before 9 October, or may an offer be considered while a timely registration remains pending?

Response: *The solicitation requires an Offeror to have a South Carolina State Vendor Number to be eligible to submit an offer. Offerors are responsible for completing the applicable vendor registration requirements identified in the solicitation. The Citadel does not have a separate or expedited vendor registration process.*

8. Please confirm the expected name and concurrent users, teams and simultaneous exercises; required hosting and integrations; and the initial contract term, renewal options and pricing basis.

Response: *The Citadel has not established a fixed number of named or concurrent users, teams, or simultaneous exercises. Offerors should describe the capacity of their proposed solution and identify any user, concurrent-user, team, exercise, or other usage limitations that affect licensing or pricing.*

The initial contract will begin following award and execution of the resulting contract and will continue through September 30, 2027. No renewal options are currently included in the solicitation. Offerors should provide pricing for the initial contract term and clearly identify the basis of their proposed pricing.

9. Must the stated \$5 million per occurrence and \$10 million aggregate information-security/privacy cover be in place at submission, award or commencement? Is equivalent cover through an appropriately authorized overseas insurer acceptable?

Response: *The information security and privacy insurance limits stated in the solicitation remain required. The required coverage must be maintained for the duration of the resulting contract. Insurance must be provided by a company or companies lawfully authorized to do business in South Carolina and otherwise meeting the insurance requirements of the solicitation.*

10. The stated 1 October implementation start precedes the 9 October submission deadline and anticipated 14 October award. Please confirm the intended start date and delivery schedule.

Response: *The October 1, 2026 estimated implementation start date is revised. The contract and implementation period will begin following completion of the solicitation and award process and execution of the resulting contract. The solicitation will be amended accordingly.*

11. Clauses 02-2B040-2(c) and 07-7A015-2(b) prohibit offerors from including their standard terms or relying on end-user, privacy, or other terms outside the contract. Clause 07-7B224-1(c)(2) prohibits submitting software licensing agreements with the offer. It refers to an attached "South Carolina Standard Amendment to End User License Agreements," which is not included in the solicitation. Please provide the Standard Amendment.

Response: *The South Carolina Standard Amendment to End User License Agreements referenced in the solicitation was inadvertently omitted. The Standard Amendment is provided as an attachment to this amendment.*

12. The solicitation does not specify a hosting environment. Clauses 04-4027-2 (Security Questionnaire) and 07-7B106-1 (Location of Data) indicate a contractor-hosted solution, while clause 3-3050-1 (Installation) indicates Citadel-installed software but is incomplete. Please confirm the intended hosting environment for software configuration purposes.

Response: *The Citadel has not established a required hosting environment. Offerors should describe the hosting and deployment model of their proposed solution, including any technical or infrastructure requirements, security considerations, and responsibilities of The Citadel. Proposed solutions must comply with the applicable information security and data requirements contained in the solicitation.*

13. Does The Citadel intend to allow oral presentations or live demonstrations as part of the evaluation? We would appreciate the opportunity to demo our wargaming solution. If so, please advise on anticipated timing.

Response: *The Citadel has not established a requirement for oral presentations or live demonstrations. The Citadel may request a presentation or demonstration from Offerors during the evaluation process if determined necessary. Offerors will be notified if a presentation or demonstration is requested.*

14. Has The Citadel established an anticipated budget range, funding allocation, or not-to-exceed amount for the initial implementation, licensing/subscription, training, and support contemplated by this RFP?

Response: *The Citadel is not providing an anticipated budget range or not-to-exceed amount for this solicitation. Offerors should submit their proposed pricing based on the solution and services offered in response to the requirements of the solicitation.*

15. Is The Citadel primarily seeking an existing commercial wargaming/decision-experimentation platform, or will proposals for a newly developed or substantially customized platform be evaluated equally, provided all functional requirements are met?

Response: *The Citadel has not limited the solicitation to an existing commercial platform. Offerors may propose the solution they believe best meets the requirements and objectives of the solicitation and should clearly describe any configuration, customization, or development necessary to provide the proposed solution.*

16. The solicitation requires information-security and privacy insurance with limits of \$5,000,000 per occurrence and \$10,000,000 aggregate. Are these limits mandatory as stated, or would The Citadel consider alternative limits or other evidence of financial/security risk protection based on the size and risk profile of the resulting contract?

Response: *The insurance requirements and limits stated in the solicitation remain unchanged.*

17. Appendix D asks respondents to identify third-party security certifications such as ISO 27001, SOC 2 Type II, or SOC 3. Please confirm whether any specific third-party certification is mandatory for award, or whether respondents may demonstrate adequate security controls through documented policies, technical safeguards, hosting-provider controls, security assessments, and other equivalent evidence.

Response: *No specific third-party security certification is mandatory for award. Offerors must demonstrate adequate security controls in accordance with the requirements of the solicitation and provide a complete response to the Service Provider Security Assessment Questionnaire. Third-party certifications or reports may be provided as supporting documentation.*

18. For the Experience and Qualifications evaluation factor, will The Citadel consider comparable experience developing multi-user simulation, workflow, decision-support, training, research, or interactive scenario platforms even where the respondent has not previously delivered a product specifically characterized as a military wargaming platform?

Response: *Yes. The Citadel will consider comparable experience with multi-user simulation, decision-support, training, research, interactive scenario, or similar platforms. Offerors should describe how their experience is relevant to the requirements and objectives of this solicitation.*

19. Under “Scenario Development and Modification,” the stated requirement appears to duplicate the multi-team and role-management requirement. Please clarify the required scenario-authoring and modification capabilities.

Response: The requirement under “Scenario Development and Modification” is revised to read as follows:

“The platform shall allow authorized users to create, duplicate, modify, and manage scenarios without requiring vendor programming support. Scenario development should support the configuration of elements such as actors, objectives, resources, timelines, maps, decision points, and rules.”

20. What types or classifications of information are expected to be stored or processed? Will the platform handle CUI, export-controlled information, classified information, FERPA-covered student records, or only unclassified exercise data?

Response: The Citadel does not currently anticipate the platform being used to process or store classified information, CUI, or export-controlled information. The anticipated use is for educational, training, research, and exercise-related information. Offerors should describe the security and data-protection capabilities of their proposed solution, including any limitations regarding the types of information the platform can process or store.

21. Does the restriction requiring all government information to remain within the continental United States also require all support personnel with potential access to that information to be located within CONUS?

Response: The requirement applies to the processing, storage, transmission, and access of government information. Contractor and subcontractor personnel may not access government information from outside the continental United States.

22. What is the expected implementation, pilot, acceptance-testing, and training deadlines?

Response: The Citadel has not established specific implementation, pilot, acceptance-testing, or training deadlines beyond the anticipated contract schedule. Offerors should provide their proposed implementation approach and timeline, including any recommended configuration, testing, training, or onboarding activities necessary for the proposed solution.

23. May offerors include a browser-accessible demonstration environment or recorded demonstration in addition to the demonstration materials included on the required USB drive?

Response: Yes. Offerors may provide a browser-accessible demonstration environment or recorded demonstration as supplemental proposal material. Any supplemental demonstration materials are in addition to, and do not replace, the proposal materials required by the solicitation

24. The Maximum Contract Period is stated as October 1, 2026 through September 30, 2027. Section VIII requests total cost of ownership for "the total potential term of the contract." Should the Business Proposal price the initial twelve-month term only, or should it also include pricing for anticipated renewal terms? If renewals are anticipated, please confirm the number and length.

Response: Offerors should provide pricing for the initial contract term only. No renewal terms are included in the solicitation. The initial contract will begin following award and execution of the resulting contract and will continue through September 30, 2027.

25. Will exercise content, scenario material, or participant data include FERPA-protected student records or any other category subject to specific handling, retention, or data residency requirements?

Response: *The anticipated use of the platform is for educational, training, research, and exercise-related activities. The Citadel has not established a requirement for the platform to process specific categories of regulated information beyond the requirements contained in the solicitation. Offerors should describe the data collected, stored, or processed by their proposed solution and the security, privacy, retention, and data residency controls applicable to that information.*

26. Are exercises expected to be conducted with participants co-located on campus, distributed across remote locations, or both? If distributed, is participation expected from outside The Citadel's network?

Response: *The Citadel has not established a required participation model. Offerors should describe the participation capabilities of their proposed solution, including support for co-located and/or distributed participants and any requirements or limitations associated with remote access.*

27. Data export: Scope item 5 requires export of underlying exercise data in accessible formats for independent research and analysis. Are there preferred or required export formats, or specific analysis tools the exported data must support?

Response: *The Citadel has not established a specific required export format or analysis tool. Offerors should describe the data export capabilities of their proposed solution, including available formats and any tools, interfaces, or limitations associated with exporting data for independent analysis and research.*

☐ Other Change: See below:

RFP 27006 is amended as follows:

Section I – Maximum Contract Period – Estimated (JAN 2006)

The estimated contract start date of October 1, 2026 is deleted.

The contract and implementation period will begin upon execution of the resulting contract following completion of the award process.

Section III – Scope of Work/Specifications – Scenario Development and Modification

The existing language under Item 1, Scenario Development and Modification, is deleted and replaced with the following:

“The platform shall allow authorized users to create, duplicate, modify, and manage scenarios without requiring vendor programming support. Scenario development should support the configuration of elements such as actors, objectives, resources, timelines, maps, decision points, and rules.”

Section III – Scope of Work / Specifications – Technical Support

The existing requirement stating, “Upon request, contractor shall provide technical assistance or service. Such service shall be available within 2 hours following request,” is deleted and replaced with the following:

“Offerors shall describe the technical support services included with their proposed solution, including standard support hours, methods for requesting assistance, response times, escalation procedures, and any additional support options available.”

Section VI – Award Criteria – Evaluation Factors – Proposals (JAN 2006)

The Cost Proposal evaluation factor is revised from 20% to 25%.

The evaluation factors are therefore:

Technical Approach and Compliance with Specifications – 40%

Experience and Qualifications – 20%

Cost Proposal – 25%

Implementation, Training, and Support – 15%

Section VII – Software Licensing Agreements – Single Solicitation (FEB 2015)

The South Carolina Standard Amendment to End User License Agreements referenced in the solicitation is added as an attachment to this amendment.

IMPORTANT NOTICE:

X Contractor is required to acknowledge receipt of this Addendum by signing below and returning a copy with its Offer.

Except as provided herein, all terms and conditions of the Solicitation referenced above remain unchanged and in full force and effect.

SIGNATURE OF PERSON AUTHORIZED TO EXECUTE ON BEHALF OF OFFEROR

Signature:_____

Printed Name & Title:_____

Company Name:_____

Date:_____

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

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

SINGLE AGENCY

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

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

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

Recitals

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

Agreement

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

Definitions

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

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

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

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

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

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

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

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

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

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

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

Attachments

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

1. RELATIONSHIP BETWEEN THIS AGREEMENT AND THE AUTHORIZED EULAs.

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

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

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

2. LIMITED SCOPE OF AGREEMENT.

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

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

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

3. TERM OF AGREEMENT.

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

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

4. LICENSE GRANT.

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

4.2 For each license acquired, the Software may be:

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

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

4.2.3 Reproduced for safekeeping (archives) or backup purposes;

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

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

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

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

5. INTELLECTUAL PROPERTY INFRINGEMENT.

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

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

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

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

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

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

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

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

6. LIMITATION OF RECOVERY.

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

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

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

7. AUDIT.

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

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

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

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

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

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

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

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

12.BANKRUPTCY.

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

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

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

14.GENERAL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

--- end of Piggyback ---

EXHIBIT B
SOFTWARE LIST