



# State of South Carolina

## RECORD OF NEGOTIATIONS

**Solicitation Number**: 5400008582  
**Procurement Officer**: Donna J. Potts, CPPB  
**Phone**: 803-896-6389  
**E-Mail Address**: dpotts@mmo.sc.gov  
**Address**: 1201 Main Street, Suite 600  
 Columbia, SC 29201

**CONTRACT DESCRIPTION:** Data Governance Framework and MDM Solutions

**USING GOVERNMENTAL UNIT:** Statewide Term Contract

**OFFEROR'S NAME AND ADDRESS:** Executive Information Systems, LLC  
 6901 Rockledge Drive, Suite 600  
 PO Box 34076  
 Bethesda, MD 20827-0076

### IMPORTANT NOTICE:

Offeror is required to sign this document and return 1 copy to the procurement officer named above by the following date:  
December 23, 2014.

<b>DESCRIPTION OF NEGOTIATED CHANGES:</b> <span style="float: right;">(attach additional pages if necessary)</span>	
<p>1. Unless modified by this Record of Negotiations, Offeror reaffirms its agreement to be bound by the terms of the solicitation notwithstanding anything to the contrary in its offer. Except as provided herein, all terms and conditions of the Offer and the Solicitation remain unchanged and remain in full force and effect.</p> <p>2. Offeror confirms that the following attachment constitutes documentation regarding the clarification of an offer and modify its proposal:</p> <ul style="list-style-type: none"> <li>• Attachment 1 – Revised Price Proposal</li> <li>• Attachment 2 – Service Level Agreement</li> <li>• Attachment 3 – Legal Clarifications</li> </ul> <p>3. The document titled Exhibit A – Record of Negotiation – Negotiated Changes to Proposal is attached hereto and incorporated by reference. Exhibit A and Executive Information Systems' Proposal shall be read to be consistent and complimentary. Any conflict among these two documents shall be resolved by giving priority to Exhibit A.</p> <p>Please note the Record of Negotiation detail, the development of the process, and provided a contract savings of approximately \$3,300,000 over the life of this contract.</p> <p><u>Except as provided herein, all terms and conditions of the Offer and the Solicitation remain unchanged and remain in full force and effect.</u></p> <p><b>OFFEROR'S CERTIFICATE OF CURRENT COST OR PRICING DATA:</b> The Offeror certifies that, to the best of its knowledge and belief, the cost or pricing data (as defined by 48 C.F.R. 2.101) submitted, either actually or by specific identification in writing, by the Offeror to the Procurement Officer in support of the proposed contract are accurate, complete, and current as of the date this record of negotiations is signed. [<i>Procurement Officer must initial here _____ if Certificate inapplicable to this Record of Negotiations</i>]  <small>(See "Pricing Data – Audit – Inspection" provision.) (Reference § 11-35-1830 &amp; R. 19-445.2120)</small></p>	
<b>SIGNATURE OF PERSON AUTHORIZED TO SUBMIT BINDING OFFER TO ENTER A CONTRACT ON BEHALF OF OFFEROR:</b>  By: <u>R. Patrick Krause</u> <small>(authorized signature)</small>  <u>R. PATRICK KRAUSE</u> <small>(printed name of person signing above)</small>  Its: <u>VICE PRESIDENT</u> <small>(title of person signing above)</small>  Date: <u>DECEMBER 22, 2014</u>	<b>SIGNATURE OF PERSON AUTHORIZED TO APPROVE NEGOTIATED MODIFICATIONS ON BEHALF OF USING GOVERNMENTAL ENTITY:</b>  By: <u>[Signature] for Donna Potts</u> <small>(authorized signature)</small>  <u>Ron Conner</u> <small>(printed name of person signing above)</small>  Its: <u>Procurement Officer</u> <small>(title of person signing above)</small>  Date: <u>December 22, 2014</u>

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**Exhibit A  
Record of Negotiation  
Negotiated Changes to Proposal**

**COST** - The State is required by law to negotiate the business proposal from the highest ranked offeror and seek significant savings while maintaining the offer as it was proposed.

**1) Price Proposal Schedule: Offeror's Price Proposal Schedule is deleted and replaced with the following:**

**EIS response:** EIS and SAS appreciates the State's legal obligation to seek significant savings. The submitted proposal's software costs are discounted 58.67% from GSA list pricing. In our Attachment 1 below, please find that EIS and SAS offer the State an additional 5% software discount and an additional 3.75% annual maintenance discount to show our continued commitment to providing unparalleled value.

In addition to the discounts applied to the software and maintenance fees, SAS is also pleased to offer an additional \$161,667 of cost savings for SAS Federation Server.

The total discounts applied equate to a cost savings of over \$3.3 million over the duration of the project. Further details of cost savings are provided in the following sections.

**Resolution:** EIS will provide GSA rate for each task on hourly rate per team member, software proposed, etc.

**EIS will provide discounted percent (currently 58.67%) off GSA rate on server for Statewide contract pricing schedule.**

Question and Answers to pricing schedule:

- The State would like Executive Information Systems, LLC to provide itemized pricing for each item addressed in its RFP response. In addition, the State would like Executive Information Systems, LLC to provide its best negotiated cost for all items.

**EIS response:** SAS has provided updated itemized pricing for each item addressed in its RFP response in Attachment 1.

**Resolution:** EIS will provide GSA rate for each task on hourly rate per team member, software proposed, etc.

- The State feels the price for annual maintenance and support is too high (about forty percent (40% of software cost)) and would like Executive Information Systems, LLC to provide its best negotiated cost for annual maintenance and support (cost item five-one (5.1)).

**EIS response:** Annual maintenance has been reduced by 3.75%. EIS and SAS' System Maintenance offering includes the remote administration and monitoring of the environment, and installation of upgrades/hotfixes in addition to the software maintenance as described in sections 5a and 5b of the Technical Response, "Implementation of the MDM Tool." Please see Attachment 1 below for revised itemized pricing for Phase Four (IV) –System Maintenance and Support.

**EIS will provide percent off GSA rate for Statewide contract pricing schedule.**

- Each cost item shall note the hourly rate, identify the team member assigned and provide the projected hours to complete the task, etc. In addition: TRAVEL EXPENSES - As provided in this paragraph, the state will reimburse contractor for travel expenses actually incurred (for out-of-state

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travel) for implementation and training services provided at agency locations in the administration of this contract. Travel expenses include only lodging, food, and transportation expenses reasonably incurred and necessary for performance of the contract. Reimbursement is contingent upon submittal of paid receipts on a monthly basis. Contractor will endeavor to minimize travel expenses and to use the most economical mode of transportation. Travel expenses exceeding five thousand (\$5,000) in one month must be pre-approved by the state. Reimbursements are allowed only in accordance with the travel regulations established for State employees. (See <http://gsa.gov/portal/category/100120> Meal costs may not exceed twenty-five (\$25) per day in S.C. and thirty-two (\$32) per day outside S.C.

**EIS response:** EIS and SAS will bring a variety of resources to support the SC DHEC engagement. Throughout the SC DHEC project, EIS and SAS will bring the highest-valued resource to the appropriate tasks. Given the State's request for a fixed price engagement, EIS and SAS will deliver agreed upon requirements regardless of the hours required to complete the implementation. However SAS has provided an estimated blended resource rate for Phase I and Phase 2 of \$250 per hour and \$185 per hour, respectively.

In addition to the blended hourly resource rates, the following table provides an expected allocation of time and effort for the implementation of EIS and SAS' Data Governance and Master Data Management Solution. Please note that estimates below are based on typical percentages and the State's requested functionality.

**EXECUTIVE INFORMATION SYSTEMS, LLC'S  
INFORMATION TECHNOLOGY LABOR CATEGORY  
DESCRIPTIONS**

	GSA Title	Description	GSA Rate
EXP-GSA	Expert Consultant	Expert knowledge of SAS products and the proven ability to create solutions in complex environments. Provides global counsel on the application of SAS products into a customer environment. Vast knowledge of open and proprietary systems aids in the selection, design, and implementation of a complete SAS software solution. Minimum years of experience for performance of this service is 12 years. Minimum educational requirement is a bachelor's degree or directly related work experience and/or competencies may be considered in place of the above requirements.	\$250.00
PSA-GSA	Principal Solutions Architect	Provides senior leadership and consulting for SAS technical, architectural, analytical, government, and business solutions. May provide senior program and project management or subject matter expertise. Provides strategic SAS consulting services, including assessment, solution development, and implementation. Minimum 10 years of experience for performance of these services. Minimum educational requirement is a bachelor's degree or directly related work experience and/or competencies may be considered in place of the above requirements.	\$240.00

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PR-GSA	Principal Consultant	Provides specialized subject matter expertise, guidance, and project direction in one or more of the following areas: compliance consultation and legislative and regulatory issues; review and improvement to planning and budget submission processes; Congressional consultation in support of agency strategic and performance plans; data warehousing and data mining including predictive modeling; and decision technology application at the enterprise and group level. Minimum years of experience for performance of this service is 10 years. Minimum educational requirement is a bachelor's degree or directly related work experience and/or competencies may be considered in place of the above requirements.	\$210.00
MG-GSA	Managing Consultant	Provides project management and high level technical direction. Supports the definition and implementation of planning processes and systems at the enterprise or group level including both strategic and operational activities. Manages and coordinates project activities and serves as the technical lead and liaison for the client. Minimum years of experience for performance of this service is 8 years. Minimum educational requirement is a bachelor's degree or directly related work experience and/or competencies may be considered in place of the above requirements.	\$180.00
SR-GSA	Senior Systems Consultant	Provides direction, facilitation, planning analysis, performance measurement analysis, and technical analysis and design for executive information and decision support technologies in support of enterprise or group level planning. Serves as the technical and team lead for the project. Minimum years of experience for performance of this service is 4 years. Minimum educational requirement is a bachelor's degree or directly related work experience and/or competencies may be considered in place of the above requirements.	\$160.00

*\*Since the project is fixed-price per the State's request, the rate provide is a blended rate to accommodate for variances in hourly rates based on resource skill levels required throughout the project. All change orders will be billed at a rate of \$200 per hour.*

**Resolution: EIS will provide GSA rate for each task on hourly rate per team member, software proposed, etc.**

**EIS will provide discounted percent off server for Statewide contract pricing schedule.**

Negotiated invoicing schedule:

**Invoicing schedule:**

EIS request for State's consideration:

1. **Invoicing and payment terms** - If EIS is awarded the contract, would DHEC consider a lump sum invoice with payment terms spread over first year of the contract?

**DHEC's response:** Please explain in more detail what you are requesting.

**Resolution: DHEC will issue a purchase order for the total cost for the first year of the contract. EIS will invoice quarterly. DHEC agreed to pay quarterly. Annual maintenance will be invoiced and paid annually.**

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**EIS acknowledges that other using governmental units may or may not accept this payment structure and will negotiate payment terms prior to purchase order issuance.**

- 2) **The State would like Executive Information Systems, LLC to provide its modification to its data steward framework as follows:**
- Update configuration of data steward's user interface to display source of cell data value

**EIS response:** EIS will direct SAS to configure the data steward form view in its Master Data Management Solution to display the source system of each cell data value within the master record as part of this implementation. SAS will complete this configuration during Phase II.

**Resolution:** State is in agreement with this response.

- 3) **The State would like Executive Information Systems, LLC to include:**
- Software licensing and maintenance for Federation Server

**EIS response:** SAS Federation Server is currently licensed by SC DHEC as part of the Certificate of Need (CON) and Health Inspections solution hosted by SAS in Cary, NC which runs through 31MAY2015. SC DHEC may opt to license and install SAS Federation onsite at no additional charge. This results in a cost savings for SC DHEC of approximately \$161,667.

**Resolution:** EIS will provide discounted percent off GSA rate and applicable pricing for software proposed, etc.

**Maintenance cost is included in the revised price proposal, phase IV, 5.1.**

**EIS will provide discounted percent off GSA rate for server for Statewide contract pricing schedule.**

- Software licensing and maintenance for SAS Social Media tool

**EIS response:** The Data Governance and Master Data Management Solution that EIS and SAS are offering in response to this RFP includes the capability to connect to social media platforms that offer application programming interfaces (API's) as additional data sources; however, connecting to and integrating these data sources were not scoped in EIS and SAS' response. Should the State desire to import and integrate social media data, leveraging the capabilities of the SAS Master Data Management Solution in the implementation plan, EIS and SAS will provide a time and materials or fixed-price proposal (State's preference) to import and integrate data sources from social media platforms with API's.

Beyond SAS' Master Data Management Solution, SAS offers Social Media Analytics as a solution to help the State leverage and perform advanced analytics on social media data. Should the State desire to purchase SAS' Social Media Analytics solution to integrate and analyze data from social media as part of this RFP response, the following license fees apply:

Item	Quantity	Unit Price	Extended Price
SAS Social Media Analytics	1	\$425,000	\$425,000
SAS Social Media Analytics – Maintenance and Support	6	\$150,000	\$900,000

SAS Social Media Analytics requires implementation services, which will need to be determined by a statement of work. Please note that SAS Social Media Analytics is a cloud-based solution, and is only offered on a SAS-hosted basis at this time.

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**Resolution: EIS needs to provide more defined pricing structure, i.e. standard GSA rate card for the services to implement.**

**EIS will provide pricing information for social media tool as a value added consideration.**

4) **The State would like Executive Information Systems, LLC to provide its:**

- Specific project teams resumes for this contract

**EIS response: Project team resumes were provided in EIS/SAS response in attachment 2 and is marked confidential. Accepted by the State.**

**EIS noted - Additional implementation resources may be assigned based on 1.3 Signoff on Solution Design Documentation.**

**Resolution: States response: these will have to be reviewed and approved by the State prior to new assignment by EIS.**

5) **The State would like Executive Information Systems, LLC to confirm its understanding of the following terms and conditions of the solicitation in section VII. TERMS AND CONDITIONS -- A. GENERAL on page forty-four (44):**

**CONTRACT DOCUMENTS and ORDER OF PRECEDENCE (JAN 2006)**

(a) Any contract resulting from this solicitation shall consist of the following documents: (1) a Record of Negotiations, if any, executed by you and the Procurement Officer, (2) documentation regarding the clarification of an offer [e.g., 11-35-1520(8) or 11-35-1530(6)], if applicable, (3) the solicitation, as amended, (4) modifications, if any, to your offer, if accepted by the Procurement Officer, (5) your offer, (6) any statement reflecting the state's final acceptance (a/k/a "award"), and (7) purchase orders. These documents shall be read to be consistent and complimentary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. (b) The terms and conditions of documents (1) through (6) above shall apply notwithstanding any additional or different terms and conditions in either (i) a purchase order or other instrument submitted by the State or (ii) any invoice or other document submitted by Contractor. Except as otherwise allowed herein, the terms and conditions of all such documents shall be void and of no effect. (c) No contract, license, or other agreement containing contractual terms and conditions will be signed by any Using Governmental Unit. Any document signed or otherwise agreed to by persons other than the Procurement Officer shall be void and of no effect. [07-7A015-1]

**Additional Agreements - The State will not be signing additional agreements with a third party provider under this contract. The contract developed from this solicitation will be between the State and Executive Information Systems, LLC only. Please reference "Contract Document and Order of Precedence" clause noted above. No additional contracts with any Third Party providers are necessary. The entire contract will be exclusively between the State and Executive Information Systems, LLC.**

**Resolution: EIS acknowledges and accepts.**

Offeror's proposal is amended to include the following:

11). **Additional request from the State: Provide pricing for value added items identified in EIS/SAS RFP response.**

- 1) Please find a link to the GSA Rate Card here: <http://www.execinfosys.com/Service%20Rates.htm>

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- 2) EIS / SAS will provide an on-site Program Director for \$250 per hour
- 3) The SAS Fraud Framework software license is \$1,500,000 per agency. Implementation services will be based on the modified GSA service rates located in the table attached.
- 4) The SAS Prescription Drug Monitoring Solution is \$900,000. This cost includes software and implementation services for SC DHEC only.
- 5) The SAS Disaster Recovery Offering is \$480,000 per year.

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# Attachment 1 – F. Price Proposal (Revised)

On the following pages, please find SAS' F. Price Proposal (Revised).

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## F. Price Proposal (Revised)

**The Offeror must submit their Price Proposal as a separate document. Offerors shall submit the total of all costs of ownership (line items of pricing – see Section VIII. Bidding Schedule/Price Proposal) to the State including annual maintenance and licenses fees for the potential seven (7) year contract period.**

- Offeror must provide a complete price breakdown of costs per year for an MDM solution and any required third-party services or software packages required for services to function correctly to support DHEC's Data Governance framework and enterprise system domain. Failure to provide a breakdown per year will result in your offer being deemed non-responsive.**

### Breakdown of Costs Per Year

Year	Annual Fee	Discount from Original Proposal
Year 1	\$3,199,247*	7.3%
Year 2	\$489,939**	N/A
Year 3	\$489,939	N/A
Year 4	\$489,939	N/A
Year 5	\$489,939	N/A
Year 6	\$489,939	N/A
Year 7	\$489,939	N/A

\*SAS has included the 20 days of consulting in the Year 1 Annual Fee; however, SC DHEC can utilize these days at their discretion.

\*\*Please note that for Year 2 through Year 7, the Maintenance Cost of SAS Federation Server has been included at a 5% discount along with a 5% discount on all other included software.

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2. Business/Cost Proposal shall be provided in Section VIII. Bidding Schedule.

## VIII. PRICE PROPOSAL

### Phase One (I) – Policy, Process, and Inventory Definition

Item	Quantity	Unit of Measure	Unit Price	Extended Price
<b>1. Policy, Process, and Inventory Definition. Includes:</b>				
1.1 – Business Processes for DG and Management (Data Management Masterplan)	1	EACH	\$278,400	\$278,400
1.2 – User Requirements Specification Complete	1	EACH	\$185,600	\$185,600
1.3 – Signoff on Solution Design Documentation	1	EACH	\$96,300	\$96,300
1.4 Architecture evaluation in preparation for Phase 2 System Implementation	1	EACH	\$96,300	\$96,300
Product Catg.: 91832 - Consulting Services				
Item Description: Develop an Agency Data Governance and Management Policy				
Tendering Text: The analysis and the documentation to be delivered should be bid as a fixed price deliverable inclusive of travel and Requirements Traceability Matrix preparation. Price should be inclusive of any travel expenses. Invoicing should be done monthly for completed/accepted sessions. The SCDHEC reserves the right to cancel the remaining contract items upon unsatisfactory performance in this phase one task.				

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Milestone	Hour Range of Effort	Allocation
1.1 – Business Processes for DG and Management (Data Management Masterplan)	995 – 1160*	\$262,640
1.2 – User Requirements Specification Complete	663 – 773*	\$196,980
1.3 – Signoff on Solution Design Documentation	344 – 401*	\$98,490
1.4 Architecture evaluation in preparation for Phase 2 System Implementation	344 – 401*	\$98,490

### Phase Two (II) – System Implementation

Item	Quantity	Unit of Measure	Unit Price	Extended Price	Discount from Original Proposal
2.1 – Office Analytics	1	EACH	\$168,537	\$168,537	5%
2.2 – SAS Analytics Pro	1	EACH	\$61,512	\$61,512	5%
2.3 – SAS Enterprise Miner	1	EACH	\$85,642	\$85,642	5%
2.4 – SAS Text Miner	1	EACH	\$103,341	\$103,341	5%
2.5 – SAS Visual Analytics	1	EACH	\$57,456	\$57,456	5%
2.6 – SAS	1	EACH	\$28,899	\$28,899	5%

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Visual Statistics					
2.7 – SAS ACCESS Engines	5	EACH	\$1,995	\$9,975	5%
2.8 – SAS Master Data Management Advanced	1	EACH	\$452,715	\$452,715	5%
2.9 – SAS Data Management Enrichment	1	EACH	\$38,570	\$38,570	5%
2.10 – Source Code ESCROW	1	EACH	\$1,000	\$1,000	0%
2.11 SAS Federation Server	1	EACH	\$0	\$0	N/A
<p>Tendering Text: Offeror must provide a complete price breakdown of costs for an MDM software solution to support DHEC's Data Governance Framework. Failure to provide a breakdown will result in your offer being deemed non-responsive. This line item should reflect the total costs for the initial software purchase. For purposes of the unit price, assume DHEC agency wide use of the product set. (500 primary users with up to 1000 secondary (read only) users.</p>					

Item	Quantity	Unit of Measure	Unit Price	Extended Price
3. Implementation and Configuration of MDM and Analytics. Includes:	1	EACH	\$1,445,000	\$1,445,000

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3.1 – Installation and Configuration				
3.2 – Entity Resolution				
3.3 – User Acceptance Testing (UAT)				
3.4 – Go Live				
Product Catg.: 91832 - Consulting Services				
Item Description: System Implementation and Configuration				
Tendering Text: Implementation of the MDM tool with the current enterprise shared data portfolio on DHEC's internal infrastructure. Configuration of the MDM tool Analytics for Shared DHEC data. Invoicing should be done monthly for completed/accepted sessions. The SCDHEC reserves the right to cancel the remaining contract items upon unsatisfactory performance in this phase one task.				

Milestone	Hour Range of Effort	Allocation
3.1 – Installation and Configuration	725 – 900*	\$144,500
3.2 – Entity Resolution	5100 – 6250*	\$1,011,500
3.3 – User Acceptance Testing	1100 – 1300*	\$216,750
3.4 – Go Live	365-400*	\$72,250

### Phase Three (III) – Post Implementation Support

Item	Quantity	Unit of Measure	Unit Price	Extended Price
4.1 – SAS Platform Administration: Fast Track	1	EACH	\$18,000	\$18,000
4.2 – SAS Data Integration	1	EACH	\$18,000	\$18,000




Studio: Fast Track				
4.3 – SAS Analytics Training	1	EACH	\$18,000	\$18,000
4.4 – SAS Visual Analytics: Fast Track	1	EACH	\$18,000	\$18,000
4.5 – SAS Master Data Management	1	EACH	\$18,000	\$18,000
Product Catg.: 92045 – Training				
Item Description: Training courses provided on-site for end user(s).				
Tendering Text: Offeror must provide a complete price breakdown of costs associated with on-site training for end users. Price should be inclusive of any travel expenses.				

### Phase Four (IV) –System Maintenance And Support

Item	Quantity	Unit of Measure	Unit Price	Extended Price	Discount from Original Proposal
5.1 – System Maintenance and Support	6	Year	\$489,939	\$2,939,634	3.75% (Includes Maintenance for SAS Federation Server)
5.2 – Source Code ESCROW	6	Year	\$1,000	\$6,000	0%
Product Catg.: 92045 - Software Maintenance for one (1) year.					

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Item Description: Software maintenance for MDM software system.

Tendering Text: Offeror must provide a complete price breakdown of costs associated with annual software maintenance which will apply to years 2 through 7 of the contract.

Item	Quantity	Unit of Measure	Unit Price	Extended Price
6.1	20	Days	\$2,500	\$50,000
Product Catg.: 92045 - Software Maintenance/Support onsite visit for upgrades and other services as needed				
Item Description: MDM onsite support as requested by DHEC during the life of the contract. Provide daily rate.				
Tendering Text: Offeror must provide a daily rate for onsite visits if required. For the purposes of evaluation for this solicitation, calculations will be made using an estimate of 20 days during the life of the contract. Actual number of days used to be based on actual need. Reimbursement for travel expenses will be made in accordance with rates and regulations established for State employee travel and in accordance with guidelines established by the State.				

**3. Consulting services on a per hour basis after contract award for one (1) year.**

The SAS consulting services per hour fee is \$312.50, which includes travel fees.

**G. Additional Services**

EIS and SAS will work with SC DHEC to determine whether any of the additional services described in our Technical proposal in Section G. Additional Services, are relevant to future phases. During these discussions, EIS and SAS can gather information to provide related pricing.

**MINORITY PARTICIPATION (JAN 2006)**

Is the bidder a South Carolina Certified Minority Business?  Yes  No

Is the bidder a Minority Business certified by another governmental entity?  Yes  No

If so, please list the certifying governmental entity: \_\_\_\_\_

Will any of the work under this contract be performed by a SC certified Minority Business as a subcontractor?  Yes  No

If so, what percentage of the total value of the contract will be performed by a SC certified Minority Business as a subcontractor? \_\_\_\_\_

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Will any of the work under this contract be performed by a minority business certified by another governmental entity as a subcontractor?  Yes  No

If so, what percentage of the total value of the contract will be performed by a minority business certified by another governmental entity as a subcontractor? \_\_\_\_\_

If a certified Minority Business is participating in this contract, please indicate all categories for which the Business is certified:

Traditional minority

Traditional minority, but female

Women (Caucasian females)

Hispanic minorities

DOT referral (Traditional minority)

DOT referral (Caucasian female)

Temporary certification

SBA 8 (a) certification referral

Other minorities (Native American, Asian, etc.)

(If more than one minority contractor will be utilized in the performance of this contract, please provide the information above for each minority business.)

For a list of certified minority firms, please consult the Minority Business Directory, which is available at the following URL: <http://www.govoepp.state.sc.us/osmba/>

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# Attachment 2

## Form of Service Level Agreement

### Service Level Agreement ("Agreement")

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State of South Carolina  
(through Information

Technology Management Office) 1201 MIN St., Ste. 600 Columbia, SC 29201 ("Customer")  
Customer name Street address City, State, ZIP

In exchange for Customer paying the charges and any applicable taxes arising under this Agreement, EIS agrees to provide the services described below, which include both Remote Managed Services ("RMS") and implementation services (the "Implementation Services" and together with the RMS, the "Services") including, if applicable any deliverables ("Deliverables") and a limited license to any Deliverables consisting of computer code and/or documentation ("Work Product"). Work Product is not considered to be information provided to the State and shall not be owned exclusively by the Customer or the State. The parties agree that EIS is authorized to subcontract all of the Services to SAS Institute Inc. ("SAS"). This Agreement is effective upon the last dated signature below ("Effective Date") but governs Services performed prior to the Effective Date.

#### Section A: Provisions Applicable to RMS:

1. Definitions. Capitalized terms have the meanings contained in this Section 1 or within the text throughout this Agreement.
  - 1.1. Application Monitoring Software means software specified by EIS, or its subcontractor SAS, required to collect data to verify the availability and performance of the System.
  - 1.2. Customer Materials means all data, authentication credentials, software, or other materials, including, but not limited to, Prerequisite Software and Application Monitoring Software, but excluding the Software, required for use in the System.
  - 1.3. Customer Marks means Customer's trademarks, service marks or trade names that are reproduced or displayed in the System.
  - 1.4. Issue Tracking System means the system specified by EIS or its subcontractor SAS used to report, track and monitor issues associated with the Software and/or System.
  - 1.5. Prerequisite Software means any third party software required for use with the Software as defined at <http://support.sas.com/resources/thirdpartysupport/index.html>.
  - 1.6. Software means the SAS software licensed by EIS to Customer as described on Exhibit 2 hereto.
  - 1.7. System means Customer's hardware, network and associated operating system software installed on Customer's premises as they operate together to provide the environment(s) where the Software operates.
  - 1.8. System Outage – means any period of unavailability of the System.
  - 1.9. Term shall be as described in Section A. 10 hereof.
2. Remote Managed Services. During the Term, EIS will perform Remote Managed Services as described below for the environment(s) licensed as described on Exhibit 2 hereto. For the avoidance of doubt, Remote Managed Services does not include services for the support of hardware, operating system or any other Customer infrastructure. Unless otherwise agreed by the parties, all Remote Managed Services will be performed from EIS or its subcontractor's facilities remote from Customer premises.
3. SAS Responsibilities.

EIS will perform the following:

  - 3.1. EIS will perform initial remote installation and configuration of the Software on the System using a mutually agreed upon installation and configuration method.
  - 3.2. EIS will provide a pre-installation checklist to the Customer.
  - 3.3. EIS will provide remote day-to-day operational support for the Software.

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- 3.4. EIS will use the Application Monitoring Software to monitor the Software and System and collect metrics for service level management, event management, incident management, problem management and change management.
- 3.5. EIS will perform remote installation of Software hot fixes provided by SAS' Technical Support division applicable to the then-current release of the Software installed on the System. Installation of new releases of the Software may require additional services subject to execution of a separate services agreement between the parties and payment by Customer of additional fees. Any data migration or customization services required as the result of installation of Software hot fixes or new releases are not included as part of Remote Managed Services and, if performed, will be provided as additional services subject to execution of a separate services agreement between the parties and payment by Customer of additional fees. Any such additional services will be managed through a mutually agreed upon change management process.

4. Customer Responsibilities.

4.1. Facilities and Personnel.

- 4.1.1. Customer will provide, at no charge to EIS, the required System to support the Software as defined in the Software system requirements document or specification provided by EIS or its subcontractor.
- 4.1.2. Customer will provide, at no charge to EIS, adequate facilities, personnel, resources and equipment to support the Software that meet or exceed the environmental and operational instructions provided by the applicable equipment manufacturer.
- 4.1.3. Customer will conduct periodic security scans of the System and will take other reasonable security precautions to protect against the introduction of malware and computer viruses and to prevent unauthorized access to and usage of the System.
- 4.1.4. Customer will provide, at no charge to EIS, a Windows based terminal server for connection into the System. Customer must install related third party tools, or enable EIS to install such third party tools, including, but not limited, Putty, Winscp, or xWindows server and any other third party tools as instructed by EIS. The terminal server must provide access to EIS via virtual private network ("VPN") tunnel to enable EIS to provide Remote Managed Services for the Software including access from Port 80 and 443 to EIS, access from EIS to terminal server Port 3389 and, for Linux based installations, access from EIS to Port 22.
- 4.1.5. Customer will enable necessary ports to facilitate Application Monitoring Software as specified by EIS in the installation requirements.
- 4.1.6. Customer will make available to EIS the initial System environment within thirty (30) days of the date Customer signs this Agreement. Customer will make available to EIS any additional System environment(s) on a schedule to be mutually agreed upon between Customer and EIS. Any delay by Customer in providing any System environment may result in work stoppage, resource redeployment and unplanned delays, none of which shall be considered a breach by EIS of the Agreement. Any such delay may also result in additional fees payable by Customer subject to the Changes clause on page 47 of Solicitation 5400008582.
- 4.1.7. Customer will provide, at no charge to EIS, adequate internal System space for continuous operation of the Software.
- 4.1.8. Customer will provide, at no charge to EIS, adequate connectivity to provide direct, dedicated, persistent site to site VPN ("Site-to-Site VPN") access as approved by EIS enabling EIS to access the System to perform the Remote Managed Services in accordance with EIS or its subcontractor's VPN policies and standards.
- 4.1.9. Customer will acquire a license for and will perform installation and configuration of any required Prerequisite Software and Application Monitoring Software.
- 4.1.10. Customer will download and make available to EIS the SAS Software Depot to enable EIS to perform remote installation of Software on the System.
- 4.1.11. Customer will download, upload or transfer files either to the System or to EIS that are required for installing hot fixes, supporting installation validation and reviewing System and Software logs for problem resolution purposes.

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- 4.1.12. Customer will use the Issue Tracking System to report any issues associated with the Software or System.
- 4.1.13. Customer will provide to EIS System logging or reporting diagnostic data, and network diagnostic data, to enable EIS to review System activity and performance.
- 4.1.14. Customer will provide reasonable access to Customer's subject matter experts.
- 4.1.15. Customer will provide all necessary storage to support the data on in the System.

4.2. IT Service Management. EIS and Customer will mutually agree upon processes to support event management, incident management, problem management and change management. Customer agrees not to make changes to the System or the Software, including but not limited to changes to firmware or system configuration or installation of hotfixes or updates, without prior agreement from EIS or its subcontractor SAS via the established change management process. Changes to the System or Software without prior agreement from EIS or its subcontractor SAS may result in additional fees and may lead to outages, and unplanned delays which in no event shall be considered a breach by EIS of the Agreement.

4.3. Backups. Customer will be responsible for all backups of the System, Software and Customer Materials on a regular basis. Customer will provide EIS with access to such back-ups as needed to enable EIS to perform the Remote Managed Services. Customer will undertake appropriate backup, removal, verification and protection of any Software programs, databases and removable storage media.

4.4. Customer Materials.

- 4.4.1. Customer will be responsible for: (a) providing EIS or its subcontractor, in a mutually agreed upon format, all Customer Materials; (b) providing EIS or its subcontractor all data sources and business rules necessary for input into the System; and (c) providing any Customer Marks that are to be reproduced or displayed in the System.
- 4.4.2. Customer grants EIS a non-transferable, non-exclusive, royalty-free license to use the Customer Materials and Customer Marks solely for the purpose of performing the Remote Managed Services. Where the Customer Materials include software or other materials licensed by Customer from a third party, Customer must obtain: (a) a license from the provider of the software or materials for EIS and its subcontractor SAS to use such software or materials to perform the Remote Managed Services, and (b) prior written approval from EIS or its subcontractor SAS before such software or materials may be used in conjunction with the System. Title to Customer Materials and Customer Marks remains with Customer or its licensors at all times.
- 4.4.3. If the Customer Materials require EIS or its subcontractor SAS to qualify the System, EIS or its subcontractor must first approve such qualification activities in writing prior to using the applicable Customer Materials with the System. Customer will direct each provider of such Customer Materials to provide to EIS or its subcontractor, upon request from EIS or its subcontractor or Customer, appropriate information to enable EIS to qualify the System as integrated with the Customer Materials. Additional fees may apply for any such qualification of Customer Materials, processes and related activities subject to the Changes clause on page 47 of Solicitation 5400008582.
- 4.4.4. EIS will have no obligation to provide any support, maintenance or upgrades pertaining to Customer Materials. Customer is solely responsible for providing or arranging for the provision of all such services, including ongoing qualification. Customer is responsible for providing or arranging for the provision of all upgrades for Customer Materials, including up-to-date virus protections, and will coordinate the timing of same with EIS or its subcontractor. No warranties of indemnities made by EIS in the Agreement will apply to Customer Materials.
- 4.4.5. If EIS or its subcontractor SAS is unable to process Customer Materials as a result of the unavailability of the Customer Materials, EIS or its subcontractor will notify Customer and Customer will make available to EIS or its subcontractor the Customer Materials or the corrected Customer Materials, as applicable. Unavailability of Customer Materials includes, but is not limited to: (a) Customer's failure to make available the Customer Materials to EIS or its subcontractor in a timely manner; (b) Customer's providing corrupt, improperly formatted,

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incomplete or nonfunctional Customer Materials; or (c) Customer's altering the Customer Materials. EIS or its subcontractor will process the Customer Materials or corrected Customer Materials as soon as commercially practicable after they are made available, and will process any subsequently available Customer Materials sequentially thereafter, as applicable. EIS or its subcontractor will notify Customer once any delays in the availability of the Software or System related to Customer Materials are resolved. Any unavailability of the System or the Software resulting from Customer Materials shall not be considered a breach by EIS of the Agreement.

4.4.6. EIS, through its subcontractor SAS, reserves the right to disengage and take Customer Materials offline in the event of any emergency situation, or any threat or perceived threat to the System related to the Customer Materials. Any resulting adverse performance impact to the System attributable to any such disengagement shall not be considered a breach by EIS of the Agreement.

4.5. Customer Representation.

4.5.1. Intellectual Property Representation. Customer represents: (a) that it has the right to license the Customer Materials and the Customer Marks to EIS; (b) it has obtained from the applicable provider of the Customer Materials the right for EIS to use the Customer Materials as required for the performance of the Remote Managed Services; and (c) that Customer's use of the Customer Materials complies with all applicable license terms, terms of use and other usage terms as set forth by the providers of such materials.

4.5.2. Compliance Representation. Customer represents that the publication, transmission, and receipt of all Customer Materials complies with all applicable local, state, and federal laws and regulations, including, without limitation, laws relating to trademarks, copyrights, defamation, consumer protection, personal privacy, and false or deceptive trade practices.

5. System Access Privileges. Customer will grant EIS or its subcontractor remote access to the System as needed to enable EIS or its subcontractor to perform the Remote Managed Services. Customer will also grant EIS or its subcontractor reasonable on-site access to Customer's data center and System as may be necessary to enable EIS or its subcontractor, as subcontractor to EIS, to perform any Remote Managed Services which cannot be performed remotely. Where required, Customer will provide elevated access permission, including, but are not limited to, to root privileges for mutually agreed upon commands.

6. Maintenance Outages.

6.1. System Maintenance Outage. Subject at all times to Section 4.2 (IT Service Management), Customer may conduct system maintenance services that will result in System Outage ("System Maintenance Outage."). The System will be unavailable to Customer and to EIS or its subcontractor during a System Maintenance Outage. Customer will use reasonable efforts to notify EIS and its subcontractor SAS at least seven (7) days prior to a planned System Maintenance Outage.

6.2. Facility Maintenance Outage. Customer or EIS, through its subcontractor SAS, may conduct locally planned or globally planned routine or preventative facility maintenance services at its facilities that may result in System Outage ("Facility Maintenance Outage.") The System may be unavailable to Customer and to EIS or its subcontractor during a Facility Maintenance Outage. Each party will use reasonable efforts to notify the other party and EIS or its subcontractor at least seven (7) days prior to a planned Facility Maintenance Outage affecting the System.

6.3. Software Maintenance Outage. EIS will conduct Software maintenance that may result in System Outage and/or Software Outage ("Software Maintenance Outage"). EIS, through its subcontractor SAS, will use reasonable efforts to notify Customer at least seven (7) days prior to any planned Software maintenance that may result in a Software Maintenance Outage.

7. Force Majeure. Neither party shall be liable to the other party for any failure or delay in performance caused by reasons beyond its reasonable control including, but not limited to, restrictions of law, regulations, orders or other governmental directives, labor disputes, acts of God, third-party mechanical or other equipment breakdowns, fire, explosions, fiber optic cable cuts, interruption or failure of telecommunication or digital transmission links, Internet failures or delays, cyber-attacks on information or information systems, storms or other similar events.

8. Disclaimer of Actions Caused by, or Under the Control of, Customer or Third Parties. Neither EIS nor SAS exercise control over the flow of information to or from the System, SAS' network, or other portions of the Internet. Such flow depends in large part on the performance of Internet services provided or

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controlled by Customer or third parties. At times, actions or inactions of such third parties can impair or disrupt connections to the Internet or portions of such connections. Although at all times during the Term EIS will use commercially reasonable efforts to take all actions it deems appropriate to remedy and avoid such events, EIS cannot guarantee that such events will not occur. **ACCORDINGLY, EIS DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO ALL SUCH EVENTS AND ANY OTHER ACTIONS OR INACTIONS CAUSED BY OR UNDER THE CONTROL OF CUSTOMER OR A THIRD PARTY.**

9. Service Level Agreement for Remote Managed Services. The Service Level Agreement for the Remote Managed Services is described in Exhibit 1 which is attached hereto and incorporated herein.
10. Term of RMS. The RMS shall be provided during the initial one year license term of the Software and during any continued one year annual period Customer elects to pay for the maintenance renewal for the Software and RMS. Customer may not receive RMS if it fails to renew maintenance of the Software. If Customer fails to pay for any maintenance renewal period during the term of the license to the Software, RMS shall automatically terminate and shall not be provided in the future if Customer elects to reinstate maintenance unless mutually agreed to by the parties. EIS at its option may determine not to renew the RMS for any subsequent annual renewal period and will provide notice of such at least thirty (30) days prior to any renewal period.

## **Section B. Provisions Applicable to Implementation Services:**

### **1. Services and Ownership of Work Product**

EIS grants Customer a nonexclusive, nontransferable, non-assignable, royalty-free license to use any Work Product only with the SAS software ("Software") with which the Work Product operates and only for as long as Customer maintains a license for such Software ("License"). Ownership of the Work Product, including any intellectual property embodied therein, and any techniques, skills, concepts or know-how that are utilized or developed while performing the Implementation Services remains with EIS or its subcontractor SAS. Nothing herein shall be construed as granting Customer a license to any SAS Software, which shall be licensed separately pursuant to a license agreement between EIS and Customer.

### **2. Description of Services and Acceptance Process**

- 2.1 Description of Implementation Services. EIS will provide the Implementation Services as more fully described below. The Implementation Services will be provided on a Fixed Price basis. As used herein, the term "Fixed Price" means a pre-defined project model where EIS provides Services for a set fee within the estimated time period identified below. The Implementation Services will not include continued support or maintenance of any Deliverable or Work Product unless such support or maintenance is detailed below.

Description of Implementation Services: As set forth in EIS' response to subject to Solicitation 5400008582

- 2.2 Acceptance Process. Each party agrees to respond to the other in a timely fashion when acceptance of a Deliverable is pending. After delivery, Customer will accept or reject a Deliverable within ten (10) business days. Failure to reject a Deliverable within this time frame will constitute acceptance of the Deliverable. Notice of Customer's rejection of the Deliverable shall be provided to EIS in writing and shall specify the nature and scope of the deficiencies. In the case of rejection of the Deliverable, the parties agree to adhere to the following timeframes whenever reasonably possible in order to meet the schedule set forth above: EIS will use reasonable efforts to respond to Customer within five (5) business days after receipt of the rejection notice describing the manner and timeframe in which EIS proposes to correct any deficiencies, or by actually correcting the deficiencies. In the former case, Customer will use reasonable efforts to accept EIS' proposal for correcting any deficiencies within five (5) business days after receipt of EIS' proposal. Upon EIS' delivery of the corrected Deliverable, Customer will use reasonable efforts to accept the Deliverable within five (5) business days. If Customer does not accept a Deliverable or EIS' proposal for correcting any deficiencies, EIS may terminate the Implementation Service.

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3. Intentionally Omitted

4. Intentionally Omitted

5. Intentionally Omitted

**Section C. General Provisions Applicable to All Services.**

1. Intentionally Omitted

2. Intentionally Omitted

3. Warranty; Disclaimer

With respect to the Implementation Services, EIS warrants it has the right to license any Work Product to the Customer. The exclusive remedy for breach of this warranty is set forth in Section C.4. EIS further warrants that the Implementation Services shall be provided by qualified personnel and in accordance with the requirements set forth in this Agreement. The exclusive remedy for breach of this warranty is refund of fees paid for the Implementation Services at issue. The foregoing warranties to not apply to the RMS. Any warranty provided with respect to RMS are set forth on Exhibit 1 hereto.

3.1 **EIS disclaims all other warranties, express or implied, with respect to the Work Product or the Services provided hereunder or the results obtained, including without limitation any implied warranties or conditions of merchantability or fitness for a particular purpose and those arising by statute or otherwise in law or from a course of dealing.**

4. Indemnification.

The intellectual property indemnification obligation set forth in Section 5 of the State's EULA Amendment included in the contract resulting from Solicitation 5400008582 applies to the Services and Work Product hereunder.

5. Intentionally Omitted

6. General Terms; Complete Agreement

6.1 EIS' and SAS' employees are acting as employee of an independent contractor and not as Customer's employees.

6.2 Force Majeure. Neither party shall be liable to the other party for any failure or delay in performance caused by reasons beyond its reasonable control including, but not limited to, restrictions of law, regulations, orders or other governmental directives, labor disputes, acts of God, third-party mechanical or other equipment breakdowns, fire, explosions, fiber optic cable cuts, interruption or failure of telecommunication or digital transmission links, Internet failures or delays, cyber attacks on information or information systems, storms or other similar events.

6.3 Intentionally Omitted.

6.4 This Agreement can be modified only in an amendment that specifically references this Agreement and is signed by an authorized signatory of the parties.

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**Exhibit 1**  
**To**  
**Service Level Agreement for Remote Managed Services**

1. Definitions.

1.1. Business Day means 9:00 AM to 5:00 PM, Eastern United States time, each of Monday, Tuesday, Wednesday, Thursday, and Friday, except when any such day occurs on a holiday observed by EIS or its subcontractor or Customer.

1.2. Monthly Software Availability Percentage means a measurement of Software availability on the System expressed as a percentage and calculated as follows:

$$\frac{(\text{Total Monthly Hours} - \text{System Outage} - \text{Software Outage})}{(\text{Total Monthly Hours} - \text{System Outage})} = \text{Monthly Software Availability Percentage}$$

1.3. Operational Incident means an unplanned interruption or reduction in Software in a production environment. Operational Incidents include only those incidents reported by Users using the Issue Tracking System.

1.4. Operational Incident Response Time means the amount of time between when an Operational Incident is reported by Customer in the Issue Tracking System for a production environment and when that Operational Incident is marked or commented in the Issue Tracking System as In Progress by EIS or its subcontractor.

1.5. Planned Outage means any outage or unavailability of the Software and/or System resulting from a System Maintenance Outage, Facility Maintenance Outage or Software Maintenance Outage or any other outage conducted at the mutual agreement of the parties.

1.6. Service Credit means an amount, calculated as set forth in Section 3.2 (Calculation of Service Credits) below, payable by EIS to Customer as a result of EIS' breach of the Service Level Warranty.

1.7. Software Outage - means any period of unavailability of the Software, excluding any such period of unavailability due to System Outage, a Planned Outage, Customer Materials or any outage beyond EIS' reasonable control.

2. Service Level Agreement for Remote Managed Services.

2.1. Operational Incidents. Customer will serve as first line response for all User reported Operational Incidents. Customer will promptly notify EIS or its subcontractor using the Issue Tracking System in the event of an Operational Incident Customer is unable to resolve and will provide all relevant information about the Operational Incident to enable EIS or its subcontractor to comply with its obligations hereunder. EIS or its subcontractor will monitor the Issue Tracking System and will determine EIS' compliance with the Operational Incident Response Time Objectives. Customer acknowledges and agrees that EIS' or its subcontractor's accurate measurement of Operational Incident Response Time Objectives depends upon Customer following Issue Tracking System ticket classification guidelines.

2.2. Monthly Software Availability. Customer shall provide and maintain a persistent Site-to-Site VPN connection between the production System and EIS' or its subcontractor's data center operations to enable EIS or its subcontractor to monitor the Software and the System. EIS or its subcontractor will monitor the Software and the System and determine Software Outage and System Outage and will calculate Monthly Software Availability Percentage. If EIS or its subcontractor is unable to access the Software as a result of System Outage, EIS or its subcontractor will notify Customer and Customer will make the System available to EIS or its subcontractor as soon as commercially practicable. Customer shall notify EIS or its subcontractor once any delays in the availability of System are resolved. EIS or its subcontractor will administer the Software as soon as commercially practicable after the System is made available. EIS or its subcontractor shall notify Customer once any Software Outage has been resolved.

2.3. Service Level Warranties; Warranty Disclaimers; Applicability.

2.3.1. Service Level Warranty for Incident Response Time. EIS warrants that it will use all reasonable efforts to meet the Monthly Operational Incident Response Time Objectives set forth below. Customer's sole and exclusive remedy for any noncompliance by EIS with this warranty is set forth in Section 3 (Service Credits) below.

Operational	Description
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Incident Severity Level	
Blocker	<ul style="list-style-type: none"> <li>• <b>Set this when:</b> The issue directly impacts Customer by blocking development and/or testing work for multiple Users, or Customer's production environment cannot run.</li> <li>• <b>Result:</b> Target Operational Incident Response Time is within thirty (30) minutes. Once a Blocker ticket has been entered in the Issue Tracking System by EIS or its subcontractor or Customer, emails are sent to the Operational Incident reporter, the EIS representative to whom the ticket has been assigned, [SSO] IT Support, [SSO] SAS Administration, [SSO] Database Administration, [SSO] Oncall, [SSO] DrugDev Oncall and [SSO] Project Management every ten (10) minutes until the assignee acknowledges the ticket as In Progress.</li> <li>• <b>Monthly Operational Incident Response Time Objective:</b> 90% within thirty (30) minutes.</li> </ul>
Critical	<ul style="list-style-type: none"> <li>• <b>Set this when:</b> The issue relates to a loss of data, the inability of an individual User to access the System, or potential impact to a key deliverable or deadline.</li> <li>• <b>Result:</b> Target Operational Incident Response Time is within four (4) hours on SAS Business Days.</li> <li>• <b>Monthly Operational Incident Response Time Objective:</b> 90% within four (4) hours on SAS Business Days.</li> </ul>
Major	<ul style="list-style-type: none"> <li>• <b>Set this when:</b> The incident is impacting a User's ability to perform a task without a critical deadline.</li> <li>• <b>Result:</b> Target Operational Incident Response Time is within one (1) SAS Business Day.</li> <li>• <b>Monthly Operational Incident Response Time Objective:</b> 90% within 1 SAS Business Day.</li> </ul>
Minor (Default)	<ul style="list-style-type: none"> <li>• <b>Set this when:</b> This is the default setting for most issues, where the timeframe is not critical. The issue relates to a minor loss of functionality or a task or problem that needs to be addressed or tracked.</li> <li>• <b>Result:</b> The issue should be reviewed weekly and updated as progress occurs.</li> <li>• <b>Monthly Operational Incident Response Time Objective:</b> 90% within one (1) week.</li> </ul>
Trivial	<ul style="list-style-type: none"> <li>• <b>Set this when:</b> There is a cosmetic problem in a document or interface such as misspelled words or misaligned text.</li> <li>• <b>Result:</b> The issue should be reviewed weekly and updated as progress occurs</li> <li>• <b>Monthly Operational Incident Response Time Objective:</b> 90% within next business week.</li> </ul>

2.3.2. Service Level Warranty for Monthly Software Availability. Commencing ninety (90) days after the System is available for production use, EIS warrants that it will use all reasonable efforts to ensure that the Monthly Software Availability Percentage will be no less than ninety-nine percent (99%) during each calendar month. Any Software Outage occurring as a result of System Outage shall not count against the Monthly Software Availability Percentage and shall not be deemed a breach of this warranty. This warranty applies only to the extent that (a) Customer maintains a persistent Site-to-Site VPN connection between the production System and EIS' or its subcontractor's data center operations; (b) monthly System Outage is less than five percent (5%); and (c) EIS or its subcontractor's employees or representatives are the sole administration resources designated in the SAS Open Metadata Repository ("OMR"). Customer's sole and exclusive remedy for any noncompliance by EIS with this warranty is set forth in Section 3 (Service Credits) below.

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2.3.3. Warranty Disclaimers. WITH RESPECT TO THE REMOTE MANAGED SERVICES, EIS AND ITS LICENSOR'S DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ARISING AS A RESULT OF CUSTOM OR USAGE IN THE TRADE OR BY COURSE OF DEALING. EIS AND ITS LICENSORS MAKE NO WARRANTY THAT THE SOFTWARE OR THE SYSTEM WILL OPERATE ERROR-FREE OR WITHOUT INTERRUPTION OR THAT ANY DATA TRANSMISSIONS TO, FROM, OR THROUGH THE SYSTEM WILL BE COMPLETELY SECURE.

2.3.4. Applicability. The Service Level Warranties apply to Customer's production environment only. The Service Level Warranties will not apply to Operational Incidents attributable to: (a) a System Outage; (b) a Planned Outage; (c) telecommunications lines; (d) a Force Majeure event; (e) Customer's failure to comply with its obligations under Section 4 (Customer Responsibilities) of Attachment A; (f) Customer's equipment and/or third party equipment not within the sole control of EIS or its subcontractor or its representatives; (g) any actions or inactions of Customer or any third parties; (h) conditions within Customer's data center; (i) any modification to the Software by anyone other than EIS, its parent company, if applicable, its subsidiaries or its subcontractors; (j) any modifications to the System made without EIS' approval; (k) any services other than the Remote Managed Services; (l) the Customer Materials or (m) any condition which cannot be reasonably resolved through EIS' or its subcontractor's remote access to the System.

3. Service Credits.

3.1. Application of Service Credits. Services Credits apply to Customer's production environment only. EIS will provide Customer with one (1) Service Credit for any calendar month in which EIS fails to meet the Monthly Operational Incident Response Time Objective for Blocker Severity Level or Critical Severity Level Operational Incidents for Customer's production environment and/or for any calendar month in which EIS fails to comply with the Service Level Warranty for Monthly Software Availability for Customer's production environment provided Customer requests each such Service Credit within seven (7) days of the end of such calendar month. Customer's failure to request a Service Credit within such timeframe will result in forfeiture of the Service Credit for that month. Any Service Credits payable to Customer will be applied to reduce the immediately succeeding invoice arising hereunder, unless the Service Credit is due in the final period of the Term, in which case EIS will refund to Customer the amount available as a Service Credit.

3.2. Calculation of Service Credits. Service Credits, if any, will be calculated on a monthly basis. Each Service Credit will be equal to the greater of (a) a percentage, as specified in the table below, of the Remote Managed Services fees for the then-current annual period or (b) One Thousand Dollars (\$1,000.00), up to a maximum of Two Thousand Five Hundred Dollars (\$2,500.00). If, in a given month, Customer is due a Service Credit for EIS' breach of both the Service Level Warranty for Operational Incident Response Time and the Service Level Warranty for Software Availability, the Service Credits will be calculated cumulatively and will count as one (1) Service Credit provided, however, that in no event shall the total Service Credit due for any month exceed Two Thousand Five Hundred Dollars (\$2,500).

Service Level Warranty	Service Credit Percentage
Failure to meet Monthly Response Time Objective for a Blocker Severity Level or Critical Severity Level Operational Incident	0.5%
Monthly Software Availability Percentage 99% or above	No Service Credit
Monthly Software Availability Percentage 98% or above, but less than 99%	1%
Monthly Software Availability Percentage 97% or above, but less than 98%	1.5%
Monthly Software Availability Percentage 96% or above, but less than 97%	2.5%
Monthly Software Availability Percentage Less than 96%	5%

3.3. Maximum Service Credits. Notwithstanding anything contained in Section 3.2 (Application of Service Credits) above to the contrary, the maximum number of Service Credits available to Customer will be four (4) for each annual period.

3.4. Termination for Breach of Service Level Warranties. Customer may terminate the Remote Managed Services for cause and without penalty in the event Customer receives a total of four (4) Service Credits during any annual Software license period and EIS has exceeded the Monthly Incident Response Time Objective for a Blocker Severity Level or Critical Severity Level Operational Incident for Customer's production environment and/or has failed to comply with the Service Level Warranty for Software Availability for Customer's production environment in any subsequent calendar month during such annual Software license period, provided Customer notifies EIS of its intention to terminate within five (5) days of the end of such subsequent calendar month.

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**Exhibit 2**  
**To**  
**Service Level Agreement**  
**Software**

Software and Subcomponents <sup>1</sup>		Applicable Pricing Metric, Number of Authorized Units <sup>2</sup>	Operating System <sup>3</sup>	Authorized Hardware (CPU/Server Manufacturer, Model type/Serial No.) <sup>3</sup>
<b>Software:</b>	SAS MDM Advanced	Capacity Based Solution Test and Development	To be defined by Customer in writing	To be defined by Customer in writing
<b>Subcomponents:</b>	SAS MDM Advanced DataFlux Studio	PC Use (5)	To be defined by Customer in writing	To be defined by Customer in writing
	SAS MDM Advanced DataFlux Administrator	PC Use (1)	To be defined by Customer in writing	To be defined by Customer in writing
	SAS MDM Advanced DataFlux Server	Installs (2)	To be defined by Customer in writing	To be defined by Customer in writing
	SAS Data Management Quality Knowledge Base Locale for English	Site License	To be defined by Customer in writing	To be defined by Customer in writing
	SAS Data Management Contextual Extraction LanguagePack for English	Site License	To be defined by Customer in writing	To be defined by Customer in writing
<b>Software:</b>	SAS Data Management Enrichment	Software Package License	To be defined by Customer in writing	To be defined by Customer in writing
<b>Software:</b>	SAS DataPack for US Address Verification	Site License Enrichment Data Use Terms	To be defined by Customer in writing	To be defined by Customer in writing
<b>Software:</b>	SAS DataPack for US Street Level Geocode	DataPack Capacity Based Geocode Data Use Terms	To be defined by Customer in writing	To be defined by Customer in writing
<b>Software:</b>	SAS Office Analytics	Bundle Capacity Based	To be defined by Customer in writing	To be defined by Customer in writing
<b>Software:</b>	SAS Visual Statistics - Non-Distributed Mode	Processor Core Based (16)	To be defined by Customer in writing	To be defined by Customer in writing
<b>Software:</b>	SAS Visual Analytics - Non-Distributed Mode	Processor Core Based (16)	To be defined by Customer in writing	To be defined by Customer in writing
<b>Subcomponents:</b>	SAS/ACCESS Interface to (TBD)	Not Applicable	To be defined by Customer in writing	To be defined by Customer in writing

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<b>Software:</b>	SAS Analytics Pro	Bundle Capacity Based	To be defined by Customer in writing	To be defined by Customer in writing
<b>Software:</b>	SAS Enterprise Miner	Capacity Based	To be defined by Customer in writing	To be defined by Customer in writing
<b>Subcomponents:</b>	SAS Enterprise Miner Personal Client	PC Use (5)	WX6	
<b>Software:</b>	SAS Text Miner	Capacity Based	To be defined by Customer in writing	To be defined by Customer in writing
<b>Subcomponents:</b>	SAS Text Miner Personal Client	PC Use (5)	WNDW	
	SAS Text Analytics Language Support for English	Not Applicable	Not Applicable	To be defined by Customer in writing
<b>Software:</b>	SAS Model Manager - Non-Distributed Mode	Capacity Based	To be defined by Customer in writing	To be defined by Customer in writing
<b>Subcomponents:</b>	SAS/ACCESS Interface to (TBD)	Not Applicable	To be defined by Customer in writing	To be defined by Customer in writing
<b>Software:</b>	SAS/ACCESS Interface to (TBD)	Capacity Based	To be defined by Customer in writing	To be defined by Customer in writing
<b>Software:</b>	SAS/ACCESS Interface to (TBD)	Capacity Based	To be defined by Customer in writing	To be defined by Customer in writing
<b>Software:</b>	SAS/ACCESS Interface to (TBD)	Capacity Based	To be defined by Customer in writing	To be defined by Customer in writing
<b>Software:</b>	SAS/ACCESS Interface to (TBD)	Capacity Based	To be defined by Customer in writing	To be defined by Customer in writing
<b>Software:</b>	SAS Office Analytics	Bundle Capacity Based Development Only	To be defined by Customer in writing	To be defined by Customer in writing
<b>Software:</b>	SAS Visual Statistics - Non-Distributed Mode	Processor Core Based (16) Development Only	To be defined by Customer in writing	To be defined by Customer in writing
<b>Software:</b>	SAS Visual Analytics - Non-Distributed Mode	Processor Core Based (16) Development Only	To be defined by Customer in writing	To be defined by Customer in writing
<b>Subcomponents:</b>	SAS/ACCESS Interface to (TBD)	Not Applicable	To be defined by Customer in writing	To be defined by Customer in writing
<b>Software:</b>	SAS Analytics Pro	Bundle Capacity Based Development Only	To be defined by Customer in writing	To be defined by Customer in writing
<b>Software:</b>	SAS Enterprise Miner	Capacity Based Development Only	To be defined by Customer in writing	To be defined by Customer in writing

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Subcomponents:	SAS Enterprise Miner Personal Client	PC Use (5) Development Only	WX6	
Software:	SAS Text Miner	Capacity Based Development Only	To be defined by Customer in writing	To be defined by Customer in writing
Subcomponents:	SAS Text Miner Personal Client	PC Use (5) Development Only	WNDW	
	SAS Text Analytics Language Support for English	Not Applicable	Not Applicable	To be defined by Customer in writing
Software:	SAS Model Manager - Non-Distributed Mode	Capacity Based Development Only	To be defined by Customer in writing	To be defined by Customer in writing
Subcomponents:	SAS/ACCESS Interface to (TBD)	Not Applicable	To be defined by Customer in writing	To be defined by Customer in writing
Software:	SAS/ACCESS Interface to (TBD)	Capacity Based Development Only	To be defined by Customer in writing	To be defined by Customer in writing
Software:	SAS/ACCESS Interface to (TBD)	Capacity Based Development Only	To be defined by Customer in writing	To be defined by Customer in writing
Software:	SAS/ACCESS Interface to (TBD)	Capacity Based Development Only	To be defined by Customer in writing	To be defined by Customer in writing
Software:	SAS/ACCESS Interface to (TBD)	Capacity Based Development Only	To be defined by Customer in writing	To be defined by Customer in writing
Software:	SAS/ACCESS Interface to (TBD)	Capacity Based Development Only	To be defined by Customer in writing	To be defined by Customer in writing
Software:	SAS Office Analytics	Bundle Capacity Based Test Only	To be defined by Customer in writing	To be defined by Customer in writing
Software:	SAS Visual Statistics - Non-Distributed Mode	Processor Core Based (16) Test Only	To be defined by Customer in writing	To be defined by Customer in writing
Software:	SAS Visual Analytics - Non-Distributed Mode	Processor Core Based (16) Test Only	To be defined by Customer in writing	To be defined by Customer in writing
Subcomponents:	SAS/ACCESS Interface to (TBD)	Not Applicable	To be defined by Customer in writing	To be defined by Customer in writing
Software:	SAS Analytics Pro	Bundle Capacity Based Test Only	To be defined by Customer in writing	To be defined by Customer in writing
Software:	SAS Enterprise Miner	Capacity Based Test Only	To be defined by Customer in writing	To be defined by Customer in writing
Subcomponents:	SAS Enterprise Miner Personal Client	PC Use (5) Test Only	WX6	
Software:	SAS Text Miner	Capacity Based Test Only	To be defined by Customer in writing	To be defined by Customer in writing

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	SAS Text Miner Personal Client	PC Use (5) Test Only	WNDW	
Subcomponents:	SAS Text Analytics Language Support for English	Not Applicable	Not Applicable	To be defined by Customer in writing
Software:	SAS Model Manager - Non-Distributed Mode	Capacity Based Test Only	To be defined by Customer in writing	To be defined by Customer in writing
Subcomponents:	SAS/ACCESS Interface to (TBD)	Not Applicable	To be defined by Customer in writing	To be defined by Customer in writing
Software:	SAS/ACCESS Interface to (TBD)	Capacity Based Test Only	To be defined by Customer in writing	To be defined by Customer in writing
Software:	SAS/ACCESS Interface to (TBD)	Capacity Based Test Only	To be defined by Customer in writing	To be defined by Customer in writing
Software:	SAS/ACCESS Interface to (TBD)	Capacity Based Test Only	To be defined by Customer in writing	To be defined by Customer in writing
Software:	SAS/ACCESS Interface to (TBD)	Capacity Based Test Only	To be defined by Customer in writing	To be defined by Customer in writing

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### Attachment 3

#### Legal Clarifications

Solicitation 5400008582 – Data Governance Framework and MDM Solutions – South Carolina Department of Health and Environmental Control (DHEC)

This document is provided in response to South Carolina Information Technology Management Office (ITMO) Letter Dated December 12, 2014 (“Letter”) concerning Executive Information System, LLC’s (EIS) response to the above Solicitation.

I. EIS requests the following clarifications to any contract (“Contract”) resulting from the Solicitation and EIS’ response thereto.

1. The clause titled *Ownership of Data and Materials* on page 56 of the main body of the Solicitation implies that all items created by EIS or its subcontractor, SAS Institute Inc. (SAS), will be owned by DHEC. All work product produced will be existing EIS or SAS intellectual property or derivative of such existing intellectual property. As such, EIS and its licensors must retain clear ownership of such work product. The ownership provisions clarifying this are set forth in EIS’ Service Level Agreement submitted as Appendix D to EIS’ response (“SLA”). Such provisions should be made to take precedence over any other term set forth in any Contract and specifically the *Ownership of Data and Materials* clause.

The state agrees with clause B.1 in SLA Appendix D, which addresses this. EIS/SAS will retain ownership of the work product, but the State will retain ownership of any materials/information that the state provides to EIS for completion of this contract.

EIS Response: Agreed

2. The Solicitation required EIS to provide its standard EULA, which was provided as Appendix E to EIS response. The Solicitation includes, as part of the solicitation, the State’s form of “EULA Amendment” which amends EIS’ EULA. The EULA Amendment includes an entirety clause stating that it and the EULA constitute the entire agreement with regard to software. There are also terms in the main body of the solicitation that conflict with terms in the EULA Amendment itself. In order to avoid such conflict and confusion, (i) the clause titled *Software Licenses* on page 58 of the main body of the Solicitation should be deleted in its entirety and (ii) the EULA and EULA Amendment, as they go together to constitute the software license, should be part of the “Record of Negotiation” such that they take precedence over any other term set forth in any Contract. This latter also clarifies that the software license, as contemplated by the Solicitation and the State’s EULA Amendment itself, is unchanged by the body of the Solicitation.

The state agrees with this. The state has provided a revised EULA for review by EIS. EIS is to provide their redlined EULA for State’s consideration.

EIS Response: See attached revised State EULA Amendment.

3. The Solicitation contains three separate software escrow provisions found in the following clauses: the *Escrow for Source Code* clause on page 50 of the main body of the Solicitation, and the *Software Licenses* on page 58 of the main body of the Solicitation. The latter clause contains

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code for matters other than SAS' ceasing to do business (i.e. bankruptcy). SAS software is complex and its source code is made up of 38 years of continued R&D. Any source code builds on existing source code. It would be nearly impossible for DHEC or any other party to replicate a SAS product without such long-term investment and without SAS' particular expertise. Therefore, an escrow is of very little value to DHEC. Therefore, the escrow provisions should be deleted in the entirety from the Solicitation. Alternatively, SAS has an established escrow relationship with one of the largest and most respected escrow agents in the industry, Iron Mountain, and is willing to add DHEC as a recipient under such arrangement. The documentation provided by EIS as part of the Solicitation would accomplish this even though it requires SAS to "sign-on" to the escrow arrangement as well as EIS and DHEC. This is the only document that SAS would have to sign.

**The State agrees for SAS to add DHEC and the State as recipients under the existing escrow arrangement with Iron Mountain.**

EIS Response: Agreed. Please confirm that the clause titled *Escrow For Source Code (applies to both proprietary software and customized software)* on page 50 of the Solicitation is deleted from any resulting Contract.

4. The Solicitation (in the EULA Amendment) includes a clear, fair limitation of liability relating to the software. However, the solicitation does not contain a limitation of liability relating to services and resulting work product. Such limitation is included in the SLA. The provisions of the SLA creating a limitation of liability for services and work product should be made to take precedence over any other term set forth in any Contract. Limitations of liability are a standard contract term that allow contracting parties to judge and set their relative potential liability and is essential to EIS' ability to enter into any Contract.

**The State has provided proposed limitation of liability language. This is the standard language.**

EIS Response: EIS agrees to the proposed limitation of liability language with the change as noted below:

LIMITATION ON LIABILITY: (1) Contractor's liability for damages to the Using Governmental Unit for any cause whatsoever, and regardless of the form of action, shall not exceed an amount equal to triple the Aggregate Contract Price. As used in this clause, the term "Aggregate Contract Price" means the sum total of the prices for the contract period. (2) The parties waive claims against each other for exemplary or punitive damages and for the following damages, costs or expenses: financing costs; losses resulting from injury to business reputation or goodwill; attorney's fees; cost of insurance; any interest, except to the extent allowed by the clause entitled Payment & Interest; and principal office expenses and overhead, including, but not limited to, the compensation of personnel, rent, utilities and office equipment. (3) The foregoing limitations shall not apply (a) to liability for infringement of a third party's intellectual property rights, (b) to claims regarding personal injury or damage to tangible property, (c) to claims arising from ~~gross negligence or from~~ willful or intentional misconduct, (d) to amounts due or obligations under a clause (regardless of how named) providing for liquidated damages, or if such a clause is ruled unenforceable as a penalty, or (e) to amounts due or obligations under the clauses entitled

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~~"Indemnification – Third Party Claims (Nov 2011)" or "Indemnification – Third Party Claims – Disclosure of Information".~~(4) The absence in any subcontract of a similar clause limiting liability shall not increase the obligation of the Using Governmental Unit beyond what it would have been had the subcontract contained such a clause. (5) The Using Governmental Unit'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 the cumulative price paid by the Using Governmental Unit to Contractor for the services acquired pursuant to this Contract. 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.

5. A limitation of warranty clause is not contained in the Solicitation but is included in the SLA. Such clauses limit applicable warranties to those that are specifically set forth in writing in an agreement so that "unwritten" warranties are not applied to a contract. This is a standard contractual feature that allows parties to clearly know their obligations and avoid being "blindsided" by unknown or obscure warranties. The terms of the SLA containing the limitation of warranty should be made to take precedence over any other term set forth in any Contract.

As long as it is clear that the disclaimer of warranty only applies to any warranties not set forth in the solicitation, the EULA, or the SLA, DHEC and the State agree to this.

EIS Response. Agreed.

6. The Solicitation contains two conflicting indemnities relating to intellectual property infringement. One such clause is contained in the main body of the Solicitation (*Intellectual Property Infringement* on page 55) and one such clause is contained within the State's EULA Amendment (See Section 5). The clause on page 55 of the main body of the Solicitation should be deleted in its entirety in lieu of the clause set forth in the EULA Amendment as the clause in the EULA Amendment is more clearly applicable to software and related services. To avoid any doubt, any Contract should contain a statement that Section 5 of the EULA Amendment is deemed to apply to the services and work product being provided under any Contract. Alternatively, the clause in the body of the Solicitation should be revised to contain the same terms and conditions as those set forth in the EULA Amendment.

**DHEC and the State are agreeable to this. An exhibit for clarification will be added.**

EIS Response: Agreed.

7. The Business Associate Agreement included in any Contract should be clearly made subject to the limitation of liability discussed in Section 4 above for the same reasons noted above.

**The State and DHEC will agree that the BAA becomes incorporated into the contract, so the language of the solicitation would apply to the BAA as well.**

EIS Response: EIS agrees that the BAA terms in the Solicitation are subject to the liability limits set forth in the limitation of liability clause referenced in paragraph 4 above.

8. Note that there are several places in the SLA and the EULA that inadvertently refer to SAS. With the possible limited exception to escrow identified above, all contracts will be between EIS and

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the State and the references to SAS in the SLA and EULA can be corrected. Note that EIS will still subcontract to SAS for fulfillment as EIS is a reseller of SAS software and services to US governmental entities.

**The State agrees to this.**

EIS Response: Agreed. Please see enclosed revised SLA and EULA.

9. Any inspection of EIS' records or its facilities should be subject to reasonable security and confidentiality policies and procedures.

**The State agrees to this.**

II. With regard to the matters set forth in the Letter concerning terms and conditions, please see the following responses (numbered as numbered in the Letter):

5. EIS understands the Contract Documents and Order of Precedence clause contained in the Solicitation and that it will govern any Contract. However, any Contract should clarify all matters in which terms at the same level in the order of precedence conflict, some of which are identified herein. With the possible exception of an escrow arrangement, EIS agrees that all contracts will be between DHEC and EIS as noted above.

EIS Response: Agreed. See Section I, paragraph 1 above.

6. The Solicitation does not contain most terms needed for the remote managed services offered in EIS' response to the Solicitation. Further the Solicitation requires that EIS provide its standard SLA. While certain overlapping terms may be able to be removed, EIS believes the terms of the SLA should be included in any Contract. As noted above, the SLA is between EIS and DHEC and a separate agreement between SAS and DHEC is not required. Regarding the bulleted items in the Letter, please see the following notes:

- A.4.1.6 – Agreed that changes are governed by the Changes clause on page 47 of the Solicitation, provided that any changes must be mutually agreed upon by the parties and may not be unilateral.

EIS Response: Agreed. EIS accepts the clause titled *CHANGES (JAN 2006)* as originally set forth in the Solicitation.

- A.4.2 – This provisions concerns changes to the SAS software system. Customer made changes could result in unknown problems and could result in EIS' inability to provide the agreed upon services and should be prohibited.

**The State/DHEC agrees to this as long as the parties clarify that DHEC/the State cannot change *the SAS software system* without EIS approval. "System" is defined as "Customer's hardware, network, and associated operating system software installed on Customer's premises as they operate together to provide the environment(s) where the Software operates." The State/DHEC want to make sure this doesn't prohibit the State/DHEC from changing their systems in other areas.**

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EIS Response: Agreed.

- A.4.4.3 - Agreed that changes are governed by the Changes clause on page 47 of the Solicitation, provided that any changes must be mutually agreed upon by the parties and may not be unilateral.

EIS Response: Agreed. EIS accepts the clause titled *CHANGES (JAN 2006)* as originally set forth in the Solicitation.

- A.7 - Agreed that changes are governed by the Changes clause on page 47 of the Solicitation, provided that any changes must be mutually agreed upon by the parties and may not be unilateral

EIS Response: Agreed. EIS accepts the clause titled *CHANGES (JAN 2006)* as originally set forth in the Solicitation.

- A.8 – This clause deals with third parties not in EIS' control, including the parties with whom DHEC contracts to provide its computing systems on which SAS software will be installed (for example, DHEC's internet service provider). EIS has no relationship or control over such parties and cannot be responsible for such parties.

**Response: DHEC and the State agree to this clarification.**

- A.11 and A.12 – Agreed that these two provisions can be deleted from the SLA. These are standard terms in the form agreement and EIS was required to provide the form agreement.

EIS Response: Agreed.

- B.2.1 – TBD – EIS presumes that the description of services is that set forth in EIS' response to the Solicitation.

EIS Response: Agreed.

- B.3 – This provision can be deleted from the SLA as it is part of the form that is not necessary in this case.

EIS Response: Agreed.

- B.4 – States travel expenses requirements have been accepted.

EIS Response: Agreed.

- B.5 – This provision can be deleted from the SLA as it is part of the form that is not necessary in this case. Agreed that changes are governed by the Changes clause on page

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47 of the Solicitation, provided that any changes must be mutually agreed upon by the parties and may not be unilateral.

**Agreed re: deletion.**

EIS Response: Agreed. EIS accepts the clause titled *CHANGES (JAN 2006)* as originally set forth in the Solicitation.

- C.1 – Agreed confidentiality is governed by the clause titled *DHEC's Confidentiality Policy* on page 61 of the main body of the Solicitation. This provision can be deleted from the SLA as it is part of the form that is not necessary in this case.

EIS Response: Agreed.

- C.2 – Agreed termination is governed by the termination clauses set forth in the main body of the Solicitation. This provision can be deleted from the SLA as it is part of the form that is not necessary in this case.

EIS Response: Agreed.

- C.3 – As noted above, this provision is not covered in the Solicitation and should be made part of any Contract. This provision should also be made to take precedence over any other term set forth in any Contract.

**The State has provided a proposed limitation of liability clause for EIS consideration.**

EIS Response: Please see Section I, paragraph 4 above.

- C.4 – This provision may be deleted from the SLA. However, see response in Part I above concerning infringement indemnity.

EIS Response: Agreed.

- C.5 – Insurance is governed by the clause *Contractor's Liability Insurance* on page 48 of the main body of the Solicitation. This provision can be deleted from the SLA as it is part of the form that is not necessary in this case. Please note that SAS will provide insurance.

EIS Response: Agreed.

- C.6.2 - Agreed that changes are governed by the *Changes* clause on page 47 of the Solicitation, provided that any changes must be mutually agreed upon by the parties and may not be unilateral

EIS Response: Agreed. EIS accepts the clause titled *CHANGES (JAN 2006)* as originally set forth in the Solicitation.

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- C.6.3 - This provision can be deleted from the SLA as it is part of the form that is not necessary in this case.

EIS Response: Agreed.

7. Please see response above in Part I, paragraph 5. EIS believes this provision should remain in the SLA and be made to take precedence over any other term set forth in any Contract.

**The State and DHEC are concerned about the extent to which service credits are the sole remedy for breaches of the contract. The State and DHEC request clarification from EIS regarding the extent of this limitation.**

EIS Response: The warranty disclaimer in Section 2.3.3 of Exhibit 1 to the SLA applies only to limit the warranty law remedy applicable for the breach by EIS of the warranty that applies to Remote Managed Services. Section 2.3.3 of Exhibit 1 to the SLA does not serve to limit any other term of the Contract or any other right of the State at law or in equity.

#### 8. Software License

- Paragraph 1 - To discuss. License is a 50 year term license with annual maintenance per the fees set out in EIS' response.

**Response: The State and DHEC agree to this.**

- Paragraph 4 – This paragraph is intended to disallow use as a service bureau or as a service provider.

**The South Carolina Department of Health and Environmental Control (DHEC) currently works with various State and private entities in data cleansing and exchanges. For instance, the South Carolina Department of Motor Vehicles provides state driver records for all of South Carolina for DHEC to perform death record and birth certificate matching to ensure DMV records are up to date and driver information is correct. After the matching process, DHEC provides DMV a "cleansed" driver record database to perform updates within their Phoenix system to reflect only "living" drivers and date of birth discrepancies reduce driver fraud. The terms referenced in the agreement appear to prohibit DHEC from performing the inter-agency functions critical to State operations.**

**DHEC, by statutory requirements, is required to absorb and collect data from outside sources such as EPA, CDC, USDA and other Federal and State agencies. This data is then aggregated, cleansed, enhanced and analyzed for public health and environmental record level reporting back to both State and Federal levels. The terms of this agreement, as written, appear to preclude the use of SAS software to fulfill DHEC's regulatory requirements. The ultimate end result is DHEC providing live data feeds for these best records to improve**

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as a whole State government reporting, data quality and meet statutory requirements.

DHEC would agree to licensing in which DHEC would not perform any MDM data services for entities whose dataset does not directly correlate, link or contextually apply to DHEC information systems and/or public services statutorily mandated. Any datasets DHEC absorbs to support agency initiatives and business-to-business exchanges would be acceptable MDM services and not in violation of said agreement.

EIS Response: The EULA has been revised to clarify this provision.

- Paragraph 12 – This provision should remain in the EULA; See Part I above.

EIS/SAS will retain ownership of the work product, but the state will retain ownership of any materials/information that the state provides to EIS for completion of the project.

EIS Response: Agreed.

- Paragraph 13 - This provision can be deleted from the SLA as it is part of the form that is not necessary in this case.

EIS Response: Agreed.

- Paragraph 15 - This provision should remain in the EULA; See Part I above.

Again, to the extent this term remains in the contract, it needs to be clear that the warranty disclaimer does not apply to the warranties set forth in the solicitation, the EULA, and the SLA.

EIS Response: Agreed. The warranty disclaimer applies only to warranties not otherwise stated in writing in the Contract.

- Paragraph 16 - This provision should remain in the EULA; See Part I above.

State has provided proposed limitation of liability language.

EIS Response: The limitation of liability with regard to the Software is as set forth in the State's EULA Amendment. The proposed limitation of liability language in Section I, paragraph 4 above applies to services and work product provided under the resulting Contract.

- Paragraph 17 – This provision can be deleted with reference made to the indemnification set out in Section 5 of the EULA Amendment.

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EIS Response: Agreed.

- Paragraph 20 - This provision should remain in the EULA; See Part I above.

**Response: The State agrees with this request.**

- Paragraph 21 – All subprovisions can be deleted except Section 21.2 which is required by third party licensors to be in all licenses for SAS software products.

EIS Response: Agreed.

- Paragraph – 22 – See response under Part I above, section 3.

**The State/DHEC agrees for SAS to add DHEC and the State as recipients under the existing escrow arrangement with Iron Mountain.**

EIS Response: Agreed. Please confirm that the clause titled *Escrow For Source Code (applies to both proprietary software and customized software)* on page 50 of the Solicitation is deleted from any resulting Contract.

9. See response under Part I above, section 3.

**The State/DHEC agrees for SAS to add DHEC and the State as recipients under the existing escrow arrangement with Iron Mountain.**

EIS Response: Agreed. Please confirm that the clause titled *Escrow For Source Code (applies to both proprietary software and customized software)* on page 50 of the Solicitation is deleted from any resulting Contract.

10. EIS Software List

- Enrichment Data Use Terms – These terms are applicable to the Software and Part of the EULA. Please note that the EIS Software List is part of the EULA.

EIS Response: Agreed.

- Geocode Data Use Terms - These terms are applicable to the Software and Part of the EULA. Please note that the EIS Software List is part of the EULA. These terms are required by third party licensors to be in all licenses for such products.

EIS Response: Agreed.

III. EIS' response to the Solicitation is revised to include the following additional discount.

At any time during the term of the Contract, if Customer and EIS agree in a single transaction under the Contract that Customer will license Software in which the same installation of Software is for the

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use of multiple Licensees (as defined in the State's EULA Amendment made part of the Contract) then the Software license fees will be discounted from the Software license fees set forth in EIS' response to the Solicitation as follows:

- 10% additional discount for 5 or more Licensees in a single transaction
- 20% additional discount for 10 or more Licensees in a single transaction

Discounts are applied to Software license fees only. Professional services may be required for such an installation and additional implementation services fees may apply.

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