

# Information Technology Software Value-Added Reseller Contract

between

The Virginia Information Technologies Agency

an agency of

The Commonwealth of Virginia

and

Optiv Security 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 CONTRACT  
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## INFORMATION TECHNOLOGY SOFTWARE VALUE-ADDED RESELLERS CONTRACT

THIS INFORMATION TECHNOLOGY Software Value-Added Resellers CONTRACT (“**Contract**”) is entered into by and between the Virginia Information Technologies Agency (“**VITA**”), an agency of the Commonwealth of Virginia (“**Commonwealth**”) pursuant to § 2.2-2012 of the *Code of Virginia* (“**Code**”) and Optiv Security Inc. (“**Supplier**”), a Delaware corporation headquartered at 1144 15<sup>th</sup> Street, Suite 2900, Denver, CO 80202, to be effective as of March 16, 2026 (“**Effective Date**”).

### 1. PURPOSE AND SCOPE

VITA, on behalf of the Commonwealth, is engaging Supplier to act as a Value-Added Reseller (“**VAR**”) to provide the following:

- A. Licenses for application software products that are created for specific business functions and includes:
  - i. COTS or Modified-off-the Shelf (MOTS)
  - ii. Development Platforms (Low-Code, No-Code)
  - iii. Software-as-a-Service (SaaS), Cloud-based or On-Premise delivery
  - iv. Use by public bodies, but excludes joint efforts across multiple public bodies
  - v. Products to support VITA’s delivery of enterprise solutions or services.
- B. Value-add services which must include, but not be limited to:
  - i. Customer licensing advisory (product consultation to customers)
  - ii. Customer license management (proactive renewal notifications)
  - iii. Customer license utilization management (tracking utilization; right-sizing)
  - iv. Ongoing consumption and cost management service, including tail spend management and identifying cost-saving opportunities and programs for VITA
  - v. Technical Account Management
  - vi. Quality Account Management
  - vii. Service Level Accountability
  - viii. Being knowledgeable and supporting executive-branch customers in adherence to VITA governance and security protocols
  - ix. Supporting Authorized Users in acquiring acceptance by publishers of any additional terms and conditions required by a particular purchase, an active role in facilitating any necessary discussions between Authorized Users and software publishers and including Supplier signature acknowledgement of accepted terms. Examples include but are not limited to VITA “cloud terms and conditions” and modification of a software publisher’s EULA.
  - x. Promotion of VITA contract to customers across the Commonwealth and in other states.
- C. Professional services:
  - i. Services are excluded from offerings/options except when sold with licenses/ subscriptions as directly related to a software implementation/ deployment sold by the Supplier, provisioned by the Publisher, and must be initiated within one (1) year of purchase. Independent consulting services shall not be available through this Contract.  
*VITA, in its sole discretion, may restrict services under this Contract, but also may expand services to be covered under this Contract as mutually agreed upon via a contract modification.*
  - ii. Services include installation, implementation, integration, configuration, and training.
  - iii. All services performed under this contract require a Statement of Work (“**SOW**”) in the form of **Exhibit C**. *Executive branch agencies are subject to VITA governance process. However, SCM may review and/or approve any SOW under this Contract prior to issuance or anytime during performance period. The intent is not to replace in anyway services under the IT Contingent Labor (“ITCL”) program. [IT Contingent Labor | Virginia IT Agency](#). All services provided under this contract are at the discretion of VITA.*
  - iv. The Supplier executes the SOW with the Authorized User noting the Publisher’s role within the SOW. Rates for Publisher services must be in accordance with publicly available labor rates. Third-party consultant services are not an option under this Contract.
  - vi. SOWs are limited to \$500K dollars excluding the costs of licenses. VITA at its sole discretion may change this dollar threshold.

D. Managed Cybersecurity Services:

- i. When sold, must accompany subscription software also sold by the Supplier.
- ii. Must be provisioned by the license Software Publisher not a partner or third-party provider.
- iii. Could include threat detection and assessment, alert monitoring, vulnerability assessments, security patch management, firewall management, intrusion detection and prevention, and incident response; all performed using the licensed software.
- iv. Must be delivered through a subscription-based model, where the customer pays a subscription fee embedded in or in addition to the subscription license fee, to access the services and support.
- v. Must be fully defined and described by the SKU and accompanying services description or agreement.
- vi. Excludes all customization services.
- vii. Determination of in-scope or out-of-scope is in VITA's sole discretion.

E. Out-of-Scope products, Software and Services:

- i. Custom-built solutions
- ii. Operating systems
- iii. Telecommunications software or services
- iv. Hardware
- v. Software embedded via a physical or virtual appliance
- vi. Major enterprise-wide solutions intended for multi-agency use (*except those described in A. v*), such as Cardinal, eVA, etc. (*determination of in-scope or out-of-scope is in VITA's sole discretion*)
- vii. Stand-alone hosting
- viii. Infrastructure as a Service (IaaS)
- ix. Stand-alone professional or staff augmentation services
- x. Managed Services (*excepting Managed Cybersecurity Services, item D. above*)
- xi. Services related to a software that was purchased from another source
- xii. Services not purchased within the timeframe specified in the resulting awarded contract(s)
- xiii. Services to support agency change management or agency readiness
- xiv. Software available under other existing VITA statewide solution-specific or publisher-specific contracts (*determination of in-scope or out-of-scope is in VITA's sole discretion*)

This Contract sets forth the terms and conditions under which Supplier shall provide software and services to all Authorized Users, as defined below.

This Contract allows for joint and cooperative procurement use, in accordance with Code §§ 2.2-2012 and 2.2-4304. Such use by other public bodies is not limited to Virginia and shall include other 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, or any other entity authorized by applicable law or policy to purchase the goods or services authorized in the contract, provided the using entity executes a participating addendum with Supplier. Virginia public bodies may use this Contract without executing a participating addendum if such use does not require custom terms and the entities are authorized by Code § 2.2-2012 to purchase from contracts established by VITA. VITA's approval is not required for such use, but the using entity and Supplier shall ensure that VITA is aware of such use by providing a copy of the executed participating addendum to VITA.

VITA contracts are mandatory for use by executive branch agencies. VITA contracts are optional use by all other Authorized Users. This Contract is non-exclusive, and all Authorized Users may, at their sole discretion, receive benefits from third party suppliers of services similar to, or in competition with, Services provided by Supplier.

Supplier agrees that all authorized Participating Entities may purchase the **Exhibit B "Software"** and **"Services"** furnished pursuant to this Contract in accordance with the provisions of this section. Supplier shall include all cooperative use sales in its report of Total Sales pursuant to the "Reporting" section of this Contract below.

Supplier is not a developer or “**Software Publisher**” and agrees that all Software and Services shall be provisioned in accordance with the above-described scope, the requirements of **Exhibit A** and any additional requirements defined through an executed “**Statement of Work (SOW)**” with an Authorized User under this Contract. Services are excluded from offerings/options except when sold with licenses/subscriptions as directly related to a software implementation/deployment sold by the Supplier, provisioned by the Publisher, and must be initiated within one (1) year of purchase. Independent consulting services shall not be available through this Contract. Supplier, as the VAR of Software Publisher’s Software shall work with the Software Publisher to assure that requirements of this Contract are adequately addressed in the SOW.

## 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. Adobe Large Government Agency (“LGA”)**  
Adobe large government agency buying program.
- B. Adobe Enterprise Term License Agreement (“ETLA”)**  
Adobe term-based licensing program for Adobe enterprise customers. For organizations that want to purchase enterprise-wide licenses, administered through a single Adobe and customer authorized reseller.
- C. Acceptance**  
The written acknowledgement by the Authorized User of successful delivery and performance of the Software and any other contractual commitments as set forth in by the Supplier in the applicable order or Statement of Work (“**SOW**”), which may include 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.
- D. Application**  
The software programs in object code and other related data, including intellectual data, proprietary information and Documentation contained and applicable to Licensed Services provided by Supplier under the Contract, as described in Exhibit B or as described in any order or SOW issued under the Contract, including any Updates, enhancements, and replacements to the Application.
- E. Application Development Platforms**  
Suite of technology that can support enterprises in building, developing, and implementing software.
- F. Application User**  
Application User(s) include employees of an Authorized User, independent contractors engaged by an Authorized User, or entities contracting with an Authorized User for services, as specified in the applicable order or SOW. 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.
- 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 Software, or Deliverable delivered by Supplier or Software Publisher 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, Software Publisher or an Authorized User, whether the information is in written, graphic, machine readable or other tangible form, and which at the time of disclosure is in written, graphic, machine readable or other tangible form, and which at the time of disclosure is in written, graphic, machine readable or other tangible form, and which at the time of disclosure 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:

- (1). 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;
- (2). obtained independently from a third-party without an obligation of confidentiality to the disclosing Party and without breach of this Contract;
- (3). developed independently by the receiving Party without reference to the Confidential Information of the other Party; or
- (4). required to be disclosed under The Virginia Freedom of Information Act (§§2.2-3700 et seq. of the Code of Virginia) or similar laws or pursuant to a court order.

- Q. Content**  
Any data, including the selection, arrangement, and organization of such data, entered, uploaded to the Application, or otherwise provided to Supplier or Software Publisher 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 or Software Publisher in connection with this Contract.
- R. Contract**  
This agreement, including all exhibits, schedules, and attachments, including any modifications or amendments thereto, entered into by VITA and Supplier.
- S. 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.
- T. Customized Software**  
Software that is developed specifically for a specific organization or authorized user to fit its business needs, or a modification of the Software Source Code for the specific organization or authorized user. Under this contract, customizations are out of scope, are a responsibility of the Authorized User and shall not be provisioned as a service of the Contract.
- U. 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, Software, or Updates, including the development or creation of Work Product.
- V. 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, Service, Licensed Services or Deliverable, including any and all components, and to implement and develop self-sufficiency with regard to the Application, Software, Licensed Services or Deliverable, including any and all components, provided by Supplier or Software Publisher in fulfilling its obligations under the Contract or as may be specified in any order or SOW issued pursuant to this Contract.
- W. Effective Date**  
The date this Contract goes into full force and effect as set forth in the preamble of this Contract above.
- X. 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 the applicable SOW, in trust for the Parties as set forth in the “Escrow Agreement” section of this Contract below.
- Y. 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.
- Z. Industrial Funding Adjustment (“IFA”)**  
The fee paid by Supplier to VITA to compensate VITA for the cost of procuring and managing the Contract.
- AA. Licensed Services**  
The operation of the Application and the necessary operating system software, hardware, and utilities on Supplier’s or applicable Software Publisher’s host computer system; and any Software Publisher’s third-party components; storing Content; and making the Application and Content

available to Application user(s) via the Web Site, as more fully described in Exhibit A or as described in any order or SOW issued hereunder.

**BB. Linked Membership**

An optional feature of the Adobe Value Incentive Plan which allows participating organizations to aggregate purchases across linked VIPs in order to achieve a higher discount level, while still purchasing and managing licenses separately.

**CC. Low Code**

A platform where developers can easily create and deploy applications with minimal coding, but developers have the ability add code manually to customize the application.

**DD. Maintenance Coverage Period (“MCP”)**

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

**EE. Maintenance Level**

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

**FF. Maintenance Services**

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

**GG. Managed Services**

The outsourcing of business IT requirements to a third-party IT managed service provider (MSP) to improve functions and reduce costs. Essentially, managed services involve a third-party company supporting and managing IT operations, which can include deploying, managing, and securing devices, applications, or data. Managed Services, excepting those associated with cybersecurity software, are excluded from the scope of this Contract.

**HH. Managed Cybersecurity Services**

Cybersecurity software is software intended to defend computers, servers, mobile devices, electronic systems, networks, and data from malicious attacks by intruders, code, and/or system/software vulnerabilities. Managed Services associated with cybersecurity software, when sold by the Supplier with accompanying licenses/subscriptions and provided by the Software Publisher, are included in the scope of this Contract as limited by 1. D. Managed Cybersecurity Services.

**II. Modified-off-the-Shelf (“MOTS”) Software**

Software that is commercially available that can be modified (configured and customized) to fit the end user’s business needs.

**JJ. No-Code**

Allows users with no prior programming experience to create a basic platform application using drag and drop features without having to write code.

**KK. Original Equipment Manufacturer**

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.

**LL. On-Premise**

A site or portion of a site (colocation) that is fully under control of the Commonwealth or its delegated representatives. It may be either at a centralized COV datacenter facility, an agency

datacenter/location or co-located (caged, etc.). Full control would include servers, storage, switches, the building, cooling, power, bandwidth physical security, etc.

**MM. 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.

**NN. Order**

An order placed under this Contract by an Authorized User for any Software or Services that are within the scope of this Contract and through a Software Publisher listed as an approved option in Exhibit B.

**OO. Party**

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

**PP. Protected Health Information (“PHI”)**

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

**QQ. Receipt**

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

**RR. Requirements**

The functional, performance, operational, compatibility, Acceptance testing criteria, and other parameters and characteristics of the Software, 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.

**SS. Services**

Any work performed or service provided by Supplier or the Software Publisher— including Supplier Contract value-add services, 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 or the Software Publisher 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.

**TT. Software**

The programs and code, and any subsequent releases, sold by Supplier and provided by Software Publisher under the Contract as set forth in Exhibit B or as described on Supplier's US and International price lists in effect at time of Authorized User's placement of order or SOW. “Software” also includes the programs and code provided by Software Publisher under the Contract or any order or SOW issued pursuant to the Contract in the form of Software Updates.

**UU. Software-as-a-Service**

The capability provided to the consumer is to use the provider's applications running on a cloud infrastructure. The applications are accessible from various client devices through either a thin client interface, such as a web browser (e.g., web-based email), or a program interface. The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage, or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.

**VV. Software Publisher**

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

**WW. Statement of Work ("SOW")**

Exhibit C (describing the deliverables, due dates, assignment duration, Acceptance criteria, and payment obligations for a specific project, engagement, or assignment that Supplier and Software Publisher commits to provide to an Authorized User), which, upon signing by all applicable Parties, including the Software Publisher, is made a part of the Contract.

**XX. 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.

**YY. 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.

**ZZ. Supplier Personnel**

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

**AAA. 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).

**BBB. 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).

**CCC. Transition Out Plan**

As used in this Contract, 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. As used in an SOW, the written plan developed by the Software Publisher and Authorized User addressing the transition of work and/or services away from the Software Publisher and to Authorized User, or its designee, after the expiration or termination of the SOW.

**DDD. Transition Period**

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

**EEE. Total Sales**

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

**GGG. Value-add Reseller**

Suppliers that purchase software products and services from Original Equipment Manufacturer (OEM), Software Publisher or distributors and resell the products and services while offering additional services.

**FFF. Update**

Any update, modification, or new release of the Software, Application, or Documentation that Supplier or a Software Publisher 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.

**GGG. 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.

**HHH. Warranty Period**

The period of time during which the Software Publisher is obligated to provide corrections, free of charge, for a unit of Software.

**III. Web Site**

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

**JJJ. 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 Software Publisher, or jointly by Supplier or Software Publisher 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 two (2) year ("**Initial Term**"). VITA, in its sole discretion, may renew this Contract for up to seven (7) 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.

Supplier, as the VAR of the Software Publisher, will ensure that the Software Publisher is aware that 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. 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 six (6) 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 Services, maintenance or licensing fees during any Transition Period at the Software Publisher publicly available hourly rates as 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 regard to any purchased Software perpetual licenses which are paid in full.

**C. Continuity of Services**

In the event that the Initial Term and all renewal periods of this Contract expire prior to the award for a successor contract for similar goods or services, the Commonwealth may, with written consent of the Supplier, extend this Contract for such a period as necessary to afford the Commonwealth a continuous supply of the identified goods and/or services until completion of a procurement to succeed this Contract. If there is a conflict between this term and other terms within this Contract, this term shall prevail.

**D. 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.

**E. 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.

**F. 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.

**G. 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. Any termination of this Contract under this

provision will not affect the rights and obligations attending any order or SOW outstanding at 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.

**H. Termination by Supplier or by Software Publisher**

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 of this Contract 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. Supplier, as the VAR of the Software Publisher, will ensure that the Software Publisher is aware that in no instance will termination by Software Publisher will be considered.

**I. Contract Kick-Off Meeting**

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

**J. Transition Out Plan**

Within three (3) months of the Effective Date, Supplier will develop and distribute to VITA a Contract 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 VITA's approval. The Supplier shall assure that a Transition Plan specific to the Authorized User and SOW included in each SOW written under this Contract.

**K. 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. SERVICES**

**A. Nature of Services and Engagement**

VITA, in its sole discretion, may cancel any order or SOW resulting in a commitment of any individual Supplier Personnel for more than 1,000 hours of work during any six (6) month period or of any such individual Supplier Personnel for more than eight (8) months in any twelve (12) month period. Any order or SOW cancelled by VITA will no longer be binding on either Party, and all obligations with respect to the cancelled order or SOW shall expire. Any cancellation under this provision will not affect the rights and obligations attending any order or SOW outstanding at the cancellation date.

**B. Supplier Value-Add Services**

Throughout the Contract Term, Supplier shall advocate on behalf of and provide all reasonable assistance to Authorized Users in obtaining an applicable Software Publisher's consent to any

additional terms and conditions for the Software purchased under a specific order or SOW. This may include, but is not limited to, facilitating a Software Publisher's agreement to the VITA cloud terms and conditions or License Agreement Addendum exhibits, as referenced in Contract sections 4.C and 8.A, respectively.

Supplier shall do its utmost to ensure that all Software offered pursuant to this Contract complies with all applicable Commonwealth security standards. Supplier agrees that it will not knowingly offer to Authorized Users any Software that fails to conform to the applicable Commonwealth security standard or to offer products and Software from Software Publishers who refuse to address Commonwealth security concerns with such Software Publisher's products and Software. Additionally, upon request from VITA, Supplier shall remove specific Software offerings or Software Publishers identified by VITA from the list of offerings available to Commonwealth Authorized Users and will not make such identified Software available to Authorized Users.

**C. Provisioning of Licensed Services**

When required by VITA Enterprise Services, cloud Licensed Services obtained pursuant to this Contract will be governed by the VITA cloud terms and conditions, the form of which is attached to this Contract as Exhibit F-1 and incorporated by reference. The form of the VITA cloud terms and conditions will form the basis for the terms and conditions for all Licensed Services purchased by Commonwealth Authorized Users pursuant to this Contract, modified for the particular purchase by such Authorized User. Any order or SOW for Licensed Services issued pursuant to this Contract shall include an executed copy of the VITA cloud terms as agreed to by the applicable Authorized User and Software Publisher, signed by the applicable Authorized User and Software Publisher and acknowledged by Supplier, as an attachment thereto. The VITA terms and conditions will be in addition to, and not in lieu of, any obligations of this Contract relating to Licensed Services. Supplier shall facilitate and provide all reasonable assistance to such Authorized User in assisting such Software Publisher to execute the VITA cloud terms and conditions.

As part of its VAR Services and to facilitate purchases of the same Licensed Services by different Authorized Users, Supplier shall maintain a database of the specific VITA cloud terms agreed-to for each Licensed Services offering and shall provide a copy of such terms and conditions to subsequent Authorized Users who select those same services.

**D. Services Provided by Software Publisher**

Certain implementation services, when sold by the Supplier with accompanying licenses/subscriptions—including, -configuration, installation, integration, implementation, and training—may be provided directly to an Authorized User by the Software Publisher as part of the Software Publisher's offering. Any services to be provided directly by a Software Publisher will be set forth in the applicable order or SOW and meet all order and SOW requirements of this Contract. Supplier shall facilitate and provide all reasonable assistance to the Authorized User in ensuring that an Authorized User obtains the benefits of all services that an applicable Software Publisher is obligated to provide.

**E. Managed Cybersecurity Services Provided by Software Publisher**

Certain managed cybersecurity services, when sold by the Supplier with accompanying subscription software—including threat detection and assessment, alert monitoring, vulnerability assessments, security patch management, firewall management, intrusion detection and prevention, and incident response; all performed using the licensed software—may be provided directly to an Authorized User by the Software Publisher as part of the Software Publisher's offering. An SOW is not required for managed cybersecurity services, but the managed services shall be fully defined and described by the SKU and accompanying services description or agreement. Any work outside of the defined managed cybersecurity services shall be set forth in an SOW and meet all SOW requirements of this Contract. Supplier shall facilitate and provide all reasonable assistance to the Authorized User in ensuring that an Authorized User obtains the benefits of all services that an applicable Software Publisher is obligated to provide.

## 5. SUPPLIER PERSONNEL AND SOFTWARE PUBLISHER PERSONNEL

### A. Selection and Management of Supplier Personnel and Software Publisher 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. Supplier shall ensure that SOWs include definition of any additional software publisher personnel requirements (e.g., onboarding) required by the Authorized User.

### B. Key Personnel

Supplier's personnel designated as Account Manager are considered "Key Personnel". Supplier's obligations with respect to Account Manager shall be defined by the "Account Staffing" section of Exhibit A Requirements. VITA reserves the right to interview and accept and/or reject any Supplier proposed Key Personnel assigned to account staffing. Failure of Supplier to perform in accordance with such obligations may be deemed a breach of this Contract.

An order or SOW may designate certain of the Software Publisher's personnel as "Project Managers". Software Publisher's obligations with respect to Project Managers will be described in the applicable order or SOW. Any changes to Project Managers must be communicated in advanced to the Authorized User no less than five (5) business days and mutually agreed to in writing by the Software Publisher and Authorized User. The Authorized User reserves the right to interview and accept and/or reject any Software Publisher proposed Project Managers assigned to an order or SOW. Supplier shall ensure that all SOWs include any additional software publisher key personnel requirements required by the Authorized User.

### C. Subcontractors

Supplier shall not use Subcontractors and shall ensure that Software Publisher's do 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 terms and conditions, including warranties, set forth in this Contract.

## 6. 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.

**7. GENERAL WARRANTY**

THE OBLIGATIONS OF SUPPLIER UNDER THIS GENERAL WARRANTY SECTION ARE MATERIAL.

Supplier warrants and represents to VITA that Supplier will fulfill its contractual obligations and meet all 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.

**B. Coverage Requirements**

During the Warranty Period of ninety (90) 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 result in Supplier's failure to meet the Requirement, or its contractual obligations.

The Warranty Period will begin at the Acceptance date of the final Deliverable.

**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, provided by Supplier or Software Publisher meet or exceed the Requirements and that all Software 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 Software will (a) degrade the performance of any Software or its components to a level below that defined in the Requirements or the Software Publisher's published specifications, as applicable; (b) cause any other warranty to be breached; or (c) require an Authorized User to acquire additional hardware equipment or software.

**E. Licensed Services Application and Documentation**

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

i. Supplier will ensure that the Software Publisher, who contains superior knowledge with respect to the Application, is made aware that all Authorized Users are relying on the Software Publisher's skill and judgment in providing the Licensed Services, including the Application.

ii. Supplier, as the VAR of the Software Publisher's Software, represents and warrants that all Licensed Services offered pursuant to this Contract 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, as the VAR of the Software Publisher's Software, warrants that the Application and Licensed Services offered pursuant to this Contract will conform in all material respects to the Requirements set forth in this Contract in Exhibit A and any order or SOW issued hereunder. Supplier warrants that the Application and 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, or Licensed Services. Supplier, as the VAR of the Software Publisher's Software, 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(s) provided pursuant to this Contract are 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 or the Software Publisher 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, as the VAR of the Software Publisher's Software, shall work with the Software Publisher, so that all post-Acceptance Updates, changes, alterations or modifications to the Application, Licensed Services and Documentation by Supplier or Software Publisher will be compatible with and will not materially diminish the features or functionality of the Application, or Licensed Services when used on the equipment in accordance with the Documentation and all of the terms and conditions hereof.

vii. Supplier, as a VAR of the Software Publisher, shall work with the Software Publisher so that the Documentation and all modifications or amendments thereto which Supplier is required to provide under this Contract shall be sufficient in detail and content to allow a user to understand and utilize fully the Application without reference to any other materials or information.

#### **F. Privacy and Security**

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

#### **G. 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 that has been approved by the Software Publisher.

**H. Operating System and Software Supportability**

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

**I. Malicious Code**

Supplier is a VAR of the Software Publisher's Software and as such does not have any access and visibility to the Software's source code. Where applicable, Supplier will use 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.

**J. Open Source**

Supplier, as a VAR of the Software Publisher, shall work with the Software Publisher to notify all Authorized Users if any Deliverables, as obligated and provided by Supplier, contain any Open Source code and identify the specific Open Source License that applies to any embedded code dependent on Open Source code, provided by Supplier under this Contract.

**K. Supplier Viability**

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

**L. Supplier's Past Experience**

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

**8. 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**

Software Licensed by Software Publisher

Supplier is providing Software that is licensed from third-party Software Publishers through an End User Licensing Agreement ("EULA"). In the event that a Software Publisher's EULA contains terms and conditions that an Authorized User, as a government entity, cannot accept, and if that Software Publisher will not modify its EULA to address those terms and conditions that an Authorized User cannot accept, then the EULA will be subject to the License Agreement Addendum ("LAA"), the form of which is attached to this Contract as Exhibit F-2 for reference purposes. Supplier shall facilitate and provide commercially reasonable assistance to such Authorized User in ensuring that any such Software Publisher executes the LAA. The Software Publisher's EULA, along with the LAA executed by Software Publisher and acknowledged by the Supplier, will be added to the order or SOW for that Software, but will not become a part of this Contract.

**B. License Type**

All licenses granted, regardless of the type, include all uses set forth above. License type may vary by Software product and will be identified on any order or SOW issued pursuant to this Contract.

#### Option 1 - 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.

#### Option 2 - Concurrent User License

The license(s) granted to an Authorized User under this section authorize the use of the Software on any system based on the total number of Concurrent Users. The Authorized User shall specify an initial number of Concurrent User licenses in its order or SOW pursuant to this Contract. An Authorized User may increase the number of Concurrent User licenses upon issuing an order or SOW for additional Concurrent User licenses. The license fee for additional Concurrent User licenses and payment of the license fee is set forth in Exhibit B attached to this Contract.

#### Option 3 – Site License

The license(s) granted under this Section authorizes use of the Software on any system located at the “Site” as such term is defined in the applicable order or SOW.

#### Option 4 – Project Specific License

The “Project Specific License” authorizes the use of the Software on any CPU or system owned or operated by the Commonwealth or an Authorized User, and by any user, without limitation as to quantity or location for the duration of Project as specified in an applicable order or SOW.

#### Option 5 – Enterprise Wide License

The “Enterprise Wide License” authorizes use of the Software on any CPU, on any system, and by any user within the “Enterprise”, as such term is defined in the applicable order or SOW, without limitation as to the quantity, location, or project.

#### **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 Software 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.

### **9. 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 or any applicable order or SOW and incorporated into this Contract. Supplier using commercially reasonable efforts will work with the Software Publisher to 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.

### **10. SOFTWARE ESCROW AGREEMENT**

Supplier is a VAR of the Software Publisher's Software and as such does not have access to the Software source code. When applicable and permitted, Supplier shall ensure that the Software Publisher 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.

Prior to the Effective Date of any SOW, Supplier shall ensure that the Software Publisher delivered to the Authorized User and the Authorized User received a copy of the executed Escrow Agreement naming the Commonwealth as a third-party beneficiary. The Authorized User 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 shall ensure that the Software Publisher agrees to notify the Authorized User in writing not less than 30 calendar days prior to termination or any modification of Escrow Agreement.

When applicable and permitted, Supplier shall ensure that the Software Publisher 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 shall ensure that the Software Publisher 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.

When applicable and available, Supplier shall ensure that the Software Publisher provides all Documentation in unprotected MS Word and other commonly used formats that can be updated. Supplier, shall ensure that the Software Publisher 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 shall ensure that the Software Publisher 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 ensure that the Software Publisher 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 Software Publisher'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 compiled 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, as a VAR of the Software Publisher, to ensure that the Software Publisher fixes 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.

When applicable, Supplier shall ensure that the Software Publisher 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.

## **11. DELIVERY AND INSTALLATION**

### **A. Scheduling of Software Installation**

Supplier shall deliver Software and perform the Services according to the delivery dates set forth on the appropriate order or SOW.

### **B. Installation of Software**

Authorized User Installation of Software

For Software that an Authorized User elects to install itself, contract with Software Publisher to install licenses procured through Supplier as a VAR; or contract a third party outside of this Contract to perform installation services, the Software will be deemed to be installed when all programs, program libraries, and user interfaces are copied to and initialized on the appropriate equipment as executable by having the ordering Authorized User, its Agent, or its third party installer invoke the primary function of each major component of the Software or when Acceptance criteria have been met. Authorized User shall provide to Supplier written notice of Acceptance upon completion of installation and successful Acceptance testing.

### **C. Documentation of Software Configuration**

If the license fee for the Software listed in Exhibit B includes configuration, Supplier, as a VAR of the Software Publisher, shall ensure the Software Publisher provides to the appropriate Authorized User documentation containing a description of the configuration. Such documentation shall be sufficiently detailed such that any appropriately trained employee or Agent of any Authorized User may reconstruct the configuration of the Software.

**D. Scheduling of Software Maintenance**

Supplier, as a VAR of the Software Publisher, shall ensure that the Software Publisher delivers Software Updates according to the delivery dates set forth on the appropriate order or SOW, or as mutually agreed by Supplier and Authorized User.

**E. Installation of Software Updates**

Software Updates will be deemed to be installed when all Acceptance criteria as specified in the Authorized User's order or SOW have been met.

**12. ACCEPTANCE AND CURE PERIOD**

**A. Software and Deliverables Acceptance Criteria**

Software and Deliverables are deemed accepted when the Authorized User determines, in writing, that the Software and Deliverables successfully operates in accordance with the Requirements. The Authorized User will commence Acceptance testing within five (5) business days after receipt of the Software or Deliverables, or within such other period as set forth in the applicable order or SOW. The Acceptance testing period for the first instance of each product type set forth in Exhibit B will last no longer than fifteen (15) business days, unless a longer period is 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 throughout the Acceptance testing period. 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 Supplier shall provide Agency with written notice that Supplier has not received a notice of successful or unsuccessful Acceptance testing from Agency. If Authorized User fails to provide Supplier with written notice of successful or unsuccessful Acceptance testing within 5 (five) business days after receiving such notice from Supplier, the Software or Deliverable will be deemed Accepted.

**B. 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 the appropriate Authorized User's written notice of non-conformance, or as otherwise agreed in writing 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 Deliverable that meets the Requirements, the Authorized User may, in its sole discretion: (i) reject the Software 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 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 Software, Deliverable and Services to be provided by Supplier. In addition, Supplier shall refund any monies previously paid by the Authorized User for Software, Deliverable or Services that were to be provided pursuant to the order of SOW.

**C. Software Maintenance Acceptance Criteria**

A Software Update is deemed accepted when the Authorized User determines that the Software Update meets the Requirements set forth in the applicable order or SOW. Authorized User shall commence Acceptance testing within five (5) business days after Receipt of the Software, or within such other period as set forth in the applicable order or SOW. Acceptance testing for the first instance of each Update will be no longer than fifteen (15) business days, or such longer period as may be agreed in writing between Authorized User and Supplier. Supplier shall provide to the Authorized User such assistance and advice as the Authorized User may reasonably require, at no additional cost, during any 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 installation and 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 Supplier shall provide Authorized User with written notice that Supplier has not received a notice of successful or unsuccessful Acceptance testing from Authorized User. If Authorized User fails to provide Supplier with written notice of successful or unsuccessful Acceptance testing within 5 (five) business days after receiving such notice from Supplier, the Software or Deliverable will be deemed Accepted.

**D. Software Maintenance Cure Period**

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

**E. Licensed Services Commencement Date**

The Supplier, as a VAR of the Software Publisher, shall ensure that the Software Publisher begins 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**

Authorized User shall commence Acceptance testing within ten (10) business days after receiving written notice from Supplier of the ability of such Authorized User and its Application Users to access the Application, or within such other period as set forth in the applicable order or SOW. Throughout the Acceptance testing period, Supplier shall ensure that the Software Publisher provides to such Authorized User any assistance and advice as such Authorized User may reasonably require. Supplier shall ensure that the Software Publisher provides this assistance at no additional cost, other than pre-approved travel expenses incurred which will be reimbursable by such 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 an Authorized User fails to provide Supplier with written notice of successful or unsuccessful Acceptance testing within ten (10) business days following the end of the Acceptance testing period, then Supplier shall provide the Authorized User with written notice that Supplier has not received notice of successful or unsuccessful Acceptance testing from the Authorized User. If such Authorized User fails to provide Supplier with written notice of successful or unsuccessful Acceptance testing within 5 (five) business days after receiving such notice from Supplier, the Service will 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. Services Acceptance Criteria**

Service(s) will be deemed accepted when the Authorized User determines that the Service(s) meet(s) the Requirements set forth in the applicable order or SOW. Supplier shall ensure any individual Deliverable functions properly with any other Deliverables provided pursuant to the order or SOW. In the event that a previously Accepted Deliverable requires further modification in order to work properly with any other Deliverable. Supplier, as the VAR of the Software Publisher shall ensure that the Software Publisher is responsible for all costs associated with the modification.

Authorized User shall commence Acceptance testing within ten (10) calendar days after Receipt of the Service, or within such other period as set forth in the applicable order or SOW. Acceptance testing will last no longer than ten (10) calendar days, unless otherwise agreed to in writing between Authorized User and Supplier, for each Deliverable, or for the first instance of each Service type set forth in Exhibit B. Supplier, as the VAR of the Software Publisher, shall ensure that the Software Publisher provides the Authorized User any assistance and advice as the Authorized User may reasonably require, at no additional cost, during Acceptance testing. Authorized User shall provide Supplier written notice of Acceptance upon completion of installation and successful Acceptance testing. In the event that the Authorized User fails to provide Supplier written notice of successful or unsuccessful Acceptance testing within five (5) business days following the Acceptance testing period, the Supplier shall provide Authorized User with written notice that Supplier has not received a notice of successful or unsuccessful Acceptance testing from Authorized User. If Authorized User fails to provide Supplier with written notice of successful or unsuccessful Acceptance testing within 5 (five) business days after receiving such notice from Supplier, the Software or Deliverable will be deemed Accepted.

#### **I. Services Cure Period**

Supplier, as the VAR of the Software Publisher shall ensure that the Software Publisher corrects any non-conformities identified during Acceptance testing and re-submit the non-conforming Service for re-testing within seven (7) calendar days of Supplier’s receipt of written notice of non-conformance, unless otherwise agreed to between the Authorized User and Supplier in the applicable order or SOW. Should Supplier fail to cure the non-conformity or deliver a Service which meets the Requirements, the Authorized User may, in its sole discretion:

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

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

### **13. WARRANTY SERVICES FOR SOFTWARE**

At any time during the Warranty Period of one (1) year after Acceptance, Supplier, as a VAR of the Software Publisher, shall ensure that the Software Publisher provides the following warranty services (including unlimited telephonic support and all necessary travel and labor) without additional charge to any Authorized User to maintain the Software in accordance with the Requirements. During the Warranty Period, Supplier shall perform these services without additional charge to any Authorized

User 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.

**A. Known Software Defects**

Upon notification by the Software Publisher, Supplier shall promptly notify all Authorized Users of any defects or malfunctions in the Software or Documentation of which it learns from any source. Within five (5) calendar days of Supplier's knowledge of any defects or malfunctions, Supplier, as a VAR of the Software Publisher, shall ensure that the Software Publisher corrects the defects or malfunctions, or provide a work around until a correction is available.

**B. Coverage for Software Warranty Services**

Supplier, as a VAR of the Software Publisher, shall ensure that the Software Publisher provides to any Authorized Users all reasonably necessary telephone or written consultation requested by the Authorized Users in connection with use, problems and operation of the Software. Supplier shall provide this consultation from 8 a.m. to 6 p.m. local time, Monday through Friday, excluding Commonwealth holidays.

**C. Service Levels for Software Warranty Services**

Supplier, as VAR of the Software Publisher, shall ensure that the Software Publisher responds to problems with the Software identified by an Authorized User in no more than one (1) hour after notification. Supplier, as a VAR shall work with the Software Publisher to resolve all problems according to the following: i. Priority 1 (Software inoperable) within six (6) hours ii. Priority 2 (certain processing interrupted or malfunctioning but Software able to process) within 24 hours iii. Priority 3 (minor intermittent malfunctioning, Software able to process data) within three (3) business days. The level of severity (e.g., 1, 2, 3), will be defined by such Authorized User.

**D. Remedies for Software Warranty Services**

If the Software fails to conform in all material respects to the Requirements or the applicable order or SOW, Authorized User shall provide written notification of the failure to Supplier. If Supplier is unable to make the Software conform within 30 calendar days of receiving Authorized User's notice, Supplier shall cancel the license to the Software and accept return of the Software and Documentation at the Authorized User's request. Supplier shall return all monies paid by the affected Authorized User for the non-conforming Software and Documentation and any other related Service(s) rendered unusable.

**14. MAINTENANCE SERVICES FOR SOFTWARE**

At any time during the Maintenance Coverage Period, Supplier, as a VAR of the Software Publisher, shall ensure that the Software Publisher provides Maintenance Services to maintain the Software in accordance with the Requirements and to provide upgrades, updates, and new releases as they are made generally available.

Throughout the MCP, Supplier shall provide the Maintenance Services at the discounts identified in Exhibit B attached to this Contract. The prices identified in Exhibit B are inclusive of all necessary labor and, unless otherwise provided, all necessary travel. In the event travel is not included in the prices identified in Exhibit B, all travel expenses must be pre-approved and are reimbursable by the Authorized User pursuant to the terms and conditions of the "Reimbursement of Expenses" section of this Contract below.

In addition to the minimum Maintenance Services described in this section, Supplier may offer additional maintenance and support services. These additional offerings, and Supplier's associated responsibilities as well as remedies available to the Authorized User in the event Supplier fails to perform its maintenance obligations, are detailed in Exhibit B attached to this Contract. In addition, Exhibit B defines coverage periods, response times, and restore times applicable to Supplier's additional maintenance offerings.

**A. Ordering Software Maintenance Services**

An Authorized User may order Maintenance Services for any Software at any time during the Contract Term, irrespective of whether such Software is covered under warranty or maintenance at the time the order is issued to Supplier. Each order must identify:

- i. Software product and number of units for which Maintenance Services will be provided,

- ii. Maintenance Level to be provided, and
- iii. MCP for Software Maintenance.

Authorized User may elect, at any time, an alternate Maintenance Level offered by Supplier. Any amendment to the Maintenance Level will be in the form of a modification to an order from Authorized User to Supplier. The amended Maintenance Level will take effect within 30 calendar days following Supplier's receipt of Authorized User's written notice.

Option 1: Unless otherwise agreed by the Authorized User and Supplier, the MCP for a unit of Software shall be one (1) year from the effective date of any executed order for Maintenance Services on the applicable Software product.

Option 2: Co-termination of MCPs, TBD based on Supplier proposal.

**B. Software Maintenance Services Renewal**

Not less than 60 calendar days prior to the expiration of the MCP for each unit of Software, Supplier shall notify the Authorized User in writing of the pending expiration. Authorized User may, at its sole discretion, issue an order to Supplier to 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) the annual change in CPI, as defined in the "Fees, Ordering and Payment Procedure" section of this Contract below, in effect at the time of renewal. Termination of this Contract or cancellation of Maintenance Services by an Authorized User will not affect this Contract or the grant of any license.

**C. Software Maintenance Services**

At a minimum, Maintenance Services will include the following:

1. Known Defects

Supplier's offerings and responsibilities related to known defects in the Software are described in Exhibit B attached to this Contract.

2. New Releases

Supplier's offerings and responsibilities related to new releases of the Software are described in Exhibit B attached to this Contract.

3. Coverage

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

4. Service Levels

Supplier's offerings and responsibilities related to response and restore times for any problems with the Software identified by an Authorized User, and any associated remedies are described in Exhibit I attached to this Contract.

5. Additional Maintenance Services

Supplier's additional Maintenance Services offerings are described in Exhibit B attached to this Contract.

**D. Software Updates**

Supplier, as a VAR of the Software Publisher, shall ensure that the Software Publisher provides copies of the Software and Documentation revised to reflect any Software Updates made by Supplier or Software Publisher to all Authorized Users no later than the first day of general release.

**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. The Supplier as a VAR, does not have any rights to reduce or replace functionality contained in the Software Publisher's licensed Software product.

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 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. The Supplier as a VAR, does not release current or future products functionality contained in the Software Publisher's licensed Software product.

**F. Escalation Procedures for Software Maintenance Services**

If the Client Manager is unable to resolve an issue, the next level of escalation for an authorized user is the Regional Director. For Virginia, that would be Trish Southwell.

**G. Remedies for Software Maintenance Services**

If the Software fails to conform, in all material respects, to the Requirements, Authorized User shall provide written notification of the failure to the Supplier. If the Supplier is unable to make the Software conform within 30 calendar days of receiving Authorized User's notice, Supplier shall, at such Authorized User's request, accept cancellation of the license to the non-conforming Software and (i) return all monies paid by such Authorized User for the cancelled license, prorated using the straight-line method for an estimated software life cycle of five (5) years, or, if a term license, shall return the prorated license fee for the remainder of the license term; and (ii) return the prorated maintenance charge for the remainder of the MCP. The prorated amount due an Authorized User shall be calculated from the date on which the Software ceased operating in accordance with the Requirements. The remedies in this section will be in addition to, and not in lieu of, any remedies described in Exhibit B of this Contract.

**15. 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 a decrease in Exhibit B discounts during the first twenty-four (24) month period following the Effective Date and will not request a decrease in the discounts more than once in any subsequent twelve (12) month period thereafter. Beginning 24 months after the Effective Date, Supplier may request in writing an adjustment to the discounts set forth in Exhibit B to this Contract. No decrease in discount 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 agrees that any change in discount mutually agreed upon via signed contract modification shall have no effect on then-existing orders or SOW. 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**

To the extent set forth in the applicable Statement of Work, 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**

To the extent set forth in the applicable Statement of Work, upon request by an Authorized User, Supplier shall perform a reasonable demonstration of the Application and Licensed Services, or Software-as-a Service at the Authorized User's location and at no charge.

To the extent set forth in the applicable Statement of Work, upon an Authorized User's request Supplier shall provide Software offered pursuant to this Contract to such 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. Request for Quote**

Upon a request for a quote by an Authorized User, the Supplier shall respond by providing a written quote to include: (a) only VITA authorized software and services as defined by Exhibit B and Contract; (b) the VITA Contract number; (c) the Software Publisher and application name and description; (d) period start/end date and term of licensing; (e) nature of license (e.g., perpetual or subscription); (f) individual unit pricing; (g) quantity; (h) the applicable Software Publisher's retail price; (i) Supplier discount; (j) extended price; (k) identification of the services provider as Software Publisher; (l) fees for implementation services provided by Software Publisher (m) labor rates for authorized Software Publisher services; for services, (n) fixed price represented as hours 'x' unit hourly rate and attached signed Statement of Work; and (o) identification of software as cloud, if applicable. The quote shall exclude the following: (i) any additional terms or conditions from Supplier, Software Publisher, or other third-party through link, reference, or otherwise; and (ii) Software, Services, or Software Publishers not authorized pursuant to this Contract.

**E. Ordering**

All Authorized Users have the right to license or purchase Supplier's products and Services under this Contract, but have no obligation to purchase or license from Supplier any of Supplier's products and 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. VITA, in its capacity as the program manager of the Contract, may also license or purchase Supplier's products or Services under this Contract for the benefit and use by other Commonwealth public bodies as the Authorized Users. In the event that VITA intends to purchase the products or Services on behalf of another public body, VITA shall so designate the public bodies that will constitute the Authorized Users of that order or SOW in the ordering document, and all rights and benefits of that purchase shall accrue to the designated Authorized User(s).

Funds provided by various programs and grants of the United States federal government may be utilized for purchases under this Contract. An Authorized User intending to utilize federal funds, in whole or in part, for its order or SOW will so designate that fact on the applicable order or SOW. Supplier agrees that it will, to the best of its ability, follow all applicable federal funding requirements and procedures when notified in such order or SOW of the intended use of federal funds. Supplier also agrees that it 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.

Any order or SOW issued pursuant to this Contract that includes the provisioning of Licensed Services or any other cloud-based, hosted service, when required by VITA Enterprise Services, shall include a copy of the VITA cloud terms and conditions as agreed-to and signed by the applicable Authorized User and Software Publisher, and acknowledged by Supplier.

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

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

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

**F. Statement of Work**

A SOW, using Exhibit C attached to this Contract, is required for any orders for work/Services placed by an Authorized User pursuant to this Contract, excepting those services defined and sold as Managed Cybersecurity Services which shall be fully defined and described by the SKU and accompanying services description or agreement. Supplier shall ensure performance of Software Publisher's work for all Deliverables associated with any SOW issued under this Contract naming the Software Publisher and any and all contractual obligations at the times and locations set forth in the applicable SOW, in accordance with the requirements of Exhibit A and at the discount percentages 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 a 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 Section 1 and Exhibit A, which is attached to this Contract and incorporated by reference.

**G. 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 discount percentages listed on Exhibit B and requirements defined by Exhibit A. 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 implementation, 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.

#### **H. 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.

#### **I. 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.

#### **J. 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.

#### **K. 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 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.

### **16. REPORTING**

Supplier shall submit to VITA the following reports containing data on:

- i. Amount of Total Sales;
- ii. Small Business Procurement and Subcontracting Spend; and
- iii. Adobe LGA and ETLA
- iv. Annual Operation Plan

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 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/>. Supplier is encouraged to review the site periodically for updates on Supplier reporting requirements and methods.

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

**C. Adobe LGA**

Supplier shall provide a quarterly report that includes line-item detail of Adobe products sold under this contract as described in Exhibit A: Requirements, noting which are under the VITA Linked Membership and which are not applicable.

**D. Adobe ETLA**

VITA-authorized Adobe ETLA Supplier shall provide a quarterly report that includes line-item detail of Adobe products sold under this contract as described in Exhibit A: Requirements, noting which are under the VITA ETLA and which are not applicable.

**E. Annual Operation Plan**

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

- i. Activities to market the Contract to other public bodies and localities.
- ii. Quarterly changes or updates to the Supplier portal, website, and other communication media.
- iii. Strategies to improve management and executive-level reporting.
- iv. Initiatives to address continuous improvements for performance and management, operations and process management, program risk management, and agency and customer training and support.

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

**17. 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.

**18. SUPPLIER ACCOUNT MANAGEMENT AND BUSINESS REVIEWS**

Supplier shall manage the Contract account in accordance with the requirements of Exhibit A. Supplier shall be prepared to conduct quarterly account business reviews with VITA in accordance with the requirements defined by Exhibit A. Such meetings are intended to provide a broad review of all services, projects and ongoing operations. Supplier should also be prepared to discuss new products and services and their potential benefit to VITA.

**19. POLICIES AND PROCEDURES GUIDE**

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

**20. TRAINING AND DOCUMENTATION**

**A. Training**

Supplier, as a VAR of the Software Publisher, shall ensure that the Software Publisher facilitates and provides all reasonable assistance to any Authorized User in ensuring that such Authorized User receives from the Software Publisher all online tutorial training. Unless expressly excluded, Supplier's listed fee for all Software will include all costs for any and all training as agreed upon for the training of Authorized User trainers 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.

**B. Documentation**

Supplier, as a VAR of the Software Publisher, shall ensure that the Software Publisher delivers to an 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 the Software Publisher revise or replace the Documentation, or should Documentation be modified to reflect Updates, Supplier shall, upon written request by Authorized User, ensure that updated or replacement copies of the Documentation are delivered to the Authorized User 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 Software Publisher. Any Authorized User, at its own discretion, will have the right to modify or completely customize all or part of the Documentation in support of the authorized use of the 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 or Software Publisher's copyright notice, as applicable.

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

At Authorized User's request, and pursuant to an order or SOW for Supplier's or Software Publisher'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 Software 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 for any of the Software delivered to Authorized User by Supplier.

## **22. 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.

## **23. 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, as a VAR of the Software Publisher, shall ensure that the Software Publisher, 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. Supplier, as VAR of the Software Publisher, shall ensure that the Software Publisher Personnel performing Services related to any order or SOW issued pursuant to this Contract, are required to sign a confidentiality statement or non-disclosure agreement.

**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.

**24. 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, provided that the Authorized User has paid Supplier for the Services giving rise to the Claim.

**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 §§ 2.2-507, 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 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.

**25. LIABILITY**

**A. Supplier Liability**

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

Supplier's liability and indemnification obligations under this Contract shall not exceed, in aggregate, twice the value of the Contract during the Contract Term. For purposes of this Contract, "value of the Contract" means the cumulative spend under this Contract—including any orders, SOWs, or Change Orders thereto—by the Commonwealth.

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.

**26. 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.

In addition, for all cloud orders, the Supplier, as a VAR of the Software Publisher, shall make the Software Publisher aware that the Software Publisher is expected to 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.

Throughout the Contract Term, Supplier shall provide evidence of insurance and access to a copy of Supplier's policy documents upon request by VITA.

**27. 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, including those pertaining to information security and privacy.

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 third-party 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.

#### **28. IMPORT/EXPORT**

Supplier shall comply with all data import and export laws and regulations. In addition, VITA policy requires that any data deemed "restricted" or "sensitive" by either federal or state authorities, shall only be collected, developed, analyzed, or otherwise used or obtained by persons or entities working within the continental United States.

#### **29. 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., SEC530 - 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.

#### **30. 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.

#### **31. COOPERATIVE CONTRACT MARKETING**

When Supplier markets this Contract to public bodies in the Commonwealth, Supplier shall not reference any competing contracts (e.g., General Services Schedule Contracts, other joint and cooperative procurement contracts, etc.).

## 32. 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;
- 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> or
- iv. the Commonwealth public body or bodies designated by VITA in the order or SOW placed by VITA in its capacity as the program manager as described in Section 15. E, "Ordering", above.

### C. Incorporated Contractual Provisions

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

- "Core Contractual Terms"; and
- "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 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 E 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 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 every twelve (12) months;
- iv. performed at Supplier's premises, during normal business hours at mutually agreed upon times; and
- v. access to Supplier cost information is excluded.

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

**O. Taxes**

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

**P. Currency**

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

**Q. Advertising and Use of Proprietary Marks**

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

**R. Notices**

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

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

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

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

**S. Offers of Employment**

During the first twelve (12) months of the Contract, 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. This section will not apply in instances of an Authorized User employee responding to a publicly posted job opening by Supplier.

**T. Unauthorized Sales**

Supplier agrees that it is not engaging, and shall not engage, during the Contract Term (including any Transition Period), in activities that conflict with the interests of VITA (for example, by attempting to sell services directly to individual public bodies, public body locations or public body business units through means outside of the Contract or not in compliance with the processes set forth in the Contract). Should a potential conflict arise, Supplier shall promptly notify VITA, rectify such conflict, fully compensate VITA for any volume credits or rebates to which VITA would have been entitled should the conflict not have occurred, reimburse VITA for all revenue not collected from the public body by VITA as a result of such conflict, and take steps to prevent the recurrence of any similar instances. In the example given above, Supplier's correction would take the form of bringing all services under the Contract and refunding any charges paid by the public body in excess of those contained in the Contract; as well as providing VITA with credits in the amount of any service charges VITA would otherwise have collected from the public body, and any credits and rebates that would otherwise have been given to VITA by Supplier had the unauthorized sale(s) not occurred.

**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 – Escrow Agreement

Exhibit F-1 – Commonwealth of Virginia Cloud Terms and Conditions (for reference only)

Exhibit F-2 – Form of License Agreement Addendum (for reference only)

Exhibit G – Certification Regarding Lobbying

Exhibit H – Supplier Procurement and Subcontracting Plan

Exhibit I – Service Level Agreements (SLAs)

Exhibit J – Internal Revenue Service Publication 1075 - Exhibit 7 Safeguarding Contract Language

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 F-1, Exhibit A, Exhibit B, any individual SOW, 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.

**OPTIV SECURITY, INC.**

*Liz Abram-Oldham*

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

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

*Robert Osmond*

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

Name: Liz Abram-Oldham  
(Print)

Name: Robert Osmond  
(Print)

Title: VP, Contracts

Title: Chief Information Officer of the  
Commonwealth of Virginia

Date: 3/16/2026 9:40:48 AM

Date: 3/16/2026 9:56:23 AM

Address for Notice:

1144 15<sup>th</sup> Street, Suite 2900

Denver, CO 80202

Attention: Supplier Contact

Address for Notice:

7325 Beaufont Springs Drive

Richmond, VA 23225

Attention: Contract Administrator