



Information Technology Solution Contract

between

The Virginia Information Technologies Agency

on behalf of

The Commonwealth of Virginia

and

Virginia Interactive, LLC

**INFORMATION TECHNOLOGY SOLUTION CONTRACT
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INFORMATION TECHNOLOGY SOLUTION CONTRACT

THIS INFORMATION TECHNOLOGY SOLUTION CONTRACT ("**Contract**") is entered into by and between the Virginia Information Technologies Agency ("**VITA**"), pursuant to § 2.2-2012 of the Code of Virginia and on behalf of the Commonwealth of Virginia ("**State**" or "**Commonwealth**"), and Virginia Interactive, LLC ("**Supplier**"), a limited liability company headquartered at 119 West Broad Street, 1st Floor, Richmond, VA 23220 to be effective as of September 6, 2019 ("**Effective Date**").

1. PURPOSE AND SCOPE

This Contract sets forth the terms and conditions under which Supplier shall provide for Citizen-facing Website/Application services, to include supporting Hosting, Development, Operations/Maintenance, Full Life-cycle support, and Payment Processing services, to the Commonwealth of Virginia ("**Commonwealth**") and all public bodies as defined by § 2.2-4301 and referenced by § 2.2-4304 and § 2.2-2012 of the Code of Virginia ("**Code**"), and private institutions of higher education that are listed at: <http://www.cicv.org/Our-Colleges/Profiles.aspx>. All supporting services (Hosting, Development, Operations/Maintenance, Full Life-cycle support, and Payment Processing) must be directly associated with the specific site or application being developed and managed by Supplier.

2. DEFINITIONS

A. Acceptance

Successful delivery and performance by the Supplier of its contractual commitments at the location(s) designated in the applicable Statement of Work ("**SOW**") or order, including completed and successful acceptance testing in conformance with the Requirements as determined by the Authorized User in the applicable SOW or order.

B. Agent

Any third party independent agent of any Authorized User.

C. 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 A or as described in any SOW or order issued under the Contract, including any Updates, enhancements, and replacements to the Application.

D. Authorized Users

All public bodies, including VITA, as defined by Code § 2.2-4301 and referenced by Code §§ 2.2-4304 and 2.2-2012, authorized to participate in the procurement of information technology under this Contract. Authorized Users include private institutions of higher education that are listed at: <http://www.cicv.org/Our-Colleges/Profiles.aspx>.

E. Code

The Code of Virginia, as amended, and all laws in the titles, chapters, articles and sections contained therein.

F. Commercial Off-The-Shelf ("**COTS**") Software

Software that is general in nature, not broad enterprise applications, which can be purchased and used immediately "as is," without modification, in the same form in which it was sold in the commercial marketplace. Standard options are not considered modifications.

G. Commonwealth

The Commonwealth of Virginia.

H. Commonwealth Indemnified Parties

Means, collectively and individually, the Commonwealth, VITA, any Authorized User, their officers, directors, agents, and employees.

I. Component

Software, Deliverable, or any part of the Solution delivered by Supplier under this Contract, including under all orders or Statements of Work.

J. Computer Virus

Any malicious code, program, or other internal component (e.g., computer virus, computer worm, computer time bomb, or similar component), which could damage, destroy, alter or disrupt any computer program, firmware, or hardware or which could, in any manner, reveal, damage, destroy, alter or disrupt any data or other information accessed through or processed by such software in any manner.

K. Confidential Information

Any confidential or proprietary information of a Party that is disclosed in any manner, including oral or written, graphic, machine readable or other tangible form, to any other Party in connection with or as a result of discussions related to this Contract or any order or SOW issued hereunder, and which at the time of disclosure either:

(i) is marked as being "Confidential" or "Proprietary";

(ii) is otherwise reasonably identifiable as the confidential or proprietary information of the disclosing Party; or

(iii) under the circumstances of disclosure should reasonably be considered as confidential or proprietary information of the disclosing Party; or

(iv) is identifiable or should be reasonably considered as protected health information; or

(v) any personally identifiable information, including information about VITA's employees, contractors, and customers, that is protected by statute or other applicable law.

L. 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.

M. Contract

This agreement, including all exhibits, schedules, and attachments, including any modifications or amendments thereto, entered into by VITA and Supplier.

N. Contractor

The use of the term "Contractor" in any of the following terms, conditions, links, or IRS Publication 1075 means the same as the term "Supplier," as defined and used in this Contract.

O. Deliverable

The embodiment of the work performed by Supplier or any combination of Services, Maintenance Services, Licensed Services, Application, Solution, Solution Component, Software, System Software, plans, reports, data, Product, Supplier Product, and Updates, including any and all components, provided or delivered by the Supplier in fulfilling its obligations under the Contract or as identified in the applicable SOW or order. "Deliverable" also means the development or creation of Work Product, if Work Product is authorized under the Contract.

P. Documentation

Those materials (including user manuals, training materials, guides, product descriptions, technical manuals, product specifications, supporting materials and Updates) detailing the information and instructions needed in order to allow any Authorized User and its agents to make productive use of the Application, Software, Solution, Product, Service, Licensed Services or Deliverable, including any and all components, and to implement and develop self-sufficiency with regard to the Application, Software, Solution, Product, Service, Licensed Services or Deliverable, including any and all components, provided by Supplier in fulfilling its obligations under the Contract or as may be specified in any SOW or order issued pursuant to this Contract.

Q. Effective Date

The date this Contract goes into full force and effect as set forth in the preamble of this Contract above.

R. Escrow Agent

The person or entity that holds and maintains all Software source code and related technical and user Documentation, along with a signed copy of the Escrow Agreement attached to this Contract as Exhibit C, in trust for the Parties as set forth in the "Escrow Agreement" section of this Contract below.

S. Excusable Downtime

That period of time when the Application or Licensed Services, including the SaaS Solutions, are not available to Authorized User or its Application users due to scheduled network, hardware or service maintenance and/or upgrades.

T. Health Record

Any written, printed or electronically recorded material maintained by a health care entity in the course of providing health services to an individual concerning the individual and the services provided. "Health Record" also includes the substance of any communication made by an individual to a health care entity in confidence during or in connection with the provision of health services or information otherwise acquired by the health care entity about an individual in confidence and in connection with the provision of health services to the individual. (Code § 32.1-127.1:03)

U. Maintenance Coverage Period ("MCP")

The period of time during which Supplier is obligated to provide Maintenance Services for a unit of Software or Product.

V. Maintenance Level

The defined parameters of Maintenance Services, including the times during which, and time-frames in which, Supplier shall respond to a request for Maintenance Services. The available Maintenance Levels are as defined in any Statement of Work or order issued pursuant to this Contract. The actual Maintenance Level for a unit of Software or Product will be set forth in the signed order or Statement of Work for Maintenance Services of that Software or Product referencing this Contract.

W. Maintenance Services

Those services, preventive and remedial, provided or performed by Supplier under the Contract or for an Authorized User in order to ensure continued operation of the Product, Hardware, or Software, including Software Updates. Maintenance Services include support services. Maintenance Services for Software may include the development of Work Product, if so authorized in the Contract.

X. Party

Any combination of Supplier, VITA, or the Commonwealth. In an SOW, any Authorized User is also a "Party". Collectively, "Parties".

Y. Prompt Payment Act

The Virginia Prompt Payment Act, Code §§ 2.2-4347 et seq., as amended.

Z. Protected Health Information ("PHI")

Individually identifiable health information that is (i) transmitted in electronic media, (ii) maintained in electronic media, or (iii) transmitted or maintained in any other form or medium. PHI excludes individually identifiable health information in (a) education records covered by the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g); (b) records of any student who is 18 years of age or older, or is attending a postsecondary school, that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and that are made, maintained, or used only in connection with the provision of treatment to the student and are not available to anyone other than persons providing such treatment, except that such records may

be personally reviewed by a physician or other appropriate professional of the student's choice; and (c) employment records held, in its role as employer, by a health plan, health care clearinghouse, or health care provider that transmits health information in electronic form. (§ 64.2-2100 of the Code of Virginia)

AA. Realized Sales

Sales under this Contract for which Supplier has received full and complete payment from an Authorized User.

BB. Receipt

An Authorized User has physically received or has unfettered access to any Deliverable at the correct "ship-to" location.

CC. Requirements

The functional, performance, operational, compatibility, Acceptance testing criteria, and other parameters and characteristics of the Product, Software, Solution, Service(s), Application and Licensed Services and Deliverables, including any and all components, as authorized by any combination of the Contract, as set forth in Exhibit A or the applicable SOW or order, and such other parameters, characteristics, or performance standards that may be agreed upon in writing by the Parties.

DD. Services

Any work performed or service provided by Supplier – including the design and development of software and modifications, software updates, solution, products, implementation, installation, maintenance, support, testing, training, or other provision – in fulfilling its obligations under the Contract or, as applicable, any Statement of Work or order authorized by the scope of the Contract. "Services" includes all functions, responsibilities, activities, and tasks of the Supplier that are an inherent, necessary, or customary part of the Services, or are required for the proper performance or provision of the Services. As permitted by the scope of the Contract, "Services" may include the discovery, creation, or development of Work Product. This definition does not include Licensed Services.

EE. Software

The programs and code provided by Supplier under the Contract or any order or SOW issued hereunder as a component(s) of any Deliverable or component of any Solution, and any subsequent modification of such programs and code, excluding Work Product. For COTS Software, "Software" means the programs and code, and any subsequent releases, provided by Supplier under this Contract as set forth in Exhibit B or as described on Supplier's US and International price lists in effect at time of Authorized User's placement of order or Statement of Work. If this Contract is for Software Maintenance, "Software" also includes the programs and code provided by Supplier under the Contract or any order or SOW issued pursuant to the Contract in the form of Software Updates.

FF. Software Publisher

The third-party licensor of the Software authorized by this Contract and provided by supplier pursuant to the terms and conditions of this Contract.

GG. Solution

The Supplier's contractually committed technical approach for solving a technology business objective and associated Requirements as defined and authorized by the scope of the Contract or any order or Statement of Work issued under the Contract. Solution means all Supplier and Supplier's third-party providers' Components making up the Solution, including but not limited to Software, Product, configuration design, implementation, Supplier-developed interfaces, Services and Work Product.

HH. Statement of Work (SOW)

Any document in substantially the form of Exhibit D (describing the deliverables, due dates, assignment duration, Acceptance criteria, and payment obligations for a specific project, engagement, or assignment that Supplier commits to provide to an Authorized User), which, upon signing by both Parties, is made a part of the Contract.

II. Subcontractor

Any group or person that furnishes supplies or services to the Commonwealth, VITA, or any Authorized User on behalf of Supplier or another Subcontractor in performance of this Contract.

JJ. Supplier

The entity set forth in the preamble of this Contract and any entity that controls, is controlled by, or is under common control with Supplier.

KK. Supplier Personnel

Any and all of Supplier's employees, agents, contractors, or subcontractors performing under this Contract.

LL. SWaM

Any entity certified by the Commonwealth's Department of Small Business and Supplier Diversity as a small, women-owned, minority-owned, or service disabled veteran-owned business, as defined in Code §§ 2.2-2000.1 and 2.2-4310, or a certified micro business as defined in Executive Order Number 20 (2014).

MM. Term

The period of time beginning with the Effective Date and lasting for the length of time, including any extension periods, set forth in the "Contract Term" section below during which this Contract will be in full force and effect.

NN. Transition Out Plan

The written plan developed by Supplier addressing the transition of Supplier's contractual obligations, in whole or in part, away from the Supplier and to Authorized User, or its designee, after the expiration or termination of the Contract.

OO. Transition Period

The period of time after the expiration or termination of the Contract that, Supplier is obligated to continue providing assistance to Authorized Users so as to transition the Supplier's contractual obligations, or any portion thereof, to any other supplier.

PP. Update

Any update, modification or new release of the Software, System Software, Application, Documentation, or Supplier Product that Supplier makes generally available to its customers at no additional cost. Software Updates include patches, fixes, upgrades, enhancements, improvements, or access mode, including without limitation additional capabilities to or otherwise improve the functionality, increase the speed, efficiency, or base operation of the Software.

QQ. VITA

The Virginia Information Technologies Agency, an agency of the Commonwealth of Virginia pursuant to Chapter 20.1 (§§ 2.2-2005 *et seq.*) of the Code, or any successor agency.

RR. Warranty Period

The period of time during which Supplier is obligated to provide maintenance for a Solution Component or unit of Software.

SS. Website

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)).

TT. Work Product

Inventions, combinations, machines, methods, formulae, techniques, processes, improvements, software designs, computer programs, strategies, specific computer-related know-how, data and original works of authorship discovered, created, or developed by Supplier, or jointly by Supplier and an Authorized User(s) in the performance of this Contract. Work Product does not include configuration of software, nor does it include anything developed by Supplier prior to, or outside of, this Contract.

3. TERM AND TERMINATION

A. Contract Term

This Contract is effective and legally binding as of the Effective Date and, unless terminated as provided for in this section, will be effective and legally binding for a period of five (5) years (“Term”). VITA, in its sole discretion, may extend this Contract for up to three (3) additional one (1) year periods after the expiration of the initial Term. VITA will issue a written notification to the Supplier stating VITA’s intention to exercise the extension period no less than thirty (30) calendar days prior to the expiration of any current term. In addition, performance of an order or SOW issued during the Term of this Contract may survive the expiration of the Term of this Contract, in which case all contractual terms and conditions required for the operation of such order or SOW will remain in full force and effect until all of Supplier's obligations pursuant to such order or SOW have met the final Acceptance criteria of the applicable Authorized User.

B. Termination for Convenience

VITA may terminate this Contract, in whole or in part, at any time and for any reason upon not less than thirty (30) calendar days prior written notice to Supplier. An Authorized User may terminate an order or SOW, in whole or in part, at any time and for any reason upon not less than thirty (30) calendar days prior written notice to Supplier. Any termination under this provision will not affect the rights and obligations attending any order or SOW outstanding at the termination date.

C. Termination for Breach or Default

In the event of breach by the Supplier, VITA will have the right to terminate this Contract, in whole or in part, and an Authorized User may terminate an order or SOW issued hereunder, in whole or in part. Supplier will be deemed in breach in the event that Supplier fails to meet any material obligation set forth in this Contract or in any order or SOW issued hereunder. Any termination under the provisions of this section will be deemed a “Termination for Breach”.

If VITA deems the Supplier to be in breach, VITA shall provide Supplier with notice of breach and allow Supplier fifteen (15) business days to cure the breach. If Supplier fails to cure the breach as noted, VITA may immediately terminate this Contract or any order or SOW issued pursuant to this Contract, in whole or in part. If an Authorized User deems the Supplier to be in breach of an order or SOW, that Authorized User shall provide Supplier with notice of breach and allow Supplier fifteen (15) business days to cure the breach. If Supplier fails to cure the breach as noted, the Authorized User may immediately terminate its order or SOW, in whole or in part. In addition, if Supplier is found by a court of competent jurisdiction to be in violation of or to have violated 31 U.S.C. § 1352, or if Supplier becomes a party excluded from Federal Procurement and Non-procurement Programs, VITA may immediately terminate this Contract, in whole or in part, for breach, and VITA shall provide written notice to Supplier of such termination. Supplier shall provide prompt written notice to VITA if Supplier is charged with violation of 31 U.S.C. § 1352, or if federal debarment proceedings are instituted against Supplier.

D. Termination for Non-Appropriation of Funds

All payment obligations from public bodies under this Contract are subject to the availability of legislative appropriations at the federal, state, or local level for this purpose. In the event of non-appropriation of funds, irrespective of the source of funds, for the items under this Contract, VITA may terminate this Contract, in whole or in part, or any order or SOW, in whole or in part, or an Authorized User may terminate an order or SOW, in whole or in part, for those goods or services for which funds have not been appropriated. Written notice will be provided to the Supplier as soon as possible after legislative action is completed.

E. Effect of Termination

Upon termination, neither the Commonwealth, nor VITA, nor any Authorized User will have any future liability except for Deliverables accepted by an Authorized User or Services (including any applicable Licensed Services and Maintenance Services) rendered by Supplier and accepted by the Authorized User prior to the termination date.

In the event of a Termination for Breach, Supplier shall accept return of any Deliverable that was not accepted by the Authorized User, and Supplier shall refund any monies paid by any Authorized User for the unaccepted Deliverable. Supplier will bear all costs of de-installation and return of Deliverables.

F. Termination by Supplier

In no instance will termination by Supplier be considered. Failure by an Authorized User to make timely payments owed to Supplier for its performance under this Contract will constitute a breach by that Authorized User. Supplier's remedy for a breach is limited to the remedies set forth in Code § 2.2-4363 and the "Remedies" section of this Contract below.

G. Transition of Services

At the request of an Authorized User prior to or upon expiration or termination of this Contract, Supplier shall provide all assistance as the Authorized User may reasonably require to transition the Supplier's contractual obligations, or any portion thereof, to any other supplier with whom the Authorized User contracts for provision of same. This Transition Period obligation may extend beyond expiration or termination of the Contract for a period of time (i.e., three (3) months, six (6) months, twelve (12) months or as required and defined by VITA or such Authorized User (herein referred to as "Transition Period"). If this Contract includes Supplier's provision of licensed products, Supplier shall take no action to restrict or terminate the use of such licensed products after the date of expiration or termination of the Contract or during any Transition Period, or both. Authorized Users shall pay for any additional maintenance or licensing fees during any Transition Period at the hourly rate or at a fee agreed upon by Supplier and the applicable Authorized User. Supplier shall provide all reasonable transition assistance requested by the applicable Authorized User to allow for the expired or terminated portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Services to Authorized User. The transition assistance will be deemed by the parties to be governed by the terms and conditions of this Contract, except for those terms or conditions that do not reasonably apply to transition assistance. Further, any Transition Period will not affect any Authorized User's rights in regards to any purchased Software perpetual licenses which are paid in full.

H. Contract Kick-Off Meeting

Within thirty (30) calendar days of the Effective Date, Supplier may be required to attend a contract orientation meeting, along with the VITA contract manager/administrator, Authorized User project manager(s) or authorized representative(s), and any other significant stakeholders who have a part in the successful performance of this Contract. The purpose of this meeting will be to review all contractual obligations for both parties, all administrative and reporting requirements, and to discuss any other relationship, responsibility, communication and performance criteria set forth in the Contract.

I. Transition Out Plan

Within three (3) months of the Effective Date, Supplier will develop and distribute to the applicable Authorized User a Transition Out Plan. The Supplier will maintain the Transition Out Plan throughout the Term, and update the Transition Out Plan as needed and subject to Authorized User's approval.

J. Contract Closeout

Prior to the Contract's expiration date, Supplier may be provided contract closeout documentation by VITA. If contract closeout documentation is provided, then Supplier shall complete, sign, and return to VITA Supply Chain Management any required documentation within thirty (30) calendar days of receipt to ensure completion of closeout administration and to maintain a positive performance reputation with the Commonwealth. Any required closeout documentation not received within thirty (30) calendar days of Supplier's receipt of the Commonwealth's request will be documented in the contract file as Supplier non-compliance. Supplier's non-compliance may affect any pending payments due to the Supplier, including final payment, until the documentation is returned to VITA.

4. SUPPLIER PERSONNEL

A. Selection and Management of Supplier Personnel

Supplier shall ensure that all Supplier Personnel performing under this Contract are competent and knowledgeable of the contractual arrangements and the applicable order or SOW between Authorized User and Supplier. Supplier acknowledges that Supplier is the employer of all Supplier employees and shall have the sole responsibility to supervise, counsel, discipline, review, evaluate, set the pay rates of, provide (to the extent required by law) health care and other benefits for, and terminate the employment of Supplier employees. Supplier shall be solely responsible for the supervision and conduct of Supplier Personnel, including all acts, omissions, gross negligence, and willful misconduct of Supplier Personnel. Additionally, Supplier shall ensure that Supplier Personnel comply with the appropriate Authorized User's site security, information security and personnel conduct rules, as well as applicable federal, state and local laws, including export regulations. Authorized User reserves the right to require the immediate removal from such Authorized User's premises of any Supplier Personnel whom such Authorized User believes has failed to comply with the above or whose conduct or behavior is unacceptable or unprofessional or results in a security or safety breach.

B. Key Personnel

An order or SOW may designate certain of Supplier's personnel as "Key Personnel" or "Project Managers". Supplier's obligations with respect to Key Personnel and Project Managers will be described in the applicable order or SOW. Any changes to Key Personnel must be mutually agreed to in writing by Supplier and Authorized User. Failure of Supplier to perform in accordance with such obligations may be deemed a breach of this Contract or of the applicable order or SOW.

C. Subcontractors

Supplier shall not use Subcontractors to perform its contractual obligations or any order or SOW issued pursuant to the Contract unless specifically authorized in writing to do so by the Authorized User. If an order or SOW issued pursuant to this Contract is supported in whole or in part with federal funds, Supplier may not subcontract to any Subcontractor that is a party excluded from Federal Procurement and Non-procurement Programs. In no event may Supplier subcontract to any Subcontractor that is debarred by the Commonwealth or that owes back taxes to the Commonwealth and has not made arrangements with the Commonwealth for payment of such back taxes.

If Supplier subcontracts the provision of any performance obligation under this Contract to any other party, Supplier shall (i) act as prime contractor and will be the sole point of contact with regard to all obligations under this Contract; and (ii) represent and warrant that any authorized Subcontractors shall perform in accordance with the warranties set forth in this Contract.

5. NEW TECHNOLOGY

A. Access to New Technology

Supplier will bring to VITA's attention any new products or services within the scope of the Contract that Supplier believes will be of interest to VITA and will work to develop proposals for the provision of any such products or services as VITA requests.

B. New Service Offerings Not Available from Supplier

If new or replacement product or service offerings become available and cannot be competitively provided by the Supplier under the scope of this Contract, VITA will have the right to purchase the new or replacement products or services from a third party. If VITA elects to use such new or replacement product or service offerings, Supplier will reasonably assist VITA to migrate to such products or services.

If VITA elects to acquire new products or services as described in the paragraph above and such services replace existing Supplier-provided services, discount tiers and any commitments (as applicable per the Contract) will be reduced to reflect reductions in purchases of the replaced products or services.

6. GENERAL WARRANTY

THE OBLIGATIONS OF SUPPLIER UNDER THIS GENERAL WARRANTY SECTION ARE MATERIAL. SUPPLIER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY CONCERNING MERCHANTABILITY OR FITNESS FOR ANY OTHER PARTICULAR PURPOSE.

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

A. Ownership

Supplier has the right to perform and provide all contractual obligations and provide all needed services or products without violating or infringing any law, rule, regulation, copyright, patent, trade secret, or other proprietary right of any third party.

B. Coverage Period

During the warranty period of one (1) year, or as specified in the applicable order or SOW, Supplier warrants that the Services, Solution, Solution Components, Deliverables, Product, Software, Updates, as authorized and provided by Supplier under this Contract, shall meet or exceed the Requirements. Supplier shall correct, at no additional cost to any Authorized User, all errors identified during the warranty period that result in supplier's failure to meet the Requirement or its contractual obligations.

C. Component Warranty

For any Component, the applicable warranty period shall be the period from written acceptance of the Component until final acceptance of the Solution, or as specified in the applicable order or SOW.

D. Interoperability Warranty

Supplier warrants that each Component, regardless of the origin of the Component, delivered under this Contract or pursuant to an order or SOW shall be interoperable with other Components so as to meet or exceed the performance specified in the Requirements and the applicable order or SOW.

E. Performance Warranty

With respect to Supplier's performance under this Contract:

- i. Supplier shall perform all contractual obligations with the care, skill and diligence, consistent with or above applicable professional standards currently recognized in Supplier's profession, and Supplier shall be responsible for the professional quality, technical accuracy, completeness, and coordination of all plans, information, specifications, Deliverables, and Services furnished under this Contract; and
- ii. Supplier shall ensure that any contractually-obligated Services or Deliverables, or both, meet or exceed the Requirements and that any Product will function in conformance with the Requirements.

F. Documentation and Deliverables

- i. Any required Documentation Supplier is obligated to provide under this Contract will be sufficient in detail and content to allow an appropriately trained user/programmer to understand and fully utilize, as applicable, the Deliverables without reference to any other materials or information.
- ii. All Deliverables provided or delivered pursuant to this Contract are at the current release level unless an Authorized User specifies an older version in its order or SOW.
- iii. No Update, engineering change, or revision made to any Supplier-provided Deliverables will (a) degrade the performance of any Deliverable or its components to a level below that defined in the Requirements or the Product manufacturer's or Software Publisher's published specifications, as applicable; (b) cause any other warranty to be breached; or (c) require an Authorized User to acquire additional hardware equipment or software.

G. Malicious Code

Supplier has used commercially reasonable efforts through quality assurance procedures to verify that there are no Computer Viruses or undocumented features in any of the Deliverables, as obligated and provided by Supplier under the order or SOW, at the time of delivery to the Authorized User. Supplier has used the best available means to scan any media provided to the Authorized User. Supplier warrants that the Deliverables, as obligated and provided by Supplier under the order or SOW, do not contain any embedded device or code (e.g., time bomb) that is intended to obstruct or prevent any Authorized User's use of the Deliverables.

Notwithstanding any rights granted under this Contract or at law, Supplier waives, under any and all circumstances, any right it has or may have in the future to exercise its license termination rights by electronic means. Supplier agrees that an Authorized User may pursue all remedies provided under law in the event of a breach or threatened breach of this section, including injunctive or other equitable relief.

H. Open Source

Supplier will notify all Authorized Users if any Deliverables (other than SaaS Solutions), as obligated and provided by Supplier, contain any Open Source code and identify the specific Open Source License that applies to any embedded code dependent on Open Source code, provided by Supplier under this Contract.

I. Supplier's Viability

Supplier has the financial capacity to perform and continue to perform its obligations under this Contract. Supplier has no constructive or actual knowledge of a potential legal proceeding being brought against Supplier that could materially adversely affect performance of this Contract. Further, Supplier is not prohibited by any contract, or order by any court of competent jurisdiction from entering into this Contract.

J. Supplier's Past Experience

Supplier has met similar contractual obligations and fulfilled the Requirements as set forth in Exhibit A and in this Contract, in similar or greater complexity, to other customers without significant problems due to Supplier's performance and without causing a contractual breach or default claim by any customer.

7. SOFTWARE LICENSE

Any and all license rights granted pursuant to this Contract will be held pursuant to the terms of the "Licensing Within the Commonwealth" section of this Contract below. License Grant and License Type may vary by Software product and shall be set forth and identified on any SOW issued pursuant to this Contract.

A. License Grant

i. Software Licensed by Supplier

Supplier grants to the Commonwealth and all Authorized Users a fully paid, perpetual, worldwide, nonexclusive, transferable, irrevocable object code license to use, copy, modify, transmit, and distribute the Software and Documentation, including any subsequent revisions, in accordance with the terms and conditions set forth herein and subject only to the limitations, restrictions, or both explicitly set forth in this Contract. It is expressly understood that "perpetual" license rights commence upon delivery of the Software to the Authorized User and exist in perpetuity unless otherwise terminated in accordance with the applicable provisions of this Contract. The Software is the property of Supplier, and no title or ownership of the Software or any of its parts, including Documentation, is or will be transferred to the Commonwealth or any Authorized User by this license grant.

All Authorized Users will have the right to use, copy, modify, transmit, and distribute the Software for their benefit, for government use and purposes, and for the benefit of their agents, including internal and third-party information processing. Except as expressly authorized, an Authorized User may not distribute the Software to any third party without Supplier's prior written consent.

Any Authorized User may allow access to the Software by third party vendors who are under contract with the Authorized User to provide services to or on behalf of the Authorized User, or by other entities as required for conducting the business of government. Access includes loading or executing the Software on behalf of the Authorized Users or its agents.

The license fee includes a test system copy, which consists of the right to use the Software for non-production test purposes, including but not limited to, problem/defect identification, remediation, resolution, debugging, new version evaluation, Software interface testing, and disaster recovery technique analysis and implementation.

Supplier shall provide replacement copies of the Software and Documentation in the event that all of an Authorized User's copies of the Software, including all backup copies, are destroyed, irreparably damaged, or otherwise lost due to disaster or other event beyond Authorized User's reasonable control, Supplier shall provide to such Authorized User replacement copies of the Software and Documentation. These replacement copies will be provided to Authorized User at no additional cost. Nothing contained in this section will obligate Supplier to replace or assist in the recovery of data lost concurrent with the loss of the Software.

An Authorized User may make a reasonable number of copies of the Software and Documentation for use in training, support, demonstrations, backup, archiving, disaster recovery, and development, and may run the Software concurrently at a back-up site, for no additional license fees or costs. Any copies of the Software or Documentation that an Authorized User makes under this Contract must bear all copyright, trademark, and other proprietary notices included by Supplier. An Authorized User may add its own copyright or other proprietary notice of the Commonwealth to any copy of the Software or Documentation that is modified by the Authorized User and to which the Commonwealth or such Authorized User has ownership rights pursuant to this Contract.

Except as expressly authorized, an Authorized User may not distribute the Software to any third party without Supplier's prior written consent.

Except as provided or allowed by law, no Party shall reverse engineer, decompile, disassemble, or otherwise attempt to derive source code or other trade secrets from any Software or other intellectual property of any other Party.

ii. Software Licensed by Software Publisher

Any Software provided by Supplier as part of its Solution that is licensed directly from the Software Publisher through an End User Licensing Agreement ("EULA") is subject to the License Agreement Addendum ("LAA") attached to this Contract as Exhibit F. Supplier shall have sole responsibility for ensuring that any such Software Publisher executes the LAA. The Software Publisher's EULA, along with the LAA executed by Software Publisher will be added to Exhibit F for reference, but will not become a part of this Contract.

B. License Type

i. Concurrent User License

The license(s) granted to an Authorized User under this section authorize the use of the Software on any system based on the total number of Concurrent Users. The Authorized User shall specify an initial number of Concurrent User licenses in its order or SOW pursuant to this Contract. An Authorized User may increase the number of Concurrent User licenses upon issuing an order or SOW for additional Concurrent User licenses. The license fee for additional Concurrent User licenses and payment of the license fee is set forth in Exhibit B attached to this Contract.

ii. Site License

The license(s) granted under this Section authorizes use of the Software on any system located at the "Site" as such term is defined in the applicable order or SOW.

iii. Project Specific License

The “Project Specific License” authorizes the use of the Software on any CPU or system owned or operated by the Commonwealth or an Authorized User, and by any user, without limitation as to quantity or location for the duration of Project [to be set forth and identified on any SOW issued pursuant to this Contract].

iv. Enterprise Wide License

The “Enterprise Wide License” authorizes use of the Software on any CPU, on any system, and by any user within the “Enterprise”, as such term is defined in the applicable order or SOW, without limitation as to the quantity, location, or project.

C. Authorized User Compliance

Compliance with the terms and conditions of any license granted pursuant to this Contract is solely the responsibility of the Authorized User that purchased the license or for whom that license was purchased. VITA will have no responsibility for compliance with the terms and conditions of the purchased license, unless VITA purchased the license on its own behalf.

D. No Subsequent, Unilateral Modification of Terms by Supplier (“Shrink Wrap”)

The terms and conditions set forth in this section supersede and govern the licensing and delivery of all Products and Services in this Contract. The terms and conditions of this Contract will supersede any other provision or other unilateral license terms that may be issued by Supplier after the Effective Date, regardless of when those provisions were proposed or the fact that another agreement may be affixed to, or accompany, Software upon delivery (“shrink wrap”).

E. Access to and Right to Use Software-as-a-Service (SaaS) Listed in Exhibit B - Options/Pricing

Notwithstanding anything to the contrary set forth herein, (a) Supplier grants Commonwealth access to the functionality of and the right to use, during the term of the Contract and any SOW issued under the Contract, services provided through hardware, software and network infrastructure hosted by Supplier, its affiliates or a public cloud provider, that enable (i) applications developed by Supplier or any of its affiliates, to authorize and capture credit and debit cards for payments, to manage the registration of users and the online transaction logging data, and the billing and collection of funds, and/or (ii) other digital services that have been developed by Supplier or its affiliates outside of this Contract, are included in Exhibit B - Options/Pricing, Table 5: Software-as-a-Service (SaaS) and made available to the Commonwealth as described in a SOW (“SaaS Solutions” or “Software-as-a-Service”), (b) Supplier will retain ownership of the SaaS Solutions, and (c) SaaS Solutions will not be deemed Software—hereunder.

8. RIGHTS TO WORK PRODUCT

Any license to pre-existing work will be held, and all rights in, title to, and ownership of Work Product will vest, pursuant to the terms of the “Licensing Within the Commonwealth” section of this Contract below.

A. Work Product

VITA and Supplier mutually acknowledge that performance of this Contract may result in Work Product. The Parties shall document all Work Product specifications and these specifications will be set forth in Exhibit A and incorporated into this Contract. Supplier shall promptly and fully disclose to the Commonwealth or the Authorized User any and all Work Product generated, conceived, reduced to practice, or learned by Supplier or any Supplier Personnel, either solely or jointly with others, during the term or performance of this Contract, which in any way relates to the business of the Commonwealth, VITA, or any Authorized User. Supplier and Supplier Personnel shall not make use of, or disclose to others, any proprietary information relating to the Work Product, other than as is required in the performance of this Contract. All Services performed pursuant to this Contract will include delivery of all source and object code and all executables and documentation for all Work Product. At no time shall Supplier shall deny VITA or an Authorized User access to the Work Product, regardless of form.

B. Ownership

All Work Product discovered, created, or developed under this Contract is, and will remain, the sole property of the Commonwealth and its assigns, or the Authorized User and its assigns, regardless of whether the Services are considered “works made for hire” or “hired to invent”. Except as specifically set forth in writing and signed by both VITA and Supplier, or Authorized User and Supplier, Supplier agrees that the Commonwealth or the Authorized User will have all rights with respect to any Work Product discovered, created or developed under this Contract, without regard to the origin of the Work Product.

Supplier irrevocably transfers, grants, conveys, assigns and relinquishes exclusively to the Commonwealth or the Authorized User any and all right, title and interest it now has or may hereafter acquire in and to the Work Product under patent, copyright, trade secret and trademark law in perpetuity, or for the longest period otherwise permitted by law. If any moral rights are created, Supplier expressly waives all moral rights created in the Work Product. Supplier shall assist the Commonwealth or the Authorized User in every reasonable way to obtain and, from time to time, enforce patents, copyrights, trade secrets and other rights and protection relating to the Work Product. Upon the reasonable request by the Commonwealth or Authorized User with respect to the Work Product, Supplier and any required Supplier Personnel shall execute all documents necessary for use in applying for and obtaining patents, copyrights, and other rights and protection, and in protecting trade secrets with respect to the Work Product.

C. Pre-existing Rights

If, and to the extent that, any pre-existing rights are embodied or reflected in the Work Product, Supplier grants to the Commonwealth or the Authorized User the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to (i) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such pre-existing rights and any derivative works thereof; and (ii) authorize others to do any or all of the foregoing. Supplier will retain all ownership rights in any pre-existing works.

D. Return of Materials

Upon termination of this Contract, or in the event Authorized User terminates any order or SOW issued pursuant to this Contract, Supplier shall immediately return to VITA or the appropriate Authorized User all copies, in whatever form, of any and all Confidential Information, Work Product, and other properties provided by VITA or the Authorized User, that is in Supplier's possession, custody, or control.

E. License Back for Commonwealth-Owned Work Product

Commonwealth or the Authorized User hereby grants to Supplier an immediate, worldwide, nonexclusive, royalty-free, perpetual, irrevocable, transferable, fully paid license (with right to sublicense and the right of sublicensees to sublicense further) to reproduce, modify, distribute, publicly perform, publicly display and use Work Product and related intellectual property rights, including the right to create derivative works based on and otherwise modify, make, reproduce, sell or otherwise distribute, perform or display such and other work product based on or using such Work Product and related intellectual property rights. The Commonwealth or any Authorized User does not grant to Supplier any associated data or personal information related to any work product or any derivative thereof.

9. ESCROW AGREEMENT

Optional third party escrow, through the Supplier's escrow agent, is available to an Authorized User at the price of the fee(s) set forth in Exhibit B. Optional third party escrow shall be finalized by the Supplier, the escrow agent and the Authorized User through the Supplier's Master Escrow Service Agreement, a Beneficiary Enrollment Form, and Deposit Material Verification work orders/SOWs; and attached to the Authorized User's VITA Exhibit D SOW as a revised Exhibit C (Escrow Agreement).

Supplier shall maintain copies of all Software source code and related technical and user Documentation, in English, in an escrow account, and shall maintain with the Escrow Agent the signed escrow agreement as set forth in Exhibit C (“**Escrow Agreement**”) attached to this Contract and incorporated by reference.

VITA acknowledges that, prior to the Effective Date of this Contract, Supplier delivered to VITA and VITA received a copy of the Escrow Agreement. VITA has reviewed the Escrow Agreement to ensure that the Escrow Agreement does not impose upon the Commonwealth any requirements or obligations other than administrative responsibilities necessary for the operation of the Escrow Agreement. In the event the Escrow Agent is obligated to release the escrowed materials to the Commonwealth, the Commonwealth's sole responsibility will be to request the release of the escrowed 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 Escrow Agreement.

Supplier warrants that the information and materials to be kept in escrow in a media safe environment for the benefit of the Commonwealth are specifically identified and listed in Attachment A to the Escrow Agreement and include the most current version used by all Authorized Users of:

- i. the source code for the Software and all future release versions, and all required runtime files;
- ii. identification of the development/support technology stack, including, but not limited to, every software tool, driver, script, app, etc. with versions and details needed to develop, test, and support all phases of the SDLC for all tiers of the Software as used in the Authorized User's solution or operating environment;
- iii. all Documentation related to items (i) and (ii) above, as well as all necessary and available information; and
- iv. (a) technical Documentation that will enable VITA, any Authorized User, or an Agent of VITA or any Authorized User to create, maintain, or enhance the Software without the aid of Supplier or any other person or reference to any other materials, maintenance tools (test programs and program specifications), or proprietary or third party system utilities (compiler and assembler descriptions); (b) descriptions of the system/program generation; and (c) descriptions of any Supplier tools required to enable VITA and all Authorized Users to continue to use the Software.

Supplier shall provide all Documentation in unprotected MS Word and other commonly used formats that can be updated. Supplier warrants that all items, including future versions, deposited in escrow for VITA or an Authorized User will be verified by the Escrow Agent within thirty (30) calendar days after deposit to validate the completeness, accuracy, and functionality of the Supplier's escrow deposits. The verification process to be performed by the escrow agent for the original deposit and subsequent deposits shall be detailed in the Escrow Agreement and any additional Deposit Material Verification work orders/SOWs defining the agreement, and a detailed report of all tests of such verification shall be submitted in writing to VITA or the Authorized User within ten (10) business days of completion. To perform such verification, escrow agent shall conduct a verification process, defined by the Exhibit C Escrow Agreement and Deposit Material Verification work orders/SOWs that includes (dependent on service level option and defined by Deposit Material Verification work orders/SOWs) but is not be limited to.

- i. File List Test - To ensure the deposited items are catalogued and confirm they are readable and virus free, and if encrypted, that the Escrow Agent has the decryption keys on deposit.
- ii. Inventory and Analysis Test – To provide a complete audit and inventory of the deposit including analysis of deposited media to verify the presence of build instructions; to identify all of materials necessary to recreate the original development environment; and to confirm the presence of all build instructions, file classification tables, database schema, and listings.
- iii. Compile Test – To validate whether the development environment can be recreated from the deposited documentation and files; to identify third-party libraries; to recreate the Supplier's development environment; to compile source files and modules; to recreate executable code; and to prepare a complete list of any hardware or software configurations.
- iv. Binary Comparison Test – To test the functionality of the complied deposit materials by comparing the files built in compile testing to the licensed, executable file running at VITA's or Authorized User's site.

- v. Full Usability Test – To confirm the source code placed in escrow will be fully functional in the event of a release, and to perform a relevant series of tests to ensure that replicated software runs properly in the required VITA or Authorized User environment.
- vi. Final Operability Test – To perform a final demonstration of the functioning software.
- vii. Fault Remedy – To collaborate with Supplier on fixing any faults discovered during the testing, to obtain corrected escrow items and to re-perform any verification tests as necessary until all tests are successful, with written detailed reports to VITA or the Authorized User.

Supplier warrants that the Escrow Agreement provides for the release of the list of items on Attachment A of the Escrow Agreement upon the occurrence 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) calendar days, Supplier's breach under this Contract, Supplier's bankruptcy, Supplier's failure to continue to do business in the ordinary course. Supplier agrees to pay all expenses associated with establishing and maintaining the escrow account and the contents mentioned above.

In the event that the information and materials listed on Attachment A of the Escrow Agreement are released to the Commonwealth pursuant to the terms of the Escrow Agreement, Supplier grants to the Commonwealth a royalty-free, perpetual, irrevocable license that permits disclosure to a third party support-vendor of a complete and accurate copy of then-current source code for the Software licensed under this Contract, along with all related documentation.

Any Authorized User which is not an agency as defined by §2.2-2006 of the Code 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 may require Supplier to execute an additional escrow agreement subject to the same requirements and binding Supplier to the same obligations as described above but naming the Authorized User as the beneficiary of the escrow agreement. In the event that the information and materials are released to an Authorized User under this provision, Supplier grants to the Authorized User a royalty-free, perpetual, irrevocable license, that permits disclosure to a third party support-vendor of a complete and accurate copy of then-current source code for the Software licensed to such Authorized User, along with all related documentation.

10. 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 Software and any hardware 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:

- i). Supplier shall maintain sufficient hardware capacity to satisfy the technical requirements and the bandwidth and required storage capacity indicated in Exhibit A.
- ii). Supplier shall be responsible for all telecommunication connections from the server hosting the Application to the Internet.
- iii). 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 will extend beyond the term of the Contract.
- iv). The Application will be made available to Authorized User and/or designated Application users, as specified in the applicable order or SOW, 24 hours a day, seven (7) days a week ("**Uptime**") less Excusable Downtime. Except in cases of emergency, Supplier shall provide an affected Authorized User a two (2) business day advance notification of any Excusable Downtime. 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 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.

v). Excusable Downtime does not include (i) an electronic hardware failure, (ii) a failure in the Supplier's Application, (iii) an electric utility failure at Supplier's facility where the Application is hosted, or (iv) a network failure up to, but not including, the interconnection point of Supplier's network to the public switched telephone network.

vi). Supplier guarantees the Application will be available for use at least 99% of the total time during each month, excluding Excusable Downtime.

vii). If non-Excusable Downtime exceeds the parameters listed above, Supplier shall 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.

viii). Supplier shall 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.

ix). 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 the Authorized User. Supplier shall provide the associated technical data, code, documentation and other necessary information about such customizations shall to the Authorized User within ten (10) business days of the customizations' operational use. Supplier shall routinely transfer knowledge regarding the Application and Licensed Services, including Updates and all material changes, to all Authorized Users in a reasonable manner to ensure proper and efficient use of Application and Licensed Services without degrading performance thereof.

x). 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.

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, will 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 will 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

Throughout the Term of this Contract, Supplier shall make available such resources, including Supplier Personnel, as are reasonably required to: (i) train designated Authorized User personnel in the use of the Application; (ii) develop modifications to the Application as agreed by VITA and Supplier in any exhibit to this Contract, or as agreed to by Supplier and Authorized User in any order or SOW issued pursuant to this Contract; and (iii) otherwise support the Application as provided under this Contract and any exhibits hereto or as agreed in any order or SOW issued pursuant to this Contract.

C. Use of Subcontractors in Licensed Services

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 Non-procurement 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.

11. 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 will have the right to add, activate, change access for, or disable USERIDs at its sole discretion. Authorized User will 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. Supplier shall ensure that historical access audit details of any such Application user is not deleted or lost. If Supplier fails to make such a removal of access, Authorized User will 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 commonwealthsecurity@vita.virginia.gov within five (5) days of VITA notification to Authorized User.

12. 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 Supplier 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
- 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 thirty (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.
- 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 a third-party independent assessment, attestation or audit, that required Commonwealth of Virginia security controls have been implemented in the Solution environment; and, upon request provide a copy of the report to VITA and the Authorized User(s). The Trust service principles to be covered include Security, Availability, Processing Integrity, Privacy and Confidentiality.

- ii) 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.
- jj) 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.
- kk) 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.
- ll) 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/>
- mm) 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.
- nn) 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.
- oo) 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).
- pp) Regular training for Supplier personnel regarding the security and data recovery programs referenced in this Section.
- qq) Regular testing of the systems and procedures outlined in this Section; and
- rr) Audit controls that record and monitor Application and Licensed Services activity continuously.
- ss) 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, 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.

13. 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 set forth in Exhibit I of the Contract, Table of Service Levels and Remedies for Licensed Services. 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. Service Level Reporting

(i) Monthly Reports:

By the 5th of each calendar month during the term of this Contract, Supplier shall provide VITA and the 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 thirty (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.

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. Authorized User or VITA may independently audit the report at its expense no more than two (2) times annually.

C. Failure to Meet Service Level Commitments

In the event that such Application fails to meet the Service Levels specified herein, Supplier will: (i) promptly replace the Application with an Application that conforms to this Contract and such specifications; (ii) repair the Application, at Supplier's expense, so that it conforms to this Contract and such specifications; or (iii) 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.

D. Escalation Procedures

Supplier shall provide escalation procedures to the Authorized User in accordance with its Service Level Agreement attached hereto in Exhibit I.

14. DELIVERY AND INSTALLATION

A. Scheduling

Supplier shall deliver the Solution, including any Component parts, and complete performance of Services according to the delivery dates set forth on the appropriate order or SOW.

Supplier shall make available all appropriate and/or related Documentation at the time of delivery of the relevant Component of the Solution. Any Solution Component delivered without the appropriate and required Documentation will be considered "shipped short" until the applicable documentation has been received.

B. Deployment of Solution

1. Supplier Deployment of Solution

The Solution fee listed in Exhibit B includes initial deployment of the complete Solution. Supplier shall deploy the Solution in accordance with the deployment schedule set forth on the applicable order or SOW. Deployment will include the installation of any Software Component and, if agreed, any Hardware Component, of the Solution. Supplier shall conduct its standard appropriate diagnostic evaluation at the Authorized User's user site to determine that the Solution is properly deployed and fully ready for productive use, and will provide the Authorized User with a copy of the results of the diagnostic evaluation promptly after completion of deployment.

Supplier agrees that failure to deploy the Solution in accordance with the delivery schedule in the applicable order or SOW constitutes a material breach of this Contract resulting in damages to the Authorized User. As an estimate of the damages the affected Authorized User will suffer, Supplier agrees to credit such Authorized User an amount equal to one percent (1%) of the total Solution fee, for each day after the scheduled deployment date that the Solution has not been deployed for a period of thirty (30) calendar days following the agreed upon delivery date. If the delay lasts longer than thirty (30) calendar days, the affected Authorized User may immediately cancel the order or SOW and collect damages for each day of that period of late delivery. The affected Authorized User may also pursue any and all other remedies available at law or in equity for delays lasting longer than thirty (30) calendar days or for non-deployment.

2. Authorized User Installation of Software

For a Solution that includes Software that Authorized User elects to install itself, the Software will be deemed to be installed when all Acceptance criteria as specified in the Authorized User's order or SOW have been met. Upon completion of installation and successful Acceptance testing, Authorized User shall provide to Supplier written notice of Acceptance. Supplier shall proceed

with full deployment of the Solution concurrently with or after Authorized User's installation of the Software, as agreed between the Authorized User and Supplier in the order or SOW.

C. Documentation of Software Configuration

If the Solution includes configuration of Software by Supplier, Supplier shall provide Documentation containing a description of the configuration to the appropriate Authorized User. The Documentation must be of sufficient detail so that any appropriately trained employee or Agent of any Authorized User may reconstruct the configuration of the Software.

15. ACCEPTANCE

A. Software and Deliverable Acceptance Criteria

Software and Deliverables are deemed accepted when the Authorized User determines that the Software and Deliverables successfully operate in accordance with the Requirements and applicable order or SOW. Acceptance of the Software and Deliverables, and for the Solution as a whole, requires delivery to the Authorized User of all of functionality listed in the Requirements as set forth in Exhibit A and required by the Authorized User in the applicable order or SOW. Supplier shall be responsible for ensuring that all Deliverables function properly within the Solution; Acceptance of any one Deliverable will not imply Authorized User's concurrence that the Deliverable will function properly with or within the Solution. In the event that a previously Accepted Deliverable requires further modification in order to work properly with or within the Solution, Supplier shall cover all costs associated with the modification.

Authorized User shall commence Acceptance testing within thirty (30) calendar days, or within the agreed to period set forth in the applicable order or SOW, after receipt of the Software or Deliverable. The Acceptance testing period for the first instance of each Product type set forth in Exhibit B will last no longer than thirty (30) calendar days, unless a longer period is agreed to in writing between Authorized User and Supplier. Supplier shall provide Authorized User with any assistance and advice the Authorized User may reasonably require during the Acceptance testing. Throughout the Acceptance testing period, Supplier shall provide to the Authorized User any assistance and advice as the Authorized User may reasonably require. Supplier shall provide this assistance and advice at no additional cost, other than pre-approved travel expenses incurred which are reimbursable by the Authorized User pursuant to the terms and conditions of the "Reimbursement of Expenses" section of this Contract below. Authorized User shall provide to Supplier written notice of Acceptance upon completion of successful Acceptance testing. In the event that Authorized User fails to provide Supplier written notice of successful or unsuccessful Acceptance testing within five (5) business days following the end of the Acceptance testing period, the Solution will be deemed Accepted.

B. Software and Deliverable Cure Period

Supplier shall correct any non-conformities identified during Acceptance testing and re-submit the corrected Software or Deliverable for re-testing within fifteen (15) days of receipt of the appropriate Authorized User's written notice of non-conformance, or as otherwise agreed between the Authorized User and Supplier in the applicable order or SOW. In the event Supplier fails to cure the non-conformity or deliver Software or a Deliverable that meets the Requirements, the Authorized User may, in its sole discretion: (i) reject the Software or Deliverable in its entirety and recover amounts previously paid to Supplier; (ii) issue a "partial Acceptance" of the Software or Deliverable with an equitable adjustment in the price to account for any deficiency; or (iii) conditionally accept the applicable Software or Deliverable while reserving its right to revoke Acceptance if timely correction is not forthcoming. Failure of the Software or a Deliverable to meet, in all material respects, the Requirements after the second set of Acceptance tests will constitute a breach by Supplier and the Authorized User may, at its sole discretion, terminate its order or SOW, in whole or in part, for the Solution to be provided by Supplier.

C. Solution Acceptance Criteria

Solution will be deemed accepted when the Authorized User determines that the Solution successfully operates in accordance with the Requirements. Authorized User shall commence Acceptance testing within thirty (30) calendar days after deployment of the Solution. The

Acceptance testing period will be completed within thirty (30) calendar days after deployment of the Solution, or such longer period as may be agreed to in writing between Authorized User and Supplier. Supplier shall provide Authorized User with any assistance and advice the Authorized User may reasonably require during the Acceptance testing. Throughout the Acceptance testing period, Supplier shall provide to the Authorized User any assistance and advice as the Authorized User may reasonably require. Supplier shall provide this assistance and advice at no additional cost, other than pre-approved travel expenses incurred which are reimbursable by the Authorized User pursuant to the terms and conditions of the "Reimbursement of Expenses" section of this Contract below. Authorized User shall provide to Supplier written notice of Acceptance upon completion of successful Acceptance testing. In the event that Authorized User fails to provide Supplier written notice of successful or unsuccessful Acceptance testing within five (5) business days following the end of the Acceptance testing period, the Solution will be deemed Accepted.

D. Solution Cure Period

Supplier shall correct any non-conformities identified during Acceptance testing and re-submit the corrected Solution or Component products or Services for re-testing within fifteen (15) business days of receipt of written notice of non-conformance to Supplier, or as otherwise agreed between the Authorized User and Supplier. In the event that Supplier fails to deliver a Solution which meets the Requirements, the Authorized User may, in its sole discretion: (i) reject the Solution in its entirety and recover amounts previously paid to the Supplier; (ii) issue a "partial Acceptance" of the Solution with an equitable adjustment in the price to account for such deficiency; or (iii) conditionally accept the applicable Solution while reserving its right to revoke Acceptance if timely correction is not forthcoming. Failure of the Solution to meet, in all material respects, the specifications and performance standards after the second set of acceptance tests will constitute a breach by Supplier and the Authorized User may, at its sole discretion, terminate its order or SOW, in whole or in part, for the Solution to be provided by Supplier.

16. WARRANTY AND MAINTENANCE SERVICES

At any time during the Warranty Period or Maintenance Coverage Period ("MCP"), as applicable, Supplier shall provide the following warranty or maintenance services (including unlimited telephonic support and all necessary travel and labor) to maintain the Solution in accordance with the Requirements. During the Warranty Period, Supplier shall perform these services without additional charge to any Authorized User. During the MCP, charges will be in accordance with the terms of this section and Exhibit B.

A. Known Defects

Supplier shall promptly notify all Authorized Users in writing of any defects or malfunctions in the Solution or Documentation of which it learns from any source. Within thirty (30) calendar days of Supplier's knowledge of any defects or malfunctions, Supplier shall correct the defects or malfunctions, or provide a work around until corrected, and provide all Authorized Users with corrected copies of same.

B. New Releases

No later than the first day of general release, Supplier shall provide to all Authorized Users copies of the Software and Documentation revised to reflect any enhancements, including all new releases, upgrades, and access modes, to the Software made by Supplier, including, without limitation, modifications to the Software which can increase the speed, efficiency or base of operation of the Software or add additional capabilities to or otherwise improve the functionality of the Software.

C. Coverage

Supplier shall provide all reasonably necessary telephone or written consultation requested by any Authorized Users in connection with use, problems, and operation of the Solution. Supplier is obligated to provide coverage under this provision on a 24 hours per day, seven days per week basis.

D. Service Levels

Respond to problems with the Solution identified by an Authorized User in no more than one (1) hour after notification. Resolve all problems according to the following:

- i) Priority 1 (system down) within six (6) hours;
- ii) Priority 2 (certain processing interrupted or malfunctioning but system able to process) within twenty four (24) hours;
- iii) Priority 3 (minor intermittent malfunctioning, system able to process data) within three (3) calendar days.

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

E. Software Evolution

In the event that Supplier or Software Publisher merge or splinter the Software previously provided to any Authorized User, Supplier shall not charge any Authorized User additional support fees in order to receive enhancements, releases, upgrades, or support for the Software.

If Supplier or Software Publisher reduces or replaces functionality contained in a licensed Software product and provides the same or substantially similar functionality as or within a separate or renamed Software product, then the Commonwealth or the Authorized User will be entitled to license such Software product at no additional license or maintenance fee, and subject to the terms and conditions in this Contract.

If Supplier or Software Publisher releases an option, future Software product, or other release that has substantially the same functionality as the Software products provided under this Contract, and the Software Publisher, or Supplier, or both, ceases to provide Maintenance Services for the older Software product, then Supplier shall offer the Commonwealth or the Authorized User the option to exchange licenses for such replacement Software product or function at no additional charge.

F. Escalation Procedures

Supplier shall provide escalation procedures to the Authorized User in accordance with its Service Level Agreement attached hereto in Exhibit I.

G. Remedies

If the Solution or any Component fails to conform in all material respects to its order or SOW, Authorized User shall provide written notification of the failure to Supplier. If Supplier is unable to make the Solution or any Component conform within thirty (30) calendar days of receiving Authorized User's notice Supplier shall, at such Authorized User's request, accept return of the tangible Solution Components at the Authorized User's request. If the failure of the Solution or any Components occurs during the Warranty Period, Supplier shall return all monies paid by an affected Authorized User for the returned Solution Components and Documentation in the following if the failure occurs during the Warranty Period. If the failure of the Solution or any Components occurs during any subsequent MCP, Supplier shall return all monies paid by an affected Authorized User for the returned Solution Components and Documentation, pro-rated using the straight-line method for an estimated Solution life cycle of seven (7) years. Authorized User shall discontinue use of any Solution Component Software or product.

H. Solution Support Services and Renewal Options

Sixty (60) calendar days prior to the expiration of the Warranty Period, Supplier shall notify the Authorized User in writing of such expiration. Authorized User may, at its sole discretion, order from Supplier Solution Maintenance Services including new Software releases, updates and upgrades. The MCP will be for a period of one (1) year and at an annual fee set forth in each applicable SOW at the price of the fee(s) set forth in Exhibit B. Supplier shall notify the Authorized User sixty (60) days prior to the expiration of the MCP, and the Authorized User may, at its sole discretion, renew Maintenance Services for an additional one (1) year period. The increase in the annual fee for Maintenance Services may not exceed the lesser of (i) three percent (3%), or (ii) the annual change in CPI, as defined in the "Fees, Ordering and Payment Procedure" section of this Contract below. Supplier warrants that it shall make Support Services

available for all the Solution components listed in Exhibit B for a period of at least five (5) years from the expiration of the initial Warranty Period of any Solution provided to an Authorized User pursuant to this Contract. Cancellation of Maintenance Services by an Authorized User shall not affect this Contract or the grant of any license by Supplier.

17. FEES, ORDERING, AND PAYMENT PROCEDURE

A. Fees and Charges

In consideration for the Supplier's performance obligations under this Contract, an Authorized User shall pay Supplier the fee(s) owed pursuant to the schedule of fees and charges as set forth on Exhibit B attached to this Contract. Supplier will only be entitled to those fees owed for Supplier's performance obligations and any additional Products and Services provided to an Authorized User in accordance with the scope of this Contract and the Requirements, as authorized by Exhibit A, and per the Authorized User's order or SOW. The fees, and any associated discounts, will be applicable throughout the Term of this Contract unless modified pursuant to the terms and conditions below. In the event the fees or discounts apply for any period less than the entire Term, Supplier agrees that it will not increase the fees during the first twelve (12) month period following the Effective Date, and will not increase the fees more than once in any subsequent twelve (12) month period thereafter. No increase in fee amounts will exceed the lesser of three percent (3%) or the annual increase in the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, All Items, Not Seasonally Adjusted, as published by the Bureau of Labor Statistics of the Department of Labor (<http://www.bls.gov/cpi/home.htm>), for the date of the increase compared with the same index one (1) year prior. Supplier must submit any change in price in writing to VITA and to the Authorized User if the change impacts any SOW or order and in accordance with the above and will not become effective for sixty (60) calendar days thereafter. Supplier agrees to offer price reductions to ensure compliance with the "Competitive Pricing" section of this Contract below.

B. Reproduction Rights for Supplier-Provided Software

At an Authorized User's request, Supplier shall provide the Authorized User with a reproducible, portable data storage device (e.g. CD-ROM or USB flash drive) of Software and Updates. The Authorized User will be responsible for making copies and distributing the Software and Updates as required. Within thirty (30) calendar days of the end of each calendar quarter, the Authorized User shall provide to Supplier a report of the net number of additional copies of the Software or Updates or both deployed during the quarter. Supplier will invoice such Authorized User for the net number of new licenses reported as deployed.

C. Demonstration and/or Evaluation

If the Supplier's contractual obligations include the provision of a Solution, an Application and Licensed Services, or Software-as-a-Service, at the request of any Authorized User, then Supplier shall perform any reasonable demonstration of its Solution, Application and Licensed Services, or Software-as-a Service at the Authorized User's location and at no charge.

If the Supplier's contractual obligations include the provision of Software, then the Supplier shall provide the Software to any Authorized User for evaluation purposes at no charge. The evaluation period will be determined by the complexity of testing but will be a period not less than thirty (30) calendar days. Each new project is entitled to an evaluation copy regardless of whether an Authorized User has previously purchased the Software.

D. Supplier Quote and Request for Quote

An Authorized User, may at its sole discretion, issue a Request for Quote ("RFQ") for any combination of the Solution, Product, or Services provided under this Contract. Supplier shall respond to the RFQ by providing a written quote. Supplier's quote must include (a) a detailed description of each product or service proposed, including any applicable components, at the Exhibit B line item fee level; (b) the quantity of each line item; (c) the total contract price; (d) any additional percentage discount offered; (e) an extended price; (f) any optional or alternate pricing; (g) any pricing assumptions; and (h) this Contract number. If requested by the Authorized User, Supplier's quote must also include a detailed description of the approach Supplier plans to take in

developing, implementing, and maintaining its offering pursuant to the RFQ for the Authorized User. If Supplier is unable to meet the requirements of the RFQ, Supplier shall notify the Authorized User in writing of its inability to perform the work requested by the Authorized User, and provide the reasons for its inability to perform, prior to the due date for the submission of quotes in response to the RFQ. Supplier's failure to respond to an RFQ may be deemed a breach of this Contract.

E. Competitive Request for Quotes

If an Authorized User determines that a competitive process is required to ensure it receives the best value for any combination of its needed Solution, Product, or Services under this Contract, then the Authorized User may, at its sole discretion, use a Competitive Request for Quote (“**CRFQ**”) process to obtain identical or similar Solutions, Products, or Services to those provided by Supplier pursuant to this Contract. The CRFQ will clearly outline the project timing and requirements. If the Authorized User is not able to identify the exact specifications required, then the CRFQ respondents will be given the opportunity to identify and propose their recommended specifications.

F. Ordering

All Authorized Users have the right to license or purchase Supplier's Products or Services under this Contract, but Authorized Users have no obligation to purchase or license from Supplier any of Supplier's Products or Services. This Contract is optional use and non-exclusive, and all Authorized Users may, at their sole discretion, purchase, license or otherwise receive benefits from third party suppliers of products and services similar to, or in competition with, the Products and Services provided by Supplier. Supplier shall accept any order or placed by an Authorized User through the Commonwealth's electronic procurement website portal, eVA (<http://www.eva.virginia.gov/>). Agencies, as defined by Code § 2.2-2006, and legislative, judicial, and independent agencies of the Commonwealth, must order through eVA. All other Authorized Users are encouraged to order through eVA, but may order through the following means:

- i. Purchase Order (“**PO**”): An official PO form issued by an Authorized User.
- ii. Any other order/payment charge or credit card process, such as AMEX, MASTERCARD, or VISA under contract for use by an Authorized User. This ordering authority is limited to issuing orders or SOWs for the contractual offerings and Requirements available under the scope of this Contract. No Authorized User have the authority to modify this Contract under any circumstances. An order or SOW from an Authorized User may contain additional terms and conditions. In the event that the terms and conditions of the Authorized User's order or SOW are inconsistent with the terms and conditions of this Contract, the terms of this Contract will supersede.

All orders will identify this Contract number and attach the required SOW.

Supplier shall not accept any order or SOW from an Authorized User if the order or SOW is to be funded, in whole or in part, by federal funds and if, at the time the order or SOW is placed, Supplier is not eligible to be the recipient of federal funds as may be noted on any of the Lists of Parties Excluded from Federal Procurement and Non-procurement Programs.

G. Statement of Work

A SOW, in the format provided for in Exhibit D attached to this Contract, is required for any orders placed by an Authorized User pursuant to this Contract. Supplier shall perform any and all contractual obligations at the times and locations set forth in the applicable SOW and at the rates set forth in Exhibit B to this Contract. All SOWs will be of a fixed price type, with payment tied to defined deliverables, unless VITA issues a written authorization for a time and materials type SOW. The SOW shall include (a) a detailed description of each product or service proposed, including any applicable components, at the Exhibit B line item fee level; (b) the quantity of each line item; (c) the total contract price; (d) any additional percentage discount offered; (e) an extended price; (f) any optional or alternate pricing; (g) any pricing assumptions; and (h) this Contract number. The fixed price SOWs may, with the written approval of VITA, contain a cost-reimbursable line item(s) for pre-approved travel expenses pursuant to the provisions of the “Reimbursement of Expenses” subsection below. If a time and materials type SOW is authorized,

Supplier Personnel shall maintain daily time records of hours and tasks performed that must be submitted or made available for inspection by the Authorized User upon 48 hours advance written notice.

Any change to an SOW must be described in a written change request, in the format provided in Exhibit E. Either Party to an SOW may issue a change request that will be subject to written approval of the other Party before it becomes part of this Contract. In no event will any SOW or any modification require the Supplier to provide any Products or Services that are beyond the scope of this Contract as such scope is defined in Exhibit A, which is attached to this Contract and incorporated by reference.

SOWs and Change Orders must be transparent, with pricing components that visibly correlate with the Exhibit B Options/Pricing line item fee level. If hourly labor defines a price component, the labor category, rate and unit of measure must be listed and correlate with the Exhibit B Options/Pricing line item labor description and fee level. Subscription and transaction-based services and fees must be defined and correlate with Exhibit B Options/Pricing line item description and fee level. Convenience funding arrangements, paid through citizen convenience fees, must be defined in the SOW and describe the manner in which convenience fees will sunset once the fixed price of the SOW or applicable line item price is reached.

SOWs and Change Orders may be subject to VITA review. Supplier acknowledges that Supplier's failure to follow the requirements set forth in this Contract for an applicable order or SOW, shall be deemed a service level default and subject to the remedies set forth in Exhibit I of the Contract.

H. Invoice Procedures

Supplier shall remit each invoice to the "bill-to" address provided with the order promptly after all Supplier's performance obligations have been accepted and in accordance with the milestone payment schedule, if any, in the applicable order or SOW. Payment for any support services, as authorized in the Contract and the Authorized User's applicable order or SOW, will be annually in arrears unless otherwise stated in this Contract, or in any order or SOW referencing this Contract. No invoice may include any costs other than those identified in the signed order or SOW, and those costs must be in accordance with the schedule of fees listed on Exhibit B. Without limiting the foregoing, all shipping costs are the Supplier's responsibility except to the extent shipping charges are identified in Exhibit B and noted in any signed order or SOW referencing this Contract. Supplier shall issue invoices that identify, at a minimum:

- i. Dates/periods that invoice covers, including any service or subscription periods, as applicable.
- ii. Line item description of the Deliverable(s) applicable to this Contract, including any components or service type, and, if applicable, the project milestone.
- iii. Quantity, charge and extended pricing for each line item
- iv. Applicable date of the order or SOW or both
- v. This Contract number and the applicable order number or SOW number or both
- vi. Supplier's Federal Employer Identification Number ("FEIN")

Any terms included on Supplier's invoice will have no force or effect and will in no way bind the Authorized User.

I. Reimbursement of Expenses

Authorized User shall pay, or reimburse Supplier, for all reasonable and actual travel-related expenses for greater than 30 miles from portal to portal incurred by Supplier during the relevant period. An Authorized User will only be liable to pay for Supplier's travel-related expenses, including transportation, meals, lodging and incidental expenses, that have been authorized by the Authorized User in advance in the order or SOW. The travel-related expenses will be reimbursable at the then-current per diem amounts as published by the Virginia Department of Accounts (<http://www.doa.virginia.gov/>). Authorized Users who are not public bodies may have their own per diem amounts applicable to Supplier's pre-approved travel expenses.

All reimbursed expenses will be billed to the Authorized User on a pass-through basis without any markup by Supplier. At Authorized User's request, Supplier shall provide copies of receipts for all travel expenses over US\$30.00.

J. Disputed Charges

If, before payment of an invoice, an Authorized User notifies the Supplier in writing of a disputed charge, Authorized User will have the right to withhold payment of the disputed amount until the dispute is settled or finally resolved. Supplier shall respond in writing to Authorized User's notification of a disputed charge acknowledging Supplier's receipt of the dispute within five (5) business days. Any charges disputed by Authorized User will be resolved (whether by credit or explanation of the charge to the Authorized User's satisfaction) in the Authorized User's required format within two (2) billing cycles (sixty (60) calendar days) following Authorized User's written notification. In the absence of the Supplier's written evidence identifying the merit of the disputed amounts, Authorized User will not be obligated to pay the disputed amounts and may consider the matter concerning the specific identified amounts closed. Authorized User will not pay any disputed amounts that remain unresolved after one hundred twenty (120) calendar days. If a disputed charge is reversed, Supplier shall reverse all associated surcharges, regulatory charges and taxes.

K. Purchase Payment Terms

Supplier is responsible for the accuracy of its billing information. Supplier may not issue invoices pursuant to this Contract until all of Supplier's performance obligations have been accepted and are in accordance with the milestone payment schedule in the applicable order or SOW, or until after services have been rendered. Charges for Deliverables, Components or Services accepted more than ninety (90) calendar days prior to receipt of a valid invoice may not be paid. In the event Supplier repeatedly over-bills an Authorized User, the Authorized User may assess a one percent (1%) charge for the amount over-billed for each month that such over-billing continues.

18. REPORTING

Supplier shall submit to VITA a monthly report containing data on:

- i. Amount of Realized Sales; and
- ii. Small Business Procurement and Subcontracting Spend

This report must be submitted in accordance with the instructions and further detailed requirements, and on the templates set forth on the "Supplier Reporting" webpage located at the following URL: <https://www.vita.virginia.gov/supply-chain/supplier-reporting/>, or any successor URL(s). Supplier is encouraged to review the site periodically for updates on Supplier reporting requirements and methods. Supplier's failure to comply with all reporting, payment, and other requirements in this section may be deemed by VITA, in its sole discretion, to be a breach of the Contract.

A. Amount of Realized Sales

Supplier shall submit to VITA a monthly report of all Realized Sales under this Contract.

In connection to the monthly report of Realized Sales, Supplier shall pay to VITA the following monthly fees in accordance with instructions described on the "Supplier Reporting" webpage located at: <https://www.vita.virginia.gov/supply-chain/supplier-reporting/>. The monthly report of Realized Sales must include these fees and percentages:

- IFA: 2% of monthly sales

Realized Sales under this Contract include all paid Supplier-charged prices and fees whether paid or absorbed by the Authorized User or charged to the citizen at transaction; to include subscription fees, transaction fees, per-download fees, payment gateway fees, convenience fee/funding, etc., but to exclude merchant interchange fees (credit card and ACH fees imposed by the payment processor.) When reporting monthly Realized Sales that include transaction fee sales, the Supplier shall provide a separate accompanying computer generated report demonstrating (a) the individual transaction authorization number(s), (b) the transaction type, (c)

the corresponding fee rate(s), (d) the monthly count of transactions, and (e) a sum of the total dollar value all transaction fees, to the following address: SCMInfo@vita.virginia.gov.

B. Small Business Procurement and Subcontracting Spend

Supplier shall provide to VITA a report of monthly subcontracting spend data. This data must include the spend with all Subcontractors who provide direct performance for obligations under this Contract. Supplier's monthly subcontracting spend data must be submitted via the SRS webpage located at: <http://vita2.virginia.gov/procurement/srs/>.

In addition, every six (6) months following the Effective Date, Supplier shall submit to VITA a "SWaM Subcontracting Certification of Compliance" ("**SSCC**") certifying that Supplier has fully complied with the Contract's Supplier Procurement and Subcontracting Plan ("**Plan**"). A copy of Supplier's Plan is attached to this Contract as **Exhibit H**, and is incorporated by reference. The SSCC must include a written explanation of any variances of greater than 20% between the Plan and the actual subcontractor spend by Supplier. Supplier's SSCC will be maintained by VITA in the Supplier's procurement file. Supplier must submit the SSCC to the following address: SCMInfo@vita.virginia.gov. In the event that Supplier fails to comply with its contractually obligated Plan spend or fails to report its contractually obligated Plan spend, VITA may, at its sole discretion, prohibit or delay any renewals or extensions of the Contract, withhold any final payments due, or both. Supplier's failure to comply will be considered in the prospective award of any future contracts with Supplier.

19. STATUS MEETINGS

Supplier will be prepared to conduct monthly stewardship meetings with VITA to provide a broad review of all services, projects and ongoing operations. Supplier should also be prepared to conduct semi-annual meetings/presentations to discuss new products and services and their potential benefit to VITA.

20. STEERING COMMITTEE

In order to facilitate mutually beneficial contractual relationships with suppliers, VITA has procedures for establishing a steering committee ("**Steering Committee**"), consisting of senior management personnel, including personnel involved in the contractual relationship, from VITA and Supplier.

Roles of the Steering Committee include but are not be limited to (a) identifying potential issues which may arise during the performance of a contract; (b) discussing and assigning roles and responsibilities; (c) establishing methods for quickly resolving potential disputes; (d) setting rules for communication and decision making; (e) monitoring and measuring the business relationship between the parties; and (f) acting as a final decision board for escalated problems.

A meeting of the Steering Committee is intended to be a forum for brainstorming and sharing ideas, emphasizing respect, cooperation, and access, with the end goal of developing relationships to avoid conflict. A facilitator may, but is not required to, conduct a meeting of the Steering Committee.

A Steering Committee for this Contract will be formed at VITA's option. Meetings may be held at any time during the Contract term, should VITA, at its sole discretion, determine that a meeting(s) would be beneficial to the contractual relationship, and Supplier agrees to participate in any scheduled meeting(s). In addition, Supplier may at any time submit a written request to VITA for a meeting of the Steering Committee, which VITA will not unreasonably deny.

Supplier will ensure the availability of the appropriate personnel to meet with the VITA contract management team. Additional Steering Committee meetings involving representatives from VITA, the Supplier, and any Authorized Users may be required prior to or during performance on any specific SOW issued pursuant to this Contract.

21. POLICIES AND PROCEDURES GUIDE

Within thirty (30) calendar days of the Effective Date of the Contract, Supplier will provide VITA with a policy and procedures guide that describes how the Supplier and VITA will work together and how performance, including Deliverables and Services, is to be measured. The guide will provide process diagram details, working activities, and interface points with VITA and Supplier deliverables. Updated

versions of the guide will be provided by Supplier to VITA and all Authorized Users every six (6) months during the Term, including any extensions, of the Contract.

22. TRAINING AND DOCUMENTATION

A. Training

In addition to any online tutorial training Supplier may make available, Supplier's fee, unless expressly excluded, includes all costs for any and all training as agreed upon for the training of one (1) Authorized User trainer per order or SOW. In order to allow Authorized User the full benefit of the applicable Deliverable, the training will cover the use and operation of the Deliverable provided to Authorized User including instruction in any necessary conversion, manipulation, or movement of such Authorized User's data. Supplier shall provide personnel sufficiently experienced and qualified to conduct such training at a time and location mutually agreeable to Supplier and Authorized User. Available additional and exhibit training, and applicable pricing and discounts, are described in Exhibit B.

B. Documentation

Supplier shall deliver to Authorized User complete copies of any Documentation applicable to the Deliverable(s) provided to Authorized User, in a quantity and media format as agreed upon by the Parties under an order or SOW. Should Supplier revise or replace the Documentation, or should Documentation be modified to reflect Updates, Supplier shall deliver to the Authorized User copies of the updated or replacement Documentation, in the same quantity and media format as originally requested by the Authorized User, or as agreed upon between the Parties. Any Authorized User will have the right, as part of any license grant, to make as many additional copies of the Documentation, in whole or in part, for its own use as required. This Documentation must include, but is not limited to, overview descriptions of all major functions, detailed step-by-step installation and operating procedures for each screen and activity, and technical reference manuals. Such Documentation must be revised to reflect any modifications, fixes or updates made by Supplier. Any Authorized User, at its own discretion, will have the right, as part of the license granted by Supplier, to modify or completely customize all or part of the Documentation in support of the authorized use of the licensed Application or Software. The Authorized User may also duplicate such Documentation and include it in such Authorized User's document or platform. All Authorized Users shall continue to include Supplier's copyright notice.

23. AUTHORIZED USER SELF-SUFFICIENCY

At Authorized User's request, and pursuant to an order or SOW for Supplier's Services issued under this Contract, Supplier shall provide all assistance reasonably required by Authorized User to develop Authorized User's self-sufficiency in operating and managing any combination of the Solution, Software, Products, or Services that Supplier provided to Authorized User under the applicable order or SOW. During or after the Transition Period, Authorized User may, at its sole discretion, elect to order or continue Maintenance Services from Supplier, if authorized under the scope of the Contract, for any of the Software or hardware Product, Components, or Solution Components delivered to Authorized User by Supplier.

24. COMPETITIVE PRICING

Supplier warrants that each of the prices, charges, economic or product terms, or warranties granted under this Contract are fair, reasonable, and commensurate with the price, charge, economic or product term or warranty being offered by Supplier to other government customers that purchase substantially similar services or products, at similar volumes, and under substantially similar terms and conditions. Supplier shall notify VITA of any new services or products that become generally available to all government customers during the Term of this Contract. New products and services are subject to the commercial terms associated with those products and services and must be formally added to this Contract before they can be purchased. Supplier shall also offer VITA commercially available national government products and services promotions and rates available at the time of purchase under the terms of those promotions.

25. CONFIDENTIALITY

A. Treatment and Protection

Each Party shall:

- i. hold in strict confidence all Confidential Information of any other Party;
- ii. use the Confidential Information solely to perform or to exercise its rights under this Contract; and
- iii. not transfer, display, convey or otherwise disclose or make available all or any part of the other Party's Confidential Information to any third-party.

An Authorized User may, however, disclose the Confidential Information as delivered by Supplier to subcontractors, contractors, or agents of the Authorized User that are bound by non-disclosure agreements with the Authorized User. Each Party shall take the same measures to protect against the disclosure or misuse of the Confidential Information as it takes to protect its own proprietary or confidential information, but in no event will such measures be less than reasonable care.

B. Exclusions

The term "Confidential Information" does not include information that is:

- i. in the public domain through no fault of the receiving Party or of any other person or entity that is similarly contractually or otherwise obligated;
- ii. obtained independently from a third-party without an obligation of confidentiality to the disclosing Party and without breach of this Contract;
- iii. developed independently by the receiving Party without reference to the Confidential Information of the other Party; or
- iv. required to be disclosed under The Virginia Freedom of Information Act (Code §§ 2.2-3700 et seq.) or similar laws or pursuant to a court order.

C. Return or Destruction

Upon the termination or expiration of this Contract, or upon the earlier request of the disclosing Authorized User, Supplier shall, at its own expense,

- i. promptly return all tangible Confidential Information (and all copies thereof except the record required by law) to the disclosing Authorized User; or
- ii. upon written request from the disclosing Authorized User, destroy any Confidential Information in Supplier's possession or control, and provide the disclosing Authorized User with written certification of the destruction.

Additionally, Supplier shall cease all further use of the Authorized User's Confidential Information, whether in tangible or intangible form.

The Authorized User shall retain and dispose of Supplier's Confidential Information in accordance with the Commonwealth's records retention policies or, if Authorized User is not subject to the Commonwealth's policies, in accordance with the Authorized User's own records retention policies.

D. Confidentiality Statement

All Supplier Personnel performing Services pursuant to this Contract are required to sign a confidentiality statement or non-disclosure agreement. Any violation of the statement or agreement will be deemed a breach of this Contract and may result in termination of the Contract or any order or SOW issued hereunder.

E. Health Insurance Portability and Accountability Act

Supplier shall comply with all applicable provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and, as applicable to the performance of this Contract or to any SOW or order issued pursuant to this Contract. Supplier shall:

- i. not use or further disclose protected health information (“**PHI**”) other than as permitted or required by the terms of this Contract or any SOW or order issued hereunder or as required by law;
- ii. use appropriate safeguards to prevent use or disclosure of PHI other than as permitted by this Contract or any SOW or order issued hereunder;
- iii. report to VITA or Authorized User, as applicable, any use or disclosure of PHI not provided for by this Contract or the applicable SOW or order;
- iv. mitigate any harmful effect that is known to the Supplier of a use or disclosure of PHI by the Supplier or Supplier Personnel in violation of the requirements of this Contract or the applicable SOW or order;
- v. impose the same requirements and restrictions contained in this provision on Supplier Personnel performing on this Contract or a SOW or order issued hereunder;
- vi. provide access to PHI contained in its records to VITA or the requesting Authorized User, in the time and manner designated by VITA or the requesting Authorized User, or at the request of VITA or an Authorized User, to an individual in order to meet HIPAA access; and
- vii. make available PHI in its records to VITA or an Authorized User for amendment and incorporate any amendments to PHI in its records at VITA’s or an Authorized User’s request.

26. INDEMNIFICATION AND LIABILITY

A. Indemnification

Supplier shall defend all Commonwealth Indemnified Parties against any third-party Claims and shall indemnify all Commonwealth Indemnified Parties from all damages, liabilities, costs, and expenses resulting from any Claims that are incurred by, borne by, or asserted against any Commonwealth Indemnified Parties to the extent the Claims in any way relate to, arise out of, or result from:

- i. any intentional or willful misconduct or negligence of any Supplier Personnel,
- ii. any negligent act or omission of any Supplier Personnel,
- iii. breach of any representation, warranty or covenant of Supplier contained herein,
- iv. any defect in the Services provided by Supplier, or
- v. any actual or alleged infringement or misappropriation of any third party’s intellectual property rights by any of the Services.

Selection and approval of counsel and approval of any settlement shall be accomplished in accordance with all applicable laws, rules and regulations. For state agencies the applicable laws include §§ 2.2-510 and 2.2-514 of the Code. In all cases, the selection and approval of counsel, and approval of any settlement, shall be satisfactory to the Commonwealth, such approval not to be unreasonably withheld. In the event of a settlement between Supplier and a private institution of higher education listed at <http://www.cicv.org/Our-Colleges/Profiles.aspx> who is an Authorized User of this Contract, such settlement shall be satisfactory to that institution.

In the event that a Claim is commenced against any of Commonwealth’s Indemnified Parties alleging that the provision of Services under this Contract infringes any third party’s intellectual property rights and Supplier is of the opinion that the allegations in such Claim in whole or in part are not covered by this indemnification provision, Supplier shall immediately notify VITA in writing, via certified mail, specifying to what extent Supplier believes it is obligated to defend and indemnify under the terms and conditions of this Contract. Supplier shall in such event protect the interests of the Commonwealth’s Indemnified Parties and secure a continuance to permit VITA to appear and defend their interests in cooperation with Supplier as is appropriate, including any jurisdictional defenses VITA may have.

In the event of a Claim pursuant to any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Services, and in addition to all other obligations of Supplier in this Section, Supplier shall at its expense, either (a) procure for VITA the right to continue use of such infringing Services, or any component thereof; or (b) replace or modify such infringing Services, or any component thereof, with non-infringing services satisfactory to VITA. And in addition, Supplier shall provide VITA with comparable temporary replacement services, or reimburse VITA for the reasonable costs incurred by VITA in obtaining alternative services in the event VITA cannot benefit from the affected Services. If Supplier cannot accomplish any of the foregoing within a reasonable time and at commercially reasonable rates, then Supplier shall accept the return of the infringing component of the Services, along with any other components rendered unusable by VITA as a result of the infringing component, and refund the price paid to Supplier for such components.

B. Liability

Except for liability with respect arising from:

- i. any intentional or willful misconduct or negligence of any employee, agent, or subcontractor of Supplier,
- ii. any act or omission of any employee, agent, or subcontractor of Supplier,
- iii. Claims for bodily injury, including death, and real and tangible property damage,
- iv. Supplier's indemnification obligations,
- v. Supplier's confidentiality obligations, and
- vi. Supplier's security compliance obligations,

Supplier's liability shall be limited to twice the aggregate value of the Services provided under this Contract. Supplier agrees that it is fully responsible for all acts and omissions of its employees, agents, and subcontractors, including their gross negligence or willful misconduct. This limitation shall apply on a per-incident basis, it being understood that multiple losses stemming from the same root cause constitute a single incident.

27. INSURANCE

In addition to the insurance coverage required by law as referenced in the "Incorporated Contractual Provisions" section of this Contract below, Supplier shall carry:

Errors and omissions insurance coverage in the amount of \$2,000,000 per occurrence.

28. SECURITY COMPLIANCE

Supplier shall comply with all provisions of the then-current Commonwealth security procedures, published by VITA and which may be found at: <https://www.vita.virginia.gov/it-governance/itm-policies-standards/>, or any successor URL(s), as are pertinent to Supplier's operation. Further, Supplier shall comply with all applicable provisions of the relevant Authorized User's then-current security procedures as are pertinent to Supplier's operation and that have been provided to Supplier by the Authorized User. Supplier shall also comply with all applicable federal, state, and local laws and regulations.

Any unauthorized release of any Confidential Information, or Commonwealth proprietary or personal information, by the Supplier or Supplier Personnel constitutes a breach of Supplier's obligations under the Contract. Supplier shall notify VITA and any affected Authorized User within 24 hours of discovery of, or when Supplier should have discovered, any breach of "unencrypted" and "unredacted" personal information, as those terms are defined in Code § 18.2-186.6, and other confidential or personal identifying information provided to the Supplier by VITA or an Authorized User. To the extent permitted by law, Supplier shall provide VITA and any affected Authorized User the opportunity to participate in the investigation of the breach and to exercise control over reporting the unauthorized disclosure.

Supplier shall ensure performance of an audit of Supplier's environment at least annually to provide assurance of "Controls Relevant to Security, Availability, Processing Integrity, Confidentiality or Privacy" in accordance with the then-current standards set forth by the American Institute of CPAs.

29. IMPORT/EXPORT

Supplier shall comply with all data export laws and regulations. In addition, VITA policy requires that any data deemed "restricted" or "sensitive" by either federal or state authorities, may only be collected, developed, analyzed, or otherwise used or obtained by persons or entities working within the boundaries of the United States.

30. BANKRUPTCY

If Supplier becomes insolvent, takes any step leading to its cessation as a going concern, fails to pay its debts as they become due, or ceases business operations continuously for longer than fifteen (15) business days, then VITA may immediately terminate this Contract, and an Authorized User may terminate an order or SOW, on notice to Supplier unless Supplier immediately gives VITA or such Authorized User adequate assurance of the future performance of this Contract or the applicable order or SOW. If this Contract has not been otherwise terminated and bankruptcy proceedings are commenced with respect to Supplier, then VITA may suspend all further performance of this Contract until Supplier assumes this Contract and provides adequate assurance of its performance of Supplier's contractual obligations or rejects this Contract pursuant to Section 365 of the Bankruptcy Code or any similar or successor provision, it being agreed by VITA and Supplier that this is an executory contract. Any suspension of further performance by VITA or Authorized User pending Supplier's assumption or rejection will not be a breach of this Contract, and will not affect the rights of VITA or any Authorized User to pursue or enforce any of its rights under this Contract or otherwise.

31. GENERAL PROVISIONS

A. Relationship Between VITA and Authorized User and Supplier

Supplier has no authority to contract for, bind or commit to any agreement of any kind, or to assume any liabilities of any nature in the name of or on behalf of VITA or any Authorized User. Under no circumstances will Supplier, or any Supplier Personnel, hold itself out as or be considered an agent or an employee of VITA or any Authorized User, and neither VITA nor any Authorized User will have any duty to provide or maintain any insurance or other employee benefits on behalf of Supplier or any Supplier Personnel. Supplier represents and warrants that it is an independent contractor for purposes of federal, state, and local employment taxes, and agrees that neither VITA nor any Authorized User is responsible to collect or withhold for Supplier any federal, state, or local employment taxes, including, but not limited to, income tax withholding and social security contributions. Supplier shall pay or withhold any and all taxes, interest or penalties (including, but not limited to, any federal, state, or local withholding or employment taxes, and any penalties related to health care or employee benefits laws) that are imposed, assessed, or levied as a result of this Contract or Services performed pursuant to this Contract. Supplier shall reimburse VITA or any Authorized User in the event that any taxes, interest or penalties are assessed against and paid by VITA or any Authorized User as a result of this Contract.

B. Licensing Within the Commonwealth

Any and all licenses granted or provided pursuant to this Contract, whether to Work Product, System Software, COTS, or any other Software will be held by:

- i. the Commonwealth, if the Authorized User is an agency as defined by Code § 2.2-2006 or a legislative, judicial and independent agency 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;
- ii. the applicable public body, if the Authorized User is a locality, municipality, school, school system, college, university, local board, local commission, or local quasi-political entity; or

iii. the applicable private institution of higher education, if the Authorized User is a private institution of higher education listed at: <http://www.cicv.org/Our-Colleges/Profiles.aspx>.

C. Incorporated Contractual Provisions

In addition to the terms, conditions, and obligations of this Contract, Supplier agrees to the VITA “Mandatory Contract Terms” which consist of the VITA:

- “Core Contractual Terms”;
- “Required eVA Terms and Conditions” as set forth in Code §2.2-4463; and
- “Mandatory Internal Revenue Service (IRS) Publication 1075 (required for FTI data only)”

Each of these Mandatory Contract Terms are set forth at the following URL and incorporated into this Contract by reference: <https://www.vita.virginia.gov/supply-chain/scm-policies-forms/mandatory-contract-terms/>.

Supplier agrees that non-compliance with the above-referenced Mandatory Contract Terms and IRS Publication 1075 may be deemed, solely by VITA, as a material breach of the applicable order or SOW or of the Contract. Supplier is responsible for verifying the correct and current version of this IRS publication and related safeguarding terms language and acknowledges that any Authorized User issuing the order or SOW will be held harmless.

The terms and conditions set forth in documents posted at the URL above, and any successor URL(s), are subject to change pursuant to action by the legislature of the Commonwealth, change in VITA policy, adoption of revised eVA business requirements, or change to IRS Publication 1075. If a change is made to any of the Mandatory Contract Terms documents, a new effective date will be noted in the applicable document title. Supplier is advised to check the URLs, or their successors, periodically.

D. Compliance with the Federal Lobbying Act

Supplier’s signed certification of compliance with 31 U.S.C. § 1352 (entitled "Limitation on use of appropriated funds to influence certain Federal Contracting and financial transactions") or by the regulations issued from time to time thereunder is incorporated as Exhibit G to this Contract.

E. Ethics in Public Contracting

By signing this Contract, Supplier warrants that its assent to this Contract is made without collusion or fraud, and that Supplier has not offered or received any kickbacks or inducements from any other bidder, supplier, manufacturer or subcontractor in connection with their proposal or the terms of this Contract. Further, Supplier warrants that it has not conferred any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, on any public employee having official responsibility for this procurement transaction, unless consideration of substantially equal or greater value was exchanged. In addition, Supplier warrants that it will notify VITA if it becomes aware of a potential conflict of interest in the future.

F. Governing Law

This Contract is governed by and will be construed in accordance with the laws of the Commonwealth of Virginia without regard to that body of law controlling choice of law. Any and all litigation relating to this Contract must be brought in the circuit courts of the Commonwealth of Virginia. The English language version of this Contract prevails when interpreting this Contract. The United Nations Convention on Contracts for the International Sale of Goods and all other laws and international treaties or conventions relating to the sale of goods are expressly disclaimed. The Uniform Computer Information Transactions Act applies to this Contract only to the extent required by Code § 59.1-501.15.

G. Dispute Resolution

In accordance with Code § 2.2-4363, contractual claims, whether for money or other relief, must be submitted in writing to the public body from whom the relief is sought no later than sixty (60) calendar days after final payment; however, written notice of the Supplier's intention to file such claim must be given to such public body at the time of the occurrence or beginning of the work

upon which the claim is based. Pendency of claims will not delay payment of amounts agreed due in the final payment. The relevant public body shall render a final decision in writing within thirty (30) calendar days after its receipt of the Supplier's written claim.

The Supplier may not invoke any available administrative procedure under the Code nor institute legal action prior to receipt of the decision of the relevant public body on the claim, unless that public body fails to render its decision within thirty (30) calendar days. The decision of the relevant public body will be final and conclusive unless the Supplier, within six (6) months of the date of the final decision on the claim, invokes appropriate action under Code § 2.2-4364 or the administrative procedure authorized by Code § 2.2-4365.

Upon request from the public body from whom the relief is sought, Supplier shall submit any and all contractual disputes arising from this Contract to the public body's alternative dispute resolution ("ADR") procedures, if any. Supplier may invoke such public body's ADR procedures, if any, at any time and concurrently with any other statutory remedies prescribed by the Code.

In the event of any breach by a Commonwealth agency, Supplier's remedies will be limited to claims for damages and interest allowable under the Prompt Payment Act and, if available and warranted, equitable relief. All such claims to be processed pursuant to this Section. In no event will Supplier's remedies include the right to terminate any license or support services hereunder.

H. Assignment

This Contract is binding upon and will inure to the benefit of the permitted successors and assigns of VITA and Supplier. Supplier may not assign, subcontract, delegate or otherwise convey this Contract or any of its rights and obligations under this Contract, to any entity without the prior written consent of VITA, and any attempted assignment or subcontracting without consent will be void. VITA may assign this Contract to any entity, so long as the assignee agrees in writing to be bound by the all the terms and conditions of this Contract.

If any law limits the right of VITA or Supplier to prohibit assignment or nonconsensual assignments, the effective date of the assignment will be thirty (30) calendar days after the Supplier gives VITA prompt written notice of the assignment, signed by authorized representatives of both the Supplier and the assignee. Any payments made prior to receipt of such notification will not be covered by this assignment.

I. Severability

Invalidity of any term of this Contract, in whole or in part, will not affect the validity of any other term. VITA and Supplier further agree that in the event such provision is an essential part of this Contract, they shall immediately begin negotiations for a suitable replacement provision.

J. Survival

Any provisions of this Contract regarding Software License, Rights To Work Product, Warranty, Escrow, Confidentiality, Content Privacy and Security, Liability, Indemnification, Transition of Services, the right to purchase Maintenance Services, and the General Provisions survive the expiration or termination of this Contract.

K. Force Majeure

No Party will be responsible for the delay or failure to meet its obligations under this Contract if the delay or failure arises from causes beyond the reasonable control and without the fault or negligence of the obligated Party. If any performance date under this Contract is postponed or extended pursuant to this Section for longer than thirty (30) calendar days, VITA, by written notice given during the postponement or extension, may terminate Supplier's right to render further performance after the effective date of termination without liability for that termination, and in addition an Authorized User may terminate any order or SOW affected by such postponement or delay.

L. No Waiver

Any failure to enforce any terms of this Contract will not constitute a waiver.

M. Remedies

The remedies set forth in this Contract are intended to be cumulative. In addition to any specific remedy, VITA and all Authorized Users reserve any and all other remedies that may be available at law or in equity.

N. Right to Audit

VITA reserves the right to audit those Supplier records that relate to the Contract or any SOWs or orders issued there under. VITA's right to audit is limited as follows:

- i. three (3) years from end date of the Contract;
- ii. at VITA's expense;
- iii. no more than once per every twelve (12) months;
- iv. performed at Supplier's premises, during normal business hours at mutually agreed upon times; and
- v. access to Supplier cost information is excluded.

In no event will Supplier have the right to audit, or require to have audited, VITA or any Authorized User.

O. Taxes

The Commonwealth is exempt from Federal excise and all State and Local taxes and any such taxes may not be included in Contract prices. Tax certificates of exemption, Form ST-12 can be obtained from Authorized Users upon request. Deliveries against this Contract shall be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

P. Currency

All prices, costs, or fees in this Contract and all exhibits, schedules, orders, or SOWs will be in United States dollars.

Q. Advertising and Use of Proprietary Marks

No Party may use the name of the other Party or refer to the other Party, directly or indirectly, in any press release or formal advertisement without receiving prior written consent of the other Party. In no event may any Party use a proprietary mark of the other Party without receiving the prior written consent of the other Party.

R. Notices

Any notice required or permitted to be given under this Contract must be in writing and will be deemed to have been sufficiently given if delivered in person, or if deposited in the U.S. mails, postage prepaid, for mailing by registered, certified mail, or overnight courier service addressed:

- i. To VITA and to Supplier, if Supplier is incorporated or formed pursuant to the laws of the Commonwealth, to the addresses shown on the signature page.
- ii. To Supplier, if Supplier is incorporated or formed outside the Commonwealth, to the address shown on the signature page and to the Registered Agent registered with the Virginia State Corporation Commission.

Pursuant to Title 13.1 of the Code, VITA or Supplier may change its address for notice purposes by giving the other Party notice of such change in accordance with this Section.

Administrative contract renewals, modifications or non-claim related notices are excluded from the above requirement. Such written, or signed, or both, contract administration actions may be processed by the assigned VITA and Supplier points of contact for this Contract and may be given in person, via U.S. mail, courier service or electronically.

S. Offers of Employment

During the first twelve (12) months of the Contract, should Supplier hire an employee of any Authorized User who has substantially worked on any project covered by this Contract without

prior written consent, the Supplier will be billed for 50% of the employee's annual salary in effect at the time of termination.

T. Contract Administration

Supplier agrees that at all times during the term of this Contract an account executive, at Supplier's senior management level, will be assigned and available to VITA. Supplier reserves the right to change such account executive upon reasonable advance written notice to VITA.

U. Captions

The captions of sections and subsections of this Contract are for convenience and in no way define, limit, or enlarge the scope of this Contract or any of its sections.

V. Entire Contract

The following exhibits, including all subparts thereof, are attached to this Contract and are made a part of this Contract for all purposes:

Exhibit A – Requirements

Exhibit B – Options, Pricing

Exhibit C – Escrow Agreement

Exhibit D - Statement of Work (SOW) Template

Exhibit E – Change Order Template

Exhibit F – Reserved

Exhibit G – Certification Regarding Lobbying

Exhibit H – Supplier Procurement and Subcontracting Plan

Exhibit I – Service Level Agreements

This Contract, its exhibits, and any prior non-disclosure agreement constitute the entire agreement between VITA and Supplier and supersede any and all previous representations, understandings, discussions or agreements between VITA and Supplier as to the subject matter of this Contract. Any and all terms and conditions contained in, incorporated into, or referenced by the Supplier's proposal are deemed invalid. The provisions of the Virginia Department of General Services, Division of Purchases and Supply Vendor's Manual will not apply to this Contract or any order issued pursuant to the Contract. This Contract may only be amended by an instrument in writing signed by VITA and Supplier.

An Authorized User and Supplier may enter into an ordering agreement pursuant to this Contract. To the extent that an ordering agreement, or any order or SOW issued pursuant to this Contract, includes any terms and conditions inconsistent with the terms and conditions of this Contract, the terms and conditions of the order or SOW will be of no force and effect.

W. Order of Precedence

In the event of a conflict, the following order of precedence shall apply: this Contract document, Exhibit A, any individual SOW, Exhibit B, then any project specific order. In the event of a conflict or inconsistency between the negotiated terms of this Contract and any provision incorporated by reference into the Contract (e.g., a section of a License Agreement), the negotiated terms of this Contract will take precedence. For purposes of this section, a "conflict" exists with respect to a subject that has been comprehensively addressed in the Contract when supplementary terms contained in a provision incorporated by reference would alter the rights and obligations of the Parties set forth in the Contract.

X. Counterparts and Electronic Signatures

This Contract may be executed in multiple counterparts, each of which, when assembled to include an original signature for each of Supplier and VITA, will constitute a complete and fully executed original. All fully executed original counterparts will collectively constitute a single agreement. Signatures transmitted by fax or electronic mail (in portable data format ("PDF")) are also permitted as binding signatures to this Contract.

Y. Opportunity to Review

VITA and Supplier each acknowledge that it has had the opportunity to review this Contract and to obtain appropriate legal review if it so chose.

[SIGNATURE PAGE(S) TO FOLLOW]

Executed as of the last date set forth below by the undersigned authorized representatives of VITA and Supplier.

Virginia Interactive. LLC

VITA, on behalf of the
COMMONWEALTH OF VIRGINIA

By: 
(Signature)

By: 
(Signature)

Name: Travis Sarkees
(Print)

Name: Nelson Moe
(Print)

Title: General Manager / PRESIDENT

Title: CIO of the Commonwealth of Virginia

Date: 9/5/2019

Date: 9/6/2019

Address for Notice:

Address for Notice:

Virginia Interactive, LLC
119 West Broad Street, 1st Floor
Richmond, VA 23220
Attention: Travis Sarkees

Virginia Information Technologies Agency
11751 Meadowville Lane
Chester, VA 23139
Attention: Contract Administrator