INCLUSION OR EXCLUSION OF CERTAIN CONTRACTUAL PROVISIONS

TO BE COMPLETED BY CUSTOMER AGENCY:

Name (for Contract Notice): _____ Title:_____

Telephone Number:_____E-Mail:_____

Please read the following statements, select one in each category, sign and date the form. Please note that not every provision is relevant to every contract. Discuss any questions with your staff attorney and/or your ITS Technology Consultant.

Return the completed form to:

ITS/ISS, 3771 Eastwood Drive, Jackson, MS 39211

Liquidated Damages:

____ I **do** want to include a "Liquidated Damages" provision in our contract. The amount requested is $_____ per day.
____ I **do not** want to include a "Liquidated Damages" provision in our contract.

Performance Bond or Irrevocable Letter of Credit:

____ I **do** want to require the vendor to post a "Performance Bond/Irrevocable Letter of Credit."   The amount of the Performance Bond/Irrevocable Letter of Credit should be $_____. Circle whether you want a performance bond or an irrevocable letter of credit.
____ I **do not** want to require the vendor to post a "Performance Bond/Irrevocable Letter of Credit."

Retainage:

____ I **do** want to include a "Retainage" provision in our contract. The amount of the retainage requested is _____% of each deliverable/milestone.
____ I **do not** want to include a "Retainage" provision in our contract.

Personnel Assignment Guarantee:

____ I **do** want to include a "Personnel Assignment Guarantee" provision in our contract.
____ I **do not** want to include a "Personnel Assignment Guarantee" provision in our contract.

Source Code Escrow:

____ I **do** want to include a "Source Code Escrow" provision in our contract.
____ I **do not** want to include a "Source Code Escrow" provision in our contract.

Change Order Rate and Procedure:

____ I **do** want to include a "Change Order Rate & Procedure" provision in our contract.
____ I **do not** want to include a "Change Order Rate & Procedure" provision in our contract.

American Recovery & Reinvestment Act (ARRA) Funds

____ **YES:** This project is funded in whole or in part by ARRA funds.
____ **No:** This project does **NOT** include ARRA funds.

Davis-Bacon Act

____ **YES:** This project involves the construction, alteration, or repair of public buildings and federal funds are being used.
____ **NO:** This project does **NOT** involve the construction, alteration, or repair of public buildings and federal funds are **NOT** being used.

Source of Funds/Special Terms

____ **YES:** This project uses funds from a federal program or other source requiring special compliance terms, conditions or warranties. Please specify the source and attach a copy of any required compliance terms.
____ **NO:** This project does **NOT** use funds from a federal program or other source requiring special compliance terms, conditions or warranties.

Cloud/Offsite Hosting – Public or Non-Public Data

____ **PUBLIC DATA**
____ **NON-PUBLIC DATA (PII)**

NOTE: ITS is NOT responsible for ensuring compliance with any guidelines, conditions, or requirements for any funding source.

Authorized Signature for Customer Agency: _____

Title: _____   Date: _____

Definition and Instructions

Liquidated Damages – a contractual provision that determines in advance the measure of damages if a party breaches the agreement.

When to use: Development projects or hardware installation projects, where a delay in performance would hinder the project schedule. Damages will be dependent upon the particular project. ITS will work with the customer to analyze the risk and develop appropriate damage amounts.

Performance Bond – a bond given by a surety company to ensure the timely performance of a contract.

Letter of Credit – an instrument under which the issuer, at a customer's request, agrees to honor a draft or other demand for payment made by a third party (the beneficiary), as long as the draft or demand complies with specified conditions, and regardless of whether any underlying agreement between the customer and the beneficiary is satisfied.

When to use: The Performance Bond or Letter of Credit would be invoked if a Vendor for any reason is unable to complete a project. The Performance Bond or Letter of Credit is typically issued for the total contract value. This provision gives agencies the ability to cover the cost associated with bringing in another vendor to complete the project. The Vendor pays for the Performance Bond and then passes that cost onto the agency.

The Performance Bond or Letter of Credit is received and reviewed before the contract is executed. The Performance Bond and Letter of Credit are kept at ITS in a fire-proof safe, reviewed periodically for project status, and returned when the project is successfully completed. Typically, the bonding company has the opportunity to remedy before the Performance Bond can be redeemed/cashed. Normally, the Letter of Credit is cashed according to procedures in the contract.

Retainage – an amount withheld from the full payment of a contract pending the other party's completion of some obligation, esp. to ensure that a contractor finishes the work agreed on beforehand. The terms of retainage are typically expressed in the contract. The device gives the contractor an incentive to finish the work, and the other party security that the work will be finished.

When to use: Retainage is another means that may be used to mitigate risk. ITS will work with the customer to determine if retainage is warranted based upon the particular project. ITS and the agency may negotiate with the awarded Vendor regarding the percentage of retainage and whether or not payments will be made upon completion of project phases, completion of deliverables, or final project completion. The retainage is expressed as a percentage of the price of a deliverable or phase, generally from 10 to 20 percent.

Personnel Assignment Guarantee – Contractual provision that addresses the Vendor's key personnel assigned to the project. This provision is used to guarantee that the Vendor will provide key personnel for the duration of the project and defines the procedure to be followed in the event a replacement is needed. The typical Guarantee in our contracts requires that the Vendor reimburse the customer in the amount of 50% of the contract.

When to use: This provision should be used for long term development or consulting projects. The objective of this provision is to insure that project expertise is maintained and that the project is not delayed due to learning curves.

Source Code Escrow – Contractual provision that defines the requirements the Vendor must follow in order to escrow the source code. This provision requires the Vendor to place and maintain a current copy of certain products, such as the data dictionary, documentation, object code and source code in escrow, and furnish the

agency with a copy of the escrow agreement and the name and address of the agent.

When to use: This provision should be used when the Vendor develops a customized system or modifies the base package to meet the agency's needs. Protects the agency in the event that the Vendor was to undergo bankruptcy, legal problems, or natural disaster.

Change Order Rate & Procedures – Contractual provision that defines the procedures for executing a change request.

When to use: Development projects, to define the procedure and rate for any change request that may occur after the initial scope has been defined and the contract has been executed. Asking the vendor to include a change order rate in their proposal allows the rate to be included or considered in the cost evaluation/scoring process. In addition, the vendor cannot increase their change order rage throughout the duration of the project.

*Readers should be aware that the previous examples provided are the typical uses/reasons for the provisions but are not inclusive of all possibilities.

Cloud/Offsite Hosting- Public or Non-Public Data – These terms are in reference to the Mississippi Cloud or Offsite Enterprise Security Policy. Agencies should be able to classify their data as public or non-public based on FedRAMP security controls. The ITS Information Security Division can help agencies classify their data.

When to use: This provision will be used if the solution will be hosted offsite or in a cloud.