

**EXHIBIT J – GOVDELIVERY CLOUD SERVICES  
 ADDITIONAL CONTRACT TERMS AND CONDITIONS  
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**EXHIBIT J – GOVDELIVERY CLOUD SERVICES  
ADDITIONAL CONTRACT TERMS AND CONDITIONS**

These additional terms and conditions for provision of Software as a Service (“**SaaS**”) as part of Supplier’s contractual obligations for an overall solution provided by the Supplier are in support of and incorporated herewith under Contract No. VA-190906-STVN. This Exhibit (“**Exhibit**”) sets forth additional terms and conditions under which Supplier shall provide such Licensed Services (“**Licensed Services**”) to VITA and Authorized Users.

**1. DEFINITIONS**

**A. Application**

The software programs in object code and other related data, including intellectual data, proprietary information and Documentation contained and applicable to Licensed Services hosted and supported by Supplier under the Contract, as described in Exhibit K or as described in any SOW or order issued under the contract, including any Updates, enhancements, and replacements to the Application.

**B. Application Users**

Application User(s) include employees of an Authorized User, independent contractors engaged by an Authorized User, or entities contracting with an Authorized User for services, as specified in the applicable order or SOW. Application User(s) also include customers, suppliers, members of the general public, and other entities with whom an Authorized User may find it necessary or desirable to process or communicate electronically in pursuit of its business. In the event that the Authorized User is a private institution of higher education which is listed at: <http://www.cicv.org/Our-Colleges/Profiles.aspx>, Application Users may include students of that private institution.

**C. Content**

Any data, including the selection, arrangement and organization of such data, entered, uploaded to the Application, or otherwise provided to Supplier by Authorized User or by any Application User, and any software and related documentation, from whatever source, provided by Authorized User or Application User to Supplier in connection with this Contract.

**D. Excusable Downtime**

The period of time when the Licensed Services are not available to Authorized User or its Application Users due to previously scheduled network, hardware or service maintenance and/or upgrades.

**E. Licensed Services**

The operation of the Application and the necessary operating system software, hardware, and utilities on Supplier’s host computer system; furnishing Supplier Product to Application Users; storing Content; and making the Application, Content, and Supplier Product available to Application User(s) via the Web Site, as more fully described in Exhibit K or as described in any Statement of Work or order issued hereunder.

**F. Supplier Product**

Supplier’s proprietary reports, information, and data made available to Authorized User and its Application Users as part of the Licensed Services.

**G. Web Site**

The Internet site operated by Supplier to provide access to the Application, with the Uniform Resource Locator (URL) specified in the applicable Statement of Work or order (or any successor URL(s)).

**2. TERM AND TERMINATION**

**A. Scalability**

VITA or an Authorized User may make a written request to increase or decrease the scope (e.g., number of USERIDs) of Licensed Services (“revised usage”) under an order or Statement of Work. The revised usage shall be effective not more than one (1) business hour following the

request. Pricing for the revised usage of Licensed Services shall be calculated as provided in Exhibit B and/or Exhibit K and shall be prorated on a daily basis for remaining portion of the current monthly billing period. For purposes of this provision, a written notice may include an e-mail or the use of a Supplier-provided provisioning website by an Authorized User's designated administrator.

### **3. DESCRIPTION OF LICENSED SERVICES**

During the term of any order or SOW issued pursuant to this Contract, Supplier hereby agrees to host the Application(s) listed and described in Exhibit A and specified in such order or SOW by the ordering Authorized User on servers owned, operated, housed, and maintained by Supplier and shall make such Application(s) available to Authorized User's designated Application Users through the Internet. Supplier has acquired any and all license rights in the Application(s) necessary and appropriate for Supplier to provide the Licensed Services as listed and described in Exhibit A for all Authorized Users.

Supplier hereby grants each ordering Authorized User and its Application Users a non-exclusive, transferable, worldwide license to access and use by any method the Application during the term of the applicable order or SOW issued pursuant to this Contract. The license fee for the rights shall be as set forth in Exhibit B and/or Exhibit K, and shall apply regardless of access mode.

If Authorized User is an agency, as defined by § 2.2-2006 and legislative, judicial, and independent agencies of the commonwealth, board, commission, or other quasi-political entity of the Commonwealth of Virginia or other body referenced in Title 2.2 of the Code of Virginia, the license shall be held by the commonwealth. If Authorized User is a locality, municipality, school, school system, college, university, local board, local commission, or local quasi-political entity, the license shall be held by that public body. If Authorized User is a private institution of higher education which is listed at: <http://www.cicv.org/Our-Colleges/Profiles.aspx>, the license shall be held by that private institution.

Notwithstanding any other provision or other unilateral license terms which may be issued by Supplier after the Effective Date of the Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of an order or SOW for Licensed Services, including access to the Application(s), or the fact that such other agreement may be presented to an Authorized User or its Application Users at the time of accessing the Application(s) ("click wrap"), the terms and conditions set forth in this Contract and any amendments or modifications thereto shall supersede and govern licensing and use of all products and services hereunder.

### **4. SUPPLIER RESPONSIBILITIES**

#### **A. Standard Application Responsibilities**

Unless otherwise indicated in Exhibit A, Supplier shall acquire and maintain, at no charge to Authorized User, the hardware and software required to host the Application(s). The hardware and software on which the Application(s) is hosted will be maintained in good operating condition, consistent with or exceeding generally accepted industry practices and procedures. In addition:

a). Supplier shall maintain sufficient hardware capacity to satisfy the technical requirements and the bandwidth and required storage capacity indicated in Exhibit A.

b). Supplier shall be responsible for all telecommunication connections from the server hosting the Application to the Internet.

c). Supplier may collect user-specific data only as necessary to provide the Licensed Services ordered by an Authorized User. No information regarding any Authorized User or any Application User shall be disclosed, provided, rented or sold to any third party for any reason unless required by law or regulation or by an order of a court of competent jurisdiction. This obligation shall extend beyond the term of the Contract.

d). The Application shall be made available to Authorized User and/or designated Application Users, as specified in the applicable order or SOW, twenty-four (24) hours a day, seven (7) days a week ("**Uptime**") less Excusable Downtime. Except in cases of emergency, Authorized User shall be provided a two (2) business day advance notification of such maintenance and/or upgrade. In cases of emergency, Supplier will use its best efforts to notify Authorized User of a planned Downtime as soon as practicable. Maintenance or upgrades are not to exceed thirty-six

(36) hours in duration in a single month and cannot occur Monday through Friday, between the hours of 6:00 a.m. and 8:00 p.m. Eastern Time.

e). Excusable Downtime shall not include (a) an electronic hardware failure, (b) a failure in the Supplier's Application, (c) an electric utility failure at Supplier's facility where the Application is hosted, or (d) a network failure up to, but not including, the interconnection point of Supplier's network to the public switched telephone network.

f). Supplier guarantees the Application will be available for use at least ninety-nine percent (99%) of the total time during each month, excluding Excusable Downtime.

g). If non-Excusable Downtime exceeds the parameters listed above, Supplier will credit to Authorized User the total recurring fees that would otherwise be owed by Authorized User under this Contract during the month of such failure. Such credit will be issued in the month immediately following the failure.

h). Supplier shall be required to notify VITA in writing at least sixty (60) days prior to of any planned change(s) or Update(s) to the Application; its functionality; Content storage/ backup/disaster recovery, including physical location; security architecture, features or settings; terminations and/or replacement of any Supplier subcontractor. The planned changes or Updates include any change(s) that would potentially impact the secure and efficient use of the Application, as understood and agreed to between Supplier and VITA at Contract award. The purpose of this notice is to allow sufficient time for Supplier and VITA to discuss any technical/functional considerations and/or changes that would require action by the commonwealth.

i). Supplier is responsible for documenting and maintaining any customizations made for operational use of the Application and/or for interoperability use with other systems or applications used by an Authorized User and paid for solely by Authorized User. The associated technical data, code, documentation and other necessary information about such customizations shall be provided by Supplier to Authorized User within ten (10) business days of the customizations' operational use. Supplier shall be required to routinely transfer knowledge regarding the Application and Licensed Services, including Updates and all material changes, to Authorized Users in a reasonable manner to ensure proper and efficient use of Application and Licensed Services without degrading performance thereof.

j). Supplier agrees to work with the Authorized User to ensure compliance with any approved security exceptions or other identified gaps or requirements provided to Authorized User in writing by VITA.

k). Supplier shall not use any software, hardware, or services which have been prohibited pursuant to § 2.2-5514 of the *Code of Virginia*.

In addition, and at no additional cost to Authorized Users, Supplier shall provide access to additional Updates, features, and functionalities of the Application as are provided by Supplier to other customers of Supplier who require functionality similar to that of the Application provided to Authorized Users. All such additional features and functionality, where reasonably necessary, shall be accompanied by updated Documentation, whether in hard copy format or distributed electronically via email or the Supplier website. Notwithstanding the provisions of this Section and except as agreed to in writing by VITA and Supplier, nothing in the Contract shall oblige Supplier to undertake any modifications to the Application, and all such modifications are at Supplier's sole discretion whether suggested by an Authorized User or another party.

#### **B. Ancillary Responsibilities**

Supplier shall, throughout the term of this Contract, make available such resources, including Supplier personnel, as are reasonably required to: (a) train designated Authorized User personnel in the use of the Application; (b) develop modifications to the Application as agreed by VITA and Supplier in any exhibit hereto or as agreed to by Supplier and Authorized User in any order or SOW issued hereunder; and (c) otherwise support the Application as provided under this Contract and any exhibits hereto or as agreed in any order or SOW issued hereunder.

#### **C. Subcontractors**

It is understood that Supplier may utilize subcontractors to provide integral components of the Licensed Services and Application; however, except for those so named at time of Contract

award, Supplier shall not use new or replacement subcontractors to perform or provide integral components of the Licensed Services or Application during performance of this Contract without advance written notification to and approval by VITA.

Supplier is responsible for the performance of its subcontractors used in providing any portion of the Licensed Services or Application. Additionally, Supplier is responsible for its subcontractors' compliance with the terms and conditions of this Contract.

If an order or SOW issued pursuant to this Contract is supported in whole or in part with federal funds, Supplier shall not subcontract any Services pursuant to such order or SOW to any subcontractor that is a party excluded from Federal Procurement and Nonprocurement Programs. In no event shall Supplier subcontract with any subcontractor which is debarred by the Commonwealth of Virginia or which owes back taxes to the commonwealth and has not made arrangements with the commonwealth for payment of such back taxes.

## **5. AUTHORIZED USER RESPONSIBILITIES**

Unless otherwise agreed and as applicable, Authorized User or its Agent, or an Application User, will be responsible for input of Content into Supplier's Application and Authorized User or its Agent will be responsible for keeping said Content current and accurate. Supplier will have no responsibility for assisting Authorized User in creating, modifying or inputting the Content, unless specified in Exhibit A.

If Supplier issues unique USERIDs and passwords to an Application User:

a). Authorized User is responsible for protecting said passwords and for any authorized and unauthorized use made of the passwords. Authorized User will fully cooperate with law enforcement authorities in the detection and prosecution of illegal activity related to unauthorized use of the Licensed Services.

b). Authorized User shall have the right to add, activate, change access for, or disable USERIDs at its sole discretion. Authorized User shall designate Administrators who will be authorized to add, activate, change access for or disable USERIDs.

c). Upon notification by Authorized User of an Application User's disabled access, Supplier shall remove access authorization by said Application User from its server within one (1) hour of receipt of such notification, ensuring that historical access audit details of such Application User shall not be deleted or lost. If Supplier fails to make such a removal of access, Authorized User shall not be held liable for any charges or damages incurred due to use of the unauthorized USERID.

d). Authorized Users of this Contract agree to notify Supplier of any degradation, potential breach, or breach of the Content and Application privacy or security as soon as possible after discovery. Authorized Users further agree to provide Supplier the opportunity to participate in the investigation of the reported situation.

e). Authorized User agrees to submit any required Security exceptions to <mailto:commonwealthsecurity@vita.virginia.gov> within five (5) days of VITA notification to Authorized User.

## **6. CONTENT PRIVACY AND SECURITY**

Supplier shall provide a secure environment for Content and any hardware and software, including servers, network and data components provided by Supplier as part of its performance under this Contract. Supplier shall provide a secure environment for Content and any hardware and software in accordance with VITA's Security Standards located at: <https://www.vita.virginia.gov/it-governance/itrm-policies-standards/> in order to prevent unauthorized access to and use or modification of, and to protect, the Application and Content. Supplier agrees that all Content of Authorized Users is intended solely for the business of the Authorized Users and is considered private data. Therefore, Supplier shall, at a minimum, implement the following procedures designed to protect the privacy and security of Content:

a) User identification and access controls designed to limit access to Content to Application Users in accordance with the principles of least privilege.

- b) Supplier shall ensure that all personnel with physical or logical access to Content will receive industry standard annual security awareness training and all other training as required by Content owner, commonwealth security standards, regulation, or law.
- c) Supplier shall ensure that the Application and/or Licensed Services are capable of auditing the following events. Successful and unsuccessful account logon events, account management events, object access, policy change, privilege functions, process tracking, and system events.
- d) Supplier shall ensure that the Application and/or Licensed Services are capable of auditing the following events, for Web applications. All administrator activity, authentication checks, authorization checks, data deletions, data access, data changes, and permission changes.
- e) Supplier shall ensure that the Application and/or Licensed Services employs automated mechanisms to centrally review, analyze and correlate audit and log records from multiple components of the Application and/or Licensed Services to support organizational processes for investigation, alerting and response to suspicious activities.
- f) Supplier shall ensure that the Application and/or Licensed Services support exporting of log files to the commonwealth for review and analysis.
- g) Supplier shall ensure that the Application and/or Licensed Services are capable of maintaining all audit records in accordance with commonwealth record retention policies found at the following URL. <http://www.lva.virginia.gov/agencies/records/>
- h) Provide evidence of a comprehensive continuous monitoring program encompassing all systems with access to Content.
- i) Provide evidence that the Application and/or Licensed Services adhere to a security baseline, which is based on least functionality.
- j) Supplier shall ensure that all changes to proposed Application and/or Licensed Services are authorized according to change management policies.
- k) Supplier agrees to maintain all metadata associated with any original Content submitted into the Application and/or Licensed Services by the Authorized User for easy retrieval and access, using secure industry standard protocols, within a predefined period as specified in the Authorized User's Statement of Work.
- l) Supplier agrees to provide a secure method of exporting Content when requested.
- m) Supplier shall ensure that the Content exported from the supplier's Application or infrastructure is in an industry standard format that provides for interoperability and portability.
- n) Supplier shall ensure that the Application and/or Licensed Services provides and maintain a backup of Content that can be recovered in an orderly and timely manner within a predefined frequency consistent with recovery time and recovery point objectives, as specified in the Authorized User's Statement of Work.
- o) Supplier shall ensure that the Application and/or Licensed Services can store a backup of Content, at least daily, in an off-site "hardened" facility, located within the continental United States, maintaining the security of the Content.
- p) Implement a contingency plan designed to maintain the access to the Application and/or Licensed Services and to prevent the unintended destruction or loss of Content. This plan should provide a predefined frequency, consistent with recovery time and recovery point objectives, as specified in the Authorized User's Statement of Work, for disaster recovery and archival purposes of Content at a secure facility located within the continental United States.

- q) Supplier shall partition, in aggregate for this contract, all Content submitted into the Application and/or Licensed Services by the Authorized User in such a manner that it will not be impacted or forfeited due to E-discovery, search and seizure or other actions by third parties obtaining or attempting to obtain records, information or Content for reasons or activities that are not directly related to the business of the Authorized User.
- r) Service must support multi-factor authentication for access to any administrative portal and/or any remote administrative interface.
- s) Supplier shall fully cooperate with commonwealth incident response resources and all required law enforcement personnel for assistance in the handling and reporting of security incidents.
- t) Supplier shall maintain an incident response program that implements incident handling for security incidents that includes preparation, detection and analysis, containment, eradication, and recovery processes.
- u) Incident response must have the capability to support automated mechanisms for supporting incident handling processes.
- v) Supplier shall provide the capability to document incidents and investigations in the commonwealth's incident handling system.
- w) Supplier shall provide quarterly summary reports of Intrusion Detection System (IDS) and Intrusion Prevention System (IPS) events to: [enterpriseservices@vita.virginia.gov](mailto:enterpriseservices@vita.virginia.gov)
- x) Supplier ensures that all Content is removed or destroyed in accordance with and/or exceeding the requirements of the commonwealth Data Removal standard located at the following URL. <https://www.vita.virginia.gov/it-governance/itrm-policies-standards/>
- y) Supplier shall support physical security measures, including securing all Content on a secure server, in locked data cabinets within a secure facility located within the continental United States.
- z) Supplier shall ensure that access to facilities housing Content or supporting applications are restricted to only allow access to Supplier's personnel and agents who have a need to know in connection with operation and support of the Application and/or Licensed Services.
- aa) Supplier shall ensure that notification is sent to Authorized Users in writing thirty (30) days prior to its intention to replace or add any third-party that will be provided access to Content whether that access is provided by Supplier or Supplier's subcontractors. The Authorized Users may reject any additional or new third parties who may be provided access to Content.
- bb) Supplier shall ensure that the Application and/or Licensed Services operating systems, middleware, applications, and interfaces will be scanned for vulnerabilities every 30 days and scanning reports be provided to Authorized Users as required by commonwealth security standards.
- cc) Supplier shall cooperate with the commonwealth to allow monthly vulnerability scans against all public-facing interfaces with access to commonwealth data.
- dd) Application and/or Licensed Services must have the capability to set affinity on tiered systems. Supplier ensures that no one hypervisor can host the application and the data storage.
- ee) Supplier shall ensure that all Content is stored, processed and maintained within the continental United States at all times.
- ff) Supplier shall report the exact geographic location of all commonwealth data at all times if that Content is not stored in a commonwealth facility. Supplier shall provide a report to confirm the exact geographic location of any Content not stored in a commonwealth facility every 30 days.

- gg) Supplier shall, at all times, remain compliant with the privacy and security requirements mandated by federal, state and local laws and regulations.
- hh) Supplier shall ensure performance of an AICPA SOC-2 (Type 2) audit at least once annually of the Application's environment. Upon request from the Authorized Users, Supplier shall provide a non-redacted copy of current AICPA SOC-2 (Type 2) audit. Supplier shall assist the Authorized Users in obtaining the current AICPA SOC-2 (Type 2) audit report from any third-party providing services to Supplier, if said third-party services involve the processing or storage of any Content. The Trust Service Principles that should be covered in the SOC -2 Type 2 are: Security, Availability, Processing Integrity, Privacy and Confidentiality.
- ii) Supplier understands that VITA or a third-party audit organization is responsible for performing a security audit within 90 days after contract award to determine control gaps between the supplied audit and the Hosted Environment Information Security Standard (SEC525). If no audit is supplied, a complete security controls audit utilizing SEC525 must be performed. Failure to do so may result in remedies being levied as provided in the terms and conditions of the Contract.
- jj) Supplier shall ensure that external connections incorporated into the Application and/or Licensed Services have appropriate security controls including industry standard intrusion detection and countermeasures that will detect and terminate any unauthorized activity prior to entering the firewall maintained by Supplier.
- kk) Supplier shall ensure that the Application and/or Licensed Services will utilize industry standard firewalls regulating all data entering the internal data network from any external source which will enforce secure connections between internal and external systems and will permit only authorized data to pass through.
- ll) Supplier shall ensure that the Application and/or Licensed Services will use industry standard encryption techniques to protect Content that is transmitted or stored on behalf of the commonwealth. Supplier shall ensure that the Application will provide for the commonwealth to maintain exclusive control of all encryption keying material.
- mm) Supplier shall ensure that they will apply all security updates to their systems as required by commonwealth security standards. For third-party hosted systems, updates should be installed in compliance with SEC 525. Systems hosted by the commonwealth should have updates installed in compliance with SEC 501. Please refer to the following link for the above mentioned commonwealth security standards: <https://www.vita.virginia.gov/it-governance/itrm-policies-standards/>
- nn) Supplier shall ensure that they will utilize industry standard malware protection, incorporating both signature and non-signature-based detection mechanisms, on all systems with access to Content.
- oo) Supplier shall ensure that malware protection will be centrally managed and receive regular automatic updates to malicious code protection mechanisms and data files from the software vendor.
- pp) Within fifteen (15) business days after the expiration or termination of this Contract, Supplier shall confirm in writing to Authorized Users and VITA that all Content has been removed from all systems where the Content resided during performance of this Contract in a manner that complies with and/or exceeds the commonwealth Data Removal standard located at the following URL: <https://www.vita.virginia.gov/it-governance/itrm-policies-standards/>. The written confirmation shall include (a) sufficient detail describing the processes and procedures used in removing the Content, (b) information about the locations of where it was removed from within the Application and storage and other locations, and (c) the date the removals were performed. All metadata, in its original form, shall be returned to the respective Authorized User(s).
- qq) Regular training for Supplier personnel regarding the security and data recovery programs referenced in this Section.
- rr) Regular testing of the systems and procedures outlined in this Section; and

ss) Audit controls that record and monitor Application and Licensed Services activity continuously.

tt) Should Supplier fail to perform in compliance with any provision of this Section, Authorized User may provide Supplier with a written notice to cure. Supplier shall have fifteen (15) days to cure its noncompliance, or with agreement from Authorized User and VITA, in its governance role, may request a reasonable extension for time to cure providing Authorized User, and a copy to VITA at: [enterpriseservices@vita.virginia.gov](mailto:enterpriseservices@vita.virginia.gov), with a written plan of action to cure. If Supplier fails to cure, Authorized User may deem Supplier in breach and/or default of the Contract and may immediately terminate the Contract, in whole or in part. Upon such termination, neither the Commonwealth, nor Authorized User nor VITA shall have any future liability except Authorized User will be responsible for deliverables accepted by Authorized User and Licensed Services rendered to Authorized User by Supplier. In the event of such termination, Supplier shall accept return of any Deliverable that was not accepted by Authorized User, and Supplier shall refund any monies paid by Authorized User for such Deliverable and for any unused, remaining term paid for in advance by Authorized User for the Licensed Services up to the date of such termination. Supplier agrees that Authorized User may pursue all remedies provided under law in the event of a breach or threatened breach of this Section, including procurement or transition costs or injunctive or other equitable relief.

## 7. PROPRIETARY RIGHTS

### A. Supplier's Proprietary Rights

Except as otherwise stated herein, the Licensed Services (including without limitation, the Application and Updates, and Supplier Product, except to the extent that Supplier Product contains Content) and Documentation are the sole and exclusive property of Supplier and its licensors. All modifications, enhancements, Updates, and translations of the Licensed Services shall be deemed a part thereof.

### B. Authorized User Requirements and License Restrictions

Except as otherwise provided in this Contract or as provided by law:

a). Authorized User will use commercially reasonable efforts to ensure that Application Users comply with all of the terms and conditions hereof;

b). Authorized User shall not reverse engineer, decompile, disassemble, or otherwise attempt to derive source code or other trade secrets from any of the software comprising or in any way making up a part of the Application;

c). Authorized User shall not directly or indirectly copy or reproduce all or any part of the Application, whether electronically, mechanically or otherwise, in any form including, but not limited to, the copying of presentation, style or organization, without prior written permission from Supplier; provided, however, an Authorized User may reproduce and distribute any Application output generated from the relevant Authorized User Content, and an Application User may reproduce and distribute any Application output generated pursuant to the permissions set forth in the applicable Authorized User's order or SOW;

d). Authorized User shall not rent, lease, sublicense, resell for profit, loan, distribute, network or modify the Application or Supplier Product or any component thereof, provided as part of the Licensed Services, except as otherwise authorized by Supplier. However, an Authorized User may reproduce and distribute any Application output (e.g., reports) generated by Authorized User using the Application, and an Application User may reproduce and distribute any reports or output generated by the Application User using the Application and pursuant to the permissions in the applicable Authorized User's order or SOW;

e). Authorized User shall only use the Application and Supplier Product in the normal course of business, in connection with, and as part of, the Licensed Services;

f). Authorized User shall not attempt to gain unauthorized access to the Application or Licensed Services, other user accounts, computer systems or networks connected to the Licensed Services;

g). Authorized User shall not remove, obscure or alter Supplier's proprietary notices, disclaimers, trademarks, or other proprietary rights notices of any kind affixed or contained in the Application

or Licensed Services or any written or electronic report, output or result generated in connection with the Licensed Services;

h). Authorized User shall take reasonable care not to, and shall not intentionally or knowingly, use the Application to post, transmit, distribute, store or destroy any information: (a) in violation of any applicable law, statute, ordinance or regulation; (b) in a manner that shall infringe the intellectual property rights of others; (c) that is defamatory or trade libelous, or (d) that contains any Computer Viruses;

i). Authorized User shall not use the Application or Licensed Services for any illegal, obscene, offensive or immoral purpose.

### **C. Authorized User Proprietary Rights**

Except as otherwise stated herein and with the exception of any applicable third-party rights, Content and any customizations made for Authorized User's operation of the Application or for interoperability with other Authorized User's systems or applications paid for by the Authorized User, are and shall remain the sole and exclusive property of Authorized User, including all applicable rights to patents, copyrights, trademarks, trade secrets or other proprietary property rights thereto. Additionally, all right, title and interest in and to any Content or customizations relating to Authorized User's business shall remain the property of Authorized User, whether or not supplied to Supplier or uploaded into the Application. Nothing in this Contract shall be construed as conveying any rights or interest in Content or customizations to Supplier. Upon termination of an order or SOW issued hereunder, Supplier agrees to either provide the Content and customizations to the applicable Authorized User, or, at such Authorized User's request, certify in writing that said Content and customizations in all formats, have been destroyed.

## **8. CLOUD EXIT ASSISTANCE**

Upon execution of an order or SOW pursuant to this Contract, Supplier and Authorized User will develop an exit plan ("**Exit Plan**") detailing each Party's respective tasks for the orderly transition and migration of all Content stored by Supplier pursuant to such order or SOW to Authorized User's archive and/or to a system or application maintained by Authorized User.

At a minimum, the Exit Plan must provide that within 30 days of the expiration or termination of this Contract for any reason, Supplier shall return to the Authorized User all Content in its possession and stored by the Application on behalf of the Authorized User. Supplier shall return all such Content in a format accessible without the use of Supplier's Application. Supplier's failure to do so will constitute a material breach of this Contract and the Authorized User may exercise all available rights and remedies under law and equity, in addition to any remedies set forth in this Contract.

In addition, at Authorized User's option, Supplier shall continue to provide Licensed Services for up to six (6) months after the date of expiration or termination of an applicable order or SOW in order to facilitate Authorized User's transition to another service model or provider. Supplier shall also provide such reasonable assistance as may be requested by the Authorized User and agrees such assistance will not be unreasonably withheld. Supplier will perform such assistance at the hourly rate or for the fee agreed upon by Supplier and Authorized User. In the event of a termination for breach by Supplier, Supplier shall provide the transition assistance at no charge or fee to the affected Authorized User.

## **9. COMMENCEMENT AND ACCEPTANCE OF LICENSED SERVICES**

### **A. Licensed Services Commencement Date**

The Supplier shall begin delivery of Licensed Services on the date requested by the Authorized User and agreed to by the Supplier in an order or SOW. An Authorized User may delay the Licensed Services commencement date by notifying the Supplier at least ten (10) days before the scheduled Licensed Services commencement date.

### **B. Acceptance**

The Application shall be deemed accepted when the Authorized User reasonably determines that such Authorized User and its Application Users can successfully access and use all functionalities of the Application which Supplier is required to provide to such Users. Such Authorized User agrees to complete Acceptance testing within XX (XX) days after receiving written notice from Supplier of the ability of such Authorized User and its Application Users to

access the Application, or within such other period as set forth in the applicable order or SOW. Supplier agrees to provide to such Authorized User such assistance and advice as such Authorized User may reasonably require, at no additional cost, during such Acceptance testing, other than pre-approved travel expenses incurred which will be reimbursable by such Authorized User at the then current per diem amounts set forth by the Virginia Department of Accounts and published at: <http://www.doa.virginia.gov/> or a successor URL(s). Authorized Users who are not public bodies may have their own per diem amounts applicable to Supplier's pre-approved travel expenses. Authorized User shall provide to Supplier written notice of Acceptance upon completion of successful Acceptance testing. Should Authorized User fail to provide Supplier written notice of successful or unsuccessful Acceptance testing within five (5) business days following the Acceptance testing period, the Service shall be deemed Accepted.

**C. Cure Period**

If during the Acceptance test period, Authorized User is unable to access the licensed functionalities of the Application, Supplier shall provide Authorized User with such access, and such Authorized User's Application Users with their required access, within seven (7) days of written notice of inability to access, or as otherwise agreed between the Authorized User and Supplier in the applicable order or SOW. Should Supplier fail to provide access to the licensed functionalities of the Application, such Authorized User may, in its sole discretion: (a) reject the Application in its entirety and recover amounts previously paid hereunder; (b) issue a "partial Acceptance" of the Application access with an equitable adjustment in the price to account for such deficiency; or (c) conditionally accept the applicable Application access while reserving its right to revoke Acceptance if timely correction is not forthcoming.

If the Authorized User and its Application Users are unable to access the licensed functionalities of the Application after a second set of acceptance tests, Supplier shall be deemed in default of the order or SOW. In the event of such default, the Authorized User may, at its sole discretion, terminate its order or SOW, in whole or in part, for the Licensed Services to be provided thereunder by Supplier.

**10. RECORDS AND AUDIT**

Supplier shall maintain accurate records and other evidence pertaining to the costs and expenses for all Licensed Services performed/delivered under any order or SOW issued pursuant to this Contract in support of its charges invoiced to Authorized User. The records will be to the extent and in such detail as will properly reflect all direct and indirect costs associated with such order or SOW. In addition, Supplier shall maintain accurate records of the Licensed Services, including but not limited to, the "Uptime" and "Downtime" as set forth in the Supplier Responsibilities Section. Authorized User shall have the right, at any reasonable time during regular business hours after giving reasonable advance notice, to inspect and audit the records applicable to its order(s) or SOW(s). Supplier shall preserve such records for three (3) years after termination/completion of the Licensed Services agreed to under this Contract or any order or SOW issued hereunder.

**11. APPLICATION AND LICENSED SERVICES SUPPORT**

At any time during the term of any order or SOW issued pursuant to this Contract, Supplier shall provide the following Application Services (including unlimited telephonic support and all necessary travel and labor) without additional charge to any Authorized User in order to ensure such Authorized User and its Application Users are able to access and use the Application in accordance with the Requirements.

**A. Coverage**

Twenty-four (24) hours per day, seven (7) days a week, Supplier provide to any Authorized User all reasonably necessary telephone or written consultation requested by such Authorized User in connection with use, problems and operation of the Application.

**B. Service Levels**

Within one (1) hour after a request from an Authorized User or VITA, in its governance role, Supplier will respond to such request for support of Licensed Services regarding the Application and Licensed Services, including Application, Supplier Product and Documentation in accordance with the procedures identified in the Contract and/or defined by the Authorized User SOW. In each case, Authorized User may describe the problem by telephone or electronic mail or via a

web site provided by Supplier. Supplier shall use its best efforts/commercially reasonable efforts to meet Response Time and Resolution Time and other obligations under this Contract.

The level of severity (e.g., 1, 2, 3), shall be defined by such Authorized Users.

**C. Application Evolution**

Should Supplier merge or splinter the Application previously provided to any Authorized User, such action on the part of Supplier shall not in any way result in any Authorized User being charged additional license or support fees in order to access the Application, to enable its Application Users to access the Application, or to receive enhancements, releases, upgrades or support for the Application.

**12. SERVICE LEVELS AND REMEDIES**

**A. Availability**

Supplier's failure to make the Licensed Services Available to Authorized User and its Application Users at least 99% of the time in any given month during the term of such Authorized User's order or SOW, excluding scheduled maintenance or excusable downtime, shall be deemed a service level default ("**Service Level Default**") and Authorized User may obtain the non-exclusive remedies as set forth in the Contract and/or defined by the Authorized User SOW. For purposes of this Contract, "Available" means that Authorized User and its Application Users are able to access all features and functions of the Application and Licensed Services required by Authorized User, including but not limited to the Application and Supplier Product.

In the event Authorized User is eligible for a 100% Service Level Credit under this Section during any given month of the term of such Authorized User's order or SOW, Authorized User may terminate such order or SOW without penalty upon written notice to Supplier and, in addition to the remedies available under this Section, receive any additional remedies set forth in the Contract.

Credits shall be applied against the next invoice. In the event a Service Level Default occurs after VITA or an Authorized User has given notice of termination pursuant to the Term and Termination section of this Contract or due to non-appropriation of funds, or Authorized User has made final payment to Supplier for the Application and Licensed Services and no further invoices shall issue as a result, Supplier shall refund to Authorized User the amount of the appropriate Service Level Credit due for the period of default.

**B. Provisioning**

Incremental adds, access authorizations, moves or reductions, including disabled access updates, in the scope of the Licensed Service (e.g., USERIDs), shall be completed within one (1) business hour of a written request (including e-mail or submission to Supplier's provisioning website) from an Authorized User's designated Administrator. In the event that provisioning is not made available within one (1) business hour of the request, a credit for the incremental amount of the revision shall be applied against the next invoice for 1/30th of the corresponding pro-rated amount.

**C. Reporting**

(i) Monthly Reports:

By the 5th of each calendar month during the term of this Contract, Supplier shall provide Authorized User with the following written monthly reports:

(a) Service Level Performance Report - a report that contains information with respect to the performance of the Application and Licensed Services. Such report, unless otherwise agreed upon by the parties, shall be in conformity with the reporting Supplier provides to its other customers utilizing an application and licensed services identical or similar to the Application and Licensed Services provided to Authorized User.

(b) System/Application Patching Compliance Report – a report that illustrates that the supplier has installed security relevant software and firmware updates within 30 days of the release of the updates.

(c) Scanning Reports (OS, Middleware, Applications and Interfaces) Report – a report that illustrates vulnerability scanning of Cloud Service Providers Operating Systems/infrastructure,

databases and web applications(d) Geographic Locations of Data Being Hosted Report – a report that illustrates the location of Commonwealth data

(ii) Quarterly Reports:

By the 5th day of the first month of a calendar quarter, during the term of this Contract, Supplier shall provide Authorized User with the following written quarterly report

(a) Summary Report of Intrusion Detection Scans and Intrusion Prevention Scans – a report that demonstrates that supplier protects commonwealth data with intrusion monitoring tools from unauthorized access, modification and deletion.

Supplier shall submit a copy of each report to VITA at: [enterpriseservices@vita.virginia.gov](mailto:enterpriseservices@vita.virginia.gov).

Representatives of Supplier and Authorized User, and VITA at its option, shall meet as often as may be reasonably requested by either party, but no less often than once each calendar quarter during the term of this Contract, to review Supplier's performance of Licensed Services and the performance of the Application and to discuss technical plans, financial matters, system performance, service levels and any other matters related to the above required reports and to this Contract in general that may be reasonably requested by either Supplier or Authorized User or VITA. Supplier shall notify VITA of such meetings by email to: [enterpriseservices@vita.virginia.gov](mailto:enterpriseservices@vita.virginia.gov). Authorized User or VITA may independently audit the report at its expense no more than two (2) times annually.

**D. Failure to Meet Service Level Commitments**

In the event that such Application fails to meet the Service Levels specified herein, Supplier will:

(a) promptly replace the Application with an Application that conforms to this Contract and such specifications; (b) repair the Application, at Supplier's expense, so that it conforms to this Contract and such specifications; or (c) refund to Authorized User all fees paid for the Application and the Licensed Services after the failure of the Application to meet the Service Levels. In the event Supplier fails to comply with these remedies, Authorized User may exercise all available rights and remedies under law and equity.

**E. Escalation Procedures**

[To be provided by Supplier.]

**13. CYBER SECURITY LIABILITY INSURANCE**

In addition to other insurance coverage requirements in the Contract, Supplier shall carry Cyber Security Liability insurance coverage in the amount of \$5,000,000 per occurrence.

**14. ESCROW AGREEMENT**

**A. Application Escrow Agreement**

Supplier is providing a General Use or COTS Application and no custom built source code is authorized under this Contract or any order or SOW issued thereunder. Therefore, Application Escrow is not required.

**B. Content Escrow Agreement**

Supplier shall maintain, in a separate escrow account for each Authorized User, copies of all Content provided by or to such Authorized User in an agreed upon industry standard portable format accessible without use of Supplier's Application. An executed agreement for providing for any such Content Escrow Agreement shall be attached to the Authorized User SOW.

Supplier acknowledges that, prior to the Effective Date of any SOW under this Contract, Supplier shall deliver to the Authorized User and VITA and the Authorized User and VITA will acknowledge receipt of a copy of the executed Content Escrow Agreement naming the Commonwealth of Virginia as a third party beneficiary. VITA will review the Content Escrow Agreement to ensure that such Content Escrow Agreement does not impose upon the Commonwealth any requirements other than administrative responsibilities necessary for the operation of the Content Escrow Agreement. If events give rise to a need for the Escrow Agent to release escrowed materials to the Commonwealth, the Commonwealth's sole responsibility shall be to request the release of such materials from the Escrow Agent. Supplier agrees to notify VITA in writing not less than thirty (30) calendar days prior to termination or any modification of the Content Escrow Agreement.

Supplier warrants that the information and materials to be kept in escrow in a media safe environment for the benefit of an Authorized User pursuant to a Content Escrow Agreement shall be specifically identified and listed in Attachment A to such Content Escrow Agreement and include a monthly back up of the Content repository for such Authorized User.

Supplier warrants that the Content Escrow Agreements provide or shall provide for, among other items, the release of the list of items on Attachment A of each Content Escrow Agreement which could occur upon the happening of certain events, including, but not limited to, Supplier's failure to carry out its support and maintenance obligations imposed by this Contract for a period of sixty (60) days, Supplier's breach or default under this Contract, Supplier's bankruptcy and/or Supplier's failure to continue to do business in the ordinary course. Any Content Escrow Agreement shall also provide for the release of the escrowed items in the event the Authorized User's Content is destroyed, lost, or damaged or following the termination or expiration of Authorized User's order or SOW for Licensed Services. Supplier agrees to pay all expenses associated with establishing and maintaining the escrow accounts and the contents mentioned above.

## **15. CLOUD SERVICES WARRANTY**

Supplier warrants and represents to VITA that Supplier will fulfill its contractual obligations and meet all needed requirements as described in Exhibit A as follows:

### **A. Licensed Services, Application and Documentation**

Supplier warrants the following with respect to the Licensed Services and the Application:

- a). The Application is pursuant to a particular Request for Proposal ("**RFP**"), and therefore such Application shall be fit for the particular purposes specified by VITA in the RFP and in the Contract. Supplier is possessed of superior knowledge with respect to the Application and is aware that all Authorized Users are relying on Supplier's skill and judgment in providing the Licensed Services, including the Application.
- b). Supplier represents and warrants (a) that it shall perform the Licensed Services in conformity to the specifications set forth in Exhibit A in a professional and workmanlike manner and (b) that the Licensed Services shall not infringe any third party proprietary rights including (without limitation) any trademark, trade name, trade secret, copyright, moral rights, patents or similar intellectual property rights.
- c). Supplier warrants that the Application and Licensed Services will conform in all material respects to the Requirements set forth in this Contract and any order or SOW issued hereunder. Supplier warrants that the Application Licensed Services will conform to the applicable specifications and Documentation, not including any post-Acceptance modifications or alterations to the Documentation which represent a material diminishment of the functionality of the Application, Licensed Services or Supplier Product. Supplier also warrants that such Application and Licensed Services are compatible with and will operate successfully when used on the equipment in accordance with the Documentation and all of the terms and conditions hereof.
- d). The Application provided hereunder is at the current release level unless an Authorized User specifies an older version in its order or SOW;
- e). No corrections, work arounds or future Application releases provided by Supplier shall degrade the Application, cause any other warranty to be breached, or require an Authorized User to acquire additional hardware equipment, software, or licensed services;
- f). Supplier warrants that all post-Acceptance Updates, changes, alterations or modifications to the Application, Licensed Services and Documentation by Supplier will be compatible with, and will not materially diminish the features or functionality of the Application, Licensed Services and/or Supplier Product when used on the equipment in accordance with the Documentation and all of the terms and conditions hereof.
- g). Supplier warrants that the Documentation and all modifications or amendments thereto which Supplier is required to provide under this Contract shall be sufficient in detail and content to allow a user to understand and utilize fully the Application without reference to any other materials or information.

**B. Privacy and Security**

Supplier warrants that Supplier and its employees, subcontractors, partners and third party providers have taken all necessary and reasonable measures to ensure that the Application, Licensed Services, Supplier Product, and any related deliverables do not include any degradation, known security vulnerabilities, or breach of privacy or security. Supplier agrees to notify VITA of any occurrence of such as soon as possible after discovery and provide VITA with fixes or upgrades for security vulnerabilities within 90 days of discovery.

**C. Operating System and Software Supportability**

Supplier warrants that Supplier and its employees, subcontractors, partners and third party providers have taken all necessary and reasonable measures to ensure that the Application, Licensed Services, Supplier Product, and any deliverables do not have dependencies on other operating systems or software that are no longer supported by Supplier, or its Subcontractors, partners and third-party providers.

**D. Access to Product and Passwords**

Supplier warrants that the Application and Licensed Services do not contain disabling code or any program device or other undisclosed feature, including but not limited to, viruses, worms, trojan horses, or other code which is designed to permit unauthorized access, delete, disable, deactivate, interfere with or otherwise harm the Application, Licensed Services or the hardware or software of any Authorized User or its Application Users. In addition, Supplier warrants that Authorized User and its Application Users will be provided commercially reasonable uninterrupted access to the Application. Supplier also warrants that it will not cancel or otherwise terminate access to the Application by disabling passwords, keys or tokens that enable continuous use of the Application by the Authorized User and its Application Users during the term of this Contract or any order or SOW issued hereunder. Supplier further warrants that the Application and Licensed Services are compatible with and will operate successfully on the equipment.

**16. ACCEPTABLE USE POLICY OR END USER LICENSE AGREEMENT**

Authorized User agrees to abide by Supplier's Acceptable Use Policy ("AUP") and/or End User License Agreement ("EULA") incorporated as an attachment to the SOW. Because certain standard clauses that may appear in, or be incorporated by reference into, Supplier's standard AUP and/or EULA cannot be accepted by VITA, and in consideration of the convenience of using that form, and this form, without the necessity of specifically negotiating a separate contract document, the parties hereto specifically agree that:

i. In the event of a conflict between this Contract and the AUP and/or EULA, the Contract and its exhibits to include Exhibit F – License Agreement Addendum, shall control;

ii. In the event of a material, unilateral revision to the AUP and/or EULA by Supplier that substantially impairs the ability of VITA or any other public body from its lawful use of the Service, VITA shall have the option to;

a. request that the revision be rescinded;

b. request that the revision be waived as to VITA or other public bodies receiving Services under this Agreement;

If Supplier fails to a grant a request by VITA per a. or b. above, within 30 days of receiving the request, then VITA may, at its option, terminate this Contract, in whole or in part, or any order or SOW, in whole or in part, without termination liability;

**17. THIRD PARTY TERMS AND CONDITIONS**

Should Supplier's provision of the Licensed Services or any performance obligations under the Contract, or any order or SOW issued under the Contract, include third-party terms and conditions, the aforementioned referenced Commonwealth security policies standards and guidelines; i.e., SEC501 and SEC525, shall take precedence over any third party terms and conditions. For the purposes of statutory law as referenced and incorporated in the Contract, if there is any conflict with any third party terms, such statutory law shall govern.