



Information Technology Cloud Services Contract

between

The Virginia Information Technologies Agency

on behalf of

The Commonwealth of Virginia

and

HireVue, Inc.

INFORMATION TECHNOLOGY SOFTWARE-AS-A-SERVICES (SAAS) CONTRACT

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INFORMATION TECHNOLOGY SOFTWARE-AS-A-SERVICES (SAAS) CONTRACT

THIS INFORMATION TECHNOLOGY Software-as-a-Services (SaaS) 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 HireVue, Inc. ("**Supplier**"), a Delaware corporation headquartered at 10876 South Parkway, Suite 500, South Jordan, UT 84095 to be effective as of 10/19/2020 ("**Effective Date**").

1. PURPOSE AND SCOPE

This contract sets forth the terms and conditions under which Supplier shall provide a COTS SaaS Online Interviewing System to Authorized Users. The solution shall provide for Online Interviewing capabilities that support the Commonwealth's recruiting functions and allow current processes to become more agile and efficient in today's competitive market.

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. Analytical Data

Means mathematical, derivative, index, scoring, metric, associative, predictive, comparative, statistical, algorithmic, and contextual data or models that do not identify any individual or entity. Analytical Data shall not be deemed Content under this Contract.

D. Application

The Supplier-owned algorithms, mobile applications, and software programs in object code and other related data used to deliver the Licensed Services, including intellectual data, proprietary information and Documentation contained and applicable to Licensed Services hosted and supported by Supplier under the Contract, as described in any SOW or Order issued under the Contract, including any Updates, enhancements, and replacements to the Application.

E. Application User

Application User(s) include employees of an Authorized User, independent contractors engaged by an Authorized User, or entities contracting with an Authorized User for services, as specified in the applicable Order or SOW. Application Users also include candidates as defined in Section 2.V. herein. In the event that the Authorized User is a private institution of higher education which is listed at: <http://www.cicv.org/Our-Colleges/Profiles.aspx>, Application User(s) may include students of that private institution.

F. 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>.

G. 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".

H. Code

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

- I. 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.
- J. Commonwealth**
The Commonwealth of Virginia.
- K. Commonwealth Indemnified Parties**
Means, collectively and individually, the Commonwealth, VITA, any Authorized User, their officers, directors, agents, and employees.
- L. Component**
Any part or service of the Solution, Software, or Deliverable delivered by Supplier under this Contract, including under all Orders or SOWs.
- M. 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.
- N. Concurrent Users**
The maximum number of concurrent active users utilizing the Software at a given point in time.
- O. 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;
 - (v) any personally identifiable information, including information about VITA’s employees, contractors, and customers that is protected by statute or other applicable law.
- P. Content**
Any data, including Responses, all interview content created or provided by VITA or its Authorized Users, 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.
- Q. Contract**
This agreement, including all exhibits, schedules, and attachments, including any modifications or amendments thereto, entered into by VITA and Supplier.
- R. 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.
- S. 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 expressly identified in an Order. The Parties agree that the

Services do not produce any Deliverables. "Deliverable" also means the development or creation of Work Product, if Work Product is authorized under the Contract.

T. Documentation

The descriptions of the Supplier Services set forth at <http://hirevue.com/product-documentation> and in Exhibit K and 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.

U. Effective Date

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

V. End User

A user of the Application that responds to questions/requests from VITA or its Authorized Users through the Application (e.g., interview candidates).

W. 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.

X. 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)

Y. Industrial Funding Adjustment ("IFA")

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

Z. Licensed Services

Supplier-hosted software services to which VITA purchases a subscription pursuant to an Order and the operation of the Application and the necessary operating system software, hardware, and utilities on Supplier's host computer system; furnishing Supplier Product to Application users; storing Content; and making the Application, Content, and Supplier Product available to Application user(s) via the Web Site, as described in any Statement of Work or Order issued hereunder.

AA. Maintenance Coverage Period ("MCP")

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

BB. 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 defined in Exhibit L to this Contract or 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.

CC. 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 Licensed Services, 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.

DD. Order

The document that identifies the specific Services to which VITA, or its Authorized Users, have subscribed, the applicable scope, subscription length(s), and applicable fees.

EE. Party

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

FF. Product

If applicable under this Contract, hardware, peripherals, and any other equipment, including the System Software, all upgrades, all applicable user documentation, and related accessories or as specified in any Statement of Work or order provided pursuant to the Contract. For the avoidance of doubt, Supplier will not provide any Product under this Contract.

GG. Realized Sales

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

HH. Receipt

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

II. Responses

All interview and/or assessment responses submitted to the Application by End Users.

JJ. 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 detailed in the Documentation set forth in Exhibit K or the applicable SOW or Order, and such other parameters, characteristics, or performance standards that may be agreed upon in writing by the Parties.

KK. Safety Changes

Any engineering changes that affect the safety of the Product(s) provided pursuant to this Contract.

LL. Services

Collectively, all applicable aspects of the Application and related services provided hereunder, including the Licensed Services, relevant features and functionality described in the Documentation, 24/7 customer support, professional services identified in a SOW, and engaging in any other required, usual, appropriate or acceptable activities relating to the Services, such as to (a) carry out the Services or the business of which the Services are a part, (b) use data that does not identify any individual or business to develop, enhance, maintain, support, and provide the Application, (c) carry out any benefits, rights and obligations relating to the Services, (c) maintain records relating to the Services, or (d) comply with any legal or self-regulatory obligations relating to the Services.

MM. Software

Intentionally Omitted.

NN. Software Publisher

Intentionally Omitted.

OO. Solution

If applicable under this Contract, the Supplier's contractually committed technical approach for solving an information 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. For the avoidance of doubt, Supplier will not provide any Solution under this Contract.

PP. Statement of Work ("SOW")

Any document in substantially the form of Exhibit C (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 VITA), which, is hereby made a part of the Contract.

QQ. 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.

RR. 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.

SS. Supplier Personnel

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

TT. Supplier Product

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

UU. Supplier Reporting System ("SRS")

The VITA system used by Supplier to fulfill reporting obligations under this Contract. The SRS can be accessed at the following URL(s): <http://vita2.virginia.gov/procurement/srs/>, or any successor URL(s).

VV. 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).

WW. System Software

Intentionally Omitted.

XX. 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.

YY. 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. For the avoidance of doubt, Supplier will not provide any Transition Out Plan under this Contract.

ZZ. 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.

AAA. 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.

BBB. 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.

CCC. Warranty Period

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

DDD. Web Site

The Internet site operated by Supplier to provide access to the Application, with the Uniform Resource Locator ("URL") specified in the applicable Order or SOW (or any successor URL(s)).

EEE. Work Product

If applicable under this Contract, 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. No Work Product is authorized under 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 two (2) years ("Term"). VITA, in its sole discretion, may extend this Contract for up to five (5) 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 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 been met.

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 30 calendar day's 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 30 calendar day's 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

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 30 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 30 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 Nonprocurement 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 an uncured Breach by Supplier, 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.

F. Termination by Supplier

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

Upon expiration or termination of this Contract, Supplier shall provide a copy of Content in accordance with Section 4.1 of Attachment 1 herein. To the extent appropriately based on the nature of the 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 [[XX (XX)]] [[months]]. 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 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, if applicable, 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 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 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

Pursuant to Section 8.C herein, Supplier may use Subcontractors to perform its contractual obligations or any Order or SOW issued pursuant to the Contract. 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 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. 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.

After the initial Term of this Contract, 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) may 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 the Documentation set forth in Exhibit K. 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. Supplier is the owner of the Product or otherwise has, to the best of its knowledge, the right to grant to the Commonwealth or any Authorized User title or the right to use the Product provided pursuant to this Contract. Upon Supplier's receipt of payment, the Commonwealth or ordering Authorized User, as applicable, will obtain good and clear title to the Product, excluding the System Software, free and clear of all liens, claims, security interests, and encumbrances.

B. Coverage Period

During the Warranty Period of [[XX (XX)]] calendar days, or as specified in the applicable Order or SOW, Supplier warrants that any Deliverables provided by Supplier under this Contract will 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. 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.

D. 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.

E. Licensed Services, Application and Documentation

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

i). The Application is pursuant to a particular Request for Proposal ("RFP"), and therefore such Application shall be fit for the particular purposes specified in this Contract. Supplier is possessed of superior knowledge with respect to the Application and is aware that all Authorized Users are relying on Supplier's skill and judgment in providing the Licensed Services, including the Application.

ii). Supplier represents and warrants (i) that it shall perform the Licensed Services in conformity to the specifications set forth in Exhibit A in a professional and workmanlike manner and (ii) that the Licensed Services shall not infringe any third party proprietary rights including (without limitation) any trademark, trade name, trade secret, copyright, moral rights, patents or similar intellectual property rights.

iii). Supplier warrants that the Application and Licensed Services will conform in all material respects to the Requirements set forth in this Contract and any Order or SOW issued hereunder. Supplier warrants that the Application Licensed Services will conform to the applicable specifications and Documentation, not including any post-Acceptance modifications or alterations to the Documentation which represent a material diminishment of the functionality of the Application, Licensed Services or Supplier Product.

iv). The Application provided hereunder is at the current release level unless an Authorized User specifies an older version in its Order or SOW;

v). No corrections, work arounds or future Application releases provided by Supplier shall degrade the Application, cause any other warranty to be breached, or require an Authorized User to acquire additional hardware equipment or software, or licensed services;

vi). Supplier warrants that all post-Acceptance Updates, changes, alterations or modifications to the Application, Licensed Services and Documentation by Supplier will be compatible with, and will not materially diminish the features or functionality of the Application, Licensed Services and/or Supplier Product when used on the equipment in accordance with the Documentation and all of the terms and conditions hereof.

vii). Supplier warrants that the Documentation and all modifications or amendments thereto which Supplier is required to provide under this Contract shall be sufficient in detail and content to allow a user to understand and utilize fully the Application without reference to any other materials or information.

F. Privacy and Security

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

G. Operating System and Software Supportability

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

H. 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 may waive 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.

I. Access to Product and Passwords

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

J. Open Source

Supplier will notify all Authorized Users if any Deliverables, 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.

K. 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.

L. 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. DESCRIPTION OF LICENSED SERVICES

During the term of any Order or SOW issued pursuant to this Contract, Supplier hereby agrees to host the applicable Licensed Services listed and described in Exhibit K and specified in such Order or SOW by the ordering Authorized User on servers owned, operated, housed, and maintained by Supplier and shall make such Licensed Services available to Authorized User's designated Application Users through the Internet. Supplier has acquired any and all license rights in the Licensed Services necessary and appropriate for Supplier to provide the Licensed Services as listed and described in Exhibit K for all Authorized Users. Supplier hereby grants each ordering Authorized User and its Application Users a non-exclusive, transferable, worldwide license to access and use by any method the Licensed Services during the term of the applicable Order or SOW issued pursuant to this Contract. The license fee for the rights shall be as set forth in Exhibit B, and shall apply regardless of access mode. If Authorized User is an agency, as defined by §2.2-2006 and legislative, judicial, and independent agencies of the Commonwealth, board, commission, or other quasi-political entity of the Commonwealth of Virginia or other body referenced in Title 2.2 of the Code of Virginia, the license shall be held by the Commonwealth. If Authorized User is a locality, municipality, school, school system, college, university, local board, local commission, or local quasi-political entity, the license shall be held by that public body. If Authorized User is a private institution of higher education which is listed at: <http://www.cicv.org/Our-Colleges/Profiles.aspx>, the license shall be held by that private institution. Notwithstanding any other provision or other unilateral license terms which may be issued by Supplier after the Effective Date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of an Order or SOW for Licensed Services, including access to the Application(s), or the fact that such other agreement may be presented to an Authorized User or its Application Users at the time of accessing the Application(s) ("click wrap"), the terms and conditions set forth herein in this Contract and any amendments or modifications thereto shall supersede and govern licensing and use of all products and services hereunder.

8. SUPPLIER RESPONSIBILITIES

A. Standard Application Responsibilities

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

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 shall extend beyond the term of the Contract.

iv). The Application will be made available to Authorized User and/or designated Application Users in compliance with the Service Level commitments provided in Exhibit L herein.

v). Scheduled Downtime shall 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 ninety-nine percent (99%) of the total time during each month, excluding Scheduled Downtime.

vii). If non-Scheduled Downtime exceeds the parameters as measured by Supplier over any calendar month during the Term, the total amount of outage time will be added to the end of the current subscription. For clarity, if the Application experiences a total of 24 hours outage time in any given month, one day (24 hours) will be added to the end of the current subscription as a performance credit. In order to obtain a performance credit VITA must provide Supplier with written notice of its request for a time credit within 90 days after the date of the availability violation. If any Services fail to meet any of the service level requirements as set forth above: (i) for two (2) consecutive measurement periods; or (ii) four (4) or more times within any twelve (12) month period, it shall be considered a material breach of the Contract by Supplier.

viii). Supplier shall be required to notify VITA in writing forty-five (45) days prior to of any planned change(s) or Update(s) that involve any material security change to the Application; its functionality; Content storage/ backup/disaster recovery, including physical location; security architecture, features or settings. Supplier will provide VITA with notification via email of any termination and/or replacement of any Supplier subcontractor per Section 8.C below. 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). If specified in an Order or SOW, Supplier is responsible for documenting and maintaining any customizations made for operational use of the Application and/or for interoperability use with other systems or applications used by an Authorized User and paid for solely by Authorized User. The associated technical data, code, documentation and other necessary information about such customizations shall be provided by Supplier to Authorized User within ten (10) business days of the customizations' operational use. Supplier shall be required to routinely transfer knowledge regarding the Application and Licensed Services, including Updates and all material changes, to Authorized Users in a reasonable manner to ensure proper and efficient use of Application and Licensed Services without degrading performance thereof.

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. (Add any additional, project specific Supplier Standard Application responsibilities.)

xi). Supplier further agrees to meet SEC 525 IR-6 requirements for 24 hour security incident notification.

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

B. Ancillary Responsibilities

Supplier shall, throughout the term of this Contract, make available such resources, including Supplier Personnel, as are reasonably required to: (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 hereto or as agreed to by Supplier and Authorized User in any order or SOW issued hereunder; and (iii) otherwise support the Application as provided under this Contract and any exhibits hereto or as agreed in any order or SOW issued hereunder.

C. Subcontractors

It is understood that Supplier may utilize subcontractors to provide integral components of the Licensed Services and Application; however, in addition to those so named at time of Contract award, Supplier shall inform VITA of any new or replacement subcontractors to be used to perform or provide integral components of the Licensed Services or Application during performance of this Contract with written notification via email thereby giving VITA the opportunity to object to such changes. In order to receive these notifications, VITA must subscribe to the following URL: <https://www.hirevue.com/company/information/privacy-resources/approved-subcontractors>. Failure to object on reasonable data protection grounds to a proposed new subcontractor which Supplier has notified VITA of via the VITA email subscription shall be deemed consented to thirty (30) days after such email notification.

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

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

9. AUTHORIZED USER RESPONSIBILITIES

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

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

- a). Authorized User is responsible for protecting said passwords and for any authorized and unauthorized use made of the passwords. Authorized User will fully cooperate with law enforcement authorities in the detection and prosecution of illegal activity related to unauthorized use of the Licensed Services.
- b). Authorized User shall have the right to add, activate, change access for, or disable USERIDs at its sole discretion. Authorized User shall designate Administrators who will be authorized to add, activate, change access for or disable USERIDs.
- c). Upon notification by Authorized User of an Application User's disabled access and if requested by VITA, Supplier shall remove access authorization by said Application User from its server within one

(1) hour of receipt of such notification, ensuring that historical access audit details of such Application User shall not be deleted or lost. If Supplier fails to make such a removal of access, Authorized User shall not be held liable for any charges or damages incurred due to use of the unauthorized USERID.

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

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

10. 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 relevant log files to the Commonwealth for review and analysis in the event of a breach notification.

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 logically separate, 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, within a secure facility located within the continental United States.
- z) Supplier shall ensure that access to facilities housing Content or supporting applications are restricted to only allow access to Supplier's personnel and agents who have a need to know in connection with operation and support of the Application and/or Licensed Services.
- aa) Supplier shall ensure that notification is sent to Authorized Users in writing thirty (30) days prior to its intention to replace or add any third-party that will be provided access to Content whether that access is provided by Supplier or Supplier's subcontractors. The Authorized Users may reject any additional or new third parties who may be provided access to Content.
- bb) Supplier shall ensure that the Application and/or Licensed Services operating systems, middleware, applications, and interfaces will be scanned for vulnerabilities every 30 days and scanning reports provided to Authorized Users as required by Commonwealth security standards.
- cc) Supplier shall perform monthly vulnerability scans against all public-facing interfaces with access to Commonwealth data.
- dd) Reserved

ee) Supplier shall ensure that all Content is stored, processed and maintained within the continental United States at all times by Supplier.

ff) Supplier shall report the exact geographic location of all Commonwealth data at all times, or provide the cloud service used to host any and all Commonwealth data if the geographic location of data centers is not explicitly provided, if data is not held in a Commonwealth facility. Supplier shall provide a report to confirm the exact geographic location or all cloud service solutions hosting the HireVue GovCloud web application for any content not stored in a Commonwealth facility every 30 days.

gg) Supplier shall, at all times, remain compliant with the privacy and security requirements mandated by federal, state and local laws and regulations.

hh) Supplier shall ensure performance of an AICPA SOC-2 (Type 2) audit at least once annually of the Application's environment. Upon request from the Authorized Users, Supplier shall provide a non-redacted copy of current AICPA SOC-2 (Type 2) audit. Supplier shall provide reasonable assistance to the Authorized Users in obtaining the current AICPA SOC-2 (Type 2) audit report from any third-party providing services to Supplier, if said third-party services involve the processing or storage of any Content. The Trust Service Principles that should be covered in the SOC -2 Type 2 are: Security, Availability, and Confidentiality.

ii) Supplier understands that VITA or a third-party audit organization is responsible for performing a security audit within 90 days after contract award to determine control gaps between the supplied audit and the Hosted Environment Information Security Standard (SEC525). If no audit is supplied, a complete security controls audit utilizing SEC525 must be performed. Failure to do so may result in remedies being levied as provided in the terms and conditions of the Contract. Supplier shall provide its most recent AICPA SOC-2 (Type 2) audit to meet this requirement – should this report not meet the requirements of this subsection, it is the responsibility of VITA to ensure an adequate audit is performed by its organization. HireVue shall include the trust principle of Processing Integrity to the SOC 2 Type 2 audit performed by December 31, 2021 as well as subsequent SOC 2 Type 2 audits performed thereafter.

jj) Supplier shall ensure that external connections incorporated into the Application and/or Licensed Services have appropriate security controls including industry standard intrusion detection and countermeasures that will detect and terminate any unauthorized activity prior to entering the firewall maintained by Supplier.

kk) Supplier shall ensure that the Application and/or Licensed Services will utilize industry standard firewalls regulating all data entering the internal data network from any external source which will enforce secure connections between internal and external systems and will permit only authorized data to pass through.

ll) Supplier shall ensure that the Application and/or Licensed Services will use industry standard encryption techniques to protect Content that is transmitted or stored on behalf of the Commonwealth.

mm) Supplier shall ensure that they will apply all security updates to their systems as required by Commonwealth security standards. For third-party hosted systems, updates should be installed in compliance with SEC 525. Systems hosted by the Commonwealth should have updates installed in compliance with SEC 501. Please refer to the following link for the above mentioned Commonwealth security standards: <https://www.vita.virginia.gov/it-governance/itrm-policies-standards/>

nn) Supplier shall ensure that they will utilize industry standard malware protection, incorporating both signature and non-signature-based detection mechanisms, on all non-Linux based systems with access to Content.

oo) Supplier shall ensure that malware protection will be centrally managed and receive regular automatic updates to malicious code protection mechanisms and data files from the software vendor.

pp) Within thirty (30) business days after the expiration or termination of this Contract, Supplier shall confirm in writing to Authorized Users and VITA that all Content has been removed from all systems where the Content resided during performance of this Contract in a manner that complies with and/or exceeds the Commonwealth Data Removal standard located at the following URL:

<https://www.vita.virginia.gov/it-governance/itrm-policies-standards/>. The written confirmation shall include (a) sufficient detail describing the processes and procedures used in removing the Content,

(b) information about the locations of where it was removed from within the Application and storage and other locations, and (c) the date the removals were performed. All metadata, in its original form, shall be returned to the respective Authorized User(s).

qq) Regular training for Supplier Personnel regarding the security and data recovery programs referenced in this Section.

rr) Regular testing of the systems and procedures outlined in this Section; and

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

tt) Should Supplier fail to perform in compliance with any provision of this Section, Authorized User may provide Supplier with a written notice to cure. Supplier shall have thirty (30) 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 issue a pro-rated refund for the pre-paid amount of any unused Services. 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 repurchase or transition costs or injunctive or other equitable relief.

11. PROPRIETARY RIGHTS

A. Supplier's Proprietary Rights

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

B. Authorized User Requirements and License Restrictions

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

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

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

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

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

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

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

vii). Authorized User shall not remove, obscure or alter Supplier's proprietary notices, disclaimers, trademarks, or other proprietary rights notices of any kind affixed or contained in the Application or Licensed Services or any written or electronic report, output or result generated in connection with the Licensed Services;

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

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

C. Authorized User Proprietary Rights

Except as otherwise stated herein and with the exception of any applicable third-party rights, Content and any customizations made for Authorized User's operation of the Application or for interoperability with other Authorized User's systems or applications paid for by the Authorized User, are and shall remain the sole and exclusive property of Authorized User, including all applicable rights to patents, copyrights, trademarks, trade secrets or other proprietary property rights thereto. Additionally, all right, title and interest in and to any Content or customizations relating to Authorized User's business shall remain the property of Authorized User, whether or not supplied to Supplier or uploaded into the Application. Nothing in this Contract shall be construed as conveying any rights or interest in Content or customizations to Supplier. Upon termination of an Order or SOW issued hereunder, pursuant to Section 4.1 of Exhibit J, Supplier agrees to either provide the Content and customizations to the applicable Authorized User, or, at such Authorized User's request, certify in writing that said Content and customizations in all formats, have been destroyed.

12. CLOUD EXIT ASSISTANCE

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

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

Supplier shall also provide such reasonable assistance as may be requested by the Authorized User and agrees such assistance will not be unreasonably withheld. Supplier will perform such assistance at the hourly rate or for the fee agreed upon by Supplier and Authorized User. In the event of a termination for breach by Supplier, Supplier shall provide the transition assistance at no charge or fee to the affected Authorized User.

13. COMMENCEMENT AND ACCEPTANCE OF LICENSED SERVICES

A. Licensed Services Commencement Date

Unless otherwise stated in a Service Order, the start date for Licensed Services purchased under this Contract shall be the date the Authorized User is provided login credentials for the Application.

B. Acceptance

For clarity, the COTS, Licensed Services, and Services are not subject to Acceptance; however, if specified in an Order or SOW, the Application shall be deemed accepted when the Authorized

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

C. Cure Period

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

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

14. RECORDS AND AUDIT

Supplier shall maintain accurate records and other evidence pertaining to the costs and expenses for all Licensed Services performed/delivered under any Order or SOW issued pursuant to this Contract in support of its charges invoiced to Authorized User. The records will be to the extent and in such detail as will properly reflect all direct and indirect costs associated with such Order or SOW. In addition, Supplier shall maintain accurate records of the Licensed Services, including but not limited to, the "Uptime" and "Downtime" as set forth in the Supplier Responsibilities Section. Subject to the confidentiality obligations of third parties, and no more than once per year, Authorized User shall have the right, at any reasonable time during regular business hours after giving reasonable advance notice, to inspect and audit the records applicable to its order(s) or SOW(s). Supplier shall preserve such records for three (3) years after termination/completion of the Licensed Services agreed to under this Contract or any Order or SOW issued hereunder.

15. APPLICATION AND LICENSED SERVICES SUPPORT

At any time during the term of any Order or SOW issued pursuant to this Contract, Supplier shall provide the application services as provided in Exhibit L herein.

A. Coverage

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

B. Service Levels

Within one (1) hour after a request from an Authorized User or VITA, in its governance role, Supplier will respond to such request for support of Licensed Services regarding the Application and Licensed Services, including Application, Supplier Product and Documentation in accordance with the procedures identified in Exhibit L of the Contract, Response and Resolution Times and

Escalation Procedures for Licensed Services. In each case, Authorized User may describe the problem by telephone or electronic mail or via a web site provided by Supplier. Supplier shall use its best efforts/commercially reasonable efforts to meet Response Time and Resolution Time and other obligations under this Contract.

C. Application Evolution

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

16. 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 Section 8.A.vii herein. 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.

B. Provisioning

Intentionally Omitted.

C. Reporting

(i) Monthly Reports:

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

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

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 one (1) time annually.

D. 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) terminate this Contract in accordance with Section 3.C herein. In the event Supplier fails to comply with these remedies, Authorized User may exercise all available rights and remedies under law and equity.

E. Escalation Procedures

Supplier warrants and represents to VITA that Supplier will follow the escalation procedures as set forth in Exhibit L.

17. ESCROW AGREEMENT

A. Application Escrow Agreement

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

B. Content Escrow Agreement

Supplier shall maintain Content on backup systems; therefore, Content Escrow is not required. If required for future Licensed Services provided by Supplier, Supplier shall maintain, in a separate escrow account for each Authorized User, copies of all Content provided by or to such Authorized User in an agreed upon industry standard portable format accessible without use of Supplier's Application. An executed agreement for providing for any such Content Escrow Agreement is attached hereto as Exhibit E-2 (Content Escrow Agreement).

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

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

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

18. 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. Fees for Licensed Services are invoiced annually in advance, and payments are due thirty (30) days from date of invoice. If all undisputed invoices are not paid when due, Supplier reserves the right to recover costs of collection of undisputed invoices and upon reasonable notice to VITA to suspend access to the Services until payment is current. Such suspension shall not extend the expiration date of Services ordered. For purposes of this Section 18.A, an invoice is considered disputed if VITA has raised a viable, good faith dispute as to validity of the invoice. Except as expressly provided herein all amounts paid hereunder are final and non-refundable.

If both parties mutually agree to extend the Term of this Contract, one of the following renewal pricing models shall apply as agreed by the Parties: the term for the provision of

Licensed Services under an Order shall renew with no increase in fee amount (provided scope remains the same); or 2) upon mutual agreement between Supplier and VITA and/or any of its Authorized User, 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 period ending 60 to 90 days prior to the effective date of the increase compared with the same index one (1) year prior.

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 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.

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 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; and (g) any pricing assumptions. 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. Intentionally Omitted.
- iii. Product and, if applicable, serial number, for which Maintenance Services will be provided,
- iv. Maintenance Level to be provided, and
- v. MCP for the Product Maintenance. Authorized User may elect, at any time, another Maintenance Level offered by Supplier. Such amendment will take effect within 30 calendar days following Supplier's receipt of Authorized User's written notice, in the form of a modification to an order or SOW. [[Use 1 of 2 following options; Option 1]] Unless otherwise agreed to by the Authorized User and Supplier, the MCP for a unit of Product will be one (1) year from the effective date of any signed order or SOW for Maintenance on such Product. [[end Option 1]] [[Option 2]] Co-termination of MCP, TBD based on Supplier proposal. [[end Option 2]] [[END HW ADDITIONAL LANGUAGE]]

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 Nonprocurement Programs.

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

G. Statement of Work

A SOW, in the format provided for in Exhibit C 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 unless VITA issues a written authorization for a time and materials type SOW. 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 D. 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.

H. Invoice Procedures

Supplier shall remit each invoice to the "bill-to" address provided with the Order. Payment for any support services, as authorized in the Contract and the Authorized User's applicable Order or SOW, will be annually in advance 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. Purchase Payment Terms

Supplier is responsible for the accuracy of its billing information. Charges for Deliverables, or Components accepted more than 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.

J. 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.

K. 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 (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 120 calendar days. If a disputed charge is reversed, Supplier shall reverse all associated surcharges, regulatory charges and taxes.

19. REPORTING

If the referenced Reporting is applicable to Supplier, 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.

20. POLICIES AND PROCEDURES GUIDE

The SOW set forth in Exhibit C will act as 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 SOW will provide process diagram details, working activities, and interface points with VITA and Supplier deliverables. Updated versions of the project plan detailed in the SOW will be provided by Supplier to VITA and all Authorized Users during the implementation process during the Term, including any extensions, of the Contract.

21. 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 optional training, and applicable pricing and discounts, are described in Exhibit B and Exhibit C.

B. Documentation for Deliverable(s)

If applicable, 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. 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.

22. 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.

23. COMPETITIVE PRICING

Intentionally Omitted.

24. 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.

Each Party may, however, disclose the Confidential Information as delivered by the other Party to subcontractors, contractors, or agents of such Party that are bound by non-disclosure agreements. 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 with Supplier. Any violation of the statement or agreement by Supplier Personnel will be deemed a breach of this Contract and may result in termination of the Contract or any Order or SOW issued hereunder.

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.

25. 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 conduct of Supplier or any Supplier Personnel;
- ii. Intentionally Omitted.
- iii. violation of applicable laws by Supplier or Supplier Personnel; or
- iv. any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Supplier-provided products or services.

B. Defense of Claims

Supplier will be solely responsible for all costs and expenses associated with the defense of all third-party Claims against 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.

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.

26. 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; or
- iii. Supplier's indemnification and confidentiality obligations as specified in this Contract,

Supplier's indemnification obligations and liability shall not exceed, in aggregate, twice the 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

Subject to Section 26.A, 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.

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 claim.

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.

Subject to the confidential obligations of third parties, 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.

VITA reserves the right to review Supplier's information security program prior to the commencement of Licensed Services and at least once annually during the Term of this Contract. During the performance of the Licensed Services, and on an annual basis and subject to the confidentiality obligations to third parties, VITA will be entitled, at its own expense, to perform, or to have performed, an on-site audit of Supplier's information security program. In lieu of an on-site audit, upon request by VITA, Supplier shall implement any reasonably required safeguards as identified by any program audit.

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. ACCEPTABLE USE POLICY

VITA and Authorized User agree to abide by Supplier’s Acceptable Use Policy (AUP), as amended by the parties hereby and incorporated as Exhibit M. Because certain standard clauses that may appear in, or be incorporated by reference into, Supplier’s standard AUP cannot be accepted by VITA, and in consideration of the convenience of using that form, and this form, without the necessity of specifically negotiating a separate contract document, the parties hereto specifically agree that:

- i. In the event of a conflict between this Contract and the AUP, the Contract shall control;
- ii. In the event of a material, unilateral revision to the AUP by Supplier that substantially impairs the ability of VITA or any other public body from its lawful use of the Service, VITA shall have the option to:
 - a. request that the revision be rescinded;
 - b. request that the revision be waived as to VITA or other public bodies receiving Services under this Agreement;

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

- iii. [Other provisions here based on VITA’s review of Supplier AUP.]

31. THIRD PARTY TERMS AND CONDITIONS

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

32. 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 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.

33. 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 Software, 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"; 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/>, the current versions of which may be enhanced but may not be materially degraded if updated.

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 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, 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 without consent will be void. Notwithstanding the foregoing statement, Supplier may assign this Contract in connection with any merger, or reorganization or any sale or transfer of all or substantially all of its assets or stock. 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 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 subject to the confidentiality obligations of third parties and 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, Supplier will not solicit for employment or hire any employee of any Authorized User; provided, however, that the foregoing provision will not prevent Supplier from (a) conducting broad recruitment efforts not specifically directed at the employees of any Authorized User, or (b) employing any person who contacts Supplier on his or her own initiative without any direct or indirect solicitation by or encouragement from Supplier (or who contacts Supplier in response solely to the recruitment efforts specified in clause (a)).

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 – Pricing

Exhibit C – Statement of Work (SOW) Template

Exhibit D – Change Order Template

Exhibit E – Escrow Agreement

Exhibit F – End User Licensing Agreement (for reference only)

Exhibit G – Certification Regarding Lobbying

Exhibit H – Supplier Procurement and Subcontracting Plan

Exhibit I – Intentionally Omitted

Exhibit J – Additional Terms

Exhibit K – Supplier Documentation

Exhibit L – Service Levels

Exhibit M – Supplier's Acceptable Use Policy

This Contract, its attachments, and exhibits 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. In no event will contractual terms inserted in VITA or Authorized User's purchase order be incorporated into or made a part of this Contract. 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 J, Exhibit A, any individual SOW, Exhibit B, Exhibit L then any additional exhibit(s). 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.

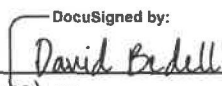
Y. Opportunity to Review

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]

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.

SUPPLIER HireVue, Inc.

By: _____
(Signature) 3569E454CC1E4E2...

Name: David Bedell
(Print)

Title: CFO

Date: October 8, 2020

Address for Notice:
10876 South Riverfront Parkway
Suite 500
South Jordan, UT 84095

Attention: Chief Financial Officer

VITA, on behalf of the COMMONWEALTH OF VIRGINIA

By: _____
(Signature)

Name: NEILSON P. MOE
(Print)

Title: CIO FOR THE Commonwealth

Date: 10/19/2020

Address for Notice:

Attention: Contract Administrator