

Information Technology Software-as-a-Services (SaaS) Contract

between

The Virginia Information Technologies Agency

on behalf of

The Commonwealth of Virginia

and

EVERLAW, INC.

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

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

THIS INFORMATION TECHNOLOGY SOFTWARE-AS-A-SERVICE 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 Everlaw, Inc. ("**Supplier**"), a corporation headquartered at 2101 Webster Street, Suite 1500, Oakland, CA 94612, to be effective as of December 6, 2022 ("**Effective Date**").

1. PURPOSE AND SCOPE

VITA, on behalf of the Commonwealth, is seeking services that will provide eDiscovery services. This Contract sets forth the terms and conditions under which Supplier shall provide Software-as-a-Service ("**SaaS**") eDiscovery document processing and services to support FOIA, litigation, and other records request and review needs. Supplier shall provide these products and services to all Authorized Users, as defined below.

This Contract is a jointly and cooperatively procured contract pursuant to § 2.2 -4304 of the Code. Accordingly, Supplier agrees that other public bodies outside of the Commonwealth may purchase the products and services furnished pursuant to this Contract even if those public bodies did not participate in the procurement, provided those entities execute a participating addendum that incorporates the terms and conditions of the Contract.

2. DEFINITIONS

Capitalized terms used in this Contract have the meaning as provided (i) where each term is used in the Contract unless the term is (ii) 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

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

B. Account Information

The information about the Authorized User that it provides to Supplier in connection with the creation or administration of its account. For example, Account Information includes names, usernames, phone numbers, email addresses, and billing information associated with the Authorized User's account.

C. Annual Minimum Commitment

Means the Annual Fee based on the Authorized User's Subscription and has a fixed minimum Storage Capacity reserved for Authorized User's use.

D. Annual Fee

Means an annual fee based on a Minimum Commitment.

E. Application

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

F. Application User

Application User(s) include employees of an Authorized User, independent contractors engaged by an Authorized User, or entities contracting with an Authorized User for services, as specified in the applicable order or SOW, whom the (A) Authorized User, or (B) a person with administrator access on Authorized User account has invited to join the Authorized User's account on the Application. Application User(s) also include customers, suppliers, and other entities with whom an Authorized User may find it necessary or desirable to process or communicate electronically in pursuit of its business. In the event that the Authorized User is a private institution of higher

education which is listed at: <http://www.cicv.org/Our-Colleges/Profiles.aspx>, Application User(s) may include students of that private institution.

G. Authorized Users

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

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.

H. 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".

I. Code

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

J. Commercial Off-The-Shelf ("COTS") Software

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

K. Commonwealth

The Commonwealth of Virginia.

L. Commonwealth Indemnified Parties

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

M. Component

Any part or service of the Solution, Software, or Deliverable delivered by Supplier under this Contract, including under all orders or SOWs.

N. Computer Virus

Any malicious code, program, malware, 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.

O. Concurrent Users

The maximum number of concurrent active users utilizing the Software at a given point in time.

P. 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) Health Records; (iii) Personally Identifiable Information, including information about VITA's employees, contractors, and customers, or Sensitive Data, including PHI; or (iv) information that is protected by statute or other applicable law. In the case of VITA, "Confidential Information" also includes any (a) information to which the Supplier has access in VITA facilities or VITA's systems, (b) Work Product and information pertaining to the Work Product, (c) VITA Content, VITA software, and systems access codes, and (d) information concerning VITA's and any other Authorized User's operations, plans, employees, contractors or third party suppliers

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

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

Q. Content

Any data, including the selection, arrangement and organization of such data, entered or uploaded onto the Application; and any related documentation, from whatever source, provided by or created in the Application by Authorized User or Application User in connection with this Contract. Content does not include: (A) Account Information; or (B) Project or Database names though Account Information and Project and Database names are considered Confidential Information.

R. Contract

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

S. Contracted Services

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

T. 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.

U. Database

The repository where the Authorized User's Content is uploaded and stored within the Application.

V. Deliverable

Software, 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, Maintenance Services, Contracted Services, Application, Solution, Product, Software, System Software, Supplier Product, or Updates, including the development or creation of Work Product.

W. Documentation

The Supplier documentation in the form generally made available by Supplier for use with the Service at <https://support.everlaw.com/hc/en-us>, detailing the information and instructions needed in order to allow any Authorized User and its agents to make productive use of the Application, Software, Solution, Product, Service, Contracted Services or Deliverable, including any and all components, and to implement and develop self-sufficiency with regard to the Application, Software, Solution, Service, Contracted Services or Deliverable, including any and all components, provided by Supplier in fulfilling its obligations under the Contract or as may be specified in any order or SOW issued pursuant to this Contract.

X. Effective Date

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

Y. Escrow Agent

The person or entity that holds and maintains all Software source code and related technical and user Documentation, along with a signed copy of the Escrow Agreement attached to this Contract

as Exhibit E, in trust for the Parties as set forth in the “Escrow Agreement” section of this Contract below.

Z. 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.

AA. Feedback

The ideas, suggestions, feedback, recommendations, or improvements pertaining to the Application provided by the Authorized Users and Application Users.

BB. 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)

CC. Industrial Funding Adjustment (“IFA”)

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

DD. Maintenance Coverage Period (“MCP”)

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

EE. Maintenance Level

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

FF. Maintenance Services

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

GG. Minimum Commitment

Means a Subscription with a fixed minimum Storage Capacity reserved for Authorized User’s use.

HH. Monthly Unit Price

Means a price per gigabyte of Storage Usage per month.

II. Native Data

Means the Documents within the Content the Authorized User or an Application User uploads via the native uploader functionality or created and processed by the Application.

JJ. Open Source

Computer software provided by a creator or community for users of the software to freely inspect, modify, enhance, and distribute the software and its source code. Open Source software operates under a licensing model whereby the copyright holder confers obligations to a user using that work, and all subsequent derivative works.

KK. Original Equipment Manufacturer (“OEM”)

The original equipment manufacturer, or in the case of software, the software publisher/licensor of, Maintenance Services, Contracted Services, Application, Solution, Solution Component, Software, System Software, plans, reports, data, and Updates.

LL. Party

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

MM. Processed Data

Means the Documents within the Content the Authorized User or an Application User uploads via the processed uploader functionality or created by the Application.

NN. Projects

The repositories created within a Database where Authorized Users and Application Users utilize the Application.

OO. 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)

PP. Receipt

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

QQ. Requirements

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

RR. Services

Any work performed or service provided by Supplier – including the design and development of software and modifications, software updates, solution, products, implementation, installation, maintenance, support, testing, training, or other provision of service – in meeting the Requirements and 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.

SS. Service-Generated Data

All data generated or derived from an Authorized User's and Application Users' interaction with and use of the Application, including data such as crash history, time the Application takes to load, configuration data, capacity, and usage to determine storage requirements. Service-Generated Data does not include Content.

TT. Software

The applicable Supplier hosted eDiscovery and document management solution provided by Supplier under the Contract or any order or SOW issued hereunder as a component(s) of any Deliverable or component of any Solution, and any subsequent modification of such eDiscovery

and document management solution, excluding Work Product. For COTS Software, "Software" means the programs and code, and any subsequent releases, provided by Supplier under this Contract as set forth in Exhibit A or as described on Supplier's US and International price lists in effect at time of Authorized User's placement of order or Statement of Work. If this Contract is for Software Maintenance, "Software" also includes the applicable Supplier hosted eDiscovery and document management solution provided by Supplier under the Contract or any order or SOW issued pursuant to the Contract in the form of Software Updates.

UU. Software Publisher

The third-party licensor of the Software, other than the Supplier, provided by Supplier under this Contract.

VV. Solution

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

WW. Statement of Work ("SOW")

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

XX. Storage Capacity

Means the minimum commitment storage amount that Authorized User purchases as stated in the applicable order or SOW.

YY. Storage Usage

Means the actual number of bytes of data the Authorized User uses on the Application, calculated on a monthly basis by the method set forth herein and the respective order or SOW.

ZZ. 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.

AAA. Subscription

The access and usage of the Application subject to this Contract and referenced in the applicable order or Statement of Work.

BBB. 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.

CCC. Supplier Personnel

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

DDD. Supplier Product

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

EEE. 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): <https://www.vita.virginia.gov/procurement/supplier-reporting/supplier-reporting-system-access/>, or any successor URL(s).

FFF. SWaM

Any entity certified by the Commonwealth's Department of Small Business and Supplier Diversity as a small, women-owned, minority-owned, or service disabled veteran-owned business, as

defined in Code §§ 2.2-2000.1 and 2.2-4310, or a certified micro business as defined in Executive Order Number 35 (2019).

GGG. 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.

HHH. Transition Period

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

III. Total Sales

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

JJJ. Update

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

KKK. VITA

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

LLL. Warranty Period

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

MMM. Web Site

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

NNN. 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 the Application, Documentation, Updates, configuration of software, nor does it include anything developed by Supplier prior to, or outside of, this Contract.

3. TERM AND TERMINATION

A. Contract Term

This Contract is effective and legally binding as of the Effective Date and, unless terminated as provided for in this section, will be effective and legally binding for a period of three (3) years ("Initial Term"). VITA, in its sole discretion, may renew this Contract for up to two (2) additional one (1) year renewal periods after the expiration of the Initial Term (collectively with the Initial Term, the "Contract Term"). VITA will issue a written notification to the Supplier stating VITA's intention to exercise a renewal period no less than 30 calendar days prior to the expiration of any current term. In addition, performance of an order or SOW issued during the Contract Term may survive the expiration of the Contract Term, in which case all contractual terms and conditions necessary for the operation of such order or SOW will remain in full force and effect until all of Supplier's obligations pursuant to such order or SOW have met the final Acceptance criteria of the applicable Authorized User.

B. Termination for Convenience

VITA may terminate this Contract, in whole or in part, at any time and for any reason upon not less than 30 calendar days prior written notice to Supplier. An Authorized User may terminate an order or SOW, in whole or in part, at any time and for any reason upon not less than 30 calendar

days prior written notice to Supplier. Any termination under this provision will not affect the rights and obligations attending any order or SOW outstanding at the termination date.

C. Termination for Breach

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

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

D. Termination for Non-Appropriation of Funds

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

E. Effect of Termination

Upon termination, neither the Commonwealth, nor VITA, nor any Authorized User will have any future liability except for Deliverables accepted by an Authorized User or Services (including any applicable Contracted Services and Maintenance Services) rendered by Supplier and accepted by the Authorized User prior to the termination date. If the Contract and the respective order or SOW terminates or expires, then: (A) all rights and access to the Contracted Services will terminate; and (B) Supplier will send Authorized User a final invoice (if applicable) for payment obligations under the applicable order or SOW.

In the event of a Termination for Breach, Supplier shall accept return of any Deliverable that was not accepted by the Authorized User, and Supplier shall refund any monies paid by any Authorized User for the unaccepted Deliverable. The Authorized User will also have the right, in its sole discretion, to return any accepted Deliverable and Supplier shall refund any monies paid for the accepted Deliverable, less a reasonable value for the use of those components.

F. Termination by Supplier

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

G. Transition of Services

At the request of an Authorized User prior to or upon expiration or termination of this Contract, Supplier shall provide all assistance as the Authorized User may reasonably require to transition the Supplier's contractual obligations, or any portion thereof, to any other supplier with whom the Authorized User contracts for provision of same. This Transition Period obligation may extend beyond expiration or termination of the Contract for a period of three (3) months, provided Customer continues its payment obligations to Supplier for such use. If this Contract includes Supplier's provision of licensed products, Supplier shall take no action to restrict or terminate the

use of such licensed products after the date of expiration or termination of the Contract or during any Transition Period, or both. Authorized Users shall pay for any applicable maintenance or Subscription fees during any Transition Period at the hourly rate or at a fee agreed upon by Supplier and the applicable Authorized User. Supplier shall provide all reasonable transition assistance, in accordance with the terms of this paragraph, requested by the applicable Authorized User to allow for the expired or terminated portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Services to Authorized User. The transition assistance will be deemed by the parties to be governed by the terms and conditions of this Contract, except for those terms or conditions that do not reasonably apply to transition assistance. Further, any Transition Period will not affect any Authorized User's rights in regards to any purchased Software perpetual licenses which are paid in full. Any such transition of services to be detailed in a mutually agreed upon Statement of Work.

H. Contract Kick-Off Meeting

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

I. Transition Out Plan

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

J. Contract Closeout

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

4. SUPPLIER PERSONNEL

A. Selection and Management of Supplier Personnel

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

B. Key Personnel

An order or SOW may designate certain of Supplier's personnel as "Key Personnel" or "Project Managers". Supplier's obligations with respect to Key Personnel and Project Managers will be described in the applicable order or SOW. Any changes to Key Personnel must be mutually

agreed to in writing by Supplier and Authorized User. Failure of Supplier to perform in accordance with such obligations may be deemed a breach of this Contract or of the applicable order or SOW.

C. Subcontractors

It is understood that Supplier may utilize subcontractors to provide integral components of the Contracted Services and Application; however, except for those so named at time of Contract award, Supplier shall not use new or replacement Subcontractors to perform or provide integral components of the Contracted Services or Application during performance of this Contract without advance written notification to and approval by VITA. For clarity, Supplier may appoint Sub-processors to process Authorized User Data in accordance with Exhibit K (Data Processing Addendum).

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. Related to the performance of this Contract, in no event may Supplier subcontract to any Subcontractor that is debarred by the Commonwealth or that owes back taxes to the Commonwealth and has not made arrangements with the Commonwealth for payment of such back taxes.

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

5. NEW TECHNOLOGY

A. Access to New Technology

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

B. New Services Offerings Not Available from Supplier

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

6. GENERAL WARRANTY

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

Supplier warrants and represents to VITA that Supplier will fulfill its contractual obligations, will not violate the Contract, and meet all needed Requirements as described in Exhibit A. Supplier warrants and represents to VITA that:

A. Ownership

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

B. Coverage Period

During the Warranty Period of ninety (90) calendar days, or as specified in the applicable order or SOW, Supplier warrants that any Deliverables provided by Supplier under this Contract will meet or exceed the Requirements. Supplier shall correct, at no additional cost to any Authorized User and to the extent practicable, all errors identified during the warranty period that result in supplier's failure to meet the Requirement, or its contractual obligations.

C. Performance Warranty

With respect to Supplier's performance under this Contract:

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

D. Documentation and Deliverables

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

E. Contracted Services, Application and Documentation

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

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

a user to understand and utilize fully the Application without reference to any other materials or information.

F. Privacy and Security

Supplier warrants that Supplier and its employees, subcontractors, partners and third party providers have taken all commercially reasonable measures to ensure that the Application, Contracted Services, Supplier Product, and any related deliverables do not include any degradation, known security vulnerabilities, or breach of privacy or security, that would have a reasonable likelihood of causing a breach of an Authorized User's Content. Supplier agrees to notify VITA of any occurrence of such breach without undue delay after discovery and provide VITA with fixes or upgrades for security vulnerabilities.

G. Access to Product and Passwords

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

H. Operating System and Software Supportability

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

I. Malicious Code

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

Notwithstanding any rights granted under this Contract or at law, Supplier waives, under any and all circumstances, any right it has or may have in the future to exercise its 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.

J. Open Source

Supplier will provide a list of all Open Source included in the Deliverables within thirty (30) days of the effective date of an order or SOW.

K. Supplier Viability

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

L. Supplier's Past Experience

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

7. RIGHTS TO WORK PRODUCT

Any rights to pre-existing work will be held, and all rights in, title to, and ownership of Work Product will vest, pursuant to the terms of the "Services Within the Commonwealth" section of this Contract below. Notwithstanding anything to the contrary contained in this Contract, the Parties do not contemplate that there will be any Work Product under this Contract.

A. Work Product

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

B. Ownership

All Work Product discovered, created, or developed under this Contract, or in the course of executing an order or SOW issued pursuant to this Contract, is and will 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 will have all rights with respect to any Work Product discovered, created or developed under this Contract, or any order 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 agrees that the provisions of this section will survive any termination of this Contract by VITA, or the termination of any order or SOW issued hereunder by an Authorized User. Supplier also agrees that in the event of a breach of this Contract by VITA or any Authorized User, Supplier's remedy will 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. Pre-existing Work

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

D. Return of Materials

Upon termination of this Contract or in the event Authorized User terminates any order or SOW issued pursuant to this Contract, Supplier shall promptly 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 possession, custody, or control.

8. SERVICES

A. Nature of Services and Engagement

This Contract is optional use and non-exclusive; all Authorized Users may, at their sole discretion, receive benefits from third party suppliers of services similar to, or in competition with, Services provided by Supplier.

VITA, in its sole discretion, may cancel any order or SOW resulting in a commitment of any individual Supplier Personnel for more than 1,000 hours of work during any six (6) month period or of any such individual Supplier Personnel for more than eight (8) months in any twelve (12) month period. Any order or SOW cancelled by VITA will no longer be binding on either Party, and all obligations with respect to the cancelled order or SOW shall expire.

9. ACCEPTANCE AND CURE PERIOD

A. Contracted Services Commencement Date

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

B. Contracted Services Acceptance Criteria

The Contracted Services shall be deemed accepted when the Authorized User reasonably determines that such Authorized User and its Application Users can successfully access and use all functionalities of the Application which Supplier is required to provide to such Users. Such Authorized User agrees to complete Acceptance testing within ten (10) business days after receiving written notice from Supplier of the ability of such Authorized User and its Application Users to access the Contracted Services, or within such other period as set forth in the applicable order or SOW. Supplier agrees to provide to such Authorized User such assistance and advice as such Authorized User may reasonably require, at no additional cost, during such Acceptance testing, other than pre-approved travel expenses incurred which will be reimbursable by such Authorized User at the then current per diem amounts set forth by the Virginia Department of Accounts and published at: <http://www.doa.virginia.gov/> or a successor URL(s). Authorized Users who are not public bodies may have their own per diem amounts applicable to Supplier's pre-approved travel expenses. Authorized User shall provide to Supplier written notice of Acceptance upon completion of successful Acceptance testing. Should Authorized User fail to provide Supplier written notice of successful or unsuccessful Acceptance testing within five (5) business days following the Acceptance testing period, the Service shall be deemed Accepted.

C. Contracted Services Cure Period

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

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

D. Services Acceptance Criteria

Service(s) will be deemed accepted when the Authorized User determines that the Service(s) meet(s) the Requirements set forth in the applicable order or SOW. Supplier shall ensure any

individual Deliverable functions properly with any other Deliverables provided pursuant to the order or SOW. 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.

Authorized User shall commence Acceptance testing within five (5) business days after Receipt of the Service, or within such other period as set forth in the applicable order or SOW. Acceptance testing will last no longer than fifteen (15) business days, unless otherwise agreed to in writing between Authorized User and Supplier, for each Deliverable, or for the first instance of each Service type set forth in Exhibit B. Supplier shall provide the Authorized User any assistance and advice as the Authorized User may reasonably require, at no additional cost, during Acceptance testing. Authorized User shall provide Supplier written notice of Acceptance upon completion of installation and successful Acceptance testing. In the event that the Authorized User fails to provide Supplier written notice of successful or unsuccessful Acceptance testing within five (5) business days following the Acceptance testing period, the Service will be deemed Accepted.

E. Services Cure Period

Supplier shall correct any non-conformities identified during Acceptance testing and re-submit the non-conforming Service for re-testing within seven (7) calendar days of Supplier's receipt of written notice of non-conformance, unless otherwise agreed to between the Authorized User and Supplier in the applicable order or SOW. 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 Service in its entirety, and any other Service(s) 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 Service with an equitable adjustment in the price to account for such deficiency; or
- iii. conditionally accept the applicable Service while reserving its right to revoke Acceptance if Supplier fails to make a timely correction.

Failure of a Service to meet, in all material respects, the Requirements after the second set of acceptance tests may constitute a breach by Supplier. In the event of such breach, the Authorized User may, at its sole discretion, terminate its order or SOW, in whole or in part, for the Services to be provided by Supplier.

10. APPLICATION AND CONTRACTED SERVICES SUPPORT

During the term of the Subscription, Supplier will provide Maintenance Services in accordance with the Supplier Technical Support Services Agreement under Exhibit I of this Contract. At any time during the term of any order or SOW issued pursuant to this Contract, Supplier shall provide the following TSS (including unlimited telephonic support and all necessary travel and labor) without additional charge to any Authorized User in order to ensure such Authorized User and its Application Users are able to access and use the Application in accordance with the Requirements. All Supplier support and maintenance will be performed by Supplier personnel and facilities within the continental United States.

A. Coverage

Please refer to Exhibit I.

B. Service Levels

Please refer to Exhibit I.

C. Application Evolution

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

11. SERVICE LEVELS AND REMEDIES FOR CLOUD SERVICES

A. Availability

The failure by Supplier to make the Contracted Services Available to Authorized User and its Application Users in accordance with Exhibit I – during the term of such Authorized User's order or SOW, will be deemed a service level default ("Service Level Default"). In the event of a Service Level Default, the Authorized User may obtain the non-exclusive remedies set forth in Exhibit I of this Contract. For purposes of this Contract, "Available" means that Authorized User and its Application Users are able to access all features and functions of the Application and Contracted Services required by Authorized User, including but not limited to the Application and Supplier Product.

Supplier shall issue a credit to an Authorized User for any downtime or period where the Contracted Services are not Available ("Service Level Credit") during any given month of the term of the applicable order or SOW in accordance with Exhibit I. Service Level Credits will be applied against the next invoice to the Authorized User. In the event Authorized User is eligible for a credit under this Section during any given month of the term of the applicable order or SOW, Authorized User may terminate the order or SOW without penalty upon written notice to Supplier and, in addition to the remedies available under this Section, receive any additional remedies set forth in the Contract.

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

B. Provisioning

An Authorized User may request an increase or decrease the scope (e.g. number of USERIDs) of Contracted Services ("revised usage"). Such revised usage may include incremental adds, access authorizations, moves or reductions, including disabled access updates, and shall, to the extent practicable, be completed promptly and without undue delay after receipt of the Authorized User's written request to Supplier. Such written request includes email or submission to Supplier's provisioning website from an Authorized User's designated Administrator. In the event that provisioning is not made available promptly and without undue delay after receipt of the request, a credit for the incremental amount of the revision shall be applied against the next invoice for 1/30th of the corresponding pro-rated amount.

C. Cloud Reporting Requirements

(i) Monthly Reports:

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

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

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

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

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

(ii) Quarterly Reports:

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

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

Supplier shall submit a copy of each report to VITA at: enterpriseservices@vita.virginia.gov.

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

D. Failure to Meet Service Level Commitments

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

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

E. Escalation Procedures

Please refer to Exhibit I.

12. CLOUD EXIT ASSISTANCE

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

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

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

13. RECORDS AND AUDIT

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

SOW(s). Supplier shall preserve such records for three (3) years after termination or completion of the Contract Services agreed to under this Contract, or any order or SOW issued hereunder.

14. DESCRIPTION OF CONTRACTED SERVICES

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

Supplier hereby grants each ordering Authorized User and its Application Users access and use of the Application during the term of the applicable order or SOW issued pursuant to this Contract. The fee for the rights shall be as set forth in Exhibit B, and shall apply regardless of access mode. Any such access granted will be held pursuant to the provisions of the "Services Within the Commonwealth" section of this Contract below.

Notwithstanding any other provision which may be issued by Supplier after the Effective Date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of an order or SOW for Contracted Services, including access to the Application(s), or the fact that such other agreement may be presented to an Authorized User or its Application Users at the time of accessing the Application(s) ("click wrap"), the terms and conditions set forth herein in this Contract and any amendments or modifications thereto shall supersede and govern the use of the Application and all products and services hereunder. Supplier agrees that Authorized Users under this Contract will not need to agree to any license agreement or terms separate from, or in addition to, the terms and conditions this Contract.

15. SUPPLIER RESPONSIBILITIES

A. Standard Application Responsibilities

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

- i. Supplier shall maintain sufficient hardware capacity to satisfy the technical requirements and the bandwidth and required storage capacity indicated in Exhibit A.
- ii. Supplier shall be responsible for all telecommunication connections from the server hosting the Application to the Internet.
- iii. Supplier may collect Service-Generated Data to provide the Contracted Services ordered by an Authorized User. No information regarding any Authorized User or any Application User shall be disclosed, provided, rented or sold to any third party for any reason unless required by law or regulation or by an order of a court of competent jurisdiction. This obligation will extend beyond the Contract Term.
- iv. The Contracted Services will be made available to Authorized User and/or designated Application Users, as specified in the applicable order or SOW, twenty-four (24) hours a day, seven (7) days a week ("Uptime") less Excusable Downtime. For the purposes of this Contract, "Excusable Downtime" is defined as that period of time when the Contracted Services are not available to Authorized User or its Application Users due to scheduled network, hardware or service maintenance and/or upgrades. Except in cases of emergency, Authorized User shall be provided a written notification via alert on the Service or email of such maintenance and/or upgrade. In cases of emergency, Supplier will use its best efforts to notify Authorized User of a planned Downtime as soon as practicable. Maintenance or upgrades are not to exceed (excluding time provided in cases of emergency maintenance) thirty-six (36) hours in duration in a single month and cannot occur Monday through Friday, between the hours of 6:00 a.m. and 8:00 p.m. Eastern Time.
- v. Excusable Downtime shall not include (a) an electronic hardware failure; (b) a failure in the Supplier's Application; (c) an electric utility failure at Supplier's facility where the Application is

hosted; or (d) a network failure up to, but not including, the interconnection point of Supplier's network to the public switched telephone network.

vi. Supplier guarantees the Application will be available for use in accordance with Exhibit I, excluding Excusable Downtime.

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

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

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

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

xi. Application to be configured to meet SEC 525 AC-2; integration with SSO Solution prior to project onset. Vendor/Supplier agrees to meet SEC 525 RA-5 requirements for scanning by project onset. Vendor/Supplier agrees to meet SEC 525 MA-5-COV requirements for support personnel.

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

B. Ancillary Responsibilities

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

16. AUTHORIZED USER RESPONSIBILITIES

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

Authorized User is responsible for managing the Application Users on its account on the Application. Authorized User is solely in control of the individual permissions on its accounts, Databases, and Projects.

If Authorized User issues access to the Application to an Application User:

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

b). Authorized User shall have the right to add, activate, change access for, or disable Application Users at its sole discretion. Authorized User shall designate Administrators who will be authorized to add, activate, change access for or disable Application Users. Authorized User must suspend an Application User's access to the Application if Authorized User or Supplier reasonably determines that: (A) Application User's use of the Application disrupts or creates a security risk to the Application or Supplier systems; or (B) Application User is using the Application in violation of any applicable law or regulation, Section 35 (Acceptable Use Policy). If Supplier detects any Application User's violation or suspected violation of Section 35 or the Contract, Supplier will use commercially reasonable efforts to notify Authorized User by sending an email to the Authorized User's email address noted in the applicable SOW. Supplier reserves the right to suspend Authorized User's access to the Application for any of the reasons stated in (A) or (B) above.

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

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

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

17. CONTENT PRIVACY AND SECURITY

Supplier shall provide a secure environment for Content and any hardware and software, including servers, network and data components provided by Supplier as part of its performance under this Contract. To the extent that Authorized User's Content are subject to European Data Protection Laws and/or Non-European Data Protection Laws (as defined in the DPA located at Exhibit K) and are processed by Supplier on Authorized User's behalf in connection with the Contracted Services, Supplier and Authorized User agree to the terms of the DPA. Supplier shall provide a secure environment for Content and any hardware and software in accordance with VITA's Security Standards located at: <https://www.vita.virginia.gov/it-governance/itrm-policies-standards/> in order to prevent unauthorized access to and use or modification of, and to protect, the Application and Content. Supplier agrees that all Content of Authorized Users is intended solely for the business of the Authorized Users and is considered private data. Therefore, Supplier shall, at a minimum, implement the following procedures designed to protect the privacy and security of Content:

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

ii. Supplier shall ensure that all personnel with physical or logical access to Content will receive industry standard annual security awareness training and all other training as required by Content owner, Commonwealth security standards, regulation, or law.

iii. Supplier shall ensure that the Application and/or Contracted Services are capable of auditing the following events. Successful and unsuccessful account logon events, account management events, object access, policy change, privilege functions, process tracking, and system events.

iv. Supplier shall ensure that the Application and/or Contracted Services are capable of auditing the following events, for Web applications. All administrator activity, authentication checks, authorization checks, data deletions, data access, data changes, and permission changes.

v. Supplier shall ensure that the Application and/or Contracted Services employs automated mechanisms to centrally review, analyze and correlate audit and log records from multiple components of the Application and/or Contracted Services to support organizational processes for investigation, alerting and response to suspicious activities.

vi. Supplier shall ensure that the Application and/or Contracted Services support exporting of log files to the Commonwealth for review and analysis.

vii. Supplier shall ensure that the Application and/or Contracted Services are capable of maintaining all audit records in accordance with Commonwealth record retention policies found at the following URL. <http://www.lva.virginia.gov/agencies/records/>

viii. Provide evidence of a comprehensive continuous monitoring program encompassing all systems with access to Content.

ix. Provide evidence that the Application and/or Contracted Services adhere to a security baseline, which is based on least functionality.

x. Supplier shall ensure that all changes to proposed Application and/or Contracted Services are authorized according to change management policies.

xi. Supplier agrees to maintain all metadata associated with any original Content submitted into the Application by the Authorized User for easy retrieval and access, using secure industry standard protocols, within a predefined period as specified in the Authorized User's Statement of Work.

xii. Supplier agrees to provide a secure method of exporting Content when requested.

xiii. Supplier shall ensure that the Content exported from the supplier's Application or infrastructure is in an industry standard format that provides for interoperability and portability.

xiv. Supplier shall ensure that the Application and/or Contracted Services provide and maintain a backup of Content that can be recovered in an orderly and timely manner within a predefined frequency consistent with Supplier's recovery time and recovery point objectives, as specified in the Authorized User's SOW.

xv. Supplier shall ensure that the Application and/or Contracted Services can store a backup of Content, at least daily, in an off-site "hardened" facility, located within the continental United States, maintaining the security of the Content.

xvi. Implement a contingency plan designed to maintain the access to the Application and/or Contracted Services and to prevent the unintended destruction or loss of Content. This plan should provide a predefined frequency, consistent with Supplier's recovery time and recovery point objectives, as specified in the Authorized User's Statement of Work, for disaster recovery and archival purposes of Content at a secure facility located within the continental United States.

xvii. Supplier shall partition, in aggregate for this contract, all Content submitted into the Application and/or Contracted Services by the Authorized User in such a manner that it will not be impacted or forfeited due to E-discovery, search and seizure or other actions by third parties obtaining or attempting to obtain records, information or Content for reasons or activities that are not directly related to the business of the Authorized User.

xviii. Service must support multi-factor authentication for access to any administrative portal and/or any remote administrative interface.

xix. Supplier shall fully cooperate with Commonwealth incident response resources and all required law enforcement personnel for assistance in the handling and reporting of security incidents.

xx. Supplier shall maintain an incident response program that implements incident handling for security incidents that includes preparation, detection and analysis, containment, eradication, and recovery processes.

xxi. Incident response must have the capability to support automated mechanisms for supporting incident handling processes.

xxii. Supplier ensures that all Content is removed or destroyed in accordance with and/or exceeding the requirements of the Commonwealth Data Removal standard located at the following URL. <https://www.vita.virginia.gov/it-governance/itrm-policies-standards/>

xxiii. Supplier shall support physical security measures, including securing all Content on a secure server, in locked data cabinets within a secure facility located within the continental United States.

xxiv. Supplier shall ensure that access to facilities housing Content or supporting applications are restricted to only allow access to Supplier's personnel and agents who have a need to know in connection with operation and support of the Application and/or Contracted Services.

xxv. Supplier shall ensure that notification is sent to Authorized Users in writing 30 days prior to its intention to replace or add any third-party that will be provided access to Content whether that access is provided by Supplier or Supplier's subcontractors. The Authorized Users may reject any additional or new third parties who may be provided access to Content.

xxvi. Supplier shall ensure that the Application and/or Contracted Services operating systems, middleware, applications, and interfaces will be scanned for vulnerabilities every 30 days and scanning reports be provided to Authorized Users as required by Commonwealth security standards.

xxvii. Supplier shall cooperate with the Commonwealth to allow monthly vulnerability scans against all public-facing interfaces with access to Commonwealth data.

xxviii. Application and/or Contracted Services must have the capability to set affinity on tiered systems. Supplier ensures that no one hypervisor can host the application and the data storage.

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

xxx. Supplier shall report the geographic location of all Commonwealth data at all times if that Content is not stored in a Commonwealth facility. Supplier shall provide a report to confirm the designated region used by the hosting party of any Content not stored in a Commonwealth facility every 30 days.

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

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

xxxiii. Supplier understands that VITA or a third-party audit organization is responsible for performing a security audit within 90 days after contract award to determine control gaps between the supplied audit and the Hosted Environment Information Security Standard (SEC525). If no audit is supplied, a complete security controls audit utilizing SEC525 must be performed. Failure to do so may result in remedies being levied as provided in the terms and conditions of the Contract.

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

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

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

Commonwealth. Supplier shall ensure that the Application will provide for the Commonwealth to maintain exclusive control of all encryption keying material.

xxxvii. Supplier shall ensure, to the extent practicable, that they will apply all security updates to their systems as required by Commonwealth security standards. For third-party hosted systems, updates should be installed in compliance with SEC 525, "Hosted Environment Information Security Standard". This information is located under "Information Security Standards" at: <https://www.vita.virginia.gov/it-governance/itrm-policies-standards/>

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

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

xl. Within 15 business days after the expiration or termination of this Contract, Supplier shall confirm in writing to Authorized Users and VITA that all Content has been removed from all systems where the Content resided during performance of this Contract in a manner that complies with and/or exceeds SEC514, "Removal of Commonwealth Data from Electronic Media Standard". This standard is located at the following URL: <https://www.vita.virginia.gov/it-governance/itrm-policies-standards/>. The written confirmation shall include (a) sufficient detail describing the processes and procedures used in removing the Content, (b) information about the locations of where it was removed from within the Application and storage and other locations, and (c) the date the removals were performed. All metadata, in its original form, shall be returned to the respective Authorized User(s).

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

xl. Regular testing of the systems and procedures outlined in this "Content Privacy and Security" section; and

xl. Audit controls that record and monitor Application and Contracted Services activity continuously.

xli. Supplier agrees to provide written notice within 48 hours to VITA of all incidents that threaten the security of the Commonwealth's Content and/or VITA's use of the Contracted Services. This notice is required to allow the Commonwealth to commence any necessary internal actions to remediate such incident, which may include a temporary suspension of use of the Contracted Services by Authorized Users, as directed by the CIO. If a suspension of use becomes necessary, the Supplier further agrees not to impose any penalty on the Commonwealth.

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

18. PROPRIETARY RIGHTS

A. Supplier's Proprietary Rights

Except as otherwise stated herein, the Contracted Services (including without limitation, the changes, derivatives, Application and Updates, and Supplier Product, except to the extent that

Supplier Product contains Content) and Documentation are the sole and exclusive property of Supplier. All modifications, enhancements, Updates, and translations of the Contracted Services shall be deemed a part thereof.

B. Feedback

Authorized User and Application Users may provide Feedback to Supplier. Supplier and its Affiliates may use that Feedback without restriction and without obligation to Authorized User or Application Users.

C. Subscriptions

Supplier and Authorized User may enter into one or more order or SOWs referencing this Contract, under which Authorized User may purchase a Subscription. During the term of a Subscription, Supplier will provide Authorized User and Application Users with non-exclusive access to the Application. Authorized User and Application Users may use the Application solely for Authorized User's own internal business purposes.

D. Third Party Services

If Authorized User or Application User chooses to use any optional, non-core third party services contained within the Application or in combination with the Application, Supplier will not be responsible for the delivery, quality, or timeliness of such third party services.

E. Authorized User Requirements and Contracted Services Restrictions

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

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

ii. Authorized User shall not (A) reverse engineer, decompile, disassemble, or otherwise attempt to derive source code or other trade secrets from any of the software comprising or in any way making up a part of the Application; (B) transmit, store, or process data that falls within the definition of "Protected Health Information" under HIPAA except as permitted by an executed HIPAA Business Associate Agreement which will be part of the applicable order or SOW; or (C) violate the Contract.

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

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

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

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

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

viii. Authorized User shall take reasonable care not to, and shall not intentionally or knowingly, use the Application to post, transmit, distribute, store or destroy any information: (i) in violation of

any applicable law, statute, ordinance or regulation; (ii) in a manner that shall infringe the intellectual property rights of others; (iii) that is defamatory or trade libelous, or (iv) that contains any Computer Viruses;

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

F. Authorized User Proprietary Rights

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

19. CLOUD SERVICES ESCROW AGREEMENT

A. Application Escrow Agreement

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

B. Content Escrow Agreement

Should Supplier cease to do business, file bankruptcy, or cease to provide Contracted Services to Authorized User for a reason other than expiration or termination under this Contract, Supplier shall promptly make all Authorized User Content available to Authorized User as a native database export provided through Supplier's FTP server.

20. FEES, ORDERING, AND PAYMENT PROCEDURE

A. Fees and Charges

In consideration for the Supplier's performance obligations under this Contract, an Authorized User shall pay Supplier the fee(s) owed pursuant to the schedule of fees and charges as set forth on Exhibit B attached to this Contract. Supplier will only be entitled to those fees owed for Supplier's performance obligations and any additional Services provided to an Authorized User in accordance with the scope of this Contract and the Requirements, as authorized by Exhibit A, and per the Authorized User's order or SOW. The fees, and any associated discounts, will be applicable throughout the Contract Term unless modified pursuant to the terms and conditions below.

In the event the fees or discounts apply for any period less than the entire Term, Supplier agrees that it will not request an increase in the fees during the first twelve (12) month period following the Effective Date and will not request an increase in the fees more than once in any subsequent twelve (12) month period thereafter. Beginning 12 months after the Effective Date, Supplier may request in writing an adjustment to the prices set forth in Exhibit B to this Contract. Supplier and VITA will work in good faith to agree on an appropriate change in pricing. Supplier must submit any change in price in writing to an Authorized User if the change impacts any order or SOW and in accordance with the above and will not become effective for 60 calendar days thereafter. Supplier agrees to offer price reductions to ensure compliance with the "Competitive Pricing" section of this Contract below.

B. Reproduction Rights for Supplier Provided Software

At an Authorized User's request and to the extent practicable, Supplier shall provide the Authorized User with a reproducible, portable data storage device (e.g. CD-ROM or USB flash

drive) of Software and Updates. The Authorized User will be responsible for making copies and distributing the Software and Updates as required. Within 30 calendar days of the end of each calendar quarter, the Authorized User shall provide to Supplier a report of the net number of additional copies of the Software or Updates or both deployed during the quarter. Supplier will invoice such Authorized User for the net number of new accounts reported as deployed.

C. Demonstration and/or Evaluation

If the Supplier's contractual obligations include the provision of a Solution, an Application and Contracted Services, or Software-as-a-Service, at the request of any Authorized User, then Supplier shall perform any reasonable demonstration of its Solution, Application and Contracted Services, or Software-as-a Service at the Authorized User's location or by other mutually agreeable means, such as through video conferencing, and at no charge.

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

D. Competitive Request for Quotes

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

E. Ordering

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

All Authorized Users have the right to purchase Supplier's Services under this Contract, but have no obligation to purchase or license from Supplier any of Supplier's Services. This Contract is optional use and non-exclusive, and all Authorized Users may, at their sole discretion, purchase, license or otherwise receive benefits from third party suppliers of products and services similar to, or in competition with, the Services provided by Supplier.

Supplier shall accept any order or SOW placed by an Authorized User through the Commonwealth's electronic procurement website portal, eVA (<http://www.eva.virginia.gov/>). Agencies, as defined by Code § 2.2-2006, and legislative, judicial, and independent agencies of the Commonwealth, must order through eVA. All other Authorized Users are encouraged to order through eVA, but may order through the following means:

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

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.

F. Statement of Work

A SOW, in the format provided for in Exhibit C attached to this Contract, is required for any orders placed by an Authorized User pursuant to this Contract. Any such SOW requires the mutual written agreement of Supplier and Authorized User. Subject to obtaining the parties mutual written agreement in an SOW, Supplier shall perform any and all contractual obligations at the times and locations set forth in the applicable SOW and at the rates set forth in Exhibit B to this Contract. All SOWs will be of a fixed price type unless VITA issues a written authorization for a time and materials type SOW. The fixed price SOWs may, with the written approval of VITA, contain a cost-reimbursable line item(s) for pre-approved travel expenses pursuant to the provisions of the "Reimbursement of Expenses" subsection below. If a time and materials type SOW is authorized, Supplier Personnel shall maintain daily time records of hours and tasks performed that must be submitted or made available for inspection by the Authorized User upon 48 hours advance written notice.

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

G. Supplier Fee Terms

- i. **Fees.** Fees for access to the Contracted Services are based on the Authorized User's Storage Usage. The Storage Usage is calculated monthly by: (A) summing the number of bytes of data that the Authorized User has on each of its Databases; and (B) rounding the total sum of the number of bytes to the nearest whole gigabyte. Database storage values will be calculated by summing: (A) the peak Native Data usage for the month; and (B) the peak Processed Data usage for the month. Should the data on any respective Database be less than 1 GB, the amount of data will be rounded up to 1 GB if the Authorized User places any data on the Application.
- ii. **Billing.** The Subscription comes with a fixed Annual Minimum Commitment with an Annual Fee. The first installment of the Annual Fee is billed at the beginning of the second full calendar month following the start date of the respective order or SOW and subsequent installments billed monthly, and Storage Usage in excess of the Annual Minimum Commitment in a given calendar month will be calculated monthly and billed monthly in arrears at the Monthly Unit Price (or the respective tiered Monthly Unit Price rate above the Annual Minimum Commitment) described in the respective order or SOW.
- iii. **Early Case Assessment Subscription.** Authorized User may place Content in an early case assessment Project with limited feature functionality ("**ECA**") to promote Content to one or more review Projects ("**Active Review**"). Content uploaded to an ECA Project undergo the full ingestion process (including PDF imaging, OCR and audio transcription) and can be searched for and visualized. However, annotation, machine learning, and story-building features are not available. Content can be transferred from an ECA Project to one or more Active Review Projects anytime at Authorized User's discretion. Any ECA Project will be billed at the ECA rate described in the respective order or SOW and any Active Review Project will be billed at the Active Data rate described in the respective order or SOW. If a Document in a Database is only in an ECA Project, it will be billed on the Monthly Unit Price for ECA Data described in the respective order or SOW. If a Document is in at least one Project in an ECA Database, it will only be billed on the active Monthly Unit Price for Active Data and contribute to the peak active size for the month. No Document will ever be billed on both the Monthly Unit Price for ECA Data and the Monthly Unit Price for Active Data at the same time.
- iv. **Suspended Mode.** Authorized User may place Projects in suspended mode, with no Customer access, at any time ("**Suspended Mode**"). If Authorized User chooses to place an entire Database, including all of its Projects, in Suspended Mode for an entire calendar month, only then will Authorized User be billed the reduced Monthly Unit Price for Suspended Data described in the respective order or SOW. Unless suspended before the first day of the respective calendar month, any Database in Suspended Mode for a partial month will be billed at the respective Monthly Unit Price for Active Data or Monthly Unit Price for ECA Data described in the respective order or SOW. Should the data which is not in Suspended Mode

used in a month be less than the Minimum Commitment in a given month, the Suspended Data Rate will only be billed for the amount by which it exceeds the value of the unused Minimum Commitment.

- v. **Case Deletion.** Any Projects that remain on the Application during any portion of a calendar month will be included in Authorized User's Storage Usage totals and respective overage charges for such month, regardless of when such Project is deleted.

H. Invoice Procedures

Supplier shall remit each invoice to the "bill-to" address provided with the order promptly after all Supplier's performance obligations have been accepted and in accordance with the milestone payment schedule, if any, in the applicable order or SOW. Payment for any support services, as authorized in the Contract and the Authorized User's applicable order or SOW, will be annually in arrears unless otherwise stated in this Contract, or in any order or SOW referencing this Contract. Payment for invoices is due within 30 days of the date of any non-disputed portions of the invoice. No invoice may include any costs other than those identified in the signed order or SOW, and those costs must be in accordance with the schedule of fees listed on Exhibit B. Without limiting the foregoing, all shipping costs are the Supplier's responsibility except to the extent shipping charges are identified in Exhibit B and noted in any signed order or SOW referencing this Contract. Supplier shall issue invoices that identify, at a minimum:

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

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

I. Purchase Payment Terms

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

J. Reimbursement of Expenses

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

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

K. Disputed Charges

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

21. 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, and on the templates set forth on the "Supplier & Vendor Reporting Requirements" webpage located at the following URL: <https://www.vita.virginia.gov/procurement/supplier-reporting/supplier--vendor-reporting-requirements/>, 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 & Vendor Reporting Requirements" webpage located at: <https://www.vita.virginia.gov/procurement/supplier-reporting/supplier--vendor-reporting-requirements/>. The monthly report of Total Sales must include these fees and percentages:

- IFA: 2% of monthly sales

B. Small Business Procurement and Subcontracting Spend

Supplier shall provide to VITA a report of monthly subcontracting spend data. This data must include Supplier's total spend to all Subcontractors who provide direct performance for obligations under this Contract. Supplier's monthly subcontracting spend data must be submitted via the SRS webpage located at: <https://www.vita.virginia.gov/procurement/supplier-reporting/supplier-reporting-system-access/>.

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

22. SUPPLIER PERFORMANCE MEASURES

Supplier has developed a set of performance measures relating to Supplier's performance under this Contract and which are attached hereto and incorporated by reference as Exhibit I. Supplier agrees to be bound by and perform its obligations under this Contract pursuant to these performance measures. The remedies for Supplier's failure to meet the performance measures are set forth in Exhibit I.

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 performance measures data and mutually agreed-to incentives and remedies. Supplier agrees to provide to VITA a report of its performance against the performance measures no less than once every six (6) months throughout the Contract Term. Supplier's report must include a comparison of its performance measures against the agreed-to targets and, in the event of any shortfall by Supplier, proposed remediation measures. Supplier will report its performance for the Contract in aggregate and for each order or SOW over \$1,000,000 for applicable Authorized Users. Any instances of Supplier non-compliance will be recorded in Supplier's Contract file and shared with Contract stakeholders. Supplier further agrees that any degradation or failure of Supplier's performance obligations may result in failure to renew the Contract, termination for convenience of the Contract or termination for breach of the Contract. VITA will have all rights and remedies available at law.

23. STATUS MEETINGS

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

24. STEERING COMMITTEE

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

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

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

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

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

25. POLICIES AND PROCEDURES GUIDE

Within 30 calendar days of the Effective Date of the Contract, Supplier may provide VITA a policy and procedures guide that describes how the Supplier and VITA will work together and how performance, including Deliverables and Services, is to be measured. The guide will provide process diagram details, working activities, and interface points with VITA and Supplier deliverables. Updated versions of the guide will be provided by Supplier to VITA and all Authorized Users every six (6) months during the Term, including any extensions, of the Contract.

26. TRAINING AND DOCUMENTATION

A. Training

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

B. Documentation

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

27. RESERVED

28. COMPETITIVE PRICING

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

29. CONFIDENTIALITY

A. Treatment and Protection

Each Party shall:

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

An Authorized User may, however, disclose the Confidential Information as delivered by Supplier to subcontractors, contractors, or agents of the Authorized User that are bound by non-disclosure agreements with the Authorized User. Each Party shall take the same measures to protect against the disclosure or misuse of the Confidential Information as it takes to protect its own

proprietary or confidential information, but in no event will such measures be less than reasonable care.

B. Return or Destruction

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

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

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

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

C. Confidentiality Statement

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

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 Protected Health Information ("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.

30. 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 products or services;
- iv. any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Supplier-provided products or services; or
- v. any Claims by any Subcontractor resulting from Supplier's failure to pay such Subcontractor.

With respect to Sections 6(E)(ii) and 30, Supplier shall have no indemnity obligation or other liability if such third-party Claims arise from: (A) Authorized User's negligence, breach of the Contract, or an Application User's violation of the Supplier's AUP in Exhibit F; (B) combination of the Application or Contracted Services with any materials, products, or services not provided by Supplier (excluding Content or any Authorized User provided data); or (C) third-party components, products, or services.

B. Defense Claims

Supplier will be solely responsible for all costs and expenses associated with the defense of all third-party Claims against Commonwealth Indemnified Parties. Selection and approval of counsel, and approval of any settlement, shall be accomplished in accordance with all applicable laws, rules, and regulations. For state agencies, the applicable laws include §§ 2.2-510 and 2.2-514 of the Code.

C. Duty to Replace or Reimburse

In the event of a Claim pursuant to any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Supplier-provided products or services, or Supplier's performance, Supplier shall, at its expense and option, either (a) procure the right to continue use of such infringing products or services, or any components thereof; or (b) replace or modify the infringing products or services, or any components thereof, with non-infringing products or services satisfactory to VITA.

In the event that an Authorized User cannot use the affected Deliverable, Contracted Services, or Services, including any Components, then Supplier shall reimburse such Authorized User for the reasonable costs incurred by such Authorized User in obtaining an alternative product or service, subject to Section 31 (Liability) of this Contract.

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. Neither party will settle any claim without the other party's written consent, not to be unreasonably withheld or delayed.

31. LIABILITY

A. Supplier Liability

Supplier agrees that it is fully responsible for all acts and omissions of all Supplier Personnel, including their negligence or willful misconduct.

Except for liability arising from any combination of:

- i. any intentional or willful misconduct, fraud, or recklessness of Supplier or any Supplier Personnel; or
- ii. 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 value of the Contract. This limitation will apply on a per-incident basis; it being understood that multiple losses stemming from the same root cause constitute a single incident.

B. Limitation of Liability

Neither Party will be liable to the other Party for any indirect, incidental, consequential, or punitive damages, including (without limitation) loss of profit, income, or savings, even if advised of the possibility of these damages.

32. INSURANCE

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

Errors and omissions insurance coverage in the amount of \$5,000,000 per occurrence; and

Cyber Security Liability insurance coverage in the amount of \$5,000,000 per occurrence.

33. SECURITY COMPLIANCE

Supplier shall comply with, where applicable, all provisions of the then-current Commonwealth security policies, standards, and guidelines published by VITA and which may be found at: <https://www.vita.virginia.gov/policy--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 48 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.

VITA reserves the right to review Supplier's information security program prior to the commencement of Contracted Services and at least once annually during the Term of this Contract. During the performance of the Contracted Services, and on an annual basis, VITA will be entitled, at its own expense, to perform, or to have performed (which will be conducted at a mutually agreeable time and place, such agreement not to be unreasonably withheld), an on-site audit of Supplier's information security program. In lieu of an on-site audit, upon request by VITA, Supplier shall implement any reasonably required safeguards as identified by any program audit. For clarity, Authorized User's additional audit rights with respect to Authorized User Data will be governed by Exhibit K (Data Processing Addendum).

34. 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.

35. ACCEPTABLE USE POLICY

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

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

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

- iii. Reserved.

36. THIRD PARTY TERMS AND CONDITIONS

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

37. BANKRUPTCY

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

38. GENERAL PROVISIONS

A. Relationship Between VITA and Authorized User and Supplier

Supplier has no authority to contract for, bind or commit to any agreement of any kind, or to assume any liabilities of any nature in the name of or on behalf of VITA or any Authorized User. Under no circumstances will Supplier, or any Supplier Personnel, hold itself out as or be considered an agent or an employee of VITA or any Authorized User, and neither VITA nor any Authorized User will have any duty to provide or maintain any insurance or other employee benefits on behalf of Supplier or any Supplier Personnel. Supplier represents and warrants that it

is an independent contractor for purposes of federal, state, and local employment taxes, and agrees that neither VITA nor any Authorized User is responsible to collect or withhold for Supplier any federal, state, or local employment taxes, including, but not limited to, income tax withholding and social security contributions. Supplier shall pay or withhold any and all taxes, interest or penalties (including, but not limited to, any federal, state, or local withholding or employment taxes, and any penalties related to health care or employee benefits laws) that are imposed, assessed, or levied as a result of this Contract or Services performed pursuant to this Contract. Supplier shall reimburse VITA or any Authorized User in the event that any taxes, interest or penalties are assessed against and paid by VITA or any Authorized User as a result of this Contract.

B. Services Within the Commonwealth

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

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

C. Incorporated Contractual Provisions

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

- "Core Contractual Terms"; and
- "Required eVA Terms and Conditions".

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/contracts/mandatory-contract-terms/>.

Supplier agrees that non-compliance with the above-referenced Mandatory Contract Terms may be deemed, solely by VITA, as a material breach of the applicable Order or SOW or of the Contract.

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, or adoption of revised eVA business requirements. If a change is made to any of the Mandatory Contract Terms documents, a new effective date will be noted in the applicable document title. Supplier is advised to check the URLs, or their successors, periodically.

D. Compliance with the Federal Lobbying Act

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

E. Ethics in Public Contracting

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

F. Governing Law

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

G. Dispute Resolution

In accordance with Code § 2.2-4363, contractual claims, whether for money or other relief, must be submitted in writing to the public body from whom the relief is sought no later than 60 calendar days after final payment; however, written notice of the Supplier's intention to file such claim must be given to such public body at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims will not delay payment of amounts agreed due in the final payment. The relevant public body shall render a final decision in writing within 30 calendar days after its receipt of the Supplier's written claim.

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

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

H. Assignment

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

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

I. Severability

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

J. Survival

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

K. Force Majeure

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

addition an Authorized User may terminate any order or SOW affected by such postponement or delay.

L. No Waiver

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

M. Remedies

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

N. Right to Audit

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

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

In no event will Supplier have the right to audit, or require to have audited, VITA or any Authorized User. For clarity, Authorized User's additional audit right with respect to Supplier's compliance with Exhibit K (Data Processing Addendum) will be governed by the terms in Exhibit K.

O. Taxes

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

P. Currency

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

Q. Non-Disparagement

Each Party agrees that it shall not engage in any conduct or pattern of conduct that involves the making or publishing of written or oral statements or remarks (including without limitations, the repetition or distribution of derogatory rumors, allegations, negative reports or comments) which are disparaging, deleterious or damaging to the integrity, reputation or good name of any other Party or the Party's affiliates, employees, agents, contractors, or subcontractors. This section will not be construed to prevent a Party from responding publicly to incorrect public statements or from making truthful statements when required by subpoena, court order, or otherwise required by law.

R. 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.

S. Notices

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

- i. To VITA and to Supplier, if Supplier is incorporated or formed pursuant to the laws of the Commonwealth, to the addresses shown on the signature page.

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

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

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

T. Offers of Employment

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

U. Contract Administration

Supplier agrees that at all times during the Contract Term 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.

V. 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.

W. Entire Contract

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

Exhibit A – Requirements

Exhibit B – Pricing

Exhibit C – Statement of Work (SOW) Template

Exhibit D – Change Order Template

Exhibit E – Reserved

Exhibit F – Acceptable Use Policy

Exhibit G – Certification Regarding Lobbying

Exhibit H – Supplier Procurement and Subcontracting Plan

Exhibit I – Supplier Performance Measures

Exhibit J – Reserved

Exhibit K – Data Processing Addendum

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

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

X. Order of Precedence

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

Y. Counterparts and Electronic Signatures

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

Z. Opportunity to Review


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

[SIGNATURE PAGE(S) TO FOLLOW]

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

SUPPLIER

**VITA, on behalf of the
COMMONWEALTH OF VIRGINIA**

By: 
(Signature)

By: **Robert Osmond**
(Signature)

Name: **Joshua Buckler**
(Print)

Name: **Robert Osmond**
(Print)

Title: **SVP of Sales**

Title: 

Date: **11/28/2022**

Date: **12/6/2022**

Address for Notice:

Address for Notice:

Attention: Supplier Contact

Attention: Contract Administrator