

# **REQUEST FOR PROPOSALS**

## **GAS CYLINDER DELIVERY SERVICES**



**South Carolina Ports Authority**  
**Request For Proposal No.: GC051225**

**South Carolina Ports Authority**  
**200 Ports Authority Drive**  
**Mount Pleasant, South Carolina 29464**

**TABLE OF CONTENTS**  
**Request For Proposal No.: GC051225**

SUBMITTAL DATES & TIMES .....	3
SECTION 1 – Instructions to Bidders .....	4
SECTION 2 – Scope of Services .....	7
ATTACHMENT A – Charleston Area Map .....	9
ATTACHMENT B – Draft Service Agreement .....	10

**SOUTH  
CAROLINA  
PORTS**

Solicitation Number: GC051225

Date Issued: May 12, 2025

Procurement Officer: Robert J. Mitchell Jr., P.E.

E-Mail Address: [bmitchell@scspa.com](mailto:bmitchell@scspa.com)

## **SUBMITTAL DATES & TIMES**

### **Request For Proposal No.: GC051225**

#### **SUBMISSION OF QUESTIONS**

**Due: Friday, May 23, 2025 at 5:00 PM**

All questions must be submitted in writing via email to: Robert J. Mitchell, Jr., P.E.  
Director, Procurement  
[bmitchell@scspa.com](mailto:bmitchell@scspa.com)

#### **SUBMISSION OF PROPOSALS**

**Due: Thursday, May 29, 2025 at 3:00 PM**

Proposals are to be submitted via email to: Robert J. Mitchell, Jr., P.E.  
Director, Procurement  
[bmitchell@scspa.com](mailto:bmitchell@scspa.com)

#### **SCHEDULE OF EVENTS**

The following Schedule of Events represents the SCPA's best estimate of the schedule that will be followed. The SCPA reserves the right, at its sole discretion, to adjust this schedule as it deems necessary.

<b>EVENTS</b>	<b>DATE</b>
1. RFP available for Distribution to Proposers	May 12, 2025
2. Questions Due (via email)	May 23, 2025
3. Proposals Due (via email)	May 29, 2025
4. SCPA Review of Proposals	June 1-6, 2025
5. SCPA Selection	June 2025
6. Notice to Proceed (exact dates TBD based on selected vendor)	June 2025

## SECTION 1

### INSTRUCTIONS TO BIDDERS

#### 1.1 PURPOSE

The purpose of this solicitation is to establish a contract for the delivery of industrial gases in various size cylinders to multiple SCPA facilities located in Charleston, Dillon and Greer, South Carolina.

The selected Bidder will furnish the SCPA with all necessary expertise, labor, management, materials, equipment, licenses, permits and insurance required to perform the services as requested.

#### 1.2 SUBMISSION OF PROPOSALS

Proposals are to be submitted to the SCPA no later than the date and time indicated in this RFP. Proposals are to be emailed to:

Robert J. Mitchell, Jr., P.E.  
Director, Procurement  
[bmitchell@scspa.com](mailto:bmitchell@scspa.com)

Bidders shall reference the RFP Number in their email. Proposals received after the submission date and time will not be considered. All expenses for preparation of a Proposal will be borne by the Bidder and will not be reimbursed by the SCPA in any manner or under any circumstance.

#### 1.3 PROPOSAL REQUIREMENTS

Bidder's Proposals should at a minimum include:

- A. **Business Organization Summary** - Bidders must indicate if it is a corporation, partnership or individual. The location or place where it is doing business, incorporated, or where it has offices will be specified. List all key personnel and their job responsibilities
- B. **Licenses/Permits** - Submit proof of all necessary state, county and local licenses/permits as may be required by law to operate the requisite business.
- C. **Experience & Qualifications** - Bidders must submit detailed information on their experience and qualifications, including sufficient description of similar services to show equivalency to the SCPA's needs.
- D. **Product List and Costs** – Proposals should include an itemized cost list for all types of gases available, the different size cylinders available, cylinder rental costs, and any other costs that may be included.
- E. **Example Invoice** – Bidders shall submit a sample invoice to show what the SCPA can expect to see on invoices.

#### **1.4 PRE-PROPOSAL CONFERENCE & SITE VISIT**

There will not be a Pre-Proposal Conference or Site Visits for this solicitation.

#### **1.5 ADDENDA**

- A. No interpretation of meanings, corrections of any apparent ambiguity, inconsistency or error therein, will be made to any Bidder orally. Any request for such interpretations or corrections, questions or clarifications must be made in writing via email as noted on Page 3.
- B. Any such request, which is not received by the due date noted on Page 3, will not be considered. All such interpretations, answers to substantive questions and supplemental instructions will be in the form of written Addendum to the RFP Documents. If issued, the Addendum will be posted on the SCPA's website at: [www.scpa.com/resources/legal/legal-notices](http://www.scpa.com/resources/legal/legal-notices). It is the responsibility of each Bidder, before submitting its Proposal, to review the SCPA's website to determine if any Addendum has been issued and to make such Addendum a part of its Proposal. Failure to acknowledge any Addendum(s) may be cause for rejection of Proposals. Only the interpretation or correction given by the SCPA in writing will be binding, and prospective Bidder are advised that only the SCPA will give information concerning, or will explain or interpret, the RFP Documents. The SCPA is not responsible for verbal representations.

#### **1.6 WITHDRAWAL OF PROPOSALS**

Any Proposal may be withdrawn by written request of the Bidder until the date and time established herein for opening of the Proposals.

#### **1.7 REVIEW AND EVALUATION OF PROPOSALS**

Proposals will not be opened and read in public. Proposals received by the submission due date and time will be reviewed and evaluated based on Bidder's qualifications, experience, products, prices, quality, service, and any additional information submitted.

The evaluation process is not meant to imply that one Bidder is superior to any other, but rather that the selected Bidder can provide the best solution for the SCPA's current and future needs based on the information available and the SCPA's best efforts of determination. The SCPA will select a Bidder that provides the best value to the SCPA, based on their proposal, as determined solely by the SCPA.

The SCPA reserves the right to select multiple vendors for this service, particularly for the various geographical locations, if it is determined to be in the best interest of the SCPA, as determined by the SCPA.

## **1.8 INTERVIEWS**

The SCPA reserves the right to conduct interviews with the most highly qualified Bidder(s) after the initial Proposals have been evaluated.

## **1.9 NO OBLIGATION**

This solicitation does not commit the SCPA to award an agreement, to pay any costs incurred in the preparation of a Proposal, or to procure or contract for the articles of goods or services. The SCPA reserves the right to accept or reject any or all Proposals, to cancel in part or in its entirety this request, or to waive any irregularities on Proposals received as a result of this request, if it is in the best interest of the SCPA to do so.

## **1.10 EXECUTION OF SERVICE AGREEMENT**

The selected Bidder will enter into a Service Agreement with the SCPA. A draft copy of the Service Agreement is included with this RFP (Attachment B). Bidders are not to submit the draft Service Agreement with their Proposal. Upon award, the SCPA will update this Service Agreement with the selected Bidder's information and send it to the Bidder for execution.

The selected Bidder shall also furnish the required Certificate of Insurance (COI), Insurance Policy Endorsements, and copies of appropriate licenses required to enter into this Service Agreement.

Failure to execute the Service Agreement as provided in these documents will be just cause to void the Award. The SCPA may then decide to award to another Bidder. No Award will be binding upon the SCPA until the Service Agreement has been executed by all appropriate parties.

## SECTION 2

### SCOPE OF SERVICES

#### 2.1 SCOPE OF SERVICES

- A. The Bidder shall provide the SCPA with gas cylinder delivery services at multiple SCPA facilities located in Charleston, Dillon and Greer, South Carolina. Delivery will include the pickup and return of empty cylinders to the Bidder's location.
- B. Types of Gas Cylinders required include:
  - 1. **Oxygen**
  - 2. **Acetylene**
  - 3. **Argon**
  - 4. **Argon / Carbon Dioxide 75/25**
  - 5. **Nitrogen**
- C. Gas Cylinder Services required include:
  - 1. **Delivery & Pick-up** – Gas cylinders are to be delivered to designated locations on the SCPA terminals. Empty cylinders are to be removed and returned to the Bidder's location. Deliveries are to occur Monday through Friday, during daylight hours between 7AM and 5PM.
  - 2. **Tracking & Invoicing** – The Bidder will provide a management system for tracking deliveries and the exchange of gas cylinders. For tracking purposes, each cylinder shall have a legible serial or identification number. The Bidder's management system shall provide reliable tracking information that correlates with their billing process. The Bidder shall conduct, at a minimum annually, an onsite inventory to reconcile rental cylinder inventories.
  - 3. **Delivery Verification** – The Bidder shall provide a plan for delivery verification with appropriate SCPA personnel.
  - 4. **Account Representative** – The Bidder shall designate an account representative to act as a point of contact capable of handling all matters pertaining to this contract.
  - 5. **Welding & Safety Supplies** – Bidders shall provide a complete list of available welding and safety supplies typically associated with the industrial gas or welding industries.

## 2.2 GAS CYLINDER DELIVERY SERVICE LOCATIONS

A. Gas Cylinder Delivery Services will be provided at the following SCPA terminal locations:

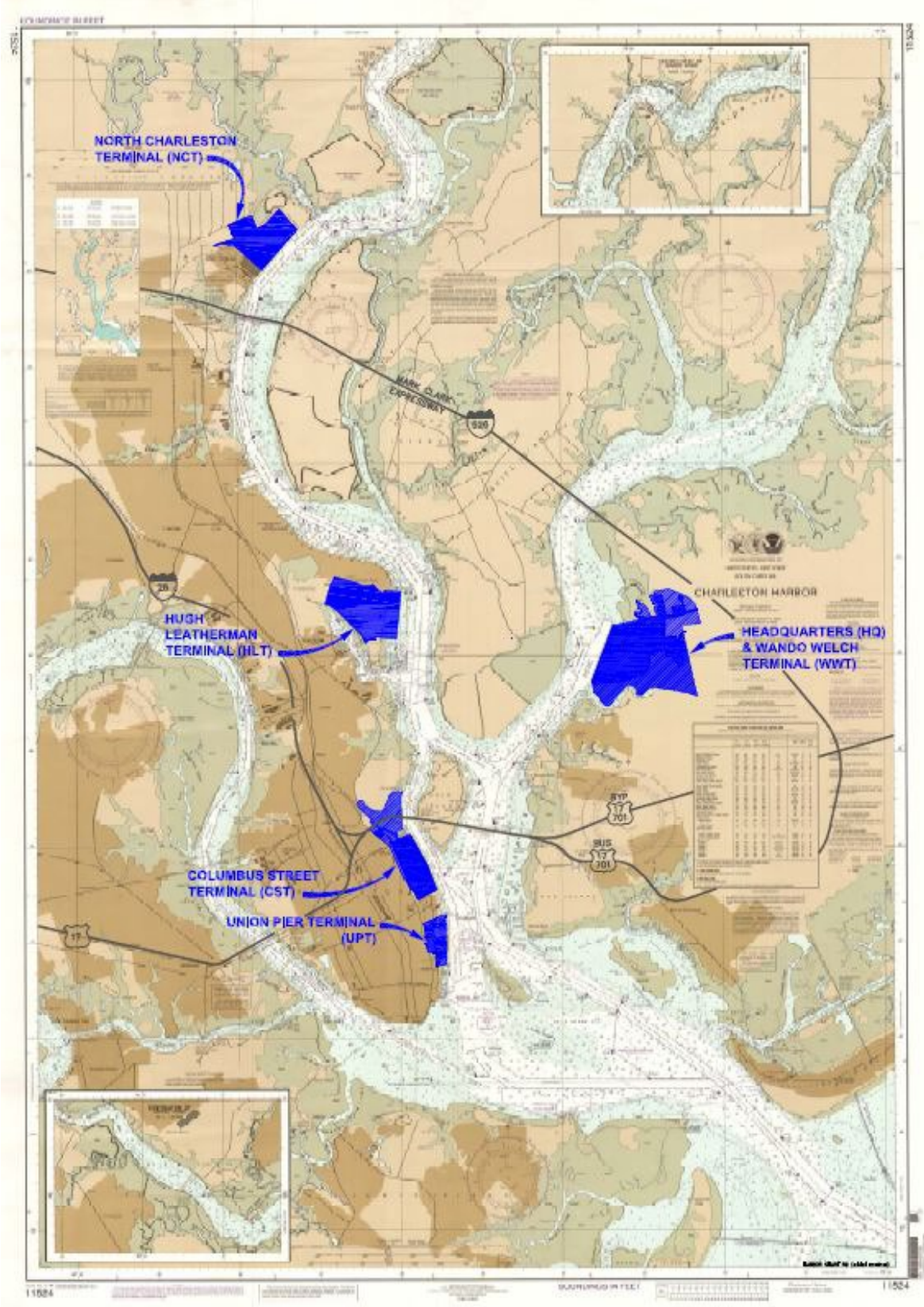
1. **Wando Welch Terminal (WWT)**  
400 Long Point Road  
Mount Pleasant, SC 29464
2. **North Charleston Terminal (NCT)**  
1000 Remount Road  
North Charleston, SC 29406
3. **Hugh Leatherman Terminal (HLT)**  
1500 Port Access Road  
North Charleston, SC 29405
4. **Columbus Street Terminal (CST)**  
1 Immigration Street  
Charleston, SC 29403
5. **Inland Port Dillon (IPD)**  
111 West Fairfield Road  
Dillon, SC 29536
6. **Inland Port Greer (IPG)**  
100 International Commerce Boulevard  
Greer, SC 29651

See Attachment A for a map showing the locations of the four terminals in the Charleston area (the two Inland Port Terminals are not included on this map).

B. TWIC Access – Access to SCPA facilities is for official verifiable business only. A Transportation Worker Identification Credential (“TWIC”) must be presented for inspection prior to being granted access to the SCPA facilities. This will be a requirement of the Contractor for all personnel whether or not a direct employee or subcontractor and shall include labor, supervision, management, suppliers, consultants, and all other personnel required for execution of the Service contract. More information regarding this Transportation Security Administration program can be obtained from its website: [www.tsa.gov/twic](http://www.tsa.gov/twic) or by calling 1-855-347-8371.



## ATTACHMENT A – CHARLESTON AREA MAP



**ATTACHMENT B**

**DRAFT SERVICE AGREEMENT**

The attached draft Service Agreement does not need to be returned with Bidder's Proposal. The Service Agreement will be executed with the Bidder selected by the SCPA.

## **SERVICE AGREEMENT**

### **THIS SERVICE AGREEMENT IS SUBJECT TO ARBITRATION**

### **PURSUANT TO SOUTH CAROLINA CODE SECTION 15-48-10 ET SEQ.**

This Service Agreement (hereinafter “Agreement”), entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2025 (“Commencement Date”), between the South Carolina State Ports Authority, an instrumentality of the State of South Carolina, (hereinafter “SCPA”) the address of which is 200 Ports Authority Drive, Mount Pleasant, South Carolina 29464, and \_\_\_\_\_ (Vendor Name), the address of which is \_\_\_\_\_ (hereinafter “Contractor”).

**WHEREAS**, the SCPA has chosen the Contractor, and the Contractor has agreed to perform the Services (as defined below) herein and be bound by the terms of this Agreement.

**NOW, THEREFORE**, for and in consideration of the mutual covenants herein contained be it agreed by and between the parties hereto as follows:

### **ARTICLE 1 - SERVICES TO BE PERFORMED BY CONTRACTOR**

#### **Scope of Services**

Contractor shall provide the SCPA with gas cylinder delivery services in accordance with the terms and conditions of this Agreement (hereinafter the “Services”).

- A. The Bidder shall provide the SCPA with gas cylinder delivery services at multiple SCPA facilities located in Charleston, Dillon and Greer, South Carolina. Delivery will include the pickup and return of empty cylinders to the Bidder’s location.
- B. Types of Gas Cylinders required include:
  - 1. **Oxygen**
  - 2. **Acetylene**
  - 3. **Argon**
  - 4. **Argon / Carbon Dioxide 75/25**
  - 5. **Nitrogen**

C. Gas Cylinder Services required include:

1. **Delivery & Pick-up** – Gas cylinders are to be delivered to designated locations on the SCPA terminals. Empty cylinders are to be removed and returned to the Bidder's location. Deliveries are to occur Monday through Friday, during daylight hours between 7AM and 5PM.
2. **Tracking & Invoicing** – The Bidder will provide a management system for tracking deliveries and the exchange of gas cylinders. For tracking purposes, each cylinder shall have a legible serial or identification number. The Bidder's management system shall provide reliable tracking information that correlates with their billing process. The Bidder shall conduct, at a minimum annually, an onsite inventory to reconcile rental cylinder inventories.
3. **Delivery Verification** – The Bidder shall provide a plan for delivery verification with appropriate SCPA personnel.
4. **Account Representative** – The Bidder shall designate an account representative to act as a point of contact capable of handling all matters pertaining to this contract.
5. **Welding & Safety Supplies** – Bidders shall provide a complete list of available welding and safety supplies typically associated with the industrial gas or welding industries

D. Gas Cylinder Delivery Services will be provided at the following SCPA locations:

1. **Wando Welch Terminal (WWT)**  
400 Long Point Road  
Mount Pleasant, SC 29464
2. **North Charleston Terminal (NCT)**  
1000 Remount Road  
North Charleston, SC 29406
3. **Hugh Leatherman Terminal (HLT)**  
1500 Port Access Road  
North Charleston, SC 29405
4. **Columbus Street Terminal (CST)**  
1 Immigration Street  
Charleston, SC 29403
5. **Inland Port Dillon (IPD)**  
111 West Fairfield Road  
Dillon, SC 29536
6. **Inland Port Greer (IPG)**  
100 International Commerce Boulevard  
Greer, SC 29651

E. This Agreement consists of the following:

1. This Agreement
2. The SCPA's then-current Terminal Tariff / Marine Terminal Operator Schedule No. 8, as may be amended from time to time, or its successor ("MTOS")
3. Contractor proposal (Attachment I)
4. Agreement to Arbitrate Disputes (Attachment II)

This Agreement, SCPA's Agreement to Arbitrate Disputes, the MTOS, SCPA Fuel Requirements, and the Contractor proposal shall be read to be consistent and complimentary. Any conflict among the documents shall be resolved by giving priority in the following order: 1) this Agreement, 2) SCPA's Agreement to Arbitrate Disputes, 3) MTOS, and 4) Contractor proposal.

DRAFT  
Service Agreement



## **ARTICLE 2 - COMPENSATION AND METHOD OF PAYMENT**

- A. **Contract Price.** The SCPA shall compensate the Contractor for the Services provided under this Agreement in accordance with the pricing stated in the Contractor's proposal, said proposal is included as Attachment I to this Agreement.
- B. **Invoices/Manner of Payment.** The Contractor shall submit a monthly invoice to the SCPA for the Services.

## **ARTICLE 3 - TERM**

The initial term of this Agreement shall be one (1) year from the Commencement Date. This Agreement will automatically extend on the anniversary date unless either party elects to terminate this Agreement as allowed in this Agreement. The extension may be less than, but will not exceed, four (4) additional one (1) year periods.

## **ARTICLE 4 - CONTRACT ADMINISTRATORS**

The following individuals are designated as contract administrator ("Contract Administrator") for their respective parties (name and address):

### **South Carolina Ports Authority**

200 Ports Authority Drive

Mount Pleasant, SC 29464

Phone: ( )

Email:

### **Contractor**

Phone: ( )

Email:

All notices under this Agreement shall be provided to the Contract Administrator of each party. Unless otherwise specified in an addendum or amendment to this Agreement, the Contractor's Contract Administrator as identified in this Agreement, shall be deemed to have authority to render any decision or take any action required under the Agreement. The SCPA's Contract Administrator, as identified in this Agreement, is the person to be contacted by the Contractor for the purposes of schedule and coordinating services, communicating routine information, requesting assistance, or making routine inquiries with respect to the Agreement. Unless otherwise specified by law or regulation or in an addendum or amendment to this Agreement, the SCPA's Director, Procurement ("Procurement Officer") is the only official authorized to enter into or administer this Agreement, to make determinations and findings with respect to the Agreement, authorize changes to the scope of Services, or issue stop services orders.

## **ARTICLE 5 – CONTRACTOR’S GENERAL RESPONSIBILITIES**

- A. The Contractor is not an employee of the SCPA but is an independent Contractor as that term is normally defined. The Contractor is not an agent of the SCPA or the State of South Carolina (“State”) and cannot commit the SCPA or the State to any expenditure of funds or enter into any contractual obligation on behalf of the SCPA or the State.
- B. The Contractor shall be responsible for providing all labor, materials, equipment, tools, transportation, and related services necessary for performance of all obligations and Services under this Agreement. Contractor covenants, represents, and warrants that (a) the Services will be performed by qualified personnel in a professional and workmanlike manner in accordance with the generally accepted industry standards and practices; (b) its providing the Services will not violate any applicable law, rule, regulation, or judicial order, or violate any contractual obligation or confidential relationship which Contractor may have to or with any third party, and (c) any information or equipment Contractor may supply SCPA or utilize in performing the Services will have been obtained lawfully.
- C. The Contractor shall be responsible for obtaining and maintaining in force at all times any necessary licenses and permits required and issued by the State, a municipality, or county for conducting business.
- D. The Contractor shall pay all taxes, including South Carolina sales, use, and income tax necessary for performance of all obligations under this Agreement.
- E. The Contractor shall comply with all federal, state, and local laws, ordinances, and regulations that in any manner affect the conduct of the Services, and Contractor shall comply with the rules and regulations of the MTOS.
- F. The Contractor shall have full responsibility to take proper safety, health, and security precautions to protect its workers, the SCPA’s employees and property, the public, and other property or persons during performance of all obligations under this Agreement.
- G. The Contractor shall comply with the South Carolina Drug-Free Workplace Act, Section 44-107-10 et seq., S.C. Code of Laws (1976, as amended).
- H. The Contractor shall comply with the South Carolina Illegal Immigration Reform Act, Section 8-14-60 et seq., S.C. Code of Laws.
- I. Subcontractors
  - 1. The Contractor shall not subcontract any of the Services, including subcontracts of any tier, without the prior written approval of the SCPA, said approval shall be in the SCPA’s sole and absolute discretion. All subcontract services provided under this Agreement shall be based upon a written agreement between the Contractor and subcontractor incorporating the provisions of this Agreement except where expressly waived by the Procurement Officer.
  - 2. The Contractor shall comply with all applicable laws, regulations, and procedures of the SCPA in the procurement of all subcontractors, and the

approval of a subcontract by the SCPA shall not operate as a waiver of this requirement or an acknowledgement that it has been satisfied.

J. Contractor and Subcontractor Personnel

1. The Contractor represents that it has, or will secure, all personnel, subcontractors, and experts required in performing the Services.
2. The SCPA Contract Administrator, at his/her sole discretion, may require the Contractor to replace an employee of the Contractor or any subcontractor for sufficient cause. Such cause may include, but is not necessarily limited to, deficient performance, lack of responsiveness, illegal or immoral acts, negligence, incompetence, or inefficiency.

K. All information furnished to the Contractor by the SCPA is considered sensitive information. Contractor will not copy, reproduce, or reveal to third parties, except in connection with the Services covered in this Agreement, any information furnished to the Contractor by the SCPA.

L. Contractor will not take any photographs, make any announcement, or release any information concerning this Agreement unless prior written approval is obtained from the SCPA.

M. The Contractor's books shall be open to audit by the SCPA in connection with any charges incurred hereunder. The SCPA will be afforded access to all of the Contractor's records, including, but not limited to, payroll records, training books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to this Agreement, and the Contractor will preserve all such records for three (3) years from the expiration or earlier termination of this Agreement, or for such longer periods as may be required by law or regulation.

N. Access to SCPA facilities is for official verifiable business only. A Transportation Worker Identification Credential ("TWIC") must be presented for inspection prior to being granted access to the SCPA facilities. This will be a requirement of the Contractor for all personnel whether or not a direct employee or subcontractor and shall include labor, supervision, management, suppliers, consultants, and all other personnel required for execution of the Service contract. More information regarding this Transportation Security Administration program can be obtained from its website: [www.tsa.gov/twic](http://www.tsa.gov/twic) or by calling 1-855-347-8371.

O. SCPA facilities are smoke-free, vape-free, and tobacco-free. Contractor shall adhere to this policy at all times.

P. Contractor and all persons and entities performing the Services on behalf of Contractor at an SCPA facility shall comply with all the SCPA's working rules, security provisions, and policies in effect for such facility. Additionally, Contractor acknowledges and agrees that entry upon and use of SCPA's terminals is conditioned upon, subject to, and governed by the MTOS.



## ARTICLE 6 - INSURANCE

- A. At all times during the term of this Agreement and for a period of three (3) years from the expiration of earlier termination of this Agreement, Contractor, at its sole cost and expense, shall procure and maintain in full force and effect insurance coverage as follows:
1. **Worker's Compensation:** South Carolina Statutory Limits.
  2. **Automobile Liability:** Minimum limits of \$1,000,000 Per Accident for Bodily Injury and Property Damage Liability Combined.
  3. **Commercial General Liability:** Minimum limits of \$3,000,000 per Occurrence and \$5,000,000 in the aggregate, to include bodily injury coverage, personal injury coverage, property damage liability, independent contractor's liability, products and completed operations coverage, and contractual liability coverage.
- B. All insurance policies required above shall be issued by insurance companies reasonably acceptable to SCPA. The Contractor shall provide an endorsement to each liability policy naming the SCPA as an additional insured. The Contractor shall provide that each insurance policy be primary insurance and that any similar insurance in the name and/or for the benefit of SCPA shall be excess and non-contributory. The Contractor shall also provide SCPA with endorsements from the Contractor's commercial general liability and workers' compensation insurance carriers waiving the insurer's right of subrogation. The above limits may be a combination of primary and excess insurance policies. Excess insurance policies must follow the form of the underlying insurance policies. Contractor shall deliver to the SCPA a certificate of insurance ("COI") and endorsements evidencing the existence or renewal of the above insurance coverages and shall not do anything to invalidate such insurance. It shall be the responsibility of the Contractor to ensure that all subcontractors carry the above levels of insurance with the appropriate endorsements before providing any Services under this Agreement.
- C. Contractor shall defend, indemnify and hold SCPA, its affiliates, and their respective officers, directors, shareholders, employees, and agents harmless from and against any claims, actions, demands, lawsuits, losses, damages, costs, expenses, judgments, fines, penalties, and liabilities (including reasonable attorney's fees and courts costs) incurred in connection with any third-party demands, assertions, claims, suits, actions, or other proceedings: (1) arising out of or relating to the acts or omissions of Contractor or its employees, agents, representatives, or subcontractors in connection with the performance of the Services under this Agreement, (2) arising out of or relating to the Services or any materials or equipment utilized in the performance of the Services, or (3) arising out of or relating to any breach of this Agreement by Contractor or its employees, agents, representatives, or subcontractors (individually and collectively in each case a "Claim"), except to the extent such Claim is caused by SCPA's negligence, gross negligence, or willful misconduct. Contractor will not consent to any judgment, attachment, or lien or any other act adverse to the interests of SCPA without SCPA's prior written consent. If Contractor fails to assume the defense of a Claim or SCPA reasonably determines that Contractor has failed to diligently assume and maintain a

prompt and vigorous defense of any Claim, SCPA may assume sole control of the defense of any Claim and all related settlement negotiations with counsel of its own choosing, and Contractor shall pay all costs and expenses (including reasonable attorneys' fees) incurred by SCPA in such defense within thirty (30) days of each of SCPA's written requests.

- D. Prior to the Commencement Date of the Agreement, Contractor shall complete an SCPA Annual Business Registration ("ABR") form. The ABR form is located at <http://www.scsipa.com/resources/risk-management>.
- E. This insurance provision shall not be construed in any manner as waiving, restricting, or limiting the liability of Contractor for any obligations imposed under this Agreement, including but not limited to, any provisions requiring Contractor to indemnify, defend, and hold harmless SCPA under the Agreement.

## **ARTICLE 7 - ENTIRE AGREEMENT**

This Agreement, including the MTOS, attachments, exhibits, and any documents incorporated by reference into this Agreement, is the entire agreement of the parties with respect to its subject matter and supersedes all prior agreements, negotiations, representations, proposals, and awards, written or oral, relating to its subject matter. Except as otherwise stated in this Agreement, any changes, alterations, and modifications in the Services of this Agreement may only be made by an agreement in writing executed by both parties and approved by the SCPA.

## **ARTICLE 8 – MODIFICATION OF AGREEMENT BY SCPA**

The SCPA has the right and authority to unilaterally modify this Agreement when said modification is in the best interest of the SCPA, provided however, Contractor is given written notice of any such modification and the SCPA is responsible for paying Contractor for any additional expenses incurred by Contractor which relate to said modification. Subject to the above, Contractor is obligated to perform the revised Agreement when so directed by the SCPA. Contract fees or prices will be equitably adjusted where an issued change order so demands. No claim by the Contractor for an adjustment hereunder shall be allowed if asserted after final payment under this Agreement.

## **ARTICLE 9 - TERMINATION**

### **A. For Convenience:**

The SCPA may terminate this Agreement at any time, for any reason or no reason at all, upon thirty (30) days advance written notice to Contractor. If this Agreement is so terminated, the Contractor shall be compensated for all necessary and reasonable direct costs of performing the Services actually accomplished. The Contractor will not be compensated for any other costs in connection with a termination for convenience. Contractor will not be entitled to recover any damages or loss of profit or unabsorbed overhead in connection with a termination for convenience.

**B. For Default:**

If the Contractor refuses or fails to perform the Services or any separable part thereof in a timely or professional manner in accordance with the Agreement, or otherwise fails, in the sole opinion of the SCPA, to comply with this Agreement, such refusal or failure shall be deemed a default under this Agreement.

In the event of a breach or default by the Contractor, the SCPA shall have the right to terminate this Agreement by written notice to the Contractor. In the event of such default, the advance notice period of termination is waived, and the Contractor shall not be entitled to any costs or damages.

Whether or not the Contractor's right to proceed with the Services is terminated, Contractor shall be liable for any damage to the SCPA resulting from Contractor's default and for any breach of this Agreement. Any wrongful termination for default shall be deemed by the parties a Termination for Convenience.

The rights and remedies of the SCPA provided in this article are in addition to any other rights and remedies provided by law and under this Agreement.

#### **ARTICLE 10 – FORUM AND CHOICE OF LAW**

- A. Any claims, disputes, and other matters in question between the Authority and the Consultancy arising out of or related to this Agreement shall be decided pursuant to the arbitration dispute resolution provisions contained in SCPA's Agreement to Arbitrate Disputes attached to this Agreement as Attachment III; said Agreement to Arbitrate Disputes is incorporated into this Agreement by reference and made part of this Agreement.
- B. The laws of South Carolina without regard to its choice of law or conflict of law provisions shall govern this Agreement.

#### **ARTICLE 11 – MISCELLANEOUS**

- A. If any provision or portion of this Agreement shall be rendered by applicable law or held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions or portions shall remain in full force and effect.
- B. Each term and provision of this Agreement that should by its sense and context survive any termination or expiration of this Agreement, shall so survive regardless of the cause and even if resulting from the material breach of either party to this Agreement.
- C. The rights and remedies of the parties herein provided shall be cumulative and not exclusive of any rights or remedies provided by law or equity.
- D. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same instrument, without necessity of production of the others. An executed signature page delivered via facsimile transmission or electronic signature shall be deemed as effective as an original executed signature page.

- E. No waiver of any term or right in this Agreement shall be effective unless in writing, signed by an authorized representative of the waiving party. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or modification of such provision, or impairment of its right to enforce such provision or any other provision of this Agreement thereafter.

[Balance of page intentionally left blank. Signature page follows.]

DRAFT  
Service Agreement

**IN WITNESS WHEREOF**, the SCPA and the Contractor have executed this Agreement by causing the same to be signed on the day and year first written above.

**CONTRACTOR**

\_\_\_\_\_  
Witness

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**SOUTH CAROLINA STATE PORTS AUTHORITY**

\_\_\_\_\_  
Witness

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

DRAFT  
Service Agreement

---

# Contract Attachment I

---

Contractor's Proposal

DRAFT  
Service Agreement

---

# Contract Attachment II

---

Agreement to Arbitrate Disputes

DRAFT  
Service Agreement

**THE CONTRACT AND CONTRACT DOCUMENTS ARE SUBJECT TO**  
**ARBITRATION PURSUANT TO THE SOUTH CAROLINA**  
**UNIFORM ARBITRATION ACT**  
**(SOUTH CAROLINA CODE SECTION 15-48-10, ET SEQ.)**

1.01 Agreement to Arbitrate Disputes:

- A. *Arbitration of Disputes:* Subject only to satisfying the mediation requirement set forth herein, all disputed matters between the South Carolina State Ports Authority (“Authority”) and the contracting party (“Contracting Party”) are subject to final and binding resolution pursuant to the South Carolina Uniform Arbitration Act, set forth at S.C. Code Ann. § 15-48-10, et seq. (“SCUAA”) and further subject to the provisions of this Arbitration Proceedings Policy (the “Arbitration Agreement”). If in any case or dispute it should be determined for any reason that the SCUAA does not apply to any matter in controversy between them, Contracting Party and Authority stipulate and agree that the contract between them (the “Contract”) and the contract documents (“Contract Documents”) are subject to arbitration and the work (“Work”) required of Contracting Party under the Contract and the Contract Documents involves interstate commerce such that the Federal Arbitration Act (“FAA”) shall apply if the SCUAA does not, and all disputes shall remain subject to arbitration pursuant to the provisions of the FAA and this Arbitration Agreement.
- B. SUBJECT TO THE SEVERABILITY PROVISIONS CONTAINED IN SECTION 1.02.K OF THIS ARBITRATION AGREEMENT, IN THE EVENT THIS ARBITRATION AGREEMENT IS DEEMED VOID OR UNENFORCEABLE IN PART OR ITS ENTIRETY FOR ANY REASON OR CAUSE, AUTHORITY AND CONTRACTING PARTY HEREBY AGREE THAT ANY LITIGATION RELATED TO OR ARISING OUT OF THE CONTRACT, THE CONTRACT DOCUMENTS AND ANY EXHIBIT OR INSTRUMENT FORMING A PART THEREOF, OR ARISING FROM OR RELATING TO THE WORK, SHALL BE FILED IN THE STATE COURT OF COMMON PLEAS FOR CHARLESTON COUNTY, SOUTH CAROLINA, WITHIN ANY APPLICABLE STATUTES OF LIMITATION PERIOD. AUTHORITY AND CONTRACTING PARTY HEREBY COVENANT AND AGREE THAT NEITHER OF THEM WILL COMMENCE OR MAINTAIN ANY CLAIM OR ACTION AGAINST THE OTHER IN ANY FEDERAL DISTRICT COURT, AND NEITHER PARTY SHALL HAVE THE RIGHT TO REMOVE ANY CLAIM OR ACTION TO ANY FEDERAL COURT, REGARDLESS OF THE ALLEGED BASIS FOR FEDERAL JURISDICTION (I.E., FEDERAL QUESTION, DIVERSITY, ANCILLARY, “RELATED TO” OR SUPPLEMENTAL JURISDICTION), AND AUTHORITY AND CONTRACTING PARTY HEREBY WAIVE AND RELEASE ANY RIGHT TO BRING OR MAINTAIN ANY CLAIM OR ACTION IN ANY FEDERAL FORUM. AUTHORITY AND CONTRACTING PARTY FURTHER AGREE TO CONDUCT THE TRIAL OF ANY CLAIM OR ACTION IN THE CHARLESTON COUNTY COURT OF COMMON PLEAS AS A “NON-JURY” BENCH TRIAL. AUTHORITY AND CONTRACTING PARTY EACH KNOWINGLY AND VOLUNTARILY WAIVE ALL RIGHTS EITHER MAY HAVE TO A TRIAL BY JURY ON ANY DISPUTE THAT MIGHT ARISE UNDER THIS ARBITRATION AGREEMENT, THE CONTRACT, THE CONTRACT DOCUMENTS, OR WHICH MIGHT OTHERWISE ARISE FROM OR RELATE TO THE WORK.



## 1.02 Arbitration Procedures

- A. *Purpose*: The purpose of this Arbitration Agreement is to provide a prompt, cost-effective, and efficient manner to resolve any and all disputes between the Authority and Contracting Party as set forth herein.
- B. *Waivers and Consents*: Authority and Contracting Party waive all objections and hereby consent to the following:
1. That Authority and Contracting Party shall adhere to the arbitration procedures set forth in this Arbitration Agreement.
  2. That the arbitration procedures set forth in this Arbitration Agreement shall apply to any dispute or claim that arises out of or that relates to (i) the Contract, including but not limited to the existence, validity, scope, interpretation, or enforcement of the Contract and the Contract Documents, as well as any breach thereof; (ii) the Work, (iii) the project ("Project"), (iv) the existence, scope, validity, and enforceability of this Arbitration Agreement; (v) the arbitrability of any particular claim, dispute, or action, and (vi) any subcontract or sub-subcontract, or supplier agreement involved in the Work.
  3. That Authority and Contracting Party, and all subcontractors, sub-subcontractors, material suppliers, vendors, engineers, architects, designers, construction lenders, bonding companies, and all other parties concerned with and involved in the performance of Contract and the Work are bound by this Arbitration Agreement, and that Authority and Contracting Party shall incorporate the requirements of this Arbitration Agreement into any contracts by, between, and among these parties, which contracts are concerned with and involved in the performance of the Contract or involved with the Work, or, in the alternative, shall require all such parties to sign a written document agreeing to be bound by this Arbitration Agreement.
  4. The submission exclusively to an arbitration panel of all issues of substantive and procedural arbitrability.
  5. The exclusive personal and subject matter jurisdiction of an arbitration in the State of South Carolina.
  6. The remand of any claim or action commenced in or removed to federal court to the Charleston County Court of Common Pleas upon the motion of any party, or, in the alternative, to an order compelling arbitration in accordance with this Arbitration Agreement.
  7. That, except as otherwise limited by this Arbitration Agreement, the arbitration panel shall have the power and authority to:

- a. Determine in the first instance the scope of the arbitration panel's remedial authority; and
  - b. Grant relief, including awarding any legal or equitable remedy appropriate in the sole judgment of the arbitration panel.
- C. *Additional Waivers:* Authority and Contracting Party further waive the right to:
  - 1. Seek to enjoin an arbitration;
  - 2. Commence, maintain, or remove any claim or action arising from or relating to the Contract, the Contract Documents, the Work, or this Arbitration Agreement to a federal court for adjudication on merits under any basis for asserting federal jurisdiction, including such grounds as may exist in connection with the underlying dispute;
  - 3. Appeal or challenge an interim ruling or interim order of the arbitration panel;
  - 4. Appeal or challenge a final award of the arbitration panel, except as provided in this Arbitration Agreement; and
  - 5. Challenge whether an arbitration has been properly held, except as provided in this Arbitration Agreement.
- D. *Appointment of the Arbitration Panel:* In the event of a demand for arbitration by either Authority or Contactor, the parties agree to engage a panel of three (3) arbitrators (the "Panel") as follows:

The Authority shall appoint one (1) arbitrator and the Contracting Party shall appoint one (1) arbitrator. The two (2) arbitrators so appointed shall designate a third arbitrator.
- E. *Fees and Expenses.* Each party to the arbitration proceeding shall share equally in the Panel's fees. A party shall pay its portion of the Panel's estimated fees within thirty (30) days of written notice from the Panel setting forth the amount due. The Panel's award will include any additional fees incurred by the Panel, and each party shall pay its portion of the additional fees within thirty (30) days of receipt of the Panel's award. The Panel shall have the authority to incur expenses only as agreed to by the parties, provided, however, that normal and customary expenses for mileage reimbursements shall not require preapproval. The Panel shall provide written notice to each party fifteen (15) days prior to incurring any expense. A party's failure to object in writing to the notice of the expense prior to the expiration of the fifteen-day period shall constitute that party's consent to the expense. Each party to the proceeding shall share equally in the expenses

incurred by the Panel. A party shall pay its portion of the expense within thirty (30) days of receipt of said notice.

F. *Commencing a Demand for Arbitration:* The following procedures shall apply to commencing a demand for arbitration:

1. Mandatory Pre-arbitration Procedures. Unless each party waives in writing the following procedures and elects to proceed directly to arbitration, the following procedures shall be satisfied prior to a demand for arbitration being made:
  - a. First, Authority, Contracting Party and any other parties involved in the claim shall, within thirty (30) days after the submission of a claim or as soon thereafter as possible, meet and confer in a good faith effort to resolve the claim. Such meeting shall involve persons with full authority to make binding decisions upon each of the Parties involved in the claim. Any party may, at their option, have counsel present for the meeting, at their own cost. If an agreement is reached resolving the claim in whole or in part, the agreement shall be reduced to a writing signed by all parties to such agreement.
  - b. Second, if the above-described meeting of the parties does not resolve the claim in full, Authority, Contracting Party, and other parties involved in the claim shall participate in a non-binding mediation settlement conference conducted by a third-party neutral knowledgeable with law applicable to the matter and the issues involved in the claim. If the parties are unable to agree upon the selection of a neutral, any party may apply to the Charleston County Court of Common Pleas for the appointment of a mediator, which appointment shall be final. All parties participating in the mediation shall share equally the cost of the neutral. The mediation shall take place in Charleston County, South Carolina.
  - c. Neither Authority nor Contracting Party shall file, serve, or otherwise commence or maintain any demand for arbitration against the other until the foregoing pre-suit dispute resolution procedures have been fully satisfied or waived in writing. Authority and Contracting Party agree that any lawsuit filed prior to completion of the pre-suit meeting and pre-suit mediation processes shall be stayed until such pre-suit processes have been completed in manner provided above.
2. The Arbitration Demand. Upon satisfaction or written waiver of the foregoing requirements, a demand for arbitration may be filed in writing with the other party to the Contract, and a copy will be sent to the Authority's Chief Financial Officer for information. The demand for arbitration should be made within the sixty (60) days of an impasse declared by the mediator, or the written waiver of the same, and in no event will any such demand be made after the date when institution of legal or

equitable proceedings based on such matter in question would be barred by the applicable statute of limitations.

3. Within thirty (30) days after receipt of a demand for arbitration, the parties shall confer and select the Panel in manner provided herein.

G. *Hearing and Discovery Procedures:* The following procedures shall apply to the arbitration:

1. Within fifteen (15) days of the Panel's acceptance of their appointments, or as soon thereafter as the Panel determines appropriate, the Panel shall appoint a time and place for a hearing, which shall be held in Charleston County, South Carolina, unless the parties to the arbitration agree otherwise in writing.
2. The Panel may, upon a party's request or at the Panel's discretion, set an expedited schedule for the parties to exchange limited discovery relevant to the arbitration, as follows:
  - a. Parties may request documents or information from any party by serving a written request on the party. Requests for information are generally limited to identification of individuals, entities, and time periods related to the dispute; such requests should be reasonable in number and not require narrative answers or fact finding. Standard interrogatories are generally not permitted in the arbitration.
  - b. Unless the parties agree otherwise, within thirty (30) days from the date a discovery request is received, the party receiving the request must either:
    - 1) Produce the requested documents or information to all other parties by serving the requested documents or information by first-class mail, overnight mail service, overnight delivery service, hand delivery, or email;
    - 2) Identify and explain the reason that specific requested documents or information cannot be produced within the required time, state when the documents will be produced, and serve this response on all parties and file this response with the Panel; or
    - 3) Object, as provided below, and serve this response on all parties and file this response with the Panel.
  - c. A party must act in good faith when complying with the discovery procedure of this rule. "Good faith" means that a party must use its best efforts to produce all documents required or agreed to be produced. If a document cannot be produced in the required time, a party must establish a reasonable timeframe to produce the document.

- d. If a party redacts any portion of a document prior to production, the redacted pages (or range of pages) shall be labeled "redacted."
  - e. If a party objects to producing any document or information requested under the discovery procedure outlined above, it must specifically identify which document or requested information it is objecting to and why. Objections must be in writing, and must be served on all other parties. Any objection not made within the required time is waived unless the Panel determines that the party had substantial justification for failing to make the objection within the required time. In making any rulings on objections, arbitrators may consider the relevance of documents or discovery requests and the relevant costs and burdens to parties to produce this information.
  - f. A party may make a motion asking the Panel to order another party to produce documents or information if the other party has:
    - 1) Failed to comply with the discovery procedure outlined above; or
    - 2) Objected to the production of documents or information pursuant to the procedure outlined above.
  - g. All discovery shall be completed at least fifteen (15) days prior to the scheduled arbitration hearing, unless the parties to the arbitration agree otherwise in writing and the Panel accepts the parties' agreement.
- 3. Each party shall be entitled to present evidence relevant to the arbitration, and to cross-examine witnesses appearing at the hearing. Documents and testimony shall be presented in the order, manner, and degree that the Panel deems most efficient and probative. The Panel shall determine the amount of evidence to be presented, and may limit the presentation of any documentation or testimony deemed irrelevant or cumulative.
  - 4. The Panel may make such rulings, including rulings of law, and issue such orders or impose such sanctions as the Panel deems proper to resolve the arbitration in a timely, efficient, and orderly manner. The Panel may resolve the arbitration on the evidence produced at the hearing notwithstanding the failure of a party duly notified to appear or participate in the hearing.
  - 5. The Panel shall have the power to administer oaths and may compel the attendance of witnesses and the production of books, records, contracts, papers, accounts, and all other documents and evidence. The Panel shall have the power to issue subpoenas, *provided, however*, that the Panel shall not have the authority to permit a deposition to be taken by any party.

H. *Awards:*

1. The Panel will use reasonable efforts to issue a decision and any award within one hundred twenty (120) days of the Panel's acceptance of the appointment, but shall not lose jurisdiction to fully adjudicate the matter should the decision and award take longer. The final award must be in writing, signed by each member of the Panel, and provided to each party. The final award shall set forth the Panel's reasoning for the decision, unless the parties otherwise agree in writing prior to the start of the arbitration hearing.
2. The Panel shall have the power to make any award, legal and/or equitable in nature, which the Panel deems appropriate. In making the final award, the Panel may make rulings on any issue of law and fact relevant to the arbitration proceeding.

I. *Challenges:*

1. A challenge to a final award may be filed exclusively in the South Carolina Court of Common Pleas located in Charleston County, South Carolina.
2. A challenge to a final award must be filed with the Court within ninety (90) days of the issuance of the final award.
3. A final award may only be vacated or altered upon one or more of the following grounds:
  - a. The award was procured by corruption, fraud, or undue means;
  - b. There was evident partiality or corruption in an arbitrator;
  - c. A member of the Panel is guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
  - d. The Panel exceeded the powers provided in this Arbitration Agreement, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

- J. *Confirmation of Final Award:* Any party shall be entitled to seek confirmation of the final award by filing such request with the South Carolina Court of Common Pleas located in Charleston County, South Carolina, upon the expiration of the period within which a challenge may be taken pursuant to Section 1.02.I of this Arbitration Agreement.

- K. *Severability and Amendment.* This Arbitration Agreement represents a separate and severable agreement to arbitrate disputes. Additionally, each provision of this Arbitration Agreement is intended to be severable. If any term or provision in this Arbitration Agreement is held by a court of law to be in violation of an applicable local, state or federal ordinance, statute, law, administrative or judicial decision, public policy, or for any other reason, and if such court should declare such provision of this Arbitration Agreement to be illegal, invalid, unlawful, void, voidable, or unenforceable as written, then such provision shall be given full force and effect to the fullest extent that is legal, valid and enforceable, the remainder of this Arbitration Agreement shall be construed as if such illegal, invalid, unlawful, void, voidable, or unenforceable provision was not contained herein, and the rights, obligations, and interests of the parties under the remainder of this Agreement shall continue in full force and effect. If any provision is held to be unenforceable, the court making such determination shall have the power to, and shall, modify such provision to the minimum extent necessary to make such provision, as so modified, enforceable, and such provision shall then be applicable in such modified form. This Arbitration Agreement shall not be amended except by a written addendum signed by both Authority and Contracting Party and affixed as an exhibit to this Arbitration Agreement.

EFFECTIVE DATE: April 15, 2025

DRAFT  
Service Agreement