



# **Statewide Microsoft Licensing Solution Provider (LSP) Information Technology Contract**

between

The Virginia Information Technologies Agency

on behalf of

The Commonwealth of Virginia

and

**SHI INTERNATIONAL CORPORATION**

**MICROSOFT RESELLER CONTRACT  
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## MICROSOFT RESELLER CONTRACT

THIS MICROSOFT RESELLER CONTRACT (“**Contract**”) is entered into by and between the Virginia Information Technologies Agency (“**VITA**”), pursuant to § 2.2-2012 of the *Code of Virginia* (“**Code**”) and on behalf of the Commonwealth of Virginia (“**Commonwealth**”), and SHI International Corporation (“**Supplier**”), a corporation headquartered at 290 Davidson Ave, Somerset, NJ 08873, to be effective as of Contract Award Date January 14, 2020 (“**Effective Date**”)

### 1. PURPOSE AND SCOPE

This Contract sets forth the terms and conditions under which Supplier agrees to sell Microsoft Products and Online Services, including but not limited to Licenses and Software Assurance, and to provide various Reseller Services to VITA and Authorized Users. Microsoft Products are to be licensed directly from Microsoft, and Microsoft shall be responsible for hosting Microsoft Online Services.

### 2. DEFINITIONS

#### A. Acceptance

For Microsoft Products and Online Services: successful performance of the Microsoft Products and Online Services, in accordance with Microsoft’s published documentation, upon completion of Authorized User’s Acceptance testing period.

For Reseller Services: successful performance of the Reseller Services as specified in Exhibit B and as specified in any individual order issued by an Authorized User under this Contract.

#### B. Agent

Any third party independent agent of VITA or the Authorized User.

#### C. Agreement

Any current Microsoft Software License Agreements between Microsoft and the Commonwealth, or any software license agreement which Microsoft and the Commonwealth may execute in the future. Exhibit A shall contain a list of all active Agreements for which Supplier is to provide Reseller Services pursuant to this Contract. VITA will provide notice of any such future agreements to Supplier.

#### 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>. Authorized Users are “affiliates” (or a successor term used by Microsoft to identify those entities authorized to license products through an Agreement) in the Agreements which is defined as “any government agency, department, instrumentality, division, unit or other office that is supervised by or is part of you [the Commonwealth, or which supervises you or of which you are a part together with, as mandated by law, any county, borough, Commonwealth, city, municipality, town, township, special purpose district or other similar type of governmental instrumentality located within your jurisdiction and geographic boundaries, provided that a state and its affiliates shall not, for purposes of this definition, be considered to be affiliates of the federal government and its affiliates.”

#### E. Claim

Any and all losses, damages, claims, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, assessments, fines, penalties (whether criminal or civil), judgments, settlements, expenses (including attorneys’ and accountants’ fees and disbursements), and costs. Collectively, “Claims”.

#### F. Code

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

#### 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. 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 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;

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

**J. 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.

**K. 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 Microsoft Products and Online Services, including any and all components, and to implement and develop self-sufficiency with regard to the Microsoft Products and Online Services, including any and all components, provided by Supplier in fulfilling its obligations under the Contract or as may be specified in any order issued pursuant to this Contract.

**L. Effective Date**

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

**M. Federal Tax Information (“FTI”)**

FTI consists of federal tax returns and return information (and information derived from it) that is in the possession or control of any Authorized User, which is covered by the confidentiality protections of the Internal Revenue Code (“IRC”) and subject to the IRC § 6103(p)(4) safeguarding requirements including IRS oversight. FTI is categorized as “Sensitive” but “Unclassified” information and may contain personally identifiable information.

**N. Industrial Funding Adjustment (“IFA”)**

The fee paid by Supplier to VITA to compensate VITA for the cost of procuring and managing the Contract.

**O. Microsoft**

Microsoft Corporation, the licensor of the Products and provider of the Online Services sold by Supplier under this Contract.

**P. Microsoft Products and Online Services**

The programs and code, and any subsequent releases, offered and licensed by Microsoft pursuant to the Agreements and provided by Contractor, as an authorized Microsoft reseller, under this Contract.

**Q. Realized Sales**

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

**R. Reseller Services**

Any services provided by Supplier under this Contract, including but not limited to servicing the Agreement(s) and managing orders for Microsoft Products and Online Services, as such services are described in Exhibit B. Development and maintenance of any website pursuant to this Contract shall be considered a Reseller Service.

**S. Supplier**

The entity set forth in the preamble of this Contract and any any authorized Microsoft reseller(s) who provide Microsoft Products and Online Services and/or Reseller Services under this Contract and any of their Affiliates (i.e., an entity that controls, is controlled by, or is under common control with Supplier).

**T. 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.

**U. 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.

**V. 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.

**W. 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.

**X. Warranty Period**

For Microsoft Products and Online Services: the Warranty Period defined in Microsoft's standard warranty.

For Reseller Services: the period of time set forth in the "Coverage Period" section of this Contract below.

**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 three (3) years. 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 30 calendar days prior to the expiration of any current term. In addition, performance of an order 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 will remain in full force and effect until all of Supplier's obligations pursuant to such order have met the final Acceptance criteria of the applicable Authorized User.

**B. Service Commencement Date ("SCD")**

Upon the Effective Date, Supplier shall execute a Microsoft Change in Channel Partnership ("**COCP**") form for each Agreement identified in Exhibit A. These executed COCP forms will then be submitted to Microsoft. VITA shall notify Supplier in writing upon receipt of confirmation from Microsoft that the Supplier may begin providing Reseller Services to VITA and all Authorized Users for each such Agreement. Supplier shall promptly begin delivery of Reseller Services for each such Agreement to VITA and all Authorized Users, upon receipt of said notice, or at such other date as may be requested by VITA (Service Commencement Date).

This procedure shall be repeated for any future Agreement which may be added by VITA to Exhibit A.

**C. Termination for Convenience**

VITA may terminate this Contract, in whole or in part, at any time and for any reason upon not less than 60 calendar days prior written notice to Supplier. An Authorized User may terminate an order, in whole or in part, at any time and for any reason upon not less than 60 calendar days prior written notice to Supplier. Any termination under this provision will not affect the rights and obligations attending any order outstanding at the termination date.

#### **D. Termination for Breach**

In the event of a breach by Supplier, VITA shall have the right to terminate this Contract, in whole or in part, or any order issued hereunder, in whole or in part, or an Authorized User may terminate an order, in whole or in part. Any termination under the provisions of this section will be deemed a "Termination for Breach". Supplier will be deemed in breach in the event that any one or more of the following events occurs or continues during the Term of the Contract or the term of the order, as applicable:

- i.) Supplier fails to deliver the Microsoft Products and Online Services or provide the Reseller Services required by this Contract or any order issued hereunder by the specified delivery date or in accordance with the timeliness standards set forth in Exhibit B;
- ii.) Supplier repeatedly fails to respond to requests for correction of deficiency(ies) or other services within the time limits set forth in the Contract or any order issued hereunder;
- iii.) Supplier is in breach and/or default of any of the other terms set forth within this Contract;
- iv.) Supplier fails for any period of time to maintain its status as a Microsoft Authorized North American Government Large Account Reseller (LAR);
- v.) Supplier fails to notify VITA and all Authorized Users that it is no longer a Microsoft Authorized North American Government LAR;
- vi.) Supplier is placed on any of the Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs; or
- vii.) Supplier is found by a court of competent jurisdiction to be in violation of or to have violated 31 USC 1352.

If VITA deems the Supplier to be in breach, VITA shall provide Supplier with notice of breach and allow Supplier 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 issued pursuant to this Contract, in whole or in part. If an Authorized User deems the Supplier to be in breach of an order, that Authorized User shall provide Supplier with notice of breach and allow Supplier 15 business days to cure the breach. If Supplier fails to cure the breach as noted, the Authorized User may immediately terminate its order, in whole or in part. With respect to items (iv), (v), and (vi) above, VITA reserves the right to terminate the Contract for breach immediately and without affording Supplier an opportunity to cure the failure.

Supplier agrees that if this Contract is terminated by VITA for breach, Supplier shall immediately provide to Microsoft, with a certified copy to VITA, permission to immediately rescind its status as the reseller of record for VITA and all Authorized Users. Further, if termination for breach results in any Authorized User's inability to make scheduled payments or to place orders for Microsoft Products installed by such Authorized User, Supplier shall reimburse such Authorized User for any penalties or additional costs incurred in licensing Microsoft Products installed by such Authorized User but not ordered due to the termination and in re-licensing Microsoft Products for which scheduled payments had not been made or for which Software Assurance could not be obtained or renewed.

Upon Termination for Breach, neither the Commonwealth, nor VITA, nor any Authorized User shall have any future liability except for Microsoft Products and Online Services provided by Supplier prior to the termination date. Supplier shall accept return, if applicable, of any Microsoft Product that was not accepted by the Authorized User(s), and Supplier shall refund any monies paid by any Authorized User for such Microsoft Product. All costs of de-installation and return of Microsoft Products shall be borne by Contractor.

The failure of VITA or an Authorized User to exercise its right to terminate for breach under this provision shall not be construed as a waiver of its right to terminate for breach, rescind or revoke this Contract or any order issued hereunder in the event of any subsequent breach on any provisions of such agreements.

Supplier shall submit any contractual dispute to VITA or the terminating Authorized User for resolution according to the terms of the Dispute Resolution Section of this Contract.

#### **E. 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, in whole or in part, or an Authorized User may terminate an order, 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.

**F. Effect of Termination**

Upon termination, neither the Commonwealth, nor VITA, nor any Authorized User will have any future liability except for Microsoft Products and Online Services accepted by an Authorized User or Reseller Services rendered by Supplier and accepted by the Authorized User prior to the termination date.

In the event of a Termination for Breach, the provisions of Section D, "Termination for Breach, above will apply.

**G. 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.

**H. 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 Reseller Services 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 twelve (12) months. Supplier agrees to provide all reasonable transition assistance without any additional fees or charges.

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.

**I. Contract Kick-Off Meeting**

Within 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.

**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 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 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 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 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. 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.

**C. Subcontractors**

Supplier shall not use Subcontractors to perform its contractual obligations or any order issued pursuant to the Contract unless specifically authorized in writing to do so by the Authorized User. If an order 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 Nonprocurement 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. 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 the Microsoft Products and Online Services and the Reseller Services described in Exhibit B as follows:

**A. Ownership**

Supplier has the right to perform and provide the Microsoft Products and Online Services to all Authorized Users without violating or infringing any law, rule, regulation, copyright, patent, trade secret, or other proprietary right of any third party. Additionally, Supplier has the right to provide the Reseller Services to VITA and the Authorized User.

**B. Performance of Reseller Services**

All Reseller Services shall be performed with care, skill and diligence, consistent with or above applicable professional standards currently recognized in Supplier's profession, and in accordance with the standards of performance set forth in Supplier's agreement with Microsoft to serve as a Large Account Reseller. Supplier shall be responsible for the professional quality, technical accuracy, completeness and coordination of all Reseller Services furnished under this Contract;

The Reseller Services shall meet or exceed the requirements set forth in Exhibit B;

The Reseller Services shall be performed in a professional manner.

**C. Coverage Period**

At any time during the applicable limited warranty period, Supplier shall provide any assistance requested by an Authorized User in exercising its rights pursuant to Microsoft's limited warranty.

**D. Malicious Code**

Should Supplier provide a website, as described in the Internet Access to Contract and Pricing Information section of this Contractor, Supplier represents and warrants that it has used its best efforts through quality assurance procedures to ensure that there are no Computer Viruses or

undocumented features in the web application. Supplier agrees the 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.

**E. Contractor's Viability**

Supplier warrants that it has the financial capacity to perform and continue to perform its obligations under this Contract; that 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 and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction.

**6. LICENSE**

**A. License Grant**

Microsoft Products will be licensed directly to the Authorized User by Microsoft through the Agreements between VITA and Microsoft.

**B. License Type**

The license types for the Microsoft Products to be provided by Supplier are defined in the Agreements.

Nothing contained herein will be construed to restrict or limit the rights of VITA or any Authorized User to use any technical data which VITA or such Authorized User may already possess or acquire under proper authorization from other sources. Compliance with the terms and conditions of any license granted pursuant to this Contract is solely the responsibility of the Authorized User to which such license is granted and not the responsibility of VITA, unless VITA is the licensee.

**7. RESELLER SERVICES**

Supplier shall perform the Reseller Services described in Exhibit B beginning on the Service Commencement Date with respect to each Agreement identified in Exhibit A and continuing until expiration or termination of the Contract or expiration or termination of the applicable Agreement. VITA and Supplier acknowledge that Supplier's compensation for performance of Reseller Services shall be in the form of the difference, if any, between the price paid by an Authorized User to Supplier for Microsoft Products and Online Services and the price paid by Supplier to Microsoft for such Microsoft Products and Online Services. Neither VITA nor any Authorized User shall be responsible to pay any other fees or charges for Reseller Services.

Notwithstanding all VITA's and Authorized User's rights to order Supplier's products or services under this Contract, neither VITA nor the Authorized User is under any obligation to order from Supplier any of Supplier's products or services. This Contract is mandatory for all executive branch agencies and optional for non-executive branch agencies, localities, K-12 and higher education. Addition of any Agreement to or deletion of any Agreement from Exhibit A shall be at the sole discretion of VITA. VITA reserves the right to have a different Microsoft reseller for each of its Agreements. Notwithstanding the foregoing, VITA shall comply with all its responsibilities with regard to selecting a Microsoft reseller as such responsibilities are set forth in the Agreements.

**A. Internet Access to Contract and Pricing Information**

Supplier agrees that VITA, at its sole discretion, may post the terms and conditions of this Contract, any and all Exhibits to this Contract, and Contract pricing and available discounts to the VITA website.

**1. Supplier Website**

Supplier will maintain a website specific to the Microsoft Product and Online Service offerings under the Contract which is clearly distinguishable from other, non-Commonwealth contract offerings at Supplier's website. The website should include: the Microsoft Products and Online Services offered, specifications for the Microsoft Products and Online Services, discounted Contract pricing, all available discounts, contact information for Contractor, instructions for obtaining quotes and placing orders, and Microsoft's warranty and return policies pursuant to the Agreements. The Supplier's website should also list this Contract number.

**2. Accurate and Timely Contract Information**

Supplier warrants and represents that the website information specified in the above section will be accurately and completely posted, maintained and displayed in an objective and timely

manner. Contractor, at its own expense, shall correct any non-conforming or inaccurate information posted at Supplier's website within ten (10) days after written notification by VITA.

**3. Website Compliance Checks**

Periodic compliance checks of the information posted for the Contract on Supplier's website may be conducted by VITA. Upon request by VITA, Supplier shall provide verifiable documentation that pricing listed upon this website is uniform with the pricing as stated in the Fees and Charges section herein.

**4. Website Changes**

Supplier hereby consents to a link from the VITA website to Supplier's website in order to facilitate access to Contract information. The establishment of the link is provided solely for convenience in carrying out the business operations of VITA and the Authorized Users. VITA reserves the right to update, terminate or remove a link at any time, in its sole discretion, without advance notice, or to deny a future request for a link. Supplier shall provide VITA and all Authorized Users with timely written notice of any change in URL or other information needed to access the site and/or maintain the link.

**5. Use of Access Data Prohibited**

If Supplier electronically stores, collects or maintains data from any Authorized User as a condition of accessing Contract information, such data shall be considered Confidential Information, in accordance with the Confidentiality provisions of this Contract, shall only be used internally by Supplier for the purpose of implementing or marketing the Contract, and shall not be disseminated to third parties or used for other marketing purposes. The Contract constitutes a public document under the laws of the Commonwealth and Supplier shall not restrict access to Contract terms and conditions including pricing, e.g., through use of restrictive technology or passwords.

**6. Responsibility for Content**

Supplier is solely responsible for administration, content, management of intellectual property rights, and all materials at Supplier's website. VITA reserves the right to require a change of listed content if, in the opinion of VITA, it does not adequately represent the Contract or Contract pricing.

**B. Order Processing**

Supplier is required to accept any order for Microsoft Products and Online Services placed by an Authorized User through the eVA electronic procurement website portal (<http://www.eva.virginia.gov/>). eVA is the Commonwealth of Virginia's e-procurement system. State agencies, as defined in §2.2-2006 of the Code of Virginia, shall order through eVA. All other Authorized Users are encouraged to order through eVA, but may order through the following means:

Purchase Order (PO): An official PO form issued by an Authorized User.

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 for the Reseller Services, Microsoft Products and Online Services available under this Contract and pursuant to the Agreements. Under no circumstances shall the Authorized User have the authority to modify this Contract. An order from an Authorized User may contain additional terms and conditions; however, to the extent that the terms and conditions of the Authorized User's order are inconsistent with the terms and conditions of this Contract, the terms of this Contract shall supersede.

Upon receipt of an order from an Authorized User for Microsoft Products and Online Services, Supplier shall promptly place such order with Microsoft in accordance with the procedures described in Exhibit B. Failure of Supplier to place such order within five (5) days shall be a material default of this Contract, and VITA or the affected Authorized User may exercise its rights pursuant to the Term and Termination section of this Contract. Supplier shall provide to Authorized User sixty (60) days advance notice of any scheduled payment or expiration of any Microsoft Software Assurance. For notices related to expiration of Software Assurance, Supplier shall include a report detailing the ordering or using entity (e.g., the Authorized User department which has licensed the Microsoft Product) and a price quote to renew Software Assurance, should Authorized User elect.

Notwithstanding the foregoing, Supplier shall not accept any order from an Authorized User if such order is to be funded, in whole or in part, by federal funds and if, at the time the order 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 Nonprocurement Programs. In addition, Supplier shall not provide Microsoft Products or Online Services to an Authorized User if Supplier has knowledge, or has reason to believe, that such Microsoft Products or Online Services are to be used outside of the United States unless such Authorized User can demonstrate the consent of Microsoft to use of such Microsoft Products or Online Services outside of the United States. If in such event Supplier does not provide such Microsoft Products or Online Services, Supplier shall provide written notice of its reason to the Authorized User and to VITA.

**C. Fees and Charges**

As consideration for the Microsoft Products and Online Services provided hereunder, the Authorized User shall pay Supplier the associated Microsoft reference price and/or Estimated Retail Price less the percentage discount(s) set forth in Exhibit C. The percentage discount(s), or greater discount(s), shall be applicable throughout the term of this Contract, including any extensions thereto. The Supplier may offer promotional discounts higher than the percentage discount set forth in Exhibit C, provided Supplier offers such promotional discounts to all Authorized Users and provides VITA with advance written notice of such promotional discounts. Supplier shall be solely responsible for payment to Microsoft of any and all fees for Microsoft Products and Online Services.

**D. Fees and Charges for Pre-Existing Orders Transitioned to this Contract**

Fees and charges for pre-existing Authorized User orders with multiple year pricing included (those issued prior to this Contract's start date), shall retain the original orders' pricing until the expiration or termination of such order. The fees and charges in Exhibit C hereto apply only to new orders (including True-ups and additional product orders) for Microsoft Products and Online Services issued after the effective date of this Contract.

**E. Invoice Procedures**

Supplier shall remit each invoice to the "bill to" address provided with the order promptly after all Microsoft Products or Online Services have been provided to the appropriate Authorized User. Payment for Software Assurance shall be annually in advance unless otherwise stated in the Agreements, an Authorized User's enrollment, or in any order referencing this Contract. No invoice shall include any costs other than those identified on the Microsoft price list in effect at the time of order placement, less the discount set forth in Exhibit C or any additional promotional discount which may be offered by the Supplier in accordance with the Fees and Charges section of this Contract. Without limiting the foregoing, all shipping costs are the Supplier's responsibility except to the extent such charges are identified in Exhibit C, or as noted in any executed order referencing this Contract. Invoices issued by the Supplier shall identify at a minimum:

Software or Service type and description

Quantity, charge (Microsoft reference price (for Enterprise Agreement) and/or Estimated Retail Price (for Select Agreement)), extended pricing, and discounted pricing for each Microsoft Product or Online Service item

Applicable order date

This Contract number and the applicable order number

Supplier's purchase order number to Microsoft

Supplier's Federal Employer Identification Number ("FEIN").

**ALL CONTRACTUAL OBLIGATIONS UNDER THIS CONTRACT IN CONNECTION WITH AN ORDER PLACED BY ANY AUTHORIZED USER ARE THE SOLE OBLIGATION OF SUCH AUTHORIZED USER AND NOT THE RESPONSIBILITY OF VITA UNLESS SUCH AUTHORIZED USER IS VITA.**

**F. Purchase Payment Terms**

Supplier is responsible for the accuracy of its billing information. Any credits due any Authorized User under the terms of this Contract may be applied against Supplier's invoices to such Authorized User with appropriate information attached. Charges for Microsoft Products and Online Services provided more than ninety (90) days prior to receipt of a valid invoice may not be

paid. Such nonpayment by an Authorized User shall not release Supplier from its obligation to remit payment to Microsoft for such Microsoft Products and Online Services.

If there are any disputed items, the Authorized User shall pay all undisputed charges and promptly notify Supplier in writing of any disputed amount. Supplier shall thereupon review its records, and, if it does not concur with the Authorized User, provide the Authorized User with documentation to support the charge. Notwithstanding any dispute regarding an invoice to any Authorized User, or any portion of such invoice, Supplier shall in all circumstances promptly remit payment any payment due Microsoft for the Microsoft Products and Online Services provided to such Authorized User.

All payment terms are net 30 days after Microsoft Products and Online Services have been provided and the Authorized User has received a valid invoice issued by Contractor.

## **8. DELIVERY, INSTALLATION, TESTING, AND CURE PERIOD**

### **A. Scheduling**

Supplier shall provide the Microsoft Products and Online Services according to the due dates set forth on the appropriate order. Supplier shall perform the Reseller Services in accordance with the requirements set forth in Exhibit B.

### **B. Installation of Microsoft Products and Online Services**

The Authorized User shall be responsible for installation of the Microsoft Products and Online Services, which shall be deemed to be installed when all programs, program libraries and user interfaces are copied to and initialized on the appropriate equipment as executable by having the Authorized User invoke the primary function of each major component of the Software.

### **C. Acceptance of Microsoft Products and Online Services**

Microsoft Products and Online Services shall be deemed accepted when the Authorized User determines that such Microsoft Products and Online Services successfully operate in accordance with Microsoft published documentation. Such Authorized User agrees to commence Acceptance testing within ten (10) business days after installation of the Microsoft Products and Online Services, or within such other period as set forth in the applicable order, after receipt of the Microsoft Products and Online Services. Acceptance testing will be no longer than ten (10) days, or such longer period as may be agreed in writing between Authorized User and Contractor, for the first instance of each product type set forth in Exhibit C. Supplier agrees to provide to such Authorized User such assistance and advice as such Authorized User may reasonably require, at no additional cost, during such Acceptance testing, other than travel expenses pre-approved by the Authorized User which will be reimbursable by such Authorized User at the then-current per diem amounts as published by the Virginia Department of Accounts <http://www.doa.virginia.gov>, or a successor URL(s)). Authorized User shall provide to Supplier written notice of Acceptance upon completion of successful Acceptance testing. Authorize User must notify Supplier immediately if Authorized User has identified any non-conformities in the Microsoft Products and Online Services. The Authorize User acknowledges and agrees that Microsoft shall only issue credits for rejected Microsoft Products and Online Services within thirty (30) days of receipt of Microsoft Products and Online Services. Should Authorized User fail to provide Supplier written notice of successful or unsuccessful Acceptance testing within five (5) days following the Acceptance testing period or within twenty-five (25) days after receipt of the Microsoft Products and Online Services, whichever time period is earlier, the Microsoft Products and Online Services shall be deemed Accepted. No credits shall be issued for Microsoft Products and Online Services unless such credits are authorized by Microsoft.

### **D. Cure Period for Microsoft Products and Online Services**

Supplier shall assist in resolving any non-conformities identified during Acceptance testing and re-submit replacements for such non-conforming Microsoft Products and Online Services for re-testing within seven (7) calendar days of the appropriate Authorized User's written notice of non-conformance, or as otherwise agreed between such Authorized User and Supplier in the applicable order. Should the non-conformity not be resolved or Supplier not deliver replacement Microsoft Products and Online Services which meet Microsoft's published documentation, such Authorized User may, in its sole discretion: (i) reject the Microsoft Products and Online Services in its entirety and recover amounts previously paid hereunder; (ii) issue a "partial Acceptance" of the Microsoft Products and Online Services with an equitable adjustment in the price to account

for such deficiency; or (iii) conditionally accept the applicable Microsoft Products and Online Services while reserving its right to revoke Acceptance if timely correction is not forthcoming. Failure of the Microsoft Products and Online Services to meet, in all material respects, Microsoft's published documentation after the second set of acceptance tests allows the Authorized User at its sole discretion, to terminate its order, in whole or in part, for the Microsoft Products and Online Services to be provided thereunder by Contractor.

**E. Acceptance of Reseller Services**

Reseller Service(s) shall be deemed accepted when VITA determines that such Reseller Service(s) meets the Reseller Service obligations set forth in the Contract or an Authorized User determines that such Reseller Service(s) meets the Reseller Service obligations set forth in the applicable Authorized User order. Should a previously Accepted Reseller Service require further services or modification in order to fulfill the Reseller Service obligation, Supplier shall be responsible for all costs associated with such additional services or with such modification.

Acceptance testing shall not apply to Reseller Services. Acceptance of Reseller Services shall be deemed Accepted if VITA, for the Contract, or Authorized User for its applicable order, fails to provide written notice of non-Acceptance of the Reseller Service(s).

Should VITA or the Authorized User provide written notice of non-Acceptance to Supplier which may include but not be limited to, any reporting delinquency or unacceptable or deficient quality, failure to provide operable website links, mismanagement of servicing the Agreement(s) and managing orders for Microsoft Products and Online Services, Supplier agrees to provide to VITA or the Authorized User, as applicable, such assistance and resolution efforts as VITA or the Authorized User may reasonably require, at no additional cost.

**F. Cure Period for Reseller Services**

Should Supplier fail to cure the non-Acceptance or fail to deliver a Reseller Services resolution which meets the Reseller Services obligations as stated in Exhibit B and an individual order, VITA, for the Contract, or the Authorized User for its applicable order, may, in its sole discretion: (i) reject the Reseller Services in their entirety and recover amounts previously paid for all such Reseller Services; (ii) issue a "partial Acceptance" of the Reseller Services with an equitable adjustment in the price to account for such deficiency; or (iii) conditionally accept the applicable Reseller Services while reserving its right to revoke Acceptance if timely correction is not forthcoming. Failure of a Reseller Service to meet, in all material respects, the Reseller Services obligations of the Contract or any individual order may constitute a default by Contractor. In the event of such default, VITA may, at its sole discretion, terminate the Contract, in whole or in part, or the Authorized User may, at its sole discretion, terminate its order, in whole or in part, for the Reseller Services to be provided thereunder by Contractor.

**9. 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

## **B. Small Business Procurement and Subcontracting Spend**

Supplier shall provide to VITA a report of monthly subcontracting spend data. This data must include Supplier's total spend to 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.

## **10. 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.

## **11. INDEMNIFICATION**

### **A. Indemnification Generally**

Supplier shall defend, indemnify, and hold harmless all Commonwealth Indemnified Parties from and against any third-party Claims to the extent the Claims in any way relate to, arise out of, or result from:

- i. any negligent act, negligent omission, or intentional or willful misconduct of Supplier or any Supplier Personnel;
- ii. a breach of any representation, warranty, covenant, or obligation of Supplier contained in this Contract;
- iii. any defect in the Supplier-provided services; or
- iv. any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Supplier-provided services.

### **B. Defense of Claims**

Commonwealth Indemnified Parties. 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.

### **C. Duty to Replace or Reimburse**

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 Supplier-provided products or services, or Supplier's performance, Supplier shall, at its expense and option, either (a) procure the right to continue use of such infringing products or services, or any components thereof; or (b) replace or modify the infringing products or services, or any components thereof, with non-infringing products or services satisfactory to VITA.

In the event that an Authorized User cannot use the affected Deliverable, Product, Licensed Services, or Services, including any Components, then Supplier shall reimburse such Authorized User for the reasonable costs incurred by such Authorized User in obtaining an alternative product or service.

### **D. Supplier Dispute of Obligation to Indemnify**

If a Claim is commenced against any Commonwealth Indemnified Parties by a third party alleging an infringement of the third party's intellectual property rights and Supplier is of the opinion that the allegations in the third-party Claim, in whole or in part, are not covered by the indemnification provision in this Contract, then In the event that Supplier disputes any of its obligations to defend or indemnify any Commonwealth Indemnified Party, then Supplier shall immediately notify VITA and the affected Authorized User(s) in writing and shall, nonetheless, take all reasonable steps to protect the rights, remedies, and interests of the Commonwealth Indemnified Parties in the defense of the Claim, including to secure a continuance to permit VITA and the affected Authorized User(s) to appear and defend their interests in cooperation with Supplier as is appropriate, including any jurisdictional defenses VITA or the affected Authorized User(s) may have.

### **E. Freedom of Information Act Acknowledgement**

All Supplier documents now or later comprising the Contract may be released in their entirety under the Virginia Freedom of Information Act, and Supplier agrees that any confidentiality or similar stamps or legends that are attached to any future documents or information may be ignored to the extent they claim confidentiality beyond that permitted by the Virginia Freedom of Information Act.

## **12. LIABILITY**

### **A. Supplier Liability**

Except for liability arising from any combination of:

i. any intentional or willful misconduct, fraud, or recklessness of Supplier or any Supplier Personnel; or

ii. any act or omission of Supplier or any Supplier Personnel that results in Claims for bodily injury, including death, and damage to real property or tangible property resulting from the negligence of a Supplier or any Supplier Personnel,

Supplier's indemnification obligations and liability shall not exceed, in aggregate, twice the annual value of the Contract. This limitation will apply on a per-incident basis; it being understood that multiple losses stemming from the same root cause constitute a single incident.

#### **B. Limitation of Liability**

Supplier will be liable for damages caused by its employees, agents, or subcontractors. Except for liability arising out of a Party's negligence or willful misconduct, neither Party will be liable to the other Party for any indirect, incidental, consequential, or punitive damages, including (without limitation) loss of profit, income, or savings, even if advised of the possibility of these damages.

### **13. 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/itrm-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.

### **14. 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.

### **15. 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 15 business days, then VITA may immediately terminate this Contract, and an Authorized User may terminate an order, 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. 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.

## 16. GENERAL PROVISIONS

### A. Relationship between VITA and Contractor

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 resold by Supplier pursuant to this Contract to the Microsoft Products and Online Services will be held by the end user, to the extent granted by Microsoft. The end user shall be specified on the order and shall be one of the following entities:

- 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”; 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 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 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 F 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 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 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 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 Code 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 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 will 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 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 affected by such postponement or delay.

**L. No Waiver**

Any failure to enforce any terms of this Contract shall 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 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, or orders 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:

<u>Exhibit A</u>	List of Agreements
<u>Exhibit B</u>	Requirements
<u>Exhibit C</u>	Pricing
<u>Exhibit D</u>	Service Level Agreements
<u>Exhibit E</u>	[RESERVED]
<u>Exhibit F</u>	Certificate Regarding Lobbying
<u>Exhibit G</u>	[RESERVED]
<u>Exhibit H</u>	Supplier Procurement and Subcontracting Plan

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 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 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, Exhibit C, Exhibit B, any individual order, then Exhibit D. In the event of a conflict or inconsistency between the negotiated terms of this Contract and any provision incorporated by reference into the Contract, 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]

Signed by the undersigned authorized representatives of VITA and Supplier and effective as of the Effective Date set forth in the preamble of this Contract above.

SHI International Corp.

By: Kristina Mann  
(Signature)

Name: Kristina Mann  
(Print)

Title: Sr. Lead Contract Specialist

Date: 1/13/2020

Address for Notice:  
290 Davidson Avenue  
Somerset, NJ 08873

Attention: Contracts

VITA, on behalf of the  
COMMONWEALTH OF VIRGINIA

By: Nelson P. Mel  
(Signature)

Name: NELSON P MEL  
(Print)

Title: CIO of The Commonwealth

Date: 1/14/2020

Address for Notice:  
\_\_\_\_\_  
\_\_\_\_\_

Attention: Contract Administrator