

Information Technology Sole Source Contract

between

The Virginia Information Technologies Agency

on behalf of

The Commonwealth of Virginia

and

Mythics Inc.

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

**INFORMATION TECHNOLOGY SOLE SOURCE CONTRACT
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INFORMATION TECHNOLOGY SOLE SOURCE CONTRACT

THIS INFORMATION TECHNOLOGY Sole Source 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 Mythics Inc. ("**Supplier**" or "**Mythics**"), a Commonwealth of Virginia corporation headquartered at 4525 Main Street, Suite 1500, Virginia Beach, Virginia 23462, to be effective as of May 3, 2023 ("**Effective Date**").

1. PURPOSE AND SCOPE

VITA, on behalf of the Commonwealth, is engaging Supplier to provide Oracle Corporation ("**Oracle**") products (cloud based and on premise) and associated services (as defined in Exhibit A-1). Supplier shall provide these products and services to all Authorized Users, as defined below. The services associated with the Oracle products include value-add services from Supplier as a re-seller, as well as software maintenance and support services, and do not include professional or consulting services from Supplier. By executing this Contract, the parties agree to be bound by the following Oracle Agreements which will be collectively referred to as the "**Oracle Terms and Conditions**" and which are attached to this Contract as Exhibit A-2 and incorporated by reference:

(1) the terms of the Software License and Services Agreement, effective April 30, 2009, between Oracle America, Inc and VITA, and as subsequently amended, modified and addended by the parties thereto (the "**SLSA**");

(2) and the terms of the Oracle Public Sector Agreement for Oracle Cloud Services, effective November 9, 2017, between Oracle America, Inc. and VITA, and as subsequently amended, modified and addended by the parties thereto (the "**Oracle PSA**");

(3) and the terms of the Oracle Linux and Oracle VM Services Agreement Addendum to the Software License and Service Agreement, effective March 13, 2018, between Oracle America, Inc. and VITA, and as subsequently amended, modified and addended by the parties thereto (the "**Oracle Addendum**").

2. DEFINITIONS

A. 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, are authorized to participate in the procurement of information technology under this Contract. Authorized Users shall include private institutions of higher education that are listed below:

- Averett University
- Bluefield College
- Bridgewater College
- Christendom College
- Eastern Mennonite University
- Emory & Henry College
- Ferrum College
- George Washington University
- Hampden-Sydney College
- Hampton University
- Hollins University
- Liberty University
- Mary Baldwin University
- Marymount University
- Randolph College
- Randolph-Macon College
- Regent University
- Roanoke College
- Shenandoah University
- Southern Virginia University
- Sweet Briar College

- University of Lynchburg
- University of Richmond
- Virginia Union University
- Virginia Wesleyan University
- Washington and Lee University

B. 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".

C. Code

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

D. Commonwealth

The Commonwealth of Virginia.

E. Commonwealth Indemnified Parties

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

F. 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.

G. Confidential Information

By virtue of this Contract, the parties may have access to information that is confidential to one another. To the extent permitted by the laws of the Commonwealth of Virginia, including but not limited to "Freedom of Information" laws, the parties agree to disclose only information that is required for the performance obligations under this Contract. Confidential information shall be limited to the terms under this Contract, including all exhibits thereto, and all information clearly identified as confidential at the time of disclosure.

A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.

Confidential Information does not include any information that is required to be disclosed under The Virginia Freedom of Information Act (Code §§ 2.2-3700 *et seq.*) or similar laws or pursuant to a court order.

H. Contract

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

I. 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.

J. Deliverable

Any Oracle product or service authorized by the scope of this Contract provided by Supplier to an Authorized User in fulfilling its obligations under the Contract or as may be specified in any order issued pursuant to this Contract.

K. Documentation

Those materials (including user manuals, training materials, guides, product descriptions, technical manuals, product specifications, supporting materials and Updates) detailing the information and instructions needed in order to allow any Authorized User and its agents to make productive use of the Deliverable, including any and all components, and to implement and

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

L. Effective Date

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

M. End User Agreement

Means, collectively, the Oracle Terms and Conditions identified in Section 1, "Purpose and Scope", of this Contract consisting of the SLSA, the Oracle PSA, and the Oracle Addendum, and subsequent agreements between VITA and Oracle that are subsequently amended, modified and added by the parties.

N. 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.

O. Industrial Funding Adjustment ("IFA")

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

P. Maintenance Coverage Period ("MCP")

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

Q. 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 the Oracle Software Technical Support Policies or as defined in any Statement of Work or order issued pursuant to this Contract.

R. Maintenance Services

Those services defined in the Oracle Software Technical Support Policies.

S. Party

Supplier, VITA, any Authorized User.

T. Receipt

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

U. Requirements

The functional, performance, operational, compatibility, acceptance testing criteria, and other parameters and characteristics of the Oracle products and services, as authorized by any combination of the Contract, as set forth in Exhibit A-1, and such other parameters, characteristics, or performance standards that may be agreed upon in writing by the Parties. Any requirements for the Oracle products and services shall comply with the specifications delineated in the applicable Oracle Terms and Conditions attached hereto as Exhibit A-2.

V. Services

Any work performed or service provided by Supplier – including the software updates, products, implementation, installation, maintenance, support, testing, training, or other provision of service – in providing value-add reseller services associated with the Oracle products, including software maintenance and support services, in fulfillment of Supplier's obligations under the Contract or, as applicable, under any order 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 used in this Contract, this definition of "Services" does not include Licensed Services or Services defined in the applicable Oracle Terms and Conditions attached hereto.

W. Software

The programs described and defined by Oracle in the applicable End User Agreement attached hereto.

X. Software Publisher

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

Y. 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.

Z. Supplier Personnel

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

AA. 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).

BB. 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).

CC. Total Sales

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

DD. Update

Means any updates Offered through Oracle as provided in the applicable End User Agreement attached hereto.

EE. 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.

FF. Warranty Period

Means Oracle's standard commercial warranty period defined in the applicable End User Agreement

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"). The parties may mutually agree to renew this Contract for up to four (4) additional one (1) year renewal periods after the expiration of the Initial Term (collectively with the Initial Term, the "Contract Term") by signing a written modification no less than thirty (30) days prior to the expiration of any current term. In addition, performance of an order 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 will remain in full force and effect until all of Supplier's contractual obligations pursuant to such order have been met.

B. Termination for Convenience

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

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 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 issued hereunder. Any termination under the provisions of this section will be deemed a "Termination for Breach".

If VITA deems the Supplier to be in breach, VITA shall provide Supplier with notice of breach and allow Supplier 30 business days to cure the breach. If Supplier fails to cure the breach as noted, VITA may immediately terminate this Contract or any order issued pursuant to this Contract, in whole or in part. If an Authorized User deems the Supplier to be in breach of an order, that Authorized User shall provide Supplier with notice of breach and allow Supplier 30 business days to cure the breach. If Supplier fails to cure the breach as noted, the Authorized User may immediately terminate its order, in whole or in part. 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, in whole or in part, or an Authorized User may terminate an order. 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 Maintenance Services rendered by Supplier and accepted by the Authorized User prior to the termination date.

F. Termination by Supplier

In the event of a change to the distribution agreement between Supplier and Oracle, changes to the license definitions and rules and/or changes to the Global Price Lists, Supplier may submit such changes as Oracle requires under Oracle's distribution agreement in writing to VITA for review. VITA shall have 30 days to accept or reject those changes. If VITA accepts the new terms and conditions, VITA shall notify Supplier in writing of such acceptance and the parties will execute an Amendment to the Contract to incorporate such changes. If VITA rejects the proposed changes, Supplier may terminate this Contract. In the event that VITA fails to respond to Supplier's request within 30 days of receiving notice, Supplier will again notify VITA of the new terms and conditions and if VITA again fails to respond to such request within 30 days of the second notice, Supplier may elect to terminate the Contract.

G. 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.

H. Contract Closeout

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

4. SUPPLIER PERSONNEL

A. Selection and Management of Supplier Personnel

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

B. Key Personnel

An order may designate certain of Supplier's personnel as "Key Personnel" or "Project Managers". Supplier's obligations with respect to Key Personnel and Project Managers will be described in the applicable order. Any changes to Key Personnel must be mutually agreed to in writing by Supplier and Authorized User. Failure of Supplier to perform in accordance with such obligations may be deemed a breach of this Contract or of the applicable order .

C. Subcontractors

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

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

5. 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.

6. GENERAL WARRANTY

The provisions of the Oracle Terms and Conditions will govern any warranties in the Oracle products and services provided pursuant to this Contract.

7. SOFTWARE LICENSE

The provisions of the Oracle Terms and Conditions will govern any software licensed pursuant to this Contract.

8. SOFTWARE LICENSE FOR SOFTWARE MAINTENANCE SERVICES

The provisions of the Oracle Terms and Conditions will govern any software licensed pursuant to this Contract.

9. RIGHTS TO WORK PRODUCT

Rights to any Work Product will be governed by the provisions of the Oracle Terms and Conditions, as applicable.

10. 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.

In the event the fees or discounts apply for any period less than the entire Term, Supplier agrees that it will not request an decrease in the percentage discounts during the first twelve (12) month period following the Effective Date and will not request an decrease in the percentage discount 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 percentage discounts set forth in Exhibit B to this Contract, however no decrease in percentage discounts amounts will exceed three percent (3%) unless a lesser percentage is substantiated by the annual increase in the applicable 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 from the previous year. Supplier's price increase request shall only be authorized in the event that Oracle decreases the existing discount structure referenced in Exhibit B. Supplier and VITA will work in good faith to agree on an appropriate change in the percentage discount which shall be agreed upon by signing a written modification to this Contract.. Supplier agrees to offer price reductions to ensure compliance with the "Competitive Pricing" section of this Contract below.

B. Authorized User Request for Quote

An Authorized User may, at its sole discretion, request a quote for any combination of the Oracle products and services provided under this Contract. 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 or unwilling 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.

C. Ordering

Oracle products may not be acquired under the Contract unless the Oracle Terms and Conditions are current and valid. Supplier shall not accept any order from an Authorized User if the order is to be funded, in whole or in part, by federal funds and if, at the time the order is placed, Supplier is not eligible to be the recipient of federal funds as may be noted on any of the Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs.

All Authorized Users have the right to license or purchase from Supplier the Oracle products and services available through this Contract, but have no obligation to purchase or license from Supplier any such 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, that incorporates then current and valid Oracle Terms and Conditions, 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 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 may contain additional terms and conditions. In the event that the terms and conditions of an order are inconsistent with the terms and conditions of this Contract, the terms and conditions of this Contract will supersede.

ALL CONTRACTUAL OBLIGATIONS UNDER THIS CONTRACT IN CONNECTION WITH AN ORDER 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.

D. Invoice Procedures

Supplier shall remit each invoice to the "bill-to" address provided with the order promptly in accordance with payment terms in the order. Payment for any support services, as authorized in the Contract and the Authorized User's applicable order, will be annually in arrears unless otherwise stated in this Contract, or in any order referencing this Contract. No invoice may include any costs other than those identified in the signed order, 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 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
- v. This Contract number and the applicable order number
- 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.

E. 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, or until after services have been rendered. Charges for Deliverables 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.

F. 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. 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.

G. Timely Payment

Pursuant to the Virginia Prompt Payment Act (Code §§ 2.2-4347 *et seq.*), all Commonwealth Authorized Users are obligated to make timely payments to Supplier. Authorized Users shall make full payment of all accurate amounts to the Supplier within 30 days of receipt of a proper invoice from Supplier. If any invoiced amount remains unpaid and undisputed 60 days from the date of the invoice, Supplier may charge that Authorized User interest at the rate of one percent (1%) per month on any such unpaid amount.

H. Invoice Defects

If, before payment of an invoice, an Authorized User notifies the Supplier in writing of a defect in an invoice pursuant to Code §§ 2.2-4351, Authorized User will have the right to withhold payment of the disputed amount until the invoice is corrected by Supplier. This right to withhold payment will only apply to such portion of an invoice from Supplier that is incorrect based on the agreed payment terms and billing information in the parties original quote and purchase order. Supplier is responsible for the accuracy of its billing information. 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. If a disputed charge is reversed, Supplier shall reverse all associated surcharges, regulatory charges and taxes.

11. REPORTING

Supplier shall submit to VITA monthly reports containing data on:

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

Supplier shall submit the "Supplier Monthly Report of Sales" to VITA by the 30th day of each subsequent month using 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"). 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 did not submit a Plan and is not anticipating utilizing Subcontractors in its performance of the Contract. Thus, Supplier is not required to comply with the SSCC requirements under this Contract, but shall provide a monthly subcontracting report.

12. 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.

13. TRAINING AND DOCUMENTATION

A. Training

Supplier shall provide personnel sufficiently experienced and qualified to conduct such training at a time and location (physical or online) mutually agreeable to Supplier and Authorized User. Available additional and optional training, and applicable pricing and discounts, are described in

B. Exhibit B. Documentation

Supplier shall deliver to Authorized User any documents described in the End User Agreements.

14. COMPETITIVE PRICING

Supplier warrants that each of the prices, charges, economic or product terms, or warranties granted under this Contract are fair, reasonable, and comparable with the price, charge, economic or product term or warranty being offered by Supplier to other government and higher education 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 other government customers during the Contract Term. New products and services outside the scope of the Contract 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 will make reasonable efforts to seek approval from Oracle to 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.

15. CONFIDENTIALITY

Except as set forth in subsection A below, the provisions of the Oracle Terms and Conditions will govern the confidentiality obligations of the Parties.

A. 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.

16. INDEMNIFICATION

A. Indemnification Generally

Indemnification of Commonwealth Indemnified Parties for all matters pertaining to Oracle products and services will be in accordance with the applicable provisions of the Oracle Terms and Conditions.

For any services provided directly by Supplier, 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:

v. any Claims by any Subcontractor resulting from Supplier's failure to pay such Subcontractor.

B. Defense Claims Supplier Services

Supplier will be solely responsible for all costs and expenses associated with the defense of all third-party Claims against Commonwealth Indemnified Parties resulting from Supplier's direct actions. 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.

17. LIABILITY

A. Supplier Liability

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

Supplier's liability for direct damages arising out of or under this Contract will not exceed, in aggregate, twice the value of the Contract. For purposes of this paragraph, "value of the Contract" shall mean fees paid by the affected Authorized User(s) for the programs and/or services under the applicable order(s) giving rise to the liability. These limitations will apply on a per-incident basis; it being understood that multiple losses stemming from the same root cause constitute a single incident

The limitations on liability set forth in this section will not apply to liability arising from any combination of the following:

- 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.

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.

18. 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.

19. SECURITY COMPLIANCE

The provisions of the Oracle Terms and Conditions will govern the security compliance obligations of Oracle and Supplier with regard to any Oracle products or services provided pursuant to this Contract.

20. IMPORT/EXPORT

The provisions of the Oracle Terms and Conditions will govern the import/export obligations of Oracle and Supplier with regard to any Oracle products or services provided pursuant to this Contract.

21. ACCEPTABLE USE POLICY

The provisions of the Oracle Terms and Conditions will govern the acceptable use by Authorized User of any Oracle products or services provided pursuant to this Contract.

22. BANKRUPTCY

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

23. 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

The provisions of the Oracle Terms and Conditions will govern the licensing provisions with regard to any Oracle products or services provided pursuant to this Contract.

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"

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/>.

Notwithstanding the above, the extent to which an Oracle product (hardware or software program) is, at the time of delivery, capable of providing comparable access to individuals with disabilities is indicated by the comments and exceptions (if any) specified on the applicable Voluntary Product Accessibility Template ("VPAT") available at www.oracle.com/us/corporate/accessibility, provided that such Oracle product is used in accordance with the applicable Oracle program and hardware documentation and that any assistive technologies and any other products used with the Oracle product properly interoperate with the Oracle product. The VPAT indicates the degree of conformance with the applicable provisions of the Architectural and Transportation Barriers Compliance Board standards set out in 36 CFR Part 1194 (known as "Section 508"). In the event that Section 508 is revised over the life of this Agreement, the VPAT will indicate the applicable version. The VPAT also lists the degree of conformance with the Web Content Accessibility Guidelines (WCAG). In the event that no VPAT is available for a particular product, please contact the Oracle Accessibility Program Office at accessible_ww@oracle.com. Oracle makes no representations regarding the accessibility status of any product identified as "third party."

The terms and conditions set forth in documents posted at the URL above, and any successor URL(s), are subject to change pursuant to action by the legislature of the Commonwealth, change in VITA policy, or adoption of revised eVA business requirements. If a change is made to any of the Mandatory Contract Terms documents, a new effective date will be noted in the applicable document title. Supplier is advised to check the URLs, or their successors, periodically.

D. Compliance with the Federal Lobbying Act

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

E. Ethics in Public Contracting

By signing this Contract, Supplier warrants that its assent to this Contract is made without collusion or fraud, and that Supplier has not offered or received any kickbacks or inducements

from any other bidder, supplier, manufacturer or subcontractor in connection with their proposal or the terms of this Contract. Further, Supplier warrants that it has not conferred any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, on any public employee having official responsibility for this procurement transaction, unless consideration of substantially equal or greater value was exchanged. In addition, Supplier warrants that it will notify VITA if it becomes aware of a potential conflict of interest in the future.

F. Governing Law

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

G. Dispute Resolution

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

The Supplier may not invoke any available administrative procedure under the Code nor institute legal action prior to receipt of the decision of the relevant public body on the claim, unless that public body fails to render its decision within 30 calendar days. The decision of the relevant public body will be final and conclusive unless the Supplier, within six (6) months of the date of the final decision on the claim, invokes appropriate action under Code § 2.2-4364 or the administrative procedure authorized by Code § 2.2-4365. In the event of any breach by a Commonwealth agency, Supplier's remedies will be limited to claims for damages and interest allowable under the Code and, if available and warranted, equitable relief. All such claims to be processed pursuant to this Section. , the foregoing prohibition will not apply to Oracle's rights of termination under the Oracle Terms and Conditions.

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 Commonwealth public body, 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

The provisions of the Oracle Terms and Conditions relating to force majeure will govern any such occurrence pursuant to this Contract.

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 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.

For the avoidance of doubt, this provision only applies to Mythics. Oracle's audit rights are outlined in the applicable End User Agreement. .

O. Taxes

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

P. Currency

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

Q. Advertising and Use of Proprietary Marks

No Party may use the name of the other Party or refer to the other Party, directly or indirectly, in any press release or formal advertisement without receiving prior written consent of the other Party. In no event may any Party use a proprietary mark of the other Party without receiving the prior written consent of the other Party.

R. Notices

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

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

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

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

S. Offers of Employment

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

T. Contract Administration

Supplier agrees that at all times during the 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.

U. 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-1 – Requirements

Exhibit A-2 – Oracle Terms and Conditions:

A-2.1 – Software License and Services Agreement, effective April 30, 2009, between Oracle America, Inc and VITA

A-2.2 – the terms of the Oracle Public Sector Agreement for Oracle Cloud Services, effective November 9, 2017, between Oracle America, Inc. and VITA

A-2.3 – the terms of the Oracle Linux and Oracle VM Services Agreement Addendum to the Software License and Service Agreement, effective March 13, 2018, between Oracle America, Inc. and VITA

Exhibit B – Pricing

Exhibit C – N/A RESERVED

Exhibit D – N/A RESERVED

Exhibit E – N/A RESERVED

Exhibit F – N/A RESERVED

Exhibit G – Certification Regarding Lobbying

Exhibit H – Supplier Procurement and Subcontracting Plan

Exhibit I – Service Level Agreements (SLAs)

Exhibit J – N/A RESERVED

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 not enter into an supplemental or ordering agreement pursuant to this Contract unless mutually agreed upon in writing. To the extent that an ordering agreement, or any order issued pursuant to this Contract, includes any terms and conditions inconsistent with the terms and conditions of this Contract, the terms and conditions of the order will be of no force and effect.

V. Order of Precedence

In the event of a conflict, the following order of precedence shall apply: this Contract document, Exhibit A-1, Exhibit A-2, Exhibit B, Exhibit I, then any project specific order. 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. VITA and Supplier agree that the Oracle End User Agreements shall prevail for all matters pertaining to Oracle.

W. 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.

X. 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.

Mythics Inc.

By: Deonte J. Watters
(Signature)

Name: Deonte J. Watters, CCMAP_____
(Print)

Title: Vice President, Contracts_____

05/04/2023
Date: _____

Address for Notice:

4525 Main St. Suite 1500

Virginia Beach, VA 23462

Attention: Supplier Contact

**Virginia Information Technology Agency, on
behalf of the**

COMMONWEALTH OF VIRGINIA

By: Philip L. Pippert
(Signature)

Name: Philip L. Pippert_____
(Print)

Title: Chief Supply Chain Management_____

05/04/2023
Date: _____

Address for Notice:

7325 Beaufont Springs Dr

Richmond VA 23225

Attention: Contract Administrator