

Information Technology IT Contingent Labor Managed Services Contract

between

The Virginia Information Technologies Agency

on behalf of

The Commonwealth of Virginia

and

Computer Aid, Inc.

VA-210625-CAI

This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, § 2.2-4343.1.

**INFORMATION TECHNOLOGY
IT CONTINGENT LABOR MANAGED SERVICES CONTRACT**

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**INFORMATION TECHNOLOGY
IT CONTINGENT LABOR MANAGED SERVICES CONTRACT**

THIS INFORMATION TECHNOLOGY IT CONTINGENT LABOR MANAGED SERVICES CONTRACT (“**Contract**”) is entered into by and between the Virginia Information Technologies Agency (“**VITA**”), pursuant to § 2.2-2012 of the *Code of Virginia*, and on behalf of the Commonwealth of Virginia (“**Commonwealth**”), and Computer Aid, Inc. (“**Supplier**” or “**Contractor**”), a corporation headquartered at 1390 Ridgeview Drive, Allentown, PA 18104, to be effective as of June 25, 2021 (“**Effective Date**”).

1. PURPOSE AND SCOPE

VITA, on behalf of the Commonwealth, is engaging Supplier to act as the Managed Services Provider (“**MSP**”) in order to facilitate the Commonwealth’s need for IT Staff Augmentation and IT Statement of Work (collectively, “**ITCL**”) Services and resources. This Contract sets forth the terms and conditions under which the Supplier shall act as the MSP and provide ITCL Services and resources to Authorized Users, as well as the management thereof (the “**Services**”). Authorized Users may obtain ITCL Services through the placement of specific Orders or Statements of Work issued pursuant to this Contract.

This Contract is a jointly and cooperatively procured contract under § 2.2 -4304 of the *Code of Virginia*. Accordingly, VITA and Supplier agree that the Contract can be used by other public bodies outside of Virginia provided those non-Commonwealth public bodies execute a Participating Addendum that incorporates the terms and conditions of the Contract, including all modifications thereto (each such non-Commonwealth public body a “**Participating Entity**”). Such Participating Addendum:

- a) May include additional terms that are required by the law of the state or locality or any law governing cooperative purchasing agreements.
- b) May include new, mutually agreed upon terms that clarify ordering procedures specific to that Participating Entity.

In the event that the Participating Entity requests additional terms and conditions that may increase costs to Supplier, Supplier may, upon agreement, increase or decrease its pricing accordingly. These costs may include the following:

- a) State and local taxes
- b) Unemployment and workers compensation fees
- c) E-commerce satisfaction fees
- d) Costs associated with any additional terms and conditions that are mutually agreed upon.

Supplier's pricing for all Participating Entities shall be firm and fixed for the Initial Term of the Contract. After the Initial Term of the Contract, if the Contract is renewed by the Commonwealth, Supplier's pricing may be adjusted based on market conditions only with the mutual agreement of both the Supplier and the Participating Entity.

Supplier agrees to only execute Participating Addendums with public bodies located outside of the Commonwealth. A Participating Addendum shall only apply to the jurisdiction of the Participating Entity that has executed such Participating Addendum. Supplier shall provide VITA a copy of all Participating Addenda within five (5) business days of execution.

Use of this cooperatively procured Contract by Participating Entities is subject to the statutes and regulations of the individual Participating Entity. As such, participation of a Participating Entity may be subject to the approval of the respective Chief Procurement Official of that Participating Entity.

No Participating Addendum between Supplier and a Participating Entity shall extend more than 12 months beyond the expiration of this Contract. To be valid, a Participating Addendum must be executed between Supplier and a Participating Entity during the term of this Contract and any extensions thereto.

Supplier agrees to provide a monthly report of all sales by Supplier to each Participating Entity pursuant to the Requirements and procedures set forth in Section 11.A of this Contract.

2. DEFINITIONS

Capitalized terms used in this Contract have the meaning as provided (i) where each term is used in the Contract or (ii) as set forth in this "Definitions" section below which lists the capitalized terms used in this Contract and provides a definition for the term.

A. Acceptance

(i) Acceptance of Staff Augmentation Services shall be acknowledged upon Authorized User's approval of weekly timesheets in the Vendor Management System.

(ii) Acceptance of SOW Services shall be pursuant to Sections 7C and 7D of this Contract and acknowledged upon Authorized User's approval of SOW milestones or service invoices in the VMS.

B. 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: <https://cicv.org/colleges/>.

Pursuant to Code § 2.2-4304, "Authorized Users" also includes those public bodies, or public agencies or institutions or localities of the several states, of the United States or its territories, the District of Columbia, the U.S. General Services Administration, or the Metropolitan Washington Council of Governments that have executed a Participating Addendum with the Supplier to utilize this Contract.

C. 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".

D. Code

The Code of Virginia, as in effect and amended from time-to-time.

E. Commonwealth

The Commonwealth of Virginia.

F. Commonwealth Indemnified Parties

The Commonwealth, public bodies of the Commonwealth, VITA, and Authorized Users, together with their respective officers, directors, agents, and employees.

G. Component

Any part or service of the Services or Deliverables delivered by Supplier under this Contract, including under all Orders or SOWs.

H. 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.

I. Confidential Information

Non-public proprietary or trade secret information of VITA, Supplier, or an Authorized User, whether the information is in written, graphic, machine readable or other tangible form, and which

at the time of disclosure to any other Party is either (i) marked as being “Confidential” or “Proprietary”; (ii) Personally Identifiable Information, including information about VITA’s employees, contractors, and customers, or Sensitive Data, including PHI; (iii) information to which the Supplier has access in VITA or Authorized User’s facilities or systems, (iv) Work Product and information pertaining to the Work Product, (v) Contract Data, Commonwealth software, and systems access codes, (vi) information concerning VITA’s and any other Authorized User’s operations, plans, employees, contractors or third party suppliers; or (vii) information that is protected by statute or other applicable law.

The term “Confidential Information” shall 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 (§§2.2-3700 et seq. of the Code of Virginia) or similar laws or pursuant to a court order.

J. Contract

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

K. Contract Data

All Contract management data, information, text, drawings and other materials embodied in any electronic, optical, magnetic or tangible medium that is: (i) provided to Supplier by VITA or any Authorized User in connection with the Services or Subcontractor Services provided by Supplier or a Subcontractor; (ii) obtained, processed or produced by Supplier or Subcontractor in connection with the Services provided by Supplier or Subcontractor (e.g. configuration data loaded onto equipment that Supplier maintains as part of the Services provided to VITA and any Authorized User, inventory data maintained by Supplier, administrator passwords used by Supplier in the maintenance of VITA equipment).

L. 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.

M. Deliverable

Documentation, Components, plans, reports, data, Work Product, and any other materials, items or events, in each case described or itemized as something that is developed, prepared or created and delivered or required to be developed, prepared or created and delivered or made available to VITA or other Authorized User as part of the Services, including the development or creation of Work Product.

N. Documentation

Those materials (including user manuals, training materials, guides, technical manuals, 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 Services or Deliverables, including any and all Components, and to implement and develop self-sufficiency with regard to the Services or Deliverables, including any and all Components, provided by Supplier in fulfilling its obligations under the Contract or as may be specified in any Order or SOW issued pursuant to this Contract.

O. Employer of Record (“EOR”) and EOR Services

The entity that serves as the employer for tax purposes for Staff Augmentation resources. An EOR is the resource’s employer and is legally responsible for the resource.

An EOR shall perform all personnel functions, including but not limited to payroll processing and funding; tax deposits and filing; employment contracts and paperwork; and providing and administering employee benefits. An EOR shall be responsible for background checks,

placement, on-boarding and off-boarding, and ongoing maintenance tasks associated with the resource's engagement such as performance issues and employment termination. An EOR is responsible for maintaining a Certificate of Insurance, I-9, and E-Verify forms; unemployment insurance; and workers' compensation.

Supplier shall not serve as an EOR or provide EOR Services.

P. 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.

Q. 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)

R. Industrial Funding Adjustment ("IFA")

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

S. Managed Services Provider ("MSP")

The entity responsible for managing the Commonwealth's ITCL program pursuant to this Contract. Responsibilities of the MSP include, but are not limited to, overall program management, reporting and tracking performance metrics, Subcontractor management, distribution of ITCL Services, and consolidated billing. The MSP shall also provide the Vendor Management System ("VMS") to be utilized by Supplier, VITA, Authorized Users, and Subcontractors in the procurement and fulfillment of ITCL Services as well as the management thereof.

T. Order

Any requisition in the Vendor Management System by an Authorized User for IT Staff Augmentation Services or resources.

U. Party

Supplier, VITA, or in the case of an Order or SOW, any Authorized User.

V. Protected Health Information ("PHI")

Individually identifiable health information that is (i) transmitted in electronic media, (ii) maintained in electronic media, or (iii) transmitted or maintained in any other form or medium. PHI excludes individually identifiable health information in (a) education records covered by the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g); (b) records of any student who is 18 years of age or older, or is attending a postsecondary school, that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and that are made, maintained, or used only in connection with the provision of treatment to the student and are not available to anyone other than persons providing such treatment, except that such records may be personally reviewed by a physician or other appropriate professional of the student's choice; and (c) employment records held, in its role as employer, by a health plan, health care clearinghouse, or health care provider that transmits health information in electronic form. (§ 64.2-2100 of the Code)

W. Purchase Order ("PO")

A written or electronic document issued by an Authorized User to Supplier to purchase Services pursuant to this Contract.

X. Requirements

The functional, performance-based, operational, compatibility-based, and other parameters and characteristics of the Service(s), as authorized by any combination of the Contract (including Exhibit A), or in any applicable Order or SOW, and such other parameters, characteristics, or performance standards that may be agreed upon in writing by the Parties.

Y. Services

The provision and management, by Supplier in its capacity as the MSP, of IT Staff Augmentation and IT Statement of Work Services for Commonwealth Authorized Users. "Services" includes any work performed or service provided by Supplier – including the design and development of software and modifications, software updates, solutions, implementation, installation, maintenance, support, testing, training, or other provision of service – in meeting the Requirements or in fulfilling Supplier's obligations under the Contract or, as applicable, under any Order or SOW authorized by the scope of the Contract. "Services" includes all functions, responsibilities, activities, and tasks of the Supplier that are an inherent, necessary, or customary part of the Services, or are required for the proper performance or provision of the Services. As permitted by the scope of the Contract, "Services" may include the discovery, creation, or development of Work Product.

Z. Staff Augmentation

Personnel engaged by an Authorized User through the MSP's Subcontractor network to provide additional resources on a temporary basis in order to augment the Authorized User's capacity.

AA. 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 IT project, engagement, or assignment that Supplier commits to provide through its Subcontractor network to an Authorized User.

BB. Subcontractor

Any entity to which Supplier (or other Subcontractor of any tier) has subcontracted for performance of, or delegated any of its responsibilities under the Contract, including an affiliate of the Supplier.

CC. 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. Supplier is the prime contractor responsible for the direct provision of, or management of, a base of Subcontractors to perform the various Services required by this Contract.

DD. Supplier Intellectual Property

All deliverables, measurement and benchmarking tools, templates, methodologies, questionnaires, Supplier-proprietary research and copyrighted material, and data owned by Supplier used in performance of Supplier's performance of its Contract obligations.

EE. Supplier Personnel

Supplier Personnel means any and all of Supplier's employees, agents, Subcontractors, and Subcontractor personnel performing under this Contract.

FF. 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).

GG. Total Sales

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

HH. 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.

II. Transition Period

The period of time not to exceed twelve (12) months after the expiration or termination of the Contract during which Supplier is obligated to continue providing assistance to VITA and Authorized Users so as to transition the Supplier's contractual obligations, or any portion thereof, to any other supplier.

JJ. Vendor Management System ("VMS")

A web-based software application that acts as the mechanism for procuring and managing ITCL Services and resources pursuant to this Contract.

KK. Work Product

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

3. TERM AND TERMINATION

A. Contract Term

This Contract is effective and legally binding as of the Effective Date and, unless terminated, is effective and legally binding for a period of five (5) years ("**Initial Term**"). VITA, in its sole discretion, may renew this Contract for one (1) additional five (5) year term (the "**Renewal Term**") after the expiration of the Initial Term. The Initial Term and Renewal Term, if exercised, constitute collectively the "**Contract Term**".

Performance of an Order or SOW issued during the Contract Term may survive the expiration of the Contract Term and any extensions thereto, in which case all contractual terms and conditions required for the operation of such Order or SOW shall remain in full force and effect until all of Supplier's obligations pursuant to such Order or SOW have met the final Acceptance criteria of the applicable Authorized User.

B. Termination for Convenience

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

C. Termination for Breach

In the event of breach by the Supplier, VITA shall have the right to terminate this Contract, in whole or in part, and an Authorized User shall have the right to terminate any Order or SOW issued hereunder, in whole or in part. Supplier shall 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.

Prior to termination, VITA, or Authorized User in the case of any Order or SOW, shall provide Supplier with notice of breach and allow Supplier 15 business days to cure the breach. 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 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, 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 of this Contract, neither the Commonwealth, nor VITA, nor any Authorized User shall have any future liability except for Services performed or Deliverables accepted by VITA or an Authorized User prior to the termination date.

Upon termination of an SOW, the Authorized User shall pay for Services performed or rendered by Supplier and accepted by the Authorized User prior to the termination date. The Authorized User and Supplier shall mutually agree to payment due for any Deliverable(s) that is in progress that has not yet been completed by Supplier and accepted by the Authorized User at time of SOW termination.

The Authorized User shall pay for any Services performed or rendered by Supplier and accepted by the Authorized User for an SOW that survives the Contract termination date pursuant to Section 3A of this Contract.

F. Termination by Supplier

Supplier shall have no right to terminate this Contract. Supplier may terminate an SOW only with VITA's prior written agreement. 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.

G. Transition of Services

At the request of VITA or any Authorized User prior to or upon expiration or termination of this Contract, Supplier shall provide all assistance as VITA or the Authorized User may reasonably require to transition the Supplier's contractual obligations, or any portion thereof, to any other supplier with whom VITA or 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 up to twelve (12) months. Supplier shall be paid for its Services during the Transition Period as provided in this Contract at then current Exhibit B Pricing, provided that prices are reasonable, consistent with market conditions, and aligned with prices offered to other government customers purchasing substantially similar Services in similar quantities under similar terms and conditions. Supplier shall provide all reasonable transition assistance requested by VITA or 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 VITA or the Authorized User. The transition assistance shall 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.

H. Continuity of Services

In the event the Contract Term expires prior to the award for a successor contract for similar Services, the Commonwealth may, with the written consent of the Supplier, extend this Contract for such a period necessary to afford the Commonwealth and Authorized Users a continuous supply of the Services identified in this Contract until completion of a procurement to succeed this Contract. If there is a conflict between this term and other terms within this Contract, this term shall prevail.

I. Contract Kick-Off Meeting

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

J. Transition Out Plan

On or before July 1, 2027, Supplier shall provide VITA a written Transition Out Plan. At VITA's request, Supplier shall update the Transition Out Plan as needed and subject to VITA's approval.

K. Contract Closeout

Prior to the Contract's expiration date, Supplier may be provided contract closeout documentation request 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 applicable Commonwealth IT and security policies, 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.

At all times throughout the Contract Term, Supplier shall have full-time local (Richmond, VA metro area) resources dedicated to the support of this Contract.

B. Key Personnel

Within 30 calendar days of the Effective Date, Supplier and VITA shall mutually agree to designate certain of Supplier's personnel as "Key Personnel". The list of mutually agreed-to Supplier Key Personnel, and their respective job titles, are set forth in Exhibit F, attached to this Contract. Any changes to the Supplier Key Personnel must be mutually agreed to in writing by Supplier and VITA. Such obligations are material to this Contract.

An SOW may designate certain of Subcontractor's personnel as "Key Personnel" or "Project Managers". Supplier's and the applicable Subcontractor's obligations with respect to Key Personnel and Project Managers shall be described in the applicable SOW. Any changes to such SOW Key Personnel must be mutually agreed to in writing by Subcontractor and the applicable Authorized User. Such obligations are material to the applicable SOW.

C. Subcontractors

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.

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.

Supplier shall be responsible for payment of its Subcontractors. Supplier shall ensure that all Subcontractor personnel performing ITCL Services under this Contract shall have a W-2 or 1099 relationship to the Subcontractor, or be no more than one relationship layer removed from the Subcontractor.

On or before September 1, 2026, Supplier shall develop and maintain Subcontractor Rules of Engagement ("ROE") to outline clear guidelines and procedures governing engagement, risk, compliance, cost, and overall program success which align with this Contract and VITA's ITCL Program Policy. Supplier shall require Subcontractors to use the ROE to communicate all

program guidelines, protocols, and relevant contractual terms throughout their organizations and to monitor their ROE compliance in support of ITCL Program.

5. NEW TECHNOLOGY

A. Access to New Technology

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

B. New Service Offerings Not Available from Supplier

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

If VITA elects to acquire new 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) shall be reduced to reflect reductions in purchases of the replaced Services.

6. GENERAL WARRANTY

THE OBLIGATIONS OF SUPPLIER UNDER THIS GENERAL WARRANTY SECTION ARE MATERIAL. SUPPLIER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY CONCERNING MERCHANTABILITY OR FITNESS FOR ANY OTHER PARTICULAR PURPOSE.

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

A. Ownership

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

B. Performance Warranty

With respect to Supplier's performance under this Contract:

i. Supplier and all Subcontractors shall perform all Services and 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;

ii. All Services and Deliverables meet or exceed the Requirements; and

iii. All Services shall be performed in a professional manner, whether performed by Supplier or any Subcontractor.

C. Service Level Standards

VITA and Supplier have entered into a Service Level Agreement ("SLA"), attached to this Contract as Exhibit E and incorporated by reference herein, setting forth the specific responsibilities of Supplier in providing the Services as well as the performance metrics and service levels with respect to each performance metric to be measured. At all times during the performance of the Services, Supplier shall meet or exceed the service levels required for each performance metric set forth in the SLA.

The SLA created pursuant to this Contract will be reviewed monthly by VITA and Supplier to identify any issues that may need immediate attention, and may be reviewed again during the quarterly meetings between VITA and Supplier. Supplier shall have a 60-day grace period of SLA remedies after completion of implementation for this Contract to ramp up Services, without scoring on any of the performance metrics in the SLAs. Supplier shall begin measuring the service levels at completion of implementation.

D. Subcontractor Performance

Any and all authorized Subcontractors and Subcontractor personnel shall perform the Services in accordance with this Contract and the applicable Order or SOW. Supplier agrees that it shall (i) be responsible for all work performed by Subcontractors and Subcontractor personnel; (ii) require any and all authorized Subcontractors and Subcontractor personnel to (a) comply with the obligations imposed upon Supplier by this Contract and the applicable Order or SOW and (b) perform the Services in accordance with this Contract and the applicable Order or SOW; and (iii) be liable for such Subcontractors and Subcontractor personnel's compliance with such obligations and performance of such Services.

E. Documentation and Deliverables

i. Any required Documentation Supplier is obligated to provide under this Contract, or under any applicable Order or SOW, shall be sufficient in detail and content to allow an appropriately trained user 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 updates, engineering changes, or revisions made to any Supplier-provided Deliverables shall (a) degrade the performance of any other Deliverables or their Components to a level below that defined in the Requirements; (b) cause any other warranty to be breached; or (c) require an Authorized User to acquire additional hardware equipment or software in order for the Deliverables to perform as specified in the Requirements..

F. 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 or any Subcontractor 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 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 anything to the contrary in this Contract, any Order or SOW, or at law, Supplier waives all rights it has or may have in the future to exercise 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.

G. 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.

H. 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. SERVICES

A. Nature of Services and Engagement

Supplier is an independent contractor engaged to function as an MSP to provide managed Services, including but not limited to the management of life cycle processes for the engagement of IT contract labor, the VMS, and management of Supplier's Subcontractor base.

B. Performance of Services

Supplier shall provide, through its network of Subcontractors, personnel qualified to perform the Services required by any Order or SOW issued pursuant to this Contract. If any ITCL resource provided by Supplier fails to perform at an acceptable level of achievement of the Requirements

set forth in the Contract, or an Order or SOW, the applicable Authorized User shall have the right to request that Supplier immediately remove such ITCL resource from performing on the IT Staff Augmentation Order or SOW project and replace the ITCL resource with a more qualified individual. Supplier shall not invoice Authorized User for any Staff Augmentation resource who is terminated or resigns within the first ten (10) business days of the Staff Augmentation engagement.

Supplier shall require all personnel performing ITCL Services under this Contract to perform those Services within the contiguous United States, Alaska, or Hawaii. Performance of Services outside of the contiguous United States, Alaska, or Hawaii during the period of performance for any Order or SOW will be deemed a breach of this Contract.

Prior to the engagement of any Staff Augmentation or SOW personnel under an Order or SOW, Supplier shall require that all Subcontractors, at Subcontractor's expense, complete a background check on all personnel performing Services under this Contract. The background check shall include a 7-year criminal information records history, social security number trace, and sex offender registry search. At its own expense, an Authorized User may require additional background checks such as fingerprint checks, a lengthier criminal information records history, etc.

C. SOW Deliverable Testing

Supplier shall ensure any individual Deliverable functions properly with any other Deliverables. In the event that a previously Accepted Deliverable requires further modification in order to work properly with any other Deliverable, Supplier shall be responsible for all costs associated with the modification.

Each Deliverable created under an SOW shall be delivered to Authorized User with a Deliverable Acceptance Receipt. This receipt shall describe the Deliverable and provide the Authorized User with space to indicate if the Deliverable is accepted, rejected, or conditionally accepted. Conditionally Accepted Deliverables shall contain a list of deficiencies that need to be corrected in order for the Deliverable to be accepted by the Authorized User. Authorized User shall have ten (10) business days from receipt of the Deliverable to provide Supplier with the signed Acceptance Receipt, or within such other period as set forth in the applicable SOW.

If written determination is not provided by Authorized User within thirty calendar days of request, the Deliverable or Service shall be deemed accepted, unless mutually agreed by the parties. Supplier shall provide the Authorized User all assistance and advice as the Authorized User may reasonably require, at no additional cost, during Deliverable testing.

D. Cure Period

Supplier shall correct all non-conformities identified during Deliverable testing and re-submit the non-conforming Deliverable or Service for re-testing within seven (7) calendar days of Supplier's receipt of written notice of non-conformance. Should Supplier fail to cure the non-conformity or deliver a Service which meets the Requirements, the Authorized User may, in its sole discretion:

- i. reject the Deliverable or Service in its entirety, and any Service rendered unusable due to the non-conforming Service, and recover amounts previously paid to Supplier for all such Services;
- ii. issue a "partial Acceptance" of the Deliverable or Service with an equitable adjustment in the price to account for such deficiency; or
- iii. conditionally Accept the applicable Deliverable or Service while reserving its right to revoke Acceptance if Supplier fails to make a timely correction.

Failure of a Deliverable or Service to meet, in all material respects, the Requirements after the second period of testing will constitute a breach by Supplier.

E. Warranty Period

Supplier warrants to each Authorized User all SOW Deliverables and Services for a period of 90 days from the date of Acceptance, or such longer period as provided in the SOW.

F. Implementation Plan

Supplier shall provide the Services in accordance with the Implementation Plan set forth in Exhibit K, which is attached to this Contract and incorporated by reference, until December 31, 2021.

Supplier and VITA agree to document all necessary details of the Implementation Plan within 30 calendar days of the Effective Date. The period of performance for Supplier's provision and management of MSP Services begins January 1, 2022.

8. RIGHTS TO WORK PRODUCT

A. Work Product

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

B. Ownership of Work Product

All Work Product discovered, created, or developed under this Contract, or in the course of executing a SOW issued pursuant to this Contract, is and shall remain the sole property of the Authorized User, regardless of whether the Deliverable or Services are considered "works made for hire" or "hired to invent". Supplier agrees that the Authorized User shall have all rights with respect to any Work Product discovered, created or developed under this Contract or SOW issued hereunder, without regard to the origin of the Work Product.

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

Supplier shall require all Subcontractors to agree to transfer, grant, convey, assign and relinquish exclusively to the Authorized User any and all, right, title, and interest in any Work Product the Subcontractor may be entitled to claim any ownership interest in. Supplier shall require all Subcontractors to expressly waive all moral rights created in the Work Product, if any moral rights are created. Supplier shall also require any applicable Subcontractor to assist the Authorized User in every reasonable way to obtain and, from time to time, enforce patents, copyrights, trade secrets and other rights and protection relating to the Work Product. Supplier shall further require that Subcontractors and any required Subcontractor personnel execute all documents necessary for use in applying for and obtaining patents, copyrights, and other rights and protection, and in protecting trade secrets with respect to the Work Product, upon reasonable request of the Authorized User.

Supplier shall require all Subcontractors to agree that neither Supplier, Subcontractor, Subcontractor's employees, nor any party claiming through Supplier, Subcontractor, or Subcontractor employees, shall make use of or disclose to others any proprietary information relating to Work Product, other than is necessary in the performance of this Contract or a SOW issued pursuant hereto.

Supplier agrees that the provisions of this section shall survive any termination of this Contract by VITA, or any SOW issued hereunder by an Authorized User. Supplier also agrees that in the

event of a breach of this Contract, issued hereunder, by VITA or any Authorized User, Supplier's remedy shall not include any right to rescind, revoke, or otherwise invalidate the provisions of this section.

Supplier acknowledges that in the case of an Authorized User which is a public body of the Commonwealth, all rights and remedies afforded that Authorized User under this section shall also be held and exercisable by the Commonwealth.

C. Ownership of Intellectual Property

Supplier represents and warrants that Supplier or its Subcontractors are the sole and exclusive owner, or has the right to use, all Supplier or Subcontractor Intellectual Property that is used in the course of performing the Services, provided that Supplier or Subcontractor Intellectual Property was owned or licensed by Supplier or Subcontractor prior to the Effective Date, or was developed, licensed, or obtained at Supplier's or Subcontractor's expense. Supplier or Subcontractor shall retain sole and exclusive ownership of Supplier or Subcontractor Intellectual Property.

D. Pre-existing Work

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

E. Return of Materials

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

9. FEES, ORDERING, AND PAYMENT PROCEDURE

A. Fees and Prices

Supplier agrees that the fees payable to Supplier by Authorized Users under Orders and SOWs executed under this Contract will be consistent in all respects with the pricing set forth in Exhibit B Pricing, and that those fees, if any, shall fully compensate Supplier for all of its obligations under this Contract.

Upon written request of either Party, Supplier may propose an adjustment to the prices set forth in Exhibit B Pricing for Staff Augmentation Not-To-Exceed hourly rates. Supplier and VITA will work in good faith to agree on appropriate change(s) in pricing based on then prevailing market information and data analysis. If VITA and Supplier agree to change(s) to Supplier's pricing, VITA and Supplier shall work in good faith to notify Authorized Users in writing of the pricing change(s) applicable to new Staff Augmentation Orders at least 30 calendar days prior to the effective date of the applicable pricing change(s).

The Commonwealth will be liable for Services and fees which have been initially authorized by a Purchase Order.

B. Ordering

All Authorized Users have the right to purchase ITCL Services from Supplier under this Contract, but Authorized Users have no obligation to purchase any such ITCL Services from Supplier.

Authorized Users shall initiate requests for ITCL Services via requisitions created and submitted in Supplier's VMS. A Purchase Order shall be submitted for all engagements. Supplier shall accept all valid Purchase Orders issued by Authorized Users.

Supplier shall accept all valid requisitions created and submitted by Authorized Users in Supplier's VMS.

Supplier shall accept Purchase Orders placed by Authorized Users through the Commonwealth's electronic procurement website portal, eVA (<http://www.eva.virginia.gov/>) for those required to

use 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.

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 or Supplier’s Subcontractor 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.

C. Staff Augmentation

A PO issued through eVA or issued by an Authorized User is required for any IT Staff Augmentation Services obtained by an Authorized User pursuant to this Contract. Supplier shall perform, through the use of Subcontractor personnel, any and all contractual obligations at the times and locations set forth in the applicable Order and at the Not-To-Exceed hourly rates set forth in Exhibit B Pricing. Supplier shall ensure that all Subcontractor personnel engaging in IT Staff Augmentation Services maintain daily reports of hours performed, which shall be submitted for approval by the applicable Authorized User.

D. Statement of Work (“SOW”)

An SOW, in the format provided for in Exhibit C attached to this Contract, is required for any ITCL Statement of Work Services obtained by an Authorized User pursuant to this Contract. Supplier shall perform, through use of Subcontractor personnel, any and all contractual obligations set forth in the applicable SOW.

Authorized Users obtaining Services through a SOW shall use a competitive process established by VITA. Supplier shall provide all support reasonably requested by VITA to establish, facilitate, and perform project and Deliverable-based SOW engagements through that competitive process, in compliance with applicable law. Supplier shall work with VITA to facilitate competition when any Authorized User requests SOW Services. Supplier shall provide support throughout the competitive process, including assisting Authorized Users in developing Requirements, receiving and reviewing proposals, and executing and managing the resulting SOW(s) for Services. VITA retains sole discretion to approve or amend the competitive process.

All SOWs shall be of a Fixed Price Type. The Fixed Price Type SOW shall include a defined scope of work, defined Deliverables and a milestone-based payment schedule conditioned upon Authorized User’s Acceptance of such Deliverables.

The terms and conditions of this Contract shall be incorporated by reference into any and all SOWs. An Authorized User shall not include additional terms and conditions in its SOW without the express written consent of Supplier. To the extent that any terms and conditions of an SOW are inconsistent with the terms and conditions of this Contract, including any modifications hereto, the terms of this Contract shall supersede and the conflicting terms and conditions of the SOW shall be of no force or effect. In no event shall any SOW or modification thereto require the Supplier to perform any Services beyond the scope of this Contract.

Any modification to the scope, deliverables, due dates, schedule, period of performance, Acceptance criteria, payment obligations, or price of an SOW must be documented in a written change request, in the format provided in Exhibit D, including but not limited to changes where the SOW price remains unchanged (also known as a “zero dollar change request.”). Either Party to an SOW may initiate a change request. All change requests shall be subject to written approval of the other Party before it becomes an obligation to that Party, as evidenced by a written change request signed by both parties.

Consistent with Code § 2.2-4309 of the Virginia Public Procurement Act (“**VPPA**”), or any successor statutory provision, the total price of any and all change requests shall not increase the total price of the SOW by more than \$50,000 or twenty-five percent (25%) of the original SOW price, whichever is greater, without advance written approval from VITA. In the absence of

advance written approval, VITA may, in its sole discretion, cancel any modification to an SOW that increases the value of the SOW by more than \$50,000 or twenty-five percent (25%), whichever is greater. In the event a SOW or SOW modification is cancelled by VITA, such SOW or SOW modification shall no longer be binding on any Party and all obligations with respect to such SOW or SOW modification shall expire.

An SOW may survive the expiration of the period of performance as defined in the SOW, in which case all contractual terms and conditions required for the SOW Services shall remain in full force and effect until all of Supplier's obligations pursuant to the SOW have met the final Acceptance criteria of the applicable Authorized User.

Supplier shall be prohibited from accepting an SOW that meets the definition of high-risk as defined in Code § 2.2-4303.01 or any successor statutory provision.

E. Invoice Procedures

Supplier shall remit monthly invoices for Staff Augmentation Services delivered in each calendar month and approved by the Authorized User via approval of weekly timesheets in Supplier's VMS. Supplier shall remit invoices for SOW Services after Supplier's performance obligations have been Accepted in accordance with the milestone payment schedule in the applicable SOW and approved by the Authorized User in Supplier's VMS. Supplier shall remit each invoice to the "bill-to" email address required by Supplier and provided by Authorized User in the Purchase Order.

No invoice may include any costs other than those identified in the 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 periods, as applicable.
- ii. Line item description of the Services or 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. This Contract number
- v. The applicable Purchase Order number
- vi. Supplier's Federal Employer Identification Number ("FEIN")

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

F. Purchase Payment Terms

Supplier is responsible for the accuracy of its billing information. Supplier shall not issue invoices for SOW Services pursuant to this Contract until all of Supplier's performance obligations have been accepted and are in accordance with the milestone payment schedule in the applicable SOW. Supplier shall not issue invoices for Staff Augmentation Services until after Services have been rendered and time sheets have been approved by the Authorized User in Supplier's VMS. Charges for Deliverables or Services 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.

G. Reimbursement of Travel Expenses

To be eligible for reimbursement, travel-related expenses for Staff Augmentation resources shall be pre-approved by an Authorized User via an approved, valid Purchase Order that includes a separate line item designated for such travel expenses. An Authorized User shall 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. To remain eligible for reimbursement, applicable expense reports shall be submitted in the VMS and approved by the Authorized User. The travel-related expenses shall be reimbursable at the then-current per diem amounts and other travel regulations as published by the Virginia Department of Accounts (<http://www.doa.virginia.gov/>). Authorized Users who are not Commonwealth of Virginia

public bodies may have their own per diem amounts and other travel regulations applicable to Supplier's pre-approved travel expenses.

All reimbursable expenses shall 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.

H. Disputed Charges

If, before payment of an invoice, an Authorized User notifies the Supplier in writing of a disputed charge, Authorized User shall 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 shall be resolved (whether by credit or explanation of the charge to the Authorized User's satisfaction) 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 shall not be obligated to pay the disputed amounts and may consider the matter concerning the specific identified amounts closed. Authorized User shall not pay any disputed amounts that remain unresolved after 120 calendar days. If a disputed charge is reversed, Supplier shall also reverse any associated late fees.

I. Timely Payment

Pursuant to the Virginia Prompt Payment Act (Code §§ 2.2-4347 *et seq.*), all Commonwealth Authorized Users are obligated to make timely payments to Supplier. The payment term for all Commonwealth Authorized Users is net 30 days from receipt of a proper invoice from Supplier. Commonwealth Authorized Users shall make full payment to Supplier within 30 days of the Authorized User's receipt of a proper invoice from Supplier.

If any invoiced amount remains unpaid and undisputed, either: a) 31 days after the date of receipt of a proper invoice by a state agency or its designated agent; or b) 46 days from the date of receipt of a proper invoice by a local government or its designated agent, Supplier may charge the applicable Authorized User interest at the rate of one percent (1%) per month on any such unpaid amount.

J. eVA Fees

Supplier shall not recoup or attempt to recoup any eVA fees by invoicing or billing VITA or any Authorized User.

K. eVA Pricing

Supplier shall not change, modify, revise, edit, add, or delete any offering or price in its punch-out catalogue or line-item load in eVA without VITA's consent, as evidenced by a written contract modification executed by VITA and Supplier.

10. ANNUAL OPERATION PLAN

Supplier shall complete an operational plan for submission to VITA annually to address the following items:

- i. Activities to market the Contract to other public bodies and localities.
- ii. Quarterly changes or updates to the Supplier portal, website, and other communication media.
- iii. Strategies to improve management and executive-level reporting.
- iv. Training schedule for Supplier's VMS to facilitate use of the VMS by Authorized Users and Subcontractors after version updating and maintenance.
- v. Initiatives to address continuous improvements for Subcontractor performance and management, operations and process management, program risk management, and agency and customer training and support.

Supplier shall meet with VITA personnel responsible for managing the Contract for an annual planning session prior to the submission of the first operational plan, and prior to each subsequent updated annual operation plan.

11. REPORTING

Supplier shall submit to VITA monthly reports containing data on:

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

These reports must be submitted in accordance with the instructions and further detailed Requirements set forth on the "Supplier Reporting" webpage located at the following URL: <https://www.vita.virginia.gov/procurement/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 Total Sales

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

In connection to the monthly report of Total 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/procurement/supplier-reporting>. The monthly report of Total Sales must include these fees and percentages:

- IFA: 2% of monthly sales to Commonwealth Authorized Users
- Administrative fee of .25% of monthly sales to non-Commonwealth Authorized Users

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: <https://www.vita.virginia.gov/procurement/supplier-reporting>.

12. SERVICE LEVEL AGREEMENT REMEDIES AND CREDITS

Supplier and VITA agree to meet within 30 calendar days of the Effective Date of this Contract to set forth the methodology and designated personnel of each Party to provide, collect, monitor, and report the Service Level Agreement performance data and mutually agreed-to incentives and remedies. In the event that Supplier fails to meet the required service levels set forth in the Service Level Agreement attached to this Contract as Exhibit E and incorporated by reference, Supplier agrees to the following remedies:

- i. For the first instance of Supplier having a below-threshold performance score in the service levels, Supplier shall be given notice and Supplier representatives and the VITA contract manager shall meet to develop a plan to improve on any areas of unsatisfactory performance within 30 days.
- ii. If a second review occurs with minimal or no improvement in the areas of unsatisfactory performance, VITA shall provide Supplier with formal, written notice of the deficiency and Supplier shall be required to provide VITA with a written plan detailing how Supplier shall correct the areas of unsatisfactory performance and improve its overall service score. Supplier shall provide the written plan to VITA within five (5) business days of Supplier's receipt of VITA's notice. Supplier shall have 90 days from submission of its plan to VITA to correct any areas of unsatisfactory performance and improve its overall service score.
- iii. If a third review finds below-threshold performance scores after the 90-day period, Supplier shall provide a one percent (1%) rebate on Supplier's MSP fee – less the eVA, VMS and IFA fees – for each month beginning from the date of Supplier's written plan to VITA. Supplier shall provide such rebate each month until the unsatisfactory performance is cured. Supplier shall provide this rebate to each Authorized User that provided revenue to Supplier during this rebate period.

Supplier shall identify and calculate all credits due for failure to meet any service level. Supplier's actual performance against all required service levels shall be computed on a quarterly basis. Supplier shall ensure that all credits due to VITA are provided automatically without requiring VITA to submit a Claim or request for such credit, and shall be clearly identified on the credit note to which they posted (including specifically identifying on the credit note the failure to meet the service level to which the service credit applies). Rebates or credits for service level failures shall be issued no later than 60 days after the failure to meet the service level giving rise to the credit occurs.

13. OPERATIONAL STATUS MEETINGS AND REPORTS

Supplier will be prepared to conduct regular stewardship meetings with VITA, customer advisory groups, and senior management, to provide a broad review of all Services, projects and ongoing operations. These status meetings shall include, but not be limited to, the following:

- i. Quarterly Business Review (“QBR”) – Review of program usage, spend and trends. Status should, at a minimum, include information on ITCL program usage, spend and trends, local labor market data, Subcontractor performance, Supplier performance to SLAs, continuous improvement plans (operations and cost reductions), and other activities to enhance the ITCL program.
- ii. Monthly progress meetings as needed to review and discuss program initiatives and challenges.
- iii. Weekly operations meeting to review current status of operational activities and engagements.

Supplier shall also submit reports of the information addressed in the status meetings in an electronic format using Microsoft Excel, PowerPoint or Word as needed. Supplier shall submit the required reporting within 60 days following the end of the quarter, or as requested by VITA. Within 30 business days of contract award, Supplier shall submit sample report(s) to designated VITA contract manager for approval of the format and content.

14. CONTRACT DATA

A. Correcting Errors and Inaccuracies

Supplier shall promptly correct any errors or inaccuracies in the Contract Data that are caused by Supplier or Subcontractors.

B. Secure Retention of Contract Data

During the Contract Term (including any Transition Period), Supplier shall maintain a copy of all Contract Data and shall make secure backups of the Contract Data on a regular basis. If any Contract Data is corrupted, lost, or sufficiently degraded so as to be unusable due to any act or omission of Supplier, then Supplier shall, at its sole cost and expense, carry out any remedial actions necessary to restore the Contract Data as VITA may reasonably require.

C. Access to Contract Data

Supplier shall provide a copy of the Contract Data to VITA on a mutually agreed upon schedule and interval, or at VITA’s request, and in the format mutually agreed upon by VITA and the Supplier, such agreement not to be unreasonably withheld. Upon the termination or expiration of the Contract, Supplier shall return all Contract Data to VITA, or to VITA’s nominated agent, in the format mutually agreed upon by VITA and the Supplier, such agreement not to be unreasonably withheld. Supplier shall provide reasonable assistance to VITA, or to VITA’s nominated agent, in order to transition the responsibilities with respect to the use and maintenance of the Contract Data to VITA or VITA’s nominated agent.

15. USER GUIDE

Within 30 calendar days of the Effective Date of the Contract, Supplier shall provide VITA with a user guide that describes how Authorized Users purchase Services from the Contract. The user guide shall be updated by Supplier as required during the Contract Term.

16. TRAINING AND DOCUMENTATION

Any training or Documentation necessary for VITA or any Authorized User to enjoy full benefit of the Services shall be deemed to be included in the scope of this Contract unless expressly excluded.

17. VITA SELF-SUFFICIENCY

At VITA’s request Supplier shall provide all assistance reasonably required by VITA to develop VITA’s self-sufficiency in operating and managing the MSP Services that Supplier provided to VITA at no extra charge.

18. COMPETITIVE PRICING

Supplier warrants that each of the prices, charges, or warranties granted under this Contract are fair, reasonable, and commensurate with the price, charge, warranty being offered by Supplier to other government customers that purchase substantially similar Services at similar volumes, and under substantially similar terms and conditions. Supplier shall notify VITA of any new Services that become generally available to all government customers during the Contract Term. New Services are subject

to the commercial terms associated with those Services and must be formally added to this Contract before they can be purchased. Supplier shall also offer VITA commercially available national government Services promotions and rates available at the time of purchase under the terms of those promotions.

19. 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 the extent necessary, to perform its obligations under this Contract; and
- iii. not transfer, display, convey or otherwise disclose or make available all or any part of the other Party's Confidential Information to any third-party.

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

B. 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 that the Supplier is not legally bound to retain, 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.

C. Non-Disclosure Agreement for Confidential Information

Supplier shall be responsible for having all Subcontractor personnel performing Staff Augmentation Services sign an agreement prohibiting the disclosure of Confidential Information. At the request of VITA or an Authorized User, Supplier shall provide copies of executed non-disclosure agreements.

Supplier shall be responsible to ensure that all SOWs include language prohibiting the disclosure of Confidential Information by Subcontractor personnel performing SOW Services.

Any violation of the non-disclosure agreement shall be deemed a breach of this Contract and may result in termination of the Contract, any Order or SOW issued hereunder, or both, and may subject Supplier to the liability provisions of Section 21 of this Contract.

D. Health Insurance Portability and Accountability Act

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

- i. not use or further disclose PHI other than as permitted or required by the terms of this Contract or any Order or SOW issued hereunder or as required by law;
- ii. use appropriate safeguards to prevent use or disclosure of PHI other than as permitted by this Contract or any Order or SOW issued hereunder;

- iii. report to VITA or Authorized User, as applicable, any use or disclosure of PHI not provided for by this Contract or the applicable Order or SOW;
- iv. mitigate any harmful effect that is known to the Supplier of a use or disclosure of PHI by the Supplier or Supplier Personnel in violation of the Requirements of this Contract or the applicable Order or SOW;
- v. impose the same Requirements and restrictions contained in this provision on Supplier Personnel performing on this Contract or any Order or SOW issued hereunder;
- vi. provide access to PHI contained in its records to VITA or the requesting Authorized User, in the time and manner designated by VITA or the requesting Authorized User, or at the request of VITA or an Authorized User, to an individual in order to meet HIPAA access; and
- vii. make available PHI in its records to VITA or an Authorized User for amendment and incorporate any amendments to PHI in its records at VITA's or an Authorized User's request.

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.

20. 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. a breach of any representation, warranty, covenant, or obligation of Supplier contained in this Contract;
- iii. any defect in the Supplier-provided Services;
- iv. any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Supplier-provided Services;
- v. any Claims by any Subcontractor resulting from Supplier's failure to pay such Subcontractor.

B. Defense of Claims

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

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

D. Supplier Dispute of Obligation to Indemnify

If a Claim is commenced against any Commonwealth Indemnified Parties by a third party alleging an infringement of the third party's intellectual property rights and Supplier is of the opinion that the allegations in the third-party Claim, in whole or in part, are not covered by the indemnification provision in this Contract, then In the event that Supplier disputes any of its obligations to defend

or indemnify any Commonwealth Indemnified Party, then Supplier shall immediately notify VITA and the affected Authorized User(s) in writing and shall, nonetheless, take all reasonable steps to protect the rights, remedies, and interests of the Commonwealth Indemnified Parties in the defense of the Claim, including to secure a continuance to permit VITA and the affected Authorized User(s) to appear and defend their interests in cooperation with Supplier as is appropriate, including any jurisdictional defenses VITA or the affected Authorized User(s) may have.

21. LIABILITY

A. Supplier Liability

Supplier agrees that it shall be fully responsible for all acts and omissions of Supplier Personnel.

In instances where liability arises from a breach of the Contract as a result of any combination of:

- i. any intentional or willful misconduct, fraud, or recklessness of Supplier or any Supplier Personnel; or
- ii. Claims for bodily injury, including death, and damage to real property or tangible property resulting from the negligence of a Supplier or any Supplier Personnel;

Supplier's indemnification obligations and liability shall not exceed, in aggregate, twice the annual value of the Contract. "Twice the annual value of the Contract" shall be calculated as twice the Total Sales in the twelve (12) full calendar months immediately preceding the date of the breach.

In instances where liability arises from a breach in the performance of a specific Order or SOW, Supplier's indemnification obligations and liability shall not exceed twice the value of the applicable Order or SOW giving rise to such liability. This limitation shall apply on a per-incident basis, it being understood that multiple losses stemming from the same root cause constitute a single incident.

"Value of the applicable Order or SOW" shall be calculated as:

- (a) For an Order, the total cost listed on the Purchase Order(s) of the Staff Augmentation personnel responsible for the breach in each full calendar month immediately preceding the date of the breach, not to exceed twelve (12) full calendar months; or
- (b) For an SOW, the initial cost of the SOW plus the cost of any change orders executed prior to the date of the breach.

B. Limitation of Liability

Except for liability arising out of any combination of A(i) or A(ii) above, neither Party shall 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.

22. INSURANCE

A. Supplier Insurance Requirements

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

- i. Errors and omissions insurance coverage in the minimum amount of \$2,000,000 per occurrence; and
- ii. Cyber Security Liability insurance coverage in the minimum amount of \$5,000,000 per occurrence.

B. Subcontractor Insurance Requirements

Supplier shall require Subcontractors to carry:

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

ii. Cyber Security Liability insurance coverage in the amount of: (a) \$1,000,000 per occurrence for businesses certified as Small, Micro, Women-owned, and Minority-owned by the Virginia Department of Small Business and Supplier Diversity or successor agency or (b) \$5,000,000 per occurrence for businesses not certified as Small, Micro, Women-owned, and Minority-owned by the Virginia Department of Small Business and Supplier Diversity or successor agency.

23. SECURITY COMPLIANCE

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

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

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

Supplier shall indemnify, defend, and hold the Commonwealth, VITA, their officers, directors, employees and agents harmless from and against any and all Claims, including reasonable expenses suffered by, accrued against, or charged to or recoverable from the Commonwealth, VITA, their officers, directors, agents or employees, on account of the failure of Supplier to perform its obligations pursuant this section.

24. 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 continental United States.

25. 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 shall not be a breach of this Contract, and shall not affect the rights of VITA or any Authorized User to pursue or enforce any of its rights under this Contract or otherwise.

26. 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 shall 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 shall 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 or Subcontractor 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 for Supplier's or Subcontractor's employees. Supplier or Subcontractor 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 for Supplier's or Subcontractor's employees as a result of this Contract.

B. Licensing Within the Commonwealth

Any and all licenses to Work Product granted or provided pursuant to this Contract shall 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/procurement/forms-policies/mandatory-contract-terms/>.

Supplier agrees that non-compliance with the above-referenced Mandatory Contract Terms and IRS Publication 1075, including Exhibit 7 of IRS Publication 1075 which is attached to this Contract as Exhibit J and incorporated by reference, 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 shall 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 shall 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 shall notify VITA if it becomes aware of a potential conflict of interest in the future.

F. Governing Law

This Contract is governed by and shall 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 shall 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 90 calendar days. The decision of the relevant public body shall 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, if any.

In the event of any breach by a Commonwealth agency, Supplier's remedies shall be limited to Claims for damages and interest allowable under the Code and, if available and warranted, equitable relief. All such Claims are to be processed pursuant to this section. In no event shall Supplier's remedies include the right to terminate any labor services hereunder.

H. Assignment

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

If any law limits the right of VITA or Supplier to prohibit assignment or nonconsensual assignments, the effective date of the assignment shall 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 shall not be covered by this assignment.

I. Severability

Invalidity of any term of this Contract, in whole or in part, shall 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 Rights To Work Product, Warranty, Escrow, Confidentiality, Content Privacy and Security, Liability, Indemnification, Transition of Services, and the General Provisions shall survive the expiration or termination of this Contract.

K. Force Majeure

No Party shall 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 shall not constitute a waiver.

M. Remedies

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

N. Right to Audit

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

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

In no event shall 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 shall 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 shall 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 documents as set forth in the prior sentence must be processed by the assigned VITA and Supplier points of contact for this Contract and may be given in person, via U.S. mail, courier service or electronically.

S. Offers of Employment

During the first twelve (12) months of the Contract, should Supplier hire an employee of any Authorized User who has substantially worked on any project covered by this Contract without prior written consent, the Supplier shall be billed for 50% of the employee's annual salary in effect at the time of termination.

If an Authorized User determines that it would be in the Authorized User's best interest to hire a Staff Augmentation resource of Supplier or Subcontractor after more than 180 calendar days of service by that resource, Supplier and Subcontractor shall release the selected resource from any non-compete agreements that may be in effect. This release shall be at no cost to the Authorized User.

If an Authorized User determines that it would be in the Authorized User's best interest to hire a Staff Augmentation resource of the Supplier or Subcontractor with less than 180 calendar days of service by that resource, the Authorized User shall notify Supplier who, in turn, shall notify the Subcontractor of the Authorized User's intent to hire the resource. Supplier and Subcontractor shall release the selected resource from any non-compete agreements that may be in effect. The Authorized User shall pay a fee to the Supplier per the conversion fee table set forth in Exhibit B Pricing.

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 and Job Rate Cards

Exhibit C – Statement of Work (SOW) Template

Exhibit D – Change Order Template

Exhibit E – Service Level Agreement

Exhibit F – List of Supplier Key Personnel

Exhibit G – Certification Regarding Lobbying

Exhibit H – Supplier Procurement and Subcontracting Plan

Exhibit I – Intentionally Omitted

Exhibit J – Mandatory Internal Revenue Service (IRS) Publication 1075

Exhibit K – Implementation Plan

This Contract, its exhibits, and any prior non-disclosure agreement constitute the entire agreement between VITA and Supplier and supersede any and all previous representations, understandings, discussions or agreements between VITA and Supplier as to the subject matter of this Contract. Any and all terms and conditions contained in, incorporated into, or referenced

by the Supplier's proposal are deemed invalid. This Contract may only be amended or renewed by an instrument in writing signed by VITA and Supplier.

To the extent that any Order or SOW issued pursuant to this Contract includes any terms or conditions inconsistent with the terms and conditions of this Contract, such inconsistent terms or conditions of the Order or SOW shall be of no force and effect.

W. Order of Precedence

In the event of a conflict, the following order of precedence shall apply: this Contract document, Exhibit A, Exhibit B, Exhibit E. In the event of a conflict or inconsistency between the negotiated terms of this Contract and any provision incorporated by reference into the Contract, the negotiated terms of this Contract shall 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, shall constitute a complete and fully executed original. All fully executed original counterparts shall 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.

Computer Aid, Inc.

VITA, on behalf of the
COMMONWEALTH OF VIRGINIA

By: 
(Signature)

By: Nelson P. Moe
(Signature)

Name: R. Abraham Hunter
(Print)

Name: Nelson P. Moe
(Print)

Title: EVP

Title: CIO of the Commonwealth

Date: 06/22/2021

Date: 06/28/2021

Address for Notice:

ape.hunter@cai.io

Address for Notice:

scminfo@vita.virginia.gov

Attention: Supplier Contact

Attention: Contract Administrator