

**MASTER TERMS AND CONDITIONS APPLICABLE TO ALL CONTRACTS  
FOR IBM PRODUCTS AND RELATED SERVICES**

**1. SCOPE AND UNDERSTANDING OF THE AGREEMENT**

International Business Machines Corporation (hereinafter "Supplier" or "IBM") and Virginia Information Technologies Agency ("VITA") on behalf of the Commonwealth of Virginia enter into this Master Agreement to establish a framework for, and the general terms applicable to, the provision of products and services by Supplier to Authorized Users under a Purchasing Vehicle.

Supplier, VITA or the Authorized User will not have any rights or obligations, including providing products and/or services, unless and until both Supplier and Authorized user sign a Purchasing Vehicle.

Supplier shall provide products and services under the terms set forth herein at the Supplier's facility and/or at Authorized User's location, as agreed to by the Supplier and the Authorized User.

Supplier provides software products under the terms of Supplier's standard commercial software license agreements (for example, IBM International Passport Advantage Agreement and IBM International Program License Agreement).

Supplier's resellers are authorized to make use of the Agreement by incorporating its terms by reference into a statement of work or similar transaction document between Authorized Users and such resellers or business partners. When such resellers or business partners make use of the terms of the Agreement, Authorized Users' sole and exclusive recourse shall be against the reseller or business partner that enters into the statement of work or transaction document with an Authorized User.

Any modification to the terms of this Master Agreement contained in a Purchasing Vehicle will be applicable only to such Purchasing Vehicle and will be effective for such Purchasing Vehicle only if such modification expressly references the applicable section of this Master Agreement which is to be modified.

**Order of Precedence.** If there is a conflict among the terms in this Master Agreement, a Purchasing Vehicle, or the attachments incorporated by reference within the Purchasing Vehicle:

(1) to the extent the conflicting provisions can reasonably be interpreted so that such provisions are consistent with each other, such consistent interpretation will prevail; and

(2) to the extent subsection (1) does not apply, this Master Agreement will prevail over a conflicting term in a Purchasing Vehicle unless the Purchasing Vehicle expressly references and modifies the applicable section of this Master Agreement but only with respect to the specific products and/or services to be delivered in that Purchasing Vehicle. A Purchasing Vehicle agreed to by the Authorized User and IBM issued under this agreement may modify the Master Agreement terms but only as applicable to the product or service provided under that specific Purchasing Vehicle.

Supplier and VITA drafted and negotiated this Master Agreement jointly, and this Master Agreement will be construed neither against nor in favor of either, but rather in accordance with its fair meaning.

**Definitions.** As used in this Master Agreement:

- A. "Acceptance of Services" means successful performance of the Services and Software at the location designated in the applicable Statement of Work, or



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completed and successful Acceptance testing in conformance with the Requirements in the applicable requisition as determined by the Authorized User in the applicable Statement of Work. Acceptance of Software will be governed by the terms of IBM's applicable software license agreements.

- B. "Authorized Users" means the end user of the products and services as identified in the applicable Purchasing Vehicle, and may include all public bodies, including VITA and all Commonwealth agencies, as defined by §2.2-4301 and referenced by §2.2-4304 of the Code of Virginia and private institutions of higher education chartered in Virginia and granted tax-exempt status under §501(c)(3) of the Internal Revenue Code. A list of the private institutions eligible to use this contract can be found at <http://www.cicv.org/Our-Colleges/Profiles.aspx>. The Purchasing Vehicle as defined below will be agreed between the Authorized User and the Supplier.
- C. "Date of Installation" for IBM Machines means: (1) for machines for which IBM is responsible for installation, the business day after the day IBM installs the machine, or if the Authorized User defers installation, the day IBM has made the machine available for subsequent installation to the Authorized User; (2) for Customer Set-Up Machines other than System X Server and Workstation Products, the second business day after the machine's standard transit allowance; or (3) for System X Server and Workstation Products, the date the machine ships. For each Machine, IBM bears the risk of loss or damage up to the time it is delivered to the IBM-designated carrier for shipment to you or your designated location. Thereafter, the Authorized User assumes the risk. Each Machine will be covered by insurance, arranged and paid for by IBM for the Authorized User, covering the period until it is delivered to the Authorized User or the Authorized User's designated location. For any loss or damage, the Authorized User must (1) report the loss or damage in writing to IBM within 10 business days of delivery and (2) follow the applicable claim procedure. "Date of Installation" for software shall be as set forth in the applicable software license agreement.
- D. "Deliverable" means the tangible embodiment of Services performed by the Supplier, including the development or creation of Work Product, performed or provided by Supplier as provided in the applicable Statement of Work.
- E. "Licensed Internal Code" ("LIC") means Machine Code used by certain IBM Machines IBM specifies (called "Specific Machines").
- F. "Machine Code" means microcode, basic input/output system code (called "BIOS"), utility programs, device drivers, diagnostics, and any other code (all subject to any exclusions in the license provided with it) delivered with an IBM Machine for the purpose of enabling the Machine's function as stated in its Specifications.
- G. "Materials" means literary works or other works of authorship (such as software programs and code, documentarian, reports, and similar works) that Supplier may deliver to Authorized User as part of the services performed under this Agreement. All such Materials shall be explicitly identified in any Purchasing Vehicle as deliverables under that Purchasing Vehicle, excluding, however, any Products that are provided under a Purchasing Vehicle as a deliverable but under their own license terms or agreements, such as commercial off the shelf software programs. Also included are incidental project materials and job aids not otherwise listed as a Deliverable from the Supplier to the Authorized User.
- H. "Party" or "Parties" means Supplier and VITA, individually or collectively.
- I. "Product" means any machine (hardware) or licensed software provided by Supplier. It does not include Services.



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- J. "Proof of Entitlement" (or "PoE") means evidence of the Licensee's Authorized Use. The PoE is also evidence of Licensee's eligibility for warranty, future update prices, if any, and potential special or promotional opportunities. If IBM does not provide the Licensee with a PoE, then IBM may accept as the PoE the original paid sales receipt or other sales record from the party (either IBM or its reseller) from whom the Program was obtained, provided that it specifies the Program name and authorized use obtained.
- K. "Purchasing Vehicle" means an agreement between Supplier and an Authorized User which incorporates the terms of this Master Agreement by reference and describes in detail the products and services to be provided by Supplier to Authorized Users under such Purchasing Vehicle, including any associated attachments expressly referenced in and/or attached to the Purchasing Vehicle. A purchase order or Statement of Work may serve as a Purchasing Vehicle. This Master Agreement is not a Purchasing Vehicle.
- L. "Services" means performance of a task, assistance, support, or access to resources (such as an information database) that IBM makes available to Authorized User. Service includes the discovery, creation, or development of Work Product, if any.
- M. "Statement of Work" ("SOW") means any document in substantially the form of an Exhibit (describing the deliverables, due dates, assignment duration and payment obligations for a specific project, engagement, or assignment for which Supplier shall be providing Services to an Authorized User), which, upon signing by both Parties, shall be deemed a part of this Contract. A Statement of Work means any incorporated, attached or subsequent document to an order which, upon acceptance by the Supplier or Subcontractor in response thereto, shall be deemed a part of the Contract, and which describes the Deliverables, due dates, assignment duration and payment obligations for a specific project, engagement, or assignment for which Supplier will be providing services.

**2. TERM**

The initial term of this Master Agreement will commence on the Effective Date and continue until October 1, 2019, or such earlier date upon which this Master Agreement may be terminated in accordance with its terms (the "Initial Term") and automatically renew for one (1) year periods (each, an "Extension Term") unless terminated by VITA upon at least 60 days notice before the expiration of the Initial Term or any Extension Term that it does not desire to renew this Master Agreement. The Initial Term together with all Extension terms hereinafter referred to as the "Term". Any terms which by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to successors and assignees.

**3. SUPPLIER PERSONNEL**

Supplier shall take such steps as may be necessary to ensure that all Supplier personnel performing services under this agreement are competent and knowledgeable of the contractual arrangements and any applicable orders. Supplier shall be solely responsible for the conduct of its employees, agents, and subcontractors, including all acts and omissions of such employees, agents, and subcontractors, and shall ensure that such employees and subcontractors comply with the appropriate Authorized User site security, and personnel conduct rules communicated in writing to Supplier. Authorized User reserves the right to require the immediate removal from its premises of any employee, subcontractor or agent of Supplier whom Authorized User believes in good faith has failed to comply or whose conduct or behavior is unacceptable or unprofessional or results in a security or safety breach.



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IBM and Authorized Users will each be responsible for the management, direction, control, supervision, and compensation of its own employees. IBM may choose to perform its responsibilities under the Purchasing Vehicle through its affiliates or subcontractors, provided that IBM will not be relieved of its obligations under the Purchasing Vehicle by the use of such affiliates or subcontractors.

Supplier is expected to provide continuity of each employee or consultant ("Employee") assigned pursuant to an order. If Authorized User requests an Employee's removal from an engagement, the Authorized User will provide IBM with a written notice and explanation for its request that IBM remove such Employee from providing services under the Purchasing Vehicle. Promptly after receiving such notice and explanation, IBM will investigate the matter and take appropriate action, which may include the removal of such Employee.

**4. CONFIDENTIAL INFORMATION**

IBM's and Authorized Users mutual objective under this Section is to provide appropriate protection for Confidential Information while maintaining IBM's and the Authorized Users ability to conduct their respective business activities. Confidential information means all proprietary data and content that is disclosed in any manner, including oral or written, graphic, machine readable or other tangible form, hereinafter referred to as "Confidential Information." The term "Confidential Information" shall not include information that is:

- i. in the public domain through no fault of receiving Parties or of any other person or entity that is similarly contractually or otherwise obligated;
- ii. obtained independently from a third-party without an obligation of confidentiality to the disclosing Party and without breach of any order hereunder;
- iii. already in the receiving Party's possession without an obligation of confidentiality;
- iv. disclosed by the disclosing Party to another without obligation of confidentiality;
- v. developed independently by the receiving Party without reference to the Confidential Information of the Commonwealth; or
- vi. 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.

Upon the termination or expiration of any order or SOW hereunder, or upon the earlier request of disclosing Party, receiving Party shall (i) at its own expense, (a) promptly return to disclosing Party all tangible Confidential Information (and all copies thereof except the record required by law), or (b) upon written request from disclosing Party, destroy such Confidential Information and provide disclosing Party with written certification of such destruction, and (ii) cease all further use of the Confidential Information, whether in tangible or intangible form.

**5. TRAVEL EXPENSES**

The Authorized User shall be responsible for the pre-approved expenses of Supplier's consultants while on assignment. These may include travel, meals and accommodations. All expenses and requests for reimbursement shall be in accordance with the Virginia travel policies and regulations. Please refer to then-current Meals and Lodging Per Diem guidelines found at the following website:

<http://www.doa.virginia.gov/>.

**6. INVOICING**

Supplier shall remit each invoice to the "bill-to" address provided with the eVA purchase order, promptly after all services have been accepted in writing. In no event shall an invoice be allowed prior to receipt of services, nor more often than monthly. If a



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Purchasing Vehicle is received outside of eVA, the "bill-to" address should be reflected in the Purchasing Vehicle.

**7. ORDERS**

Supplier is required to accept any order placed by an Authorized User through the eVA electronic procurement website portal (<http://www.eva.virginia.gov/>). eVA is the Commonwealth of Virginia's e-procurement system. State agencies, as defined in §2.2-2006 of the Code of Virginia, shall 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.

This ordering authority is limited to issuing orders for the Services available under this Contract. Under no circumstances shall any Authorized User have the authority to modify this Contract. An order or SOW from an Authorized User may contain additional terms and conditions if agreed by the parties; however, to the extent that the terms and conditions of the Authorized User's order are inconsistent with the terms and conditions of this Contract, the terms of this Contract shall supersede.

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

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

**8. ADDITIONAL TERMS AND CONDITIONS**

The contractual provisions provided in Attachment A (Mandatory Terms) are mandatory contractual provisions, required by law or by VITA, are hereby incorporated by reference.

**9. WORK PRODUCT**

A Purchasing Vehicle or related statement of work will specify Materials to be delivered to the Authorized User and identify them as "Type I Materials," "Type II Materials," or otherwise as both parties agree. If not specified, Materials will be considered Type II Materials.

Authorized User will own the copyright in Materials created as part of a Service that are identified as Type I Materials, and they will each constitute a "work made for hire" to the extent permissible under U.S. copyright law. If any such Materials are not works made for hire under applicable law, IBM assigns the ownership of copyrights in such Materials to Authorized User, who grants IBM and its suppliers an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works based on Type I Materials.

IBM or its suppliers will own the copyright in Materials created as part of a Services transaction that are identified as Type II Materials. IBM grants Authorized User an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute (within Authorized User's Enterprise only) copies of Type II Materials.



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IBM or its suppliers will retain ownership of the copyright in any of IBM's or its suppliers' works that pre-exist or were developed outside of this Agreement and any modifications or enhancements of them that may be made under this Agreement. To the extent they are embedded in any Materials, such works are licensed in accordance with their separate license provided to Authorized User (e.g., the terms of the applicable software license), or otherwise as Type II Materials.

IBM and its subcontractors or suppliers may use in their business activities the ideas, concepts, and know-how abstracted from the information which is retained in the unaided memories of personnel who have had access to the Confidential Information under this Agreement. The foregoing does not permit intentional memorization of Confidential Information for the purpose of evading obligations contained in this Agreement.

IBM and Authorized User agree to reproduce the copyright notice and any other legend of ownership on any copies made under the licenses granted under this item.

The terms in this section shall control unless otherwise agreed in a Purchasing Vehicle or related statement of work.

**10. IMPORT/EXPORT**

In addition to compliance by Supplier with all U.S. export laws and regulations, any data deemed "restricted" or "sensitive" by either federal or state authorities, must only be collected, developed, analyzed, or otherwise used or obtained by persons or entities working within the boundaries of the United States.

**11. STATUTORY COMPLIANCE**

The Parties will adhere to all applicable federal, state, and local laws, including export regulations and applicable Virginia statutory requirements, including the Virginia Public Procurement Act and the Virginia Public Records Act.

**12. COMMONWEALTH EA ITRM POLICIES AND STANDARDS**

Supplier will comply with Commonwealth enterprise architecture (EA) ITRM Policies and Standards at: <http://www.vita.virginia.gov/library/default.aspx?id=537>, as applicable to any order issued hereunder.

**13. RETENTION REQUIREMENTS AND AUDIT RIGHTS**

Supplier shall retain all records that relate to the services rendered or the amounts due Supplier for such services. The Commonwealth's right to audit such records shall be limited as follows:

- i). Three (3) years from final payment;
- ii). Audits to be performed at Supplier's premises, during normal business hours at mutually agreed upon times; and
- iii). Excludes access to Supplier cost information.

Notwithstanding any audit rights agreed to in writing between the Supplier and the Commonwealth, in no event shall Supplier have the right to audit the Commonwealth or one of its agencies, or require the Commonwealth or its agencies to be audited.

**14. WARRANTY**

**A. Hardware Warranty**

For each IBM Machine, IBM provides its standard commercial warranties in effect at the time such products are sold under an applicable Purchasing Vehicle.

**B. Software Warranty**



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Software warranties shall be as set forth in the applicable software license agreement.

**C. Services Warranty**

Supplier warrants that it performs each Supplier service using reasonable care and skill and according to its current description (including any completion criteria) contained in a mutually agreed Purchasing Vehicle or related statement of work. Authorized User agrees to provide timely written notice of any failure to comply with this warranty so that Supplier can take corrective action.

**C. Items Not Covered by Warranty**

Supplier does not warrant uninterrupted or error-free operation of a product or service or that Supplier will correct all defects.

Unless otherwise specified in an attachment or Purchasing Vehicle, Supplier provides Materials, and non-Supplier products and services **WITHOUT WARRANTIES OF ANY KIND**. However, non-Supplier manufacturers, developers, suppliers, or publishers may provide their own warranties to Authorized User. Warranties, if any, for Other Supplier Programs and Non-Supplier Programs may be found in their license agreements.

**D. In addition, Supplier provides the following warranties:**

- ii). Reserved
- iii). Supplier's Viability

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

- iv). Reserved
- v). Performance

The documentation which Supplier is required to provide under any order shall meet the requirements agreed to by Supplier and Authorized User in the Purchasing Vehicle or in a related statement of work.

- vi). Malicious Code

Supplier has used commercially reasonable efforts through quality assurance procedures to ensure that there are no computer viruses or undocumented features in any of the media or means used to deliver the Services.

**E. DISCLAIMER OF IMPLIED WARRANTIES AND OTHER WARRANTIES:**

**THESE WARRANTIES ARE VITA'S AND THE AUTHORIZED USER'S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

**15. LIMITATION ON LIABILITY**

There shall be no limit on Supplier's liability to the Commonwealth for breaches arising if the damages are based on bodily injury (including death), or damage to real property or tangible personal property.

Supplier's entire liability to the Commonwealth for all claims in the aggregate arising from or related to each product or service or otherwise arising under a Purchasing Vehicle shall be limited to actual direct damages up to the greater of \$100,000 or two times the value of any order or SOW, (if recurring, 12 months' charges apply) for the



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Product or Service that is the subject of the claim. This limit also applies to IBM's subcontractors and program developers. It is the maximum for which IBM and its subcontractors and program developers are collectively responsible per order or SOW.

Under no circumstances is Supplier, or its subcontractors or program developers, liable for any of the following, even if informed of their possibility: a) loss of, or damage to, data; b) special, incidental, or indirect damages or for any economic consequential damages; c) lost profits, business, revenue, goodwill, or anticipated savings; or d) any third party claims against VITA or Authorized Users except as described in the Indemnification section below.

**16. INDEMNIFICATION**

A. Supplier agrees to indemnify, defend and hold harmless the Commonwealth, VITA, any Authorized User, their officers, directors, agents and employees (collectively, "Commonwealth's Indemnified Parties") from any third party claims, damages and actions as a result of bodily injury (including death) or damages to real or personal property arising out of Supplier's performance related to this Agreement for which Supplier is legally liable, provided that such liability is not attributable to the negligence of the Commonwealth's Indemnified Parties to use the Products or Services in the manner already and permanently described by the Supplier for the materials, goods or equipment delivered.

**B. PATENT & COPYRIGHT INDEMNITY**

For purposes of this Section, the term "Product" includes Materials, Machine Code and Licensed Internal Code.

If a third party claims that a Product IBM provides to the Authorized User infringes that party's patent or copyright, IBM will indemnify the Authorized User, its officers, agents, and employees against liability, at IBM's expense and pay all costs, damages, and attorneys fees that a court finally awards or that are included in a settlement approved by IBM, provided that the Authorized User:

(1) Promptly notifies IBM in writing of the claim; and

(2) Gives IBM such opportunity as is offered by applicable laws, rules or regulations to participate in the defense thereof. The Authorized User shall make every effort to permit IBM to fully participate in the defense and/or in any settlement of such claim. However, IBM understands that such participation and any settlement will be under the control of the Virginia Attorney General's Office.

If such a claim is made or appears likely to be made, the Authorized User agrees to permit IBM to enable the Authorized User to continue to use the Product, or to modify it, or replace it with one that is at least functionally equivalent. If IBM determines that none of these alternatives is reasonably available, the Authorized User agrees to return the Product to IBM on IBM's written request. IBM will then give the Authorized User a credit equal to:

(1) For a Machine, the Authorized User's net book value, provided the Authorized User has followed generally-accepted accounting principles.

(2) For a Program, the amount paid by the Authorized User or 12 months' charges



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(whichever is less). If the Product is an IBM SaaS or subject to Fixed Term charges, up to twelve months' charges.

(3) For Materials, the amount the Authorized User paid IBM for the creation of the Materials.

This is subject to the Authorized User's right to require continued use of the Products pursuant to the provisions of 28USC1498. In the event of such continued use, the Authorized User shall notify IBM in writing of its election to continue use and agrees to undertake at the Authorized User's expense the defense of any action against the Authorized User and IBM shall have no further indemnification obligation; it being understood that IBM may participate at its expense in the defense of any such action if such claim is against IBM.

**Claims for Which IBM is Not Responsible:**

IBM has no obligation regarding any claim based on any of the following:

- (1) The Authorized User's modification of a Product, or a Program's use in other than its Specified Operating Environment;
- (2) Anything the Authorized User provides which is incorporated into a Product or IBM's compliance with any designs, specifications, or instructions provided by the Authorized User or by a third party on behalf of the Authorized User;
- (3) The combination, operation, or use of a Product with other Products not provided by IBM as a system, or the combination, operation or use of a Product with any product, data, apparatus, or business method that IBM did not provide, or the distribution, operation or use of a Product for the benefit of a third party;
- (4) Infringement by a non-IBM Product.
- (5) Product's use other than in accordance with its applicable licenses and restrictions or use of a non-current version or release of a Product, when a claim could have been avoided or the risk of a claim reduced by using the current version or release;
- (6) the distribution, operation, or use of the Product outside Authorized User's Enterprise or for the benefit of any third party; or
- (7) Separately Licensed Code, if any, as identified in the LI for the Product.

The LI for the Product or other documents may permit the Authorized User to copy, modify, or redistribute all or portions of the Product without paying additional licensing fees to IBM. The indemnification obligation under this Patent and Copyright provision only applies to copies of the Product provided to the Authorized User by IBM and additional copies expressly authorized in a Proof of Entitlement. IBM has no obligation for claims relating to copies of the Product neither provided by IBM nor specifically authorized by a Proof of Entitlement, even if permitted by the LI for the Product or other documents.

These Patent and Copyright terms do not obligate in any manner any third-party supplier of code (including Separately Licensed Code) included with or part of the



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Product.

**THE FOREGOING STATES THE ENTIRE OBLIGATION OF IBM WITH RESPECT TO INFRINGEMENT OF PATENTS OR COPYRIGHTS.**

**17. INSURANCE**

In addition to the insurance coverage required by the Mandatory Terms, (see Attachment A), Supplier shall carry errors and omissions insurance coverage in the amount of \$1,000,000 per occurrence.

**18. TERMINATION**

Authorized User may terminate a Purchasing Vehicle on written notice if the Supplier or Subcontractor does not meet its obligations concerning the Purchasing Vehicle or a related Statement of Work and fails to remedy any breach within a reasonable time. Supplier may terminate on written notice for Authorized User's failure to pay within a reasonable time, not to be less than 60 days from receipt of invoice. Authorized User may terminate a Statement of Work for convenience upon 60 days written notice. Upon termination, Supplier or Subcontractor will stop work in an orderly manner as soon as practical. If an SOW is terminated, Authorized User agrees to pay Supplier for all Services provided and any Products and Materials delivered through the project's termination and any charges Supplier incurs in terminating subcontracts, if any. If the Supplier should have a grievance against the Authorized User, resolution should be attempted via Section 18 (Dispute Resolution).

**19. DISPUTE RESOLUTION**

Contractual claims, whether for money or other relief, shall be submitted in writing to Authorized User no later than sixty (60) days after final payment; however, written notice of the Supplier's intention to file such claim must be given to Authorized User at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment. Authorized User shall render a final decision in writing within thirty (30) days after its receipt of the Supplier's written claim.

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

Supplier agrees to submit any and all contractual disputes arising from an order to VITA's non-binding alternative dispute resolution (ADR) procedures, if any. Supplier may invoke VITA's ADR procedures at any time and concurrently with any other statutory remedies prescribed by the Code of Virginia.

In the event of any breach by an Authorized User, Supplier's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section.

**20. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996**



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(HIPAA)

21. **FOR ANY PURCHASING VEHICLE THAT REQUIRES HIPAA COMPLIANCE, SUPPLIER AND AUTHORIZED USER SHALL MUTUALLY EXECUTE A BUSINESS ASSOCIATE ADDENDUM (BAA) USING THE FORM PROVIDED AS ATTACHMENT B TO THIS MASTER AGREEMENT. IF SUPPLIER AND AUTHORIZED USER HAVE AN EXISTING BAA IN PLACE, SUPPLIER AND AUTHORIZED USER MAY AGREE TO REFERENCE THE EXISTING BAA IN LIEU OF EXECUTING A NEW BAA FOR EACH APPLICABLE PURCHASING VEHICLE.**

22. **GOVERNING LAW**

The terms of this Agreement shall be governed by and 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 shall be brought in the circuit courts of the Commonwealth of Virginia. The English language version of this Agreement prevails when interpreting this Agreement. 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. UCITA shall apply to this Agreement only to the extent required by §59.1-501.15 of the Code of Virginia.

By signing below, both parties agree to the terms of this document.

**International Business Machines Corporation**

By:   
(Signature)

Name: ANDY HARMON  
(Print)

Title: CLIENT MANAGER

Date: 10/8/14

**COMMONWEALTH OF VIRGINIA  
VIRGINIA INFORMATION  
TECHNOLOGIES AGENCY**

By:   
(Signature)

Name: PHILIP L. PIPPERT  
(Print)

Title: DIRECTOR, SCM

Date: 9/30/14



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**ATTACHMENT A: MANDATORY TERMS**

The contractual provisions provided below (Mandatory Terms) are mandatory contractual provisions, required by law or by VITA, are hereby incorporated by reference.

I. Statutorily Mandated Terms and Conditions



statutorilymandate  
dtsandcs.pdf

II. Contractual claims provision at §2.2-4363 of the Code of Virginia



Code of Virginia  
2\_2-4363.pdf

III. Required eVA provisions



evatsandcs.pdf



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**ATTACHMENT B: BUSINESS ASSOCIATE ADDENDUM**

For any Purchasing Vehicle that requires HIPAA compliance, Supplier and Authorized User shall mutually execute a Business Associate Addendum using the form provided in this Attachment B. If Supplier and Authorized User have an existing BAA in place, Supplier and Authorized User may agree to reference the existing BAA in lieu of executing a new BAA for each applicable Purchasing Vehicle.



Business Associate  
Addendum.doc