

# Information Technology RFP Contract

between

The Virginia Information Technologies Agency

on behalf of

The Commonwealth of Virginia

and

Mid-Atlantic

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

# INFORMATION TECHNOLOGY RFP CONTRACT

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## INFORMATION TECHNOLOGY RFP CONTRACT

THIS INFORMATION TECHNOLOGY RFP 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 Mid-Atlantic Installers, Inc T/A Mid-Atlantic Technology Services ("**Supplier**"), headquartered at 12674 Patrick Henry Drive, Newport News, Virginia 23602 to be effective as of April 27, 2023 ("**Effective Date**").

### 1. PURPOSE AND SCOPE

VITA, on behalf of the Commonwealth, is seeking a Solution that will provide Public Safety Video Products and Services that includes video camera systems including in-car and body worn cameras, automated license plate readers, interview/ interrogation room video recording systems, government secure digital storage, related software enhancements and warranty/maintenance services. This Contract sets forth the terms and conditions under which Supplier shall provide Public Safety Video Products and Services. 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. Application

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

#### C. Application User

Application User(s) include employees of an Authorized User, independent contractors engaged by an Authorized User, or entities contracting with an Authorized User for services, as specified in the applicable order or SOW. Application User(s) also include customers, suppliers, members of the general public, 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.

#### D. Content

Any data, including the selection, arrangement and organization of such data, entered, uploaded to the Application, or otherwise provided to Supplier by Authorized User or by any Application User; and any software and related documentation, from whatever source, provided by Authorized User or Application User to Supplier in connection with this Contract.

#### E. Licensed 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 B or as described in any Statement of Work or order issued hereunder.

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

data, 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. Contract**

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

**R. Contractor**

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

**S. Deliverable**

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

**T. Documentation**

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

**U. Effective Date**

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

**V. 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.

**W. Federal Tax Information ("FTI")**

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

confidence and in connection with the provision of health services to the individual. (Code § 32.1-127.1:03)

**X. Industrial Funding Adjustment ("IFA")**

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

**Y. Inventory Record**

A record of all units of Product covered under warranty or maintenance by type, quantity, and location, including the end date for each unit's warranty period or maintenance term, as applicable.

**Z. Maintenance Coverage Period ("MCP")**

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

**AA. 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 B to this Contract or as defined in any Statement of Work or order issued pursuant to this Contract. The actual Maintenance Level for a unit of Software or Product will be set forth in the signed order or Statement of Work for Maintenance Services of that Software or Product referencing this Contract.

**BB. Maintenance Services**

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

**CC. 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.

**DD. Original Equipment Manufacturer ("OEM")**

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

**EE. Party**

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

**FF. Operating Condition**

The condition that allows the Software or Product to function in a normal, acceptable working manner, as designed by the Software or Product manufacturer, and, if applicable, in compliance with any service levels established in the Contract or any order or SOW issued under the Contract.

**GG. Performance Changes**

Any engineering changes that affect the ability of the Product(s) provided by Supplier pursuant to this Contract to meet the published specifications.

**HH. Preventative Maintenance**

Maintenance that can be performed in advance of an actual problem or malfunction through the monitoring of internal diagnostic reports generated automatically by print output devices.

**II. Response Time**

The time between Supplier's receipt of Authorized User's request for Maintenance and the time Supplier has notified Authorized User that it has commenced repair and resolution of the reported problem.

**JJ. System Software**

The operating system code, including software, firmware and microcode, (object code version) for each Product, including any subsequent revisions, as well as any applicable documentation.

**KK. Product**

Hardware, peripherals, and any other equipment, including the System Software, all upgrades, all applicable user documentation, and related accessories as set forth on Exhibit A or as specified in any Statement of Work or order provided pursuant to the Contract.

**LL. Receipt**

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

**MM. Requirements**

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

**NN. Safety Changes**

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

**OO. 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.

**PP. Software**

The programs and code provided by Supplier under the Contract or any order or SOW issued hereunder as a component(s) of any Deliverable or component of any Solution, and any subsequent modification of such programs and code, excluding Work Product. For COTS Software, "Software" means the programs and code, and any subsequent releases, provided by Supplier under this Contract as set forth in Exhibit 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 programs and code provided by Supplier under the Contract or any order or SOW issued pursuant to the Contract in the form of Software Updates.

**QQ. Software Publisher**

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

**RR. 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, Product, configuration design, implementation, Supplier-developed interfaces, Services and Work Product.

**SS. 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.

**TT. 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.

**UU. 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.

**VV. Supplier Personnel**

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

**WW. 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).

**XX. 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).

**YY. Transition Out Plan**

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

**ZZ. Transition Period**

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

**AAA. Total Sales**

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

**BBB. 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.

**CCC. 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.

**DDD. Warranty Period**

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

**EEE. 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)).

**FFF. Work Product**

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

**3. TERM AND TERMINATION**

**A. Contract Term**

This Contract is effective and legally binding as of the Effective Date and, unless terminated as provided for in this section, will be effective and legally binding for a period of one (1) year ("Initial Term"). VITA, in its sole discretion, may renew this Contract for up to five (5) 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 required for the operation of such order or SOW will remain in full force and effect until all of Supplier's obligations pursuant to such order or SOW have met the final Acceptance criteria of the applicable Authorized User.

**B. Termination for Convenience**

VITA may terminate this Contract, in whole or in part, at any time and for any reason upon not less than 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 Licensed Services and Maintenance Services) rendered by Supplier and accepted by the Authorized User prior to the termination date.

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

**F. Termination by Supplier**

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

**G. Transition of Services**

At the request of an Authorized User prior to or upon expiration or termination of this Contract, Supplier shall provide all assistance as the Authorized User may reasonably require to transition the Supplier's contractual obligations, or any portion thereof, to any other supplier with whom the Authorized User contracts for provision of same. This Transition Period obligation may extend beyond expiration or termination of the Contract for a period of twenty four (24) months. If this Contract includes Supplier's provision of licensed products, Supplier shall take no action to restrict or terminate the use of such licensed products after the date of expiration or termination of the Contract or during any Transition Period, or both. Authorized Users shall pay for any additional maintenance or licensing fees during any Transition Period at the hourly rate or at a fee agreed upon by Supplier and the applicable Authorized User. Supplier shall provide all reasonable transition assistance requested by the applicable Authorized User to allow for the expired or terminated portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Services to Authorized User. The transition assistance will be deemed by the parties to be governed by the terms and conditions of this Contract, except for those terms or conditions that do not reasonably apply to transition assistance. Further, any Transition Period will not affect any Authorized User's rights in regards to any purchased Software perpetual licenses which are paid in full.

**H. Contract Kick-Off Meeting**

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

**I. Transition Out Plan**

Within three (3) months of the Effective Date, 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**

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

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

**5. NEW TECHNOLOGY**

**A. Access to New Technology**

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

**B. New 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.

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

**6. GENERAL WARRANTY**

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

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

**A. Ownership**

Supplier has the right to perform and provide all contractual obligations and provide all needed services or products without violating or infringing any law, rule, regulation, copyright, patent, trade secret, or other proprietary right of any third party. Supplier is the owner of the Product or otherwise has, to the best of its knowledge, the right to grant to the Commonwealth or any Authorized User title or the right to use the Product provided pursuant to this Contract. Upon Supplier's receipt of payment, the Commonwealth or ordering Authorized User, as applicable, will

obtain good and clear title to the Product, excluding the System Software, free and clear of all liens, claims, security interests, and encumbrances.

**B. Coverage Period**

During the Warranty Period of three hundred sixty-five (365) calendar days, or as specified in the applicable order or SOW, Supplier warrants that any Deliverables provided by Supplier under this Contract will meet or exceed the Requirements. Supplier shall correct, at no additional cost to any Authorized User, all errors identified during the warranty period that result in supplier's failure to meet the Requirement, or its contractual obligations.

**C. Performance Warranty**

With respect to Supplier's performance under this Contract:

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

**D. Documentation and Deliverables**

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

**E. Component Warranty**

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

**F. Interoperability Warranty**

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

**G. Licensed Services Application and Documentation**

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

- i). The Application is pursuant to a particular Request for Proposal ("RFP"), and therefore such Application shall be fit for the particular purposes specified 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 Licensed Services, including the Application.
- ii). Supplier represents and warrants (i) that it shall perform the Licensed Services in conformity to the specifications set forth in Exhibit A in a professional and workmanlike manner and (ii) that the Licensed Services shall not infringe any third party proprietary rights including (without limitation) any trademark, trade name, trade secret, copyright, moral rights, patents or similar intellectual property rights.
- iii). Supplier warrants that the Application and Licensed Services will conform in all material respects to the Requirements set forth in this Contract and any order or SOW issued hereunder.

Supplier warrants that the Application Licensed Services will conform to the applicable specifications and Documentation, not including any post-Acceptance modifications or alterations to the Documentation which represent a material diminishment of the functionality of the Application, Licensed Services or Supplier Product. Supplier also warrants that such Application and Licensed 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, Licensed Services and Documentation by Supplier will be compatible with, and will not materially diminish the features or functionality of the Application, Licensed Services and/or Supplier Product when used on the equipment in accordance with the Documentation and all of the terms and conditions hereof.

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

**H. Privacy and Security**

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

**I. Access to Product and Passwords**

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

**J. Operating System and Software Supportability**

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

**K. Malicious Code**

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

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

rights by electronic means. Supplier agrees that an Authorized User may pursue all remedies provided under law in the event of a breach or threatened breach of this section, including injunctive or other equitable relief.

**L. Open Source**

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

**M. 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.

**N. Supplier's Past Experience**

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

**7. SOFTWARE LICENSE**

Any and all license rights granted pursuant to this Contract will be held pursuant to the terms of the "Licensing Within the Commonwealth" section of this Contract below.

**A. License Grant**

**i. Software Licensed by Supplier**

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

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

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

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

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

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

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

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

**B. License Type**  
Designated CPU License

The license(s) granted to an Authorized User under this Section authorize the use of the Software only on the number of CPU(s) listed in the applicable order or SOW. An Authorized User may transfer the Software to a different machine to the extent that the license price for the new CPU(s) is equivalent to the CPU(s) initially licensed. If the licensed CPU is inoperative because of (i) malfunction; (ii) performance of maintenance; (iii) modification to the licensed CPU; or (iv) transfer of Software to another CPU, the Authorized User may use the Software on a replacement CPU as long as required by the above-stated conditions.

**C. Authorized User Compliance**

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

**D. No Subsequent, Unilateral Modification of Terms by Supplier ("Shrink Wrap")**

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

**E. Reservation of Rights**

Nothing contained in this section will be construed to restrict or limit the rights of the Commonwealth or any Authorized User to use any technical data that the Commonwealth or Authorized User may already possess or acquire under proper authorization from other sources.

**8. RIGHTS TO WORK PRODUCT**

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

**A. Work Product**

VITA and Supplier mutually acknowledge that performance of this Contract may result in Work Product. The Parties shall document all Work Product specifications and these specifications will be set forth in Exhibit A and incorporated into this Contract. Supplier shall promptly and fully disclose to the Commonwealth or the Authorized User any and all Work Product generated, conceived, reduced to practice, or learned by Supplier or any Supplier Personnel, either solely or jointly with others, during the term or performance of this Contract, which in any way relates to the business of the Commonwealth, VITA, or any Authorized User. Supplier and Supplier Personnel shall not make use of, or disclose to others, any proprietary information relating to the Work Product, other than as is required in the performance of this Contract. All Services performed pursuant to this Contract will include delivery of all source and object code and all executables

and documentation for all Work Product. At no time 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 immediately return to VITA or the appropriate Authorized User all copies, in whatever form, of any and all Confidential Information, Work Product and other properties provided by VITA or the Authorized User that are in Supplier's possession, custody, or control.

**9. SOFTWARE ESCROW AGREEMENT**

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

VITA acknowledges that, prior to the Effective Date of this Contract, Supplier delivered to VITA and VITA received a copy of the executed Escrow Agreement naming the Commonwealth as a third party beneficiary. VITA has reviewed the Escrow Agreement to ensure that the Escrow Agreement does not impose upon the Commonwealth any requirements or obligations other than administrative responsibilities necessary for the operation of the Escrow Agreement. In the event the Escrow Agent is obligated to release the escrowed materials to the Commonwealth, the Commonwealth's sole responsibility will be to request the release of the escrowed materials from the Escrow Agent. Supplier agrees to notify VITA in writing not less than 30 calendar days prior to termination or any modification of Escrow Agreement.

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

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

Supplier shall provide all Documentation in unprotected MS Word and other commonly used formats that can be updated. Supplier warrants that all items, including future versions, deposited in escrow for VITA or an Authorized User will be verified by the Escrow Agent within 30 calendar days after deposit to validate the completeness, accuracy, and functionality of the Supplier's escrow deposits. Supplier also warrants that the Escrow Agreement details the verification process to be performed by the Escrow Agent for the original deposit as well as all subsequent deposits. Supplier shall provide VITA or the Authorized User a detailed report of all verification tests conducted by the Escrow Agent within ten (10) business days of completion.

Escrow Agent shall conduct a verification process that includes but is not be limited to:

- v. File List Test - To ensure the deposited items are catalogued and confirm they are readable and virus free, and if encrypted, that the Escrow Agent has the decryption keys on deposit.
- vi. Inventory and Analysis Test – To provide a complete audit and inventory of the deposit including analysis of deposited media to verify the presence of build instructions; to identify all of materials necessary to recreate the original development environment; and to confirm the presence of all build instructions, file classification tables, database schema, and listings.
- vi. Compile Test – To validate whether the development environment can be recreated from the deposited documentation and files; to identify third-party libraries; to recreate the Supplier's development environment; to compile source files and modules; to recreate executable code; and to prepare a complete list of any hardware or software configurations.
- viii. Binary Comparison Test – To test the functionality of the complied deposit materials by comparing the files built in compile testing to the licensed, executable file running at VITA's or Authorized User's site.
- ix. Full Usability Test – To confirm the source code placed in escrow will be fully functional in the event of a release, and to perform a relevant series of tests to ensure that replicated software runs properly in the required VITA or Authorized User environment.
- x. Final Operability Test – To perform a final demonstration of the functioning software.
- xi. Fault Remedy – To collaborate with Supplier on fixing any faults discovered during the testing, to obtain corrected escrow items and to re-perform any verification tests as necessary until all tests are successful, with written detailed reports to VITA or the Authorized User.

Supplier warrants that the Escrow Agreement provides for the release of the list of items on Attachment A of the Escrow Agreement upon the occurrence of certain events, including, but not limited to, Supplier's failure to carry out its support and maintenance obligations imposed by this Contract for a period of sixty 60 calendar days, Supplier's breach under this Contract, Supplier's bankruptcy, Supplier's failure to continue to do business in the ordinary course. Supplier agrees to

pay all expenses associated with establishing and maintaining the escrow account and the contents mentioned above.

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

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

#### **10. PRODUCT SCOPE OF USE**

Any Authorized User may use the Product, and any Software licensed in connection with the Product, on a worldwide basis for the benefit of itself and its agents. Supplier further authorizes use of the Product by third parties who are under contract with an Authorized User to provide outsourcing services. If the Commonwealth or an Authorized User takes title under the terms of this Contract to any Products with System Software that is integral to the Products, there will be no restrictions on subsequent resale or distribution of the Products and System Software by the Commonwealth or the Authorized User.

#### **11. SYSTEM SOFTWARE LICENSE**

Any and all license rights granted pursuant to this Contract will be held pursuant to the terms of the "Licensing Within the Commonwealth" section of this Contract below.

##### **A. License Grant**

Supplier grants to the Commonwealth and all Authorized Users a fully paid, perpetual, worldwide, nonexclusive, transferable, irrevocable license to use, and to permit any agent of the Commonwealth or Authorized User to use System Software for each Product. Each license granted under this Contract authorizes the Commonwealth or any Authorized User, and any of their agents, to use Supplier-licensed programs in machine readable form on any system without limitation. It is expressly understood that "perpetual" license rights commence upon delivery of the System Software to the Authorized User and exist in perpetuity unless otherwise terminated in accordance with the applicable provisions of the Contract. The System Software is the property of Supplier, and no title or ownership of the System Software or any of its parts, including Documentation, is transferred to the Commonwealth or the Authorized User by this license grant.

##### **B. Limitations on Copying and Disclosure**

The Commonwealth, an Authorized User, or any agent of the Commonwealth or the Authorized User may make a reasonable number of backup, archival, and disaster recovery copies of the System Software for no additional license fees or costs. Any copies of the System Software or Documentation made by the Commonwealth or an Authorized User pursuant to this Contract will bear all copyright, trademarks, and other proprietary notices included by Supplier. Except as expressly authorized by Supplier's prior written consent, neither the Commonwealth nor the Authorized User may distribute the copies of the System Software to any third-party. The Commonwealth may distribute the System Software and Documentation if the distribution is incidental to a transfer of Product to which the Commonwealth has taken title. Neither the Commonwealth nor any Authorized User may resell the System Software except if the resale is incidental to the resale of Product to which the Commonwealth or the Authorized User has taken title.

**C. Business Continuity and Recovery**

Authorized User, or its agents, may run the System Software concurrently at a back-up site for no additional license fees or costs. In the event that all of an Authorized User's copies of the System Software, including all backup copies, are destroyed, irreparably damaged, or otherwise lost due to disaster or other event beyond Authorized User's reasonable control, Supplier shall provide to the Authorized User a replacement copy of the System Software and Documentation. This replacement copy will be provided to Authorized User at no additional cost. Nothing contained in this Section will obligate Supplier to replace or assist in the recovery of data lost concurrent with the loss of the System Software.

**D. Authorized User Compliance**

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

**E. No Subsequent, Unilateral Modifications of Terms by Supplier ("Shrink Wrap")**

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

**F. Reservation of Rights**

Nothing contained in this section will be construed to restrict or limit the rights of the Commonwealth or any Authorized User to use any technical data that the Commonwealth or Authorized User may already possess or acquire under proper authorization from other sources.

**12. DELIVERY AND INSTALLATION**

**A. Scheduling of Solution Delivery**

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

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

**B. Deployment of Solution**

**1. Supplier Deployment of Solution**

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

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

**2. Authorized User Installation of Software**

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

**C. Documentation of Software Configuration**

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

**D. Product Delivery Procedure**

Supplier shall deliver all Products F.O.B. destination, with the destination being the "ship to" address specified in the applicable order or SOW. If the order or SOW stipulates that the Supplier will provide installation of the Product, Supplier will bear all risk of loss of or damage to the Product until Receipt/Acceptance by the Authorized User. If the order or SOW stipulates that the Supplier will not provide installation of the Product, Supplier will bear all risk of loss or damage to the Product until Receipt. In all cases, Supplier shall arrange and pay for all transportation and insurance sufficient to fully protect the Product while in transit. Each shipment must include a packing slip indicating this Contract number, the Authorized User's order number, the SOW number, if applicable, the part number, a description of the Product shipped and the quantity shipped. Each package in any shipment must (i) be numbered; (ii) have a description stenciled on the outside indicating the quantity of Product contained by part number and description; and (iii) must conspicuously display the number of the package in that shipment which contains the packing slip. If required by the Authorized User, Supplier shall bar code all packages shipped. If any loss to, or damage of, the Product occurs prior to Acceptance by the Authorized User, Supplier shall immediately provide a replacement item. Title to Product, excluding System Software, will pass upon Acceptance.

Supplier will make available all appropriate and required Documentation at the time of delivery of the first unit of each different Product type. Product delivered without the appropriate and required Documentation will be considered "shipped short" until the applicable documentation has been received.

**E. Late Delivery of Product**

Supplier acknowledges and agrees that failure to deliver the Product ordered in strict accordance with the agreed upon delivery schedule as set forth in this Section will constitute a material breach of this Contract resulting in damages to the ordering Authorized User, the total sum of which would be impracticable or impossible to ascertain as of the Effective Date of this Contract. As an estimate of the minimum amount of damages such Authorized User will suffer, Supplier agrees to credit the Authorized User an amount equal to one percent (1%) of the total purchase price for each day that the Product is undelivered or nonoperational for a period of ten (10) calendar days following the agreed upon delivery date, or if none specified, following the date order or SOW was received by Supplier. If the delay lasts longer than ten (10) calendar days, the Authorized User may immediately cancel the order or SOW and collect as late delivery damages fifteen percent (15%) of the total purchase price. Any credit due the Authorized User will be applied to the next periodic invoice.

In addition, in the event the Supplier fails for any reason to deliver the Product within thirty (30) calendar days of the agreed upon delivery date set forth in the order/schedule, or if no date was specified, following the date the order or SOW was received by Supplier, then the ordering Authorized User, at its own discretion, may give Supplier oral or written notice of breach regarding the subject order or SOW. Once notice by the Authorized User is sent or given, the Authorized User may immediately procure the undelivered items, or substantially similar items, from another source. Once the Authorized User has effected a purchase from an alternate source, the Authorized User may charge-back Supplier. Supplier agrees to reimburse the Authorized User for any difference in cost between the original contract price and the Authorized User's cost to cover from the alternate source. In no event will any Authorized User be held to pay Supplier any costs incurred by Supplier, including but not limited to ordering, marketing, manufacturing, or delivering the item(s), which are subject of such Authorized User's notice of

breach. Further, the Authorized User reserves any and all other remedies available at law or in equity.

**F. Product Trade-in and Upgrade**  
See Exhibit B

**G. Product Installation**

Unless otherwise agreed, Supplier shall provide the initial installation of all Product at no additional charge. Installation will include: unpacking, removal of all shipping/packing materials, positioning, connecting to internal utility services, testing, and related necessary services to allow for Acceptance by the Authorized User.

All Product installations shall comply with building and facilities standards established by the ordering Authorized User. If Authorized User installs the Product, Supplier shall provide all reasonably necessary telephone assistance at no charge.

**13. ACCEPTANCE AND CURE PERIOD**

**A. Software and Deliverable Acceptance Criteria**

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

Authorized User shall commence Acceptance testing within 30 (thirty) calendar days, or within the agreed to period set forth in the applicable order or SOW, after (i) receipt of the Software or Deliverable or (ii) being granted access to the Solution. The Acceptance testing period for the first instance of each Product type set forth in Exhibit B will last no longer than ten (10) calendar days, unless a longer period is agreed to in writing between Authorized User and Supplier. Throughout the Acceptance testing period, Supplier shall provide to the Authorized User any assistance and advice as the Authorized User may reasonably require. Supplier shall provide this assistance and advice at no additional cost, other than pre-approved travel expenses incurred which are reimbursable by the Authorized User pursuant to the terms and conditions of the "Reimbursement of Expenses" section of this Contract below. Authorized User shall provide to Supplier written notice of Acceptance upon completion of successful Acceptance testing. In the event that Authorized User fails to provide Supplier written notice of successful or unsuccessful Acceptance testing within five (5) business days following the end of the Acceptance testing period, the Solution will be deemed Accepted.

**B. Solution Acceptance Criteria**

The Solution will be deemed accepted when the Authorized User determines that the Solution successfully operates in accordance with the Requirements and, if applicable, successful completion of Acceptance testing. Authorized User shall commence Acceptance testing within ten (10) calendar days after deployment of the Solution. The Acceptance testing period will be completed within ten (10) calendar days after deployment of the Solution, or such longer period as may be agreed to in writing between Authorized User and Supplier. Supplier shall provide Authorized User with any assistance and advice the Authorized User may reasonably require during the Acceptance testing. Throughout the Acceptance testing period, Supplier shall provide to the Authorized User any assistance and advice as the Authorized User may reasonably require. Supplier shall provide this assistance and advice at no additional cost, other than pre-approved travel expenses incurred which are reimbursable by the Authorized User pursuant to the terms and conditions of the "Reimbursement of Expenses" section of this Contract below. Authorized User shall provide to Supplier written notice of Acceptance upon completion of successful Acceptance testing. In the event that Authorized User fails to provide Supplier written notice of successful or unsuccessful Acceptance testing within five (5) business days following the end of the Acceptance testing period, the Solution will be deemed Accepted.

**C. Software and Deliverable Cure Period**

Supplier shall correct any non-conformities identified during Acceptance testing and re-submit the corrected Software or Deliverable for re-testing within seven (7) calendar days of receipt of the appropriate Authorized User's written notice of non-conformance, or as otherwise agreed between the Authorized User and Supplier in the applicable order or SOW. In the event Supplier fails to cure the non-conformity or deliver Software or a Deliverable that meets the Requirements, the Authorized User may, in its sole discretion: (i) reject the Software or Deliverable in its entirety and recover amounts previously paid to Supplier; (ii) issue a "partial Acceptance" of the Software or Deliverable with an equitable adjustment in the price to account for any deficiency; or (iii) conditionally accept the applicable Software or Deliverable while reserving its right to revoke Acceptance if timely correction is not forthcoming. Failure of the Software or a Deliverable to meet, in all material respects, the Requirements after the second set of Acceptance tests will constitute a breach by Supplier, and the Authorized User may, at its sole discretion, terminate its order or SOW, in whole or in part, for the Solution to be provided by Supplier.

**D. Solution Cure Period**

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

**E. Licensed Services Commencement Date**

The Supplier shall begin delivery of Licensed 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 Licensed Services commencement date by notifying the Supplier at least ten (10) days before the scheduled Licensed Services commencement date.

**F. Licensed Services Acceptance Criteria**

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

**G. Licensed Services Cure Period**

If during the Acceptance test period, Authorized User is unable to access the licensed functionalities of the Application, Supplier shall provide Authorized User with such access, and such Authorized User's Application Users with their required access, within seven (7) days of written notice of inability to access, or as otherwise agreed between the Authorized User and Supplier in the applicable order or SOW. Should Supplier fail to provide access to the licensed functionalities of the Application, such Authorized User may, in its sole discretion: (i) reject the Application in its entirety and recover amounts previously paid hereunder; (ii) issue a "partial Acceptance" of the Application access with an equitable adjustment in the price to account for

such deficiency; or (iii) conditionally accept the applicable Application access while reserving its right to revoke Acceptance if timely correction is not forthcoming.

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

#### **H. Product Acceptance Criteria**

Product will be deemed accepted when the ordering Authorized User determines that the Product successfully operates in accordance with the Requirements. The Authorized User shall commence Acceptance testing within ten (10) calendar days, or within the period set forth in the applicable order or SOW, after Receipt/installation of the Product. Acceptance testing will be no longer than ten (10) calendar days, or any longer period as may be agreed in writing between Authorized User and Supplier. Authorized User shall provide to Supplier written notice of Acceptance upon successful Acceptance testing. Should Authorized User fail to provide Supplier written notice of successful or unsuccessful Acceptance testing within five (5) calendar days following the Acceptance testing period, the Product(s) will be deemed Accepted.

Throughout the Acceptance testing period, Supplier shall provide to the Authorized User any assistance and advice as the Authorized User may reasonably require. Supplier shall provide this assistance and advice at no additional cost, other than pre-approved travel expenses incurred which are reimbursable by the Authorized User pursuant to the terms and conditions of the "Reimbursement of Expenses" section of this Contract below.

#### **I. Product Cure Period**

Supplier shall correct any non-conformities identified during Acceptance testing and re-submit the corrected Product for re-testing within seven (7) calendar days of Supplier's receipt of a written notice of non-conformance, or as otherwise agreed between the Authorized User and Supplier in the applicable order or SOW. If Supplier fails to cure the non-conformity or deliver Product that meets the Requirements, the Authorized User may, in its sole discretion: (i) reject the Product in its entirety and recover amounts previously paid to Supplier; (ii) issue a "partial Acceptance" of the Product with an equitable adjustment in the price to account for such deficiency; or (iii) conditionally accept the applicable Product while reserving its right to revoke Acceptance if timely correction is not forthcoming. Failure of a Product 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 Product and any Services to be provided by Supplier.

### **14. SOLUTION WARRANTY AND MAINTENANCE SERVICES**

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

#### **A. Known Defects**

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

#### **B. New Releases**

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

**C. Coverage**

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

**D. Service Levels**

Supplier shall respond to problems with the Solution identified by an Authorized User in no more than one (1) hour after notification. Supplier shall resolve all problems according to the following schedule:

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

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

**E. Software Evolution**

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

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

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

**F. Escalation Procedures**

[To be provided by Supplier.]

**G. Solution Remedies**

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

**H. Solution Support Services and Renewal Options**

Sixty (60) calendar days prior to the expiration of the Warranty Period, Supplier shall notify the Authorized User in writing of such expiration. Authorized User may, at its sole discretion, order from Supplier Solution Maintenance Services including new Software releases, updates and upgrades. The MCP will be for a period of one (1) year and at an annual fee of ten percent (10%) of the Software license fee paid by any Authorized User for its then current installed base. Supplier shall notify the Authorized User 60 days prior to the expiration of the MCP, and the Authorized User may, at its sole discretion, renew Maintenance Services for an additional one (1)

year period. Any increase in the annual fee for renewed Maintenance Services may not exceed the lesser of (i) three percent (3%), or (ii) as defined in the "Fees, Ordering and Payment Procedure" section of this Contract below, in effect at the time of renewal. Supplier warrants that it shall make Support Services available for all the Solution components listed in Exhibit B for a period of at least five (5) years from the expiration of the initial Warranty Period of any Solution provided to an Authorized User pursuant to this Contract. Cancellation of Maintenance Services by an Authorized User shall not affect this Contract or the grant of any license by Supplier.

## **15. APPLICATION AND LICENSED SERVICES SUPPORT**

At any time during the term of any order or SOW issued pursuant to this Contract, Supplier shall provide the following Application Services (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.

### **A. Coverage**

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

### **B. Service Levels**

Within one (1) hour of a request from an Authorized User or VITA, in its governance role, Supplier shall respond to such request for support of Licensed Services regarding the Application and Licensed Services, including Application, Supplier Product, and Documentation in accordance with the procedures identified in Exhibit X of the Contract, "Table of Service Levels, Response and Resolution Times and Escalation Procedures for Licensed Services". Authorized User may describe the problem by telephone, electronic mail, or via a web site provided by Supplier. Supplier shall use its best efforts to meet Response Time and Resolution Time and other obligations under this Contract.

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

### **C. Application Evolution**

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

## **16. SERVICE LEVELS AND REMEDIES FOR CLOUD SERVICES**

### **A. Availability**

The failure by Supplier to make the Licensed Services Available to Authorized User and its Application Users at least 99% of the time in any given month – excluding scheduled maintenance or excusable downtime – 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 X of this Contract, "Table of Service Levels and Remedies for Licensed Services". For purposes of this Contract, "Available" means that Authorized User and its Application Users are able to access all features and functions of the Application and Licensed Services required by Authorized User, including but not limited to the Application and Supplier Product.

Supplier shall issue a credit to an Authorized User for any downtime or period where the Licensed Services are not Available ("Service Level Credit") during any given month of the term of the applicable order or SOW. Service Level Credits will be applied against the next invoice to the Authorized User. In the event Authorized User is eligible for a 100% Service Level 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 Licensed 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**

Incremental adds, access authorizations, moves or reductions, including disabled access updates, in the scope of the Licensed Service (e.g., USERIDs), shall be completed within one (1) business hour of a written request (including e-mail or submission to Supplier's provisioning website) from an Authorized User's designated Administrator. In the event that provisioning is not made available within one (1) business hour 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. Reporting**

**(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 Licensed Services. Such report, unless otherwise agreed upon by the parties, shall be in conformity with the reporting Supplier provides to its other customers utilizing an application and licensed services identical or similar to the Application and Licensed Services provided to Authorized User.

(b) System/Application Patching Compliance Report – a report that illustrates that the supplier has installed security relevant software and firmware updates within 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](mailto: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 Licensed Services and the performance of the Application and to discuss technical plans, financial matters, system performance, service levels and any other matters related to the above required reports and to this Contract in general that may be reasonably requested by either Supplier or Authorized User or VITA. Supplier shall notify VITA of such meetings by email to: [enterpriseservices@vita.virginia.gov](mailto: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 Licensed Services after the failure of the Application to meet the Service Levels. In the event Supplier fails to comply with these remedies, Authorized User may exercise all available rights and remedies under law and equity.

**E. Escalation Procedures**  
[To be provided by Supplier.]

**17. 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 return all such Content in a format accessible without the use of Supplier's Application. Supplier's failure to do so will constitute a material breach of this Contract and the Authorized User may exercise all available rights and remedies under law and equity, in addition to any remedies set forth in this Contract.

In addition, at Authorized User's option, Supplier shall continue to provide Licensed 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. 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.

**18. 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 Licensed 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 Licensed 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 any reasonable time during regular business hours after giving reasonable advance notice, to inspect and audit the records applicable to its order(s) or SOW(s). Supplier shall preserve such records for three (3) years after termination or completion of the Licensed Services agreed to under this Contract, or any order or SOW issued hereunder.

**19. DESCRIPTION OF LICENSED 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 owned, operated, housed, and maintained 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 license rights in the Application(s) necessary and appropriate for Supplier to provide the Licensed Services as listed and described in Exhibit A for all Authorized Users. Supplier hereby grants each ordering Authorized User and its Application Users a non-exclusive, transferable, worldwide license to access and use by any method the Application during the term of the applicable order or SOW issued pursuant to this Contract. The license fee for the rights shall be as set forth in Exhibit B, and shall apply regardless of access mode. If Authorized User is an agency, as defined by §2.2-2006 and legislative, judicial, and independent agencies of the Commonwealth, board, commission, or other quasi-political entity of the Commonwealth of Virginia or other body referenced in Title 2.2 of the Code of Virginia, the license shall be held by the Commonwealth. If Authorized User is a locality, municipality, school, school system, college, university, local board, local commission, or local quasi-political entity, the license shall be held by that public body. If Authorized User is a private institution of higher education which is listed at: <http://www.cicv.org/Our-Colleges/Profiles.aspx>, the license shall be held by that private institution. Notwithstanding any other provision or other unilateral license terms which may be issued by Supplier after the Effective Date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of an order or SOW for Licensed Services, including access to the Application(s), or the fact that such other agreement may be presented to an Authorized User or

its Application Users at the time of accessing the Application(s) ("click wrap"), the terms and conditions set forth herein in this Contract and any amendments or modifications thereto shall supersede and govern licensing and use of all products and services hereunder.

## 20. 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 user-specific data only as necessary to provide the Licensed Services ordered by an Authorized User. No information regarding any Authorized User or any Application User shall be disclosed, provided, rented or sold to any third party for any reason unless required by law or regulation or by an order of a court of competent jurisdiction. This obligation will extend beyond the Contract Term.

iv. The Application 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 Licensed 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 two (2) business day advance notification 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 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 at least ninety-nine percent (99%) of the total time during each month, 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 of any planned change(s) or Update(s) to the Application; its functionality; Content storage/ backup/disaster recovery, including physical location; security architecture, features or settings; terminations and/or replacement of any Supplier subcontractor. The planned changes or Updates include any change(s) that would potentially impact the secure and efficient use of the Application, as understood and agreed to between Supplier and VITA at Contract award. The purpose of this notice is to allow sufficient time for Supplier and VITA to discuss any technical/functional considerations and/or changes that would require action by the Commonwealth.

ix. Supplier is responsible for documenting and maintaining any customizations made for operational use of the Application and/or for interoperability use with other systems or applications used by an Authorized User and paid for solely by Authorized User. The associated technical data, code, documentation and other necessary information about such customizations shall be provided by Supplier to Authorized User within ten (10) business days of the

customizations' operational use. Supplier shall be required to routinely transfer knowledge regarding the Application and Licensed Services, including Updates and all material changes, to Authorized Users in a reasonable manner to ensure proper and efficient use of Application and Licensed Services without degrading performance thereof.

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

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) develop modifications to the Application as agreed by VITA and Supplier in any exhibit hereto or as agreed to by Supplier and Authorized User in any order or SOW issued hereunder; and (iii) otherwise support the Application as provided under this Contract and any exhibits hereto or as agreed in any order or SOW issued pursuant to this Contract.

**C. Subcontractors for Cloud Services**

It is understood that Supplier may utilize subcontractors to provide integral components of the Licensed Services and Application; however, except for those so named at time of Contract award, Supplier shall not use new or replacement subcontractors to perform or provide integral components of the Licensed Services or Application during performance of this Contract without advance written notification to and approval by VITA.

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

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

**21. AUTHORIZED USER RESPONSIBILITIES**

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

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

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

b). Authorized User shall have the right to add, activate, change access for, or disable USERIDs at its sole discretion. Authorized User shall designate Administrators who will be authorized to add, activate, change access for or disable USERIDs.

- c). Upon notification by Authorized User of an Application User's disabled access, Supplier shall remove access authorization by said Application User from its server within one (1) hour of receipt of such notification, ensuring that historical access audit details of such Application User shall not be deleted or lost. If Supplier fails to make such a removal of access, Authorized User shall not be held liable for any charges or damages incurred due to use of the unauthorized USERID.
- d). Authorized Users of this Contract agree to notify Supplier of any degradation, potential breach, or breach of the Content and Application privacy or security as soon as possible after discovery. Authorized Users further agree to provide Supplier the opportunity to participate in the investigation of the reported situation.
- e). Authorized User agrees to submit any required Security exceptions to [commonwealthsecurity@vita.virginia.gov](mailto:commonwealthsecurity@vita.virginia.gov) within five (5) days of VITA notification to Authorized User.

## 22. CONTENT PRIVACY AND SECURITY

Supplier shall provide a secure environment for Content and any hardware and software, including servers, network and data components provided by Supplier as part of its performance under this Contract. Supplier shall provide a secure environment for Content and any hardware and software in accordance with VITA's Security Standards located at: <https://www.vita.virginia.gov/it-governance/itrm-policies-standards/> in order to prevent unauthorized access to and use or modification of, and to protect, the Application and Content. Supplier agrees that all Content of Authorized Users is intended solely for the business of the Authorized Users and is considered private data. Therefore, Supplier shall, at a minimum, implement the following procedures designed to protect the privacy and security of Content:

- 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 Licensed Services are capable of auditing the following events. Successful and unsuccessful account logon events, account management events, object access, policy change, privilege functions, process tracking, and system events.
- iv. Supplier shall ensure that the Application and/or Licensed Services are capable of auditing the following events, for Web applications. All administrator activity, authentication checks, authorization checks, data deletions, data access, data changes, and permission changes.
- v. Supplier shall ensure that the Application and/or Licensed Services employs automated mechanisms to centrally review, analyze and correlate audit and log records from multiple components of the Application and/or Licensed Services to support organizational processes for investigation, alerting and response to suspicious activities.
- vi. Supplier shall ensure that the Application and/or Licensed Services support exporting of log files to the commonwealth for review and analysis.
- vii. Supplier shall ensure that the Application and/or Licensed Services are capable of maintaining all audit records in accordance with commonwealth record retention policies found at the following URL. <http://www.lva.virginia.gov/agencies/records/>
- viii. Provide evidence of a comprehensive continuous monitoring program encompassing all systems with access to Content.
- ix. Provide evidence that the Application and/or Licensed Services adhere to a security baseline, which is based on least functionality.
- x. Supplier shall ensure that all changes to proposed Application and/or Licensed Services are authorized according to change management policies.
- xi. Supplier agrees to maintain all metadata associated with any original Content submitted into the Application and/or Licensed Services by the Authorized User for easy retrieval and access, using

secure industry standard protocols, within a predefined period as specified in the Authorized User's Statement of Work.

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 Licensed Services provides and maintain a backup of Content that can be recovered in an orderly and timely manner within a predefined frequency consistent with recovery time and recovery point objectives, as specified in the Authorized User's Statement of Work.

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

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

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

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 shall provide the capability to document incidents and investigations in the commonwealth's incident handling system.

xxiii. Supplier shall provide quarterly summary reports of Intrusion Detection System (IDS) and Intrusion Prevention System (IPS) events to: [enterpriseservices@vita.virginia.gov](mailto:enterpriseservices@vita.virginia.gov)

xxiv. 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/>

xxv. 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.

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

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

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

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

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

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

xxxii. Supplier shall report the exact 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 exact geographic location of any Content not stored in a commonwealth facility every 30 days.

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

xxxiv. 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.

xxxv. 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.

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

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

xxxviii. Supplier shall ensure that the Application and/or Licensed Services will use industry standard encryption techniques to protect Content that is transmitted or stored on behalf of the commonwealth. Supplier shall ensure that the Application will provide for the commonwealth to maintain exclusive control of all encryption keying material.

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

xl. 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.

xli. 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.ii. Within fifteen (15) business days after the expiration or termination of this Contract, Supplier shall confirm in writing to Authorized Users and VITA that all Content has been removed from all systems where the Content resided during performance of this Contract in a manner that complies with and/or exceeds the commonwealth Data Removal standard located at the following URL:

<https://www.vita.virginia.gov/it-governance/itrm-policies-standards/>. The written confirmation shall include (a) sufficient detail describing the processes and procedures used in removing the Content, (b) information about the locations of where it was removed from within the Application and storage and other locations, and (c) the date the removals were performed. All metadata, in its original form, shall be returned to the respective Authorized User(s).

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

xliv. Regular testing of the systems and procedures outlined in this Section; and

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

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

## 23. PROPRIETARY RIGHTS

### A. Supplier's Proprietary Rights

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

### B. Authorized User Requirements and License Restrictions

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

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

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

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

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

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

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

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

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

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

**C. Authorized User Proprietary Rights**

Except as otherwise stated herein and with the exception of any applicable third-party rights, Content and any customizations made for Authorized User's operation of the Application or for interoperability with other Authorized User's systems or applications paid for by the Authorized User, are and shall remain the sole and exclusive property of Authorized User, including all applicable rights to patents, copyrights, trademarks, trade secrets or other proprietary property rights thereto. Additionally, all right, title and interest in and to any Content or customizations relating to Authorized User's business shall remain the property of Authorized User, whether or not supplied to Supplier or uploaded into the Application. Nothing in this Contract shall be construed as conveying any rights or interest in Content or customizations to Supplier. Upon termination of an order or SOW issued hereunder, 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.

**24. 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.

**Content Escrow Agreement**  
Should Supplier cease to do business, file bankruptcy or fail to support Agency, Supplier shall promptly make all Agency Content available to Agency as a native database export provided through Supplier's FTP server.

**25. PRODUCT SUPPORT AND ADDITIONAL SERVICES**

**A. Authorized User or Third Party Support**

**1. Documentation and Support Availability**

In the event that VITA terminates this Contract, Supplier shall provide all the necessary user and installation Documentation and maintenance and repair training reasonably required to enable any Authorized User to maintain and repair the Product itself, or to obtain support and Maintenance Services from a third-party. Supplier shall also provide the Documentation and training necessary to allow any Authorized User to self-maintain to the subcomponent level. In addition, Supplier agrees to provide, for a period of five (5) years from the date of the last purchase, spare parts and components at the cost set forth in Exhibit B, including those solely sourced by Supplier, so as to enable any Authorized User or its designated third-party maintenance provider to provide full maintenance and repair of the Product.

**2. Timeliness and Price**

Supplier agrees to make the above-referenced Documentation, training, and spare parts and components available within 15 business days following receipt of a written request, and at a price set forth in Exhibit B. In addition, Supplier shall sell the Product to any Authorized User's third-party maintenance provider under contract with the Authorized User, at the prices as set forth in Exhibit B, for the sole purpose of supporting the Authorized User's installed inventory. Supplier shall document and provide to all Authorized Users, in a timely manner, any and all revisions to information and parts and components lists as they are developed or supplied by Supplier.

**B. Engineering Changes and Product Modification**

Product processing or operating capability, they will be scheduled at the Authorized User's request as to time and at the Authorized User's option. The Authorized User will have the option to waive or pre-approve all other engineering changes planned by Supplier on the Product delivered or planned for delivery to the Authorized User.

**C. Parts and Maintenance Support**

Supplier shall provide new or certifiable as new spare parts and the Maintenance Services identified in the "Maintenance Services" section of this Contract and Exhibit B attached to this Contract for each Product type ordered by an Authorized User. Supplier's obligation under this section will last for five (5) years from the expiration of the initial Warranty Period of the last unit of any given Product type provided by Supplier to the Authorized User. After this 5-year period, Supplier shall advise the Authorized User of its intent to discontinue either certain parts or Maintenance Services for any Product type ordered by the Authorized User.

Supplier shall notify the Authorized User one (1) year prior to the effective date of any such discontinuance, and shall provide to the Authorized User the opportunity to purchase spare parts in a quantity adequate to support its installed base. Should Supplier advise the Authorized User of its intent to discontinue certain parts for any Product type ordered by the Authorized User, the Authorized User has the option to request and Supplier has the obligation to provide, all documentation, including source code, required to ensure ongoing support, including full maintenance and repair by the Authorized User or its designated third-party maintenance provider within 30 calendar days prior to the discontinuance date, or to replace the unsupported Product with a supported Product at a cost to the Authorized User of no more than the cost delta between the supported Product and the unsupported Product.

**D. Inventory Record**

Supplier shall maintain the Inventory Record at no additional cost or reduction in the Warranty Period. Product quantities and types may vary as Product is added or deleted from coverage. Authorized User shall notify Supplier in writing of any Product relocated, added, or removed from service. Upon receipt of this notification, Supplier will amend the Inventory Record to reflect the relocation, addition, or deletion of the Product. Supplier shall provide, at no additional cost, a copy of the most current Inventory Record to any Authorized User upon request.

**E. Product Service Record**

Supplier shall maintain, at no additional cost, a Product Service Record for each unit of Product covered under warranty or maintenance. The Product Service Record must include the following records for each unit of Product: (i) installation/ relocation/ removal/ modifications; (ii) remedial actions; (iii) preventive actions; and (iv) any additional services not covered by warranty or maintenance. Upon request by the Authorized User, Supplier shall provide, at no additional cost, a copy of the Product Service Record.

**F. Product Discontinuation**

During the Contract Term, if any Product listed on Exhibit B is discontinued and Supplier does not offer a substitute acceptable to VITA, then Supplier shall continue to meet such Authorized User's needs for the discontinued Product for not less than twenty-four (24) months, for each Authorized User who purchased the discontinued Product. Additionally, Supplier shall make maintenance parts for the discontinued Product available to the Authorized User for a period of five (5) years from the date of discontinuation. In every event, Supplier will provide any Authorized User with 120 days advance written notice of its intent to discontinue any Product type previously ordered by such Authorized User.

**G. Additional Services**

Upon request of an Authorized User by means of an order or SOW issued in accordance with the ordering provisions of this Contract, Supplier will provide additional on-site services which may include: (i) relocation of previously installed hardware; (ii) assistance to Authorized User's communications department in mutually acceptable duties related to the warranty or Maintenance Services provided under this Contract; and (iii) cabling, if applicable. The Authorized User shall compensate Supplier for such additional on-site services in accordance with the prices identified in Exhibit B. These additional on-site services will be in addition to any existing on-site Warranty Services or Maintenance Services obligations of Supplier.

Upon request of an Authorized User by means of an order or SOW issued in accordance with the ordering provisions of this Contract, Supplier will also provide the following services beyond those identified as Warranty Services or Maintenance Services offerings: (i) service on equipment not covered by this Contract; (ii) repair of damage or replacement of parts of Hardware resulting from changes in the hardware environment, extraordinary use of the hardware, or interconnected devices; or (iii) service outside the applicable hours of service specified in an executed order or SOW referencing this Contract. The charge for such services will be at the hourly rate specified in Exhibit B and will be inclusive of all expenses. Warranty Services or Maintenance Services requested for a unit of hardware within the 48-hour period immediately following Remedial Maintenance (as set forth below) performed on the same unit of hardware for the same problem, will not be considered an additional service and will be provided at no charge. Requests for additional services will only be approved for payment by the Authorized User when a Product's service record is included with the applicable invoice.

## **26. PRODUCT WARRANTY AND REMEDY**

### **A. Compatibility**

Supplier warrants that each Product provided pursuant to this Contract is, and will continue to be, data, program, and upward compatible with any other Product available or to be made available from Supplier within the same family of Products. Supplier warrants that, as a result of this compatibility, each Product can be utilized without adaptation of the other Products, and so that programs written for the Product shall operate on the next generation of Products, and not result in the need for alteration, emulation, or other loss of efficiency for a period of not less than ten (10) years.

### **B. Product Warranty**

Supplier warrants the following with respect to the Product:

- i. The Product will be free of defects in material, design, and workmanship;
- ii. Upon delivery, the Product will be new and in Operating Condition and will have all engineering changes released to date already installed;
- iii. Supplier shall not disable any Authorized User's use of System Software through remote access or otherwise. If the System Software contains authorization codes allowing access to a data base or other software, Supplier warrants that such codes will be perpetual and non-expiring.

### **C. Performance Standards and Mean Time Between Failure**

Supplier warrants that the Product's performance and Mean Time Between Failure ("MTBF") standards will be at least as the standards set forth in Exhibit I of this Contract for a period of five (5) years following Acceptance of the Product by an Authorized User. Supplier's performance and MTBF standards will be calculated on the basis of the Authorized User's installed base of Supplier's Product. If the Product fails to satisfy (i) the MTBF standards or (ii) the performance standards for that Product type as set forth in this Contract, Supplier shall pay for any and all additional repairs, parts and labor required to bring Product to the appropriate level set forth in Exhibit A, including the cost to retrofit the entire installed Product base. If Supplier fails to so modify or replace the Product so as to achieve the MTBF standards within thirty (30) calendar days, the Authorized User may, at its option, return such Product and receive a full refund during the Product Warranty Period; or if the Warranty Period has expired, receive a straight line pro-rated refund, by year thereafter for the five (5) year period following installation of the Product.

### **D. Product Warranty Services**

During the warranty period of three hundred sixty-five (365) calendar days, or as specified in the applicable order or SOW, Supplier warrants that the Product will meet or exceed the Requirements. Supplier shall provide Warranty Services (including unlimited telephonic support and all necessary travel and labor) during the warranty period at the prices set forth in Exhibit B of this Contract. Supplier shall correct, at no additional cost to any Authorized User, all errors identified during the Warranty Period that result in a failure of the Product to meet the Requirements.

Exhibit B provides detailed descriptions of the Supplier's warranty and maintenance offerings and responsibilities as well as remedies available to the Authorized User in the event Supplier fails to

perform its warranty and maintenance obligations. Any remedies will be paid to the Authorized User on a quarterly basis. Exhibit B defines coverage periods, response times, and restore times.

If multiple warranty levels are available, an Authorized User may elect, at any time, an alternative warranty level offered by Supplier. Any amendment to the warranty level will take effect within thirty (30) calendar days following Supplier's receipt of Authorized User's written notice, in the form of a modification to an order or SOW.

Authorized User's designated control organization will have the exclusive authority to request Warranty Services. Supplier shall not respond to calls for service from any other source without prior written approval of Authorized User's agreement administrator designated on the relevant order.

#### 1. Product Covered

Exhibit B lists all Product types covered under warranty.

#### 2. Preventive Maintenance

Supplier's Preventive Maintenance offerings and responsibilities, and the Authorized User's associated remedies, are described in Exhibit B.

#### 3. Remedial Maintenance

Supplier's Remedial Maintenance offerings and responsibilities, and the Authorized User's associated remedies, are described in Exhibit B.

#### 4. Replacement Parts

Supplier's offerings and responsibilities related to Replacement Parts, and the Authorized User's associated remedies, are described in Exhibit B.

#### 5. Spares

Supplier's offerings and responsibilities related to Spares, and the Authorized User's associated remedies, are described in Exhibit B.

#### 6. Notification and Correction of Defects

Supplier's offerings and responsibilities related to notification and correction of defects, and the Authorized User's associated remedies, are described in Exhibit B.

#### 7. One-year Depot Warranty

Supplier's depot warranty offerings and responsibilities are described in Exhibit B.

#### 8. On-site Warranty

Supplier's on-site warranty offerings and responsibilities are described in Exhibit B.

#### 9. System Software Warranty

As part of the standard warranty offering, for a period of not less than twelve (12) months beginning on the date of Acceptance, Supplier shall provide the following warranty services (including unlimited telephonic support and all necessary travel and labor) without additional charge to any Authorized User to maintain the System Software in accordance with the Requirements:

##### a) New Releases

Supplier's responsibilities related to new releases of System Software and Documentation are described in Exhibit B.

##### b) Coverage

Supplier's offerings and responsibilities related to coverage for telephonic and written consultation in connection with use, problems, and operation of the System Software are described in Exhibit B.

##### c) Response and Restore Times

Supplier's response and restore times related to use, problems, and operation of the System Software, and Authorized User's associated remedies, are described in Exhibit B.

#### d) Software Evolution

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

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

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

#### 10. Escalation Procedures

Bob Christman, Business Development Manager

[bob\\_christman@masec.com](mailto:bob_christman@masec.com); (o) 757-538-1264, (m) 757,404-5454

#### 11. Remedies

In addition to any remedies described in Exhibit B, if Supplier is unable to make the Product, including System Software, conform, in all material respects to the Requirements, within thirty (30) calendar days following notification by an Authorized User, Supplier shall, at such Authorized User's request, either (i) replace the non-conforming Product or (ii) accept return of the non-conforming Product and return all monies paid by such Authorized User for the returned Product.

Notwithstanding anything to the contrary in this Contract or in any exhibit hereto, VITA and any Authorized User retain all rights and remedies available at law or in equity.

#### 12. Product Maintenance Services and Renewal Options

At least sixty (60) calendar days prior to the expiration of the warranty period, Supplier shall notify the Authorized User, and the Authorized User, at its sole discretion, may order from Supplier Maintenance Services, including System Software Maintenance Services for a period of one (1) year and for the annual fee identified in Exhibit B. Supplier warrants that it shall make Maintenance Services available for all the Products, including System Software, listed in Exhibit B, or which are components of Products listed in Exhibit B, for a period of at least five (5) years from the expiration of the initial warranty period of any Product provided to an Authorized User pursuant to this Contract. Termination of this Contract or cancellation of Maintenance Services, including System Software Maintenance Services if provided as a separate offering from Supplier, by an Authorized User shall not affect this Contract or the grant of any license pursuant thereto.

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

#### 27. PRODUCT MAINTENANCE SERVICES

Supplier shall provide Maintenance Services (including unlimited telephonic support and all necessary travel and labor) during the MCP at the prices identified in Exhibit B without additional charge to maintain the Product in accordance with the Requirements.

Exhibit B attached to this Contract provides detailed descriptions of the Supplier's warranty and maintenance offerings and responsibilities, as well as remedies available to the Authorized User in

the event Supplier fails to perform its warranty and maintenance obligations. Any remedies will be paid to the Authorized User on a quarterly basis. Exhibit B also defines coverage periods, response times, and restore times.

Authorized User's designated control organization will have the exclusive authority to request maintenance services. Supplier shall not respond to calls for service from any other source without prior written approval of Authorized User's agreement administrator designated on the relevant order or SOW.

**A. Ordering**

See the "Fees, Ordering, and Payment Procedure" section of this Contract below.

**B. Renewal**

At least 60 calendar days prior to the expiration of the MCP for each unit of Product, Supplier shall notify the Authorized User in writing of such expiration. Authorized User may, at its sole discretion, issue an order or SOW to Supplier to renew the Maintenance Services, including System Software Maintenance Services, for an additional one (1) year period. Any increase in the annual fee for Maintenance Services may not exceed the lesser of (i) three percent (3%), or (ii) the annual change in CPI, as defined in the "Fees, Ordering and Payment Procedures" section of this Contract below, in effect at the time of renewal. Termination of this Contract or cancellation of Maintenance Services, including System Software Maintenance Services if provided as a separate offering from Supplier, by an Authorized User will not affect this Contract or the grant of any license pursuant to the Contract.

**C. Offered Services**

See Exhibit B

**1. Product Covered**

Exhibit B lists all Product types for which Supplier offers Maintenance Services. No Authorized User is obligated to continue Maintenance Services on Product(s) that has been removed from service, provided Supplier has been notified in writing of such removal.

**2. Preventive Maintenance**

Supplier's Preventive Maintenance offerings and responsibilities, and the Authorized User's associated remedies, are described in Exhibit B.

**3. Remedial Maintenance**

Supplier's Remedial Maintenance offerings and responsibilities, and the Authorized User's associated remedies, are described in Exhibit B.

**4. Replacement Parts**

Supplier's offerings and responsibilities related to Replacement Parts, and the Authorized User's associated remedies, are described in Exhibit B.

**5. Spares**

Supplier's offerings and responsibilities related to Spares, and the Authorized User's associated remedies, are described in Exhibit B.

**6. Notification and Correction of Defects**

Supplier's offerings and responsibilities related to notification and correction of defects, and the Authorized User's associated remedies, are described in Exhibit B.

**7. Advanced Replacement Services**

Supplier's advanced replacement service offerings and responsibilities are described in Exhibit B.

**8. On-site Maintenance Services**

Supplier's on-site Maintenance Services offerings and responsibilities are described in Exhibit B.

**9. System Software Maintenance**

During the MCP and as part of the standard Maintenance Services offering, Supplier shall provide the following Maintenance Services (including unlimited telephonic support and all necessary

travel and labor) without additional charge to any Authorized User to maintain the System Software in accordance with the Requirements:

a) New Releases

Supplier's responsibilities related to new releases of System Software and Documentation are described in Exhibit B.

b) Coverage

Supplier's offerings and responsibilities related to coverage for telephonic and written consultation in connection with use, problems, and operation of the System Software are described in Exhibit B.

c) Response and Restore Times

Supplier's response and restore times related to use, problems, and operation of the System Software, and any associated remedies, are described in Exhibit B.

d) Software Evolution

If Supplier merges or splinters the System Software previously provided to any Authorized User, in no event will the merger or splinter on the part of Supplier result in any Authorized User being charged additional license or Maintenance fees in order to receive enhancements, releases, upgrades, or support for the System Software.

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

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

10. Escalation Procedures

Bob Christman, Business Development Manager

[bob\\_christman@masec.com](mailto:bob_christman@masec.com); (o) 757-538-1264, (m) 757,404-5454

11. Remedies

In addition to any remedies described in Exhibit B, if the Product, including the System Software, fails to conform, in all material respects, to the Requirements, Authorized User shall provide written notice to the Supplier of the failure. If within 30 calendar days of its receipt of Authorized User's notice the Supplier is unable to make the Product, including the System Software, conform, in all material respects, to the Requirements, Supplier shall, at Authorized User's request, either (i) provide a replacement Product at no additional cost to the Authorized User, or (ii) accept return of the Product and return all monies paid by such Authorized User (a) for Maintenance Services for the returned Product, including System Software, pro-rated on a monthly basis as of the date the Authorized User reported the non-conformity, and (b) for the Product, including System Software, pro-rated on a monthly basis as of the date the Authorized User reported the non-conformity and based on the average life of the Product.

In addition to the remedies set forth in this Contract and any exhibits, VITA and any Authorized User retain all rights and remedies available at law or in equity.

## 28. FEES, ORDERING, AND PAYMENT PROCEDURE

### A. Fees and Charges

In consideration for the Supplier's performance obligations under this Contract, an Authorized User shall pay Supplier the fee(s) owed pursuant to the schedule of fees and charges as set forth on Exhibit B attached to this Contract. Supplier will only be entitled to those fees owed for

Supplier's performance obligations and any additional Products and Services provided to an Authorized User in accordance with the scope of this Contract and the Requirements, as authorized by Exhibit A, and per the Authorized User's order or SOW. The fees, and any associated discounts, will be applicable throughout the 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. No increase in fee amounts will exceed the lesser of three percent (3%) or the annual increase in the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, All Items, Not Seasonally Adjusted, as published by the Bureau of Labor Statistics of the Department of Labor (<http://www.bls.gov/cpi/home.htm>) for the period ending 60 to 90 days prior to the effective date of the increase compared with the same index one (1) year prior. 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, Supplier shall provide the Authorized User with a reproducible, portable data storage device (e.g. CD-ROM or USB flash drive) of Software and Updates. The Authorized User will be responsible for making copies and distributing the Software and Updates as required. Within 30 calendar days of the end of each calendar quarter, the Authorized User shall provide to Supplier a report of the net number of additional copies of the Software or Updates or both deployed during the quarter. Supplier will invoice such Authorized User for the net number of new licenses reported as deployed.

**C. Demonstration and/or Evaluation**

If the Supplier's contractual obligations include the provision of a Solution, an Application and Licensed Services, or Software-as-a-Service, at the request of any Authorized User, then Supplier shall perform any reasonable demonstration of its Solution, Application and Licensed Services, or Software-as-a Service at the Authorized User's location 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. Supplier Quote and Request for Quote**

An Authorized User may, at its sole discretion, issue a Request for Quote ("RFQ") for any combination of the Solution, Product, or Services provided under this Contract. Supplier shall respond to the RFQ by providing a written quote. Supplier's quote must include (a) a detailed description of each product or service proposed, including any applicable components, at the Exhibit B line item fee level; (b) the quantity of each line item; (c) the total contract price; (d) any additional percentage discount offered; (e) an extended price; (f) any optional or alternate pricing; and (g) any pricing assumptions. If requested by the Authorized User, Supplier's quote must also include a detailed description of the approach Supplier plans to take in developing, implementing, and maintaining its offering pursuant to the RFQ for the Authorized User. If Supplier is unable to meet the requirements of the RFQ, Supplier shall notify the Authorized User in writing of its inability to perform the work requested by the Authorized User, and provide the reasons for its inability to perform, prior to the due date for the submission of quotes in response to the RFQ. Supplier's failure to respond to an RFQ may be deemed a breach of this Contract.

**E. Competitive Request for Quotes**

If an Authorized User determines that a competitive process is required to ensure it receives the best value for any combination of its needed Solution, Product, or Services under this Contract, then the Authorized User may, at its sole discretion, use a Competitive Request for Quote

("CRFQ") process to obtain identical or similar Solutions, Products, or Services to those provided by Supplier pursuant to this Contract. The CRFQ will clearly outline the project timing and requirements. If the Authorized User is not able to identify the exact specifications required, then the CRFQ respondents will be given the opportunity to identify and propose their recommended specifications.

**F. Ordering**

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

Supplier shall accept any order or 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.
- If the Contract allows for the provision of hardware Product, an Authorized User may order Maintenance Services for any Product at any time during the Term of the Contract, irrespective of whether such Product is covered under warranty or maintenance at the time the order is issued to Supplier. Each order will identify:
- iii. Product and, if applicable, serial number, for which Maintenance Services will be provided,
  - iv. Maintenance Level to be provided, and
  - v. MCP for the Product Maintenance. Authorized User may elect, at any time, another Maintenance Level offered by Supplier. Such amendment will take effect within 30 calendar days following Supplier's receipt of Authorized User's written notice, in the form of a modification to an order or SOW. Unless otherwise agreed to by the Authorized User and Supplier, the MCP for a unit of Product will be one (1) year from the effective date of any signed order or SOW for Maintenance on such Product.

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

**G. Statement of Work**

A SOW, in the format provided for in Exhibit C attached to this Contract, is required for any orders placed by an Authorized User pursuant to this Contract. Supplier shall perform any and all contractual obligations at the times and locations set forth in the applicable SOW and at the rates set forth in Exhibit B to this Contract. All SOWs will be of a fixed price type unless VITA issues a written authorization for a time and materials type SOW. The fixed price SOWs may, with the written approval of VITA, contain a cost-reimbursable line item(s) for pre-approved travel expenses pursuant to the provisions of the "Reimbursement of Expenses" subsection below. If a time and materials type SOW is authorized, Supplier Personnel shall maintain daily time records

of hours and tasks performed that must be submitted or made available for inspection by the Authorized User upon 48 hours advance written notice.

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

#### **H. Invoice Procedures**

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

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

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

#### **I. Purchase Payment Terms**

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

#### **J. Reimbursement of Expenses**

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.

## **29. SUPPLIER SPONSORED PROMOTIONS**

The Supplier, at its discretion, may sponsor Product and Service promotions during the Term or any extensions. In the event that Supplier chooses to sponsor such a promotion, Supplier shall provide in writing to VITA, at least five (5) days prior to the promotion, the following information: (i) the dates of the promotion or the duration of the promotion to include the commencement date and the ending date; (ii) the exact Products or Services covered in the promotion; and (iii) the pricing or percentage discount offered during the promotion. VITA will communicate to Supplier in writing its agreement to the promotion.

Supplier shall make all sponsored Product or Service promotions available to all Authorized Users. Should the Supplier request a promotion that would be limiting, either through product configuration or quantities of Products and Services, VITA, at its sole discretion, may not provide a written agreement. VITA and Supplier agree that promotions will not target any one Authorized User, or a few Authorized Users.

VITA and Authorized Users may, at their discretion, assist in advertising the promotion. This assistance may consist of advertising space on Authorized User web sites, or other assistance at an Authorized User's discretion.

If Supplier fails to obtain the prior written agreement of VITA for the promotion, proposes prices different from those in the Contract without VITA's consent, or otherwise does not adhere to the provisions of this section, Supplier will be deemed to be in breach of this Contract. VITA will have all remedies for this breach available under the Contract as well as in law and in equity.

## **30. 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: SCMLInfo@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.

### **31. SUPPLIER PERFORMANCE MEASURES**

VITA 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.

### **32. 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.

### **33. 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 to Authorized User complete copies of any Documentation applicable to the Deliverable(s) provided to Authorized User, in a quantity and media format as agreed upon by the Parties under an order or SOW. Should Supplier revise or replace the Documentation, or should Documentation be modified to reflect Updates, Supplier shall deliver to the Authorized User copies of the updated or replacement Documentation, in the same quantity and media format as originally requested by the Authorized User, or as agreed upon between the Parties. Any Authorized User will have the right, as part of any license grant, to make as many additional copies of the Documentation, in whole or in part, for its own use as required. This Documentation

must include, but is not limited to, overview descriptions of all major functions, detailed step-by-step installation and operating procedures for each screen and activity, and technical reference manuals. Such Documentation must be revised to reflect any modifications, fixes or updates made by Supplier. Any Authorized User, at its own discretion, will have the right, as part of the license granted by Supplier, to modify or completely customize all or part of the Documentation in support of the authorized use of the licensed Application or Software. The Authorized User may also duplicate such Documentation and include it in such Authorized User's document or platform. All Authorized Users shall continue to include Supplier's copyright notice.

#### **34. AUTHORIZED USER SELF-SUFFICIENCY**

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

#### **35. 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.

#### **36. 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. 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.

In the case of Supplier proprietary or trade secret information, Supplier must have followed the procedures required by Code § 2.2-4342(F) in order for the information to be protected from disclosure under the Virginia Freedom of Information Act.

**37. 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.

**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, Product, Licensed Services, or Services, including any Components, then Supplier shall reimburse such Authorized User for the reasonable costs incurred by such Authorized User in obtaining an alternative product or service.

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

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

### **38. 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.

### **39. 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.

### **40. SECURITY COMPLIANCE**

Supplier shall comply with 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/itm-policies-standards/>, or any successor URL(s), as are pertinent to Supplier's operation. Further, Supplier shall comply with all applicable provisions of the relevant Authorized User's then-current security procedures as are pertinent to Supplier's operation and that have been provided to Supplier by the Authorized User. Supplier shall also comply with all applicable federal, state, and local laws and regulations.

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

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

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

#### **41. 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.

#### **42. 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 G. 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;

#### **43. THIRD PARTY TERMS AND CONDITIONS**

In the event that Supplier's provision of the Licensed Services or any performance obligations under the Contract, or any order or SOW issued under the Contract, include third-party terms and conditions, the 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.

#### **44. 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.

#### **45. GENERAL PROVISIONS**

##### **A. Relationship Between VITA and Authorized User and Supplier**

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

##### **B. Licensing Within the Commonwealth**

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

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

##### **C. Incorporated Contractual Provisions**

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

- "Core Contractual Terms";
- "Required eVA Terms and Conditions"; and
- "Mandatory Internal Revenue Service (IRS) Publication 1075 (required for FTI data only)"

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

Supplier agrees that non-compliance with the above-referenced Mandatory Contract Terms and IRS Publication 1075, including Exhibit 7 of IRS Publication 1075 which is incorporated by reference, may be deemed, solely by VITA, as a material breach of the applicable Order or SOW or of the Contract. Supplier is responsible for verifying the correct and current version of this IRS publication and related safeguarding terms language and acknowledges that any Authorized User issuing the Order or SOW will be held harmless.

The terms and conditions set forth in documents posted at the URL above, and any successor URL(s), are subject to change pursuant to action by the legislature of the Commonwealth, change in VITA policy, adoption of revised eVA business requirements, or change to IRS Publication 1075. If a change is made to any of the Mandatory Contract Terms documents, a new effective

date will be noted in the applicable document title. Supplier is advised to check the URLs, or their successors, periodically.

**D. Compliance with the Federal Lobbying Act**

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

**E. Ethics in Public Contracting**

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

**F. Governing Law**

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

**G. Dispute Resolution**

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

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

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

**H. Assignment**

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

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

**I. Severability**

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

**J. Survival**

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

**K. Force Majeure**

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

**L. No Waiver**

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

**M. Remedies**

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

**N. Right to Audit**

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

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

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

**O. Taxes**

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

**P. Currency**

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

**Q. 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 – RESERVED

Exhibit G – Certification Regarding Lobbying

Exhibit H – Supplier Procurement and Subcontracting Plan

Exhibit I – Supplier Performance Measures

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

**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

**David J. Bragg**

By: \_\_\_\_\_  
(Signature)

**Philip L. Pippert**

By: \_\_\_\_\_  
(Signature)

Name: David Justin Bragg  
(Print)

Name: Phil Pippert  
(Print)

Title: President

Title: Chief Procurement Officer

**04/23/2023**

Date: \_\_\_\_\_

**04/27/2023**

Date: \_\_\_\_\_

Address for Notice:

\_\_\_\_\_  
  
\_\_\_\_\_

Address for Notice:

\_\_\_\_\_  
  
\_\_\_\_\_

Attention: Supplier Contact

Attention: Contract Administrator