



Information Technology Solution Contract

between

The Virginia Information Technologies Agency

on behalf of

The Commonwealth of Virginia

and

International Business Machines Corporation

**INFORMATION TECHNOLOGY SOLUTION CONTRACT
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INFORMATION TECHNOLOGY SOLUTION CONTRACT

THIS INFORMATION TECHNOLOGY Solution CONTRACT (“Contract”) is entered into by and between the Virginia Information Technologies Agency (VITA) pursuant to §2.2-2012 of the Code of Virginia and on behalf of the Commonwealth of Virginia (hereinafter referred to as “VITA”), and International Business Machines Corporation (“Supplier”, or “IBM”), a corporation headquartered at 1 New Orchard Road, Armonk, NY 10504 to be effective as of September 15, 2015 (“Effective Date”).

1. PURPOSE AND SCOPE

This Contract sets forth the terms and conditions under which Supplier shall provide Next generation software analytics to the Authorized Users. This includes next-generation analytics, supporting tools, the services needed to deploy and tune these tools, and training services. These tool sets include Business Intelligence (BI), predictive, prescriptive, statistical analytics, simulation, data visualization, data quality, data governance, unstructured data, Hadoop, MapReduce, and Watson Advanced Edition.

2. DEFINITIONS

A. Acceptance

Successful delivery and performance by the Supplier of its contractual commitments at the location(s) designated in the applicable Statement of Work or order, including completed and successful Acceptance testing in conformance with the Requirements as determined by the Authorized User in the applicable Statement of Work or order.

B. Agent

Any third party independent agent of any Authorized User.

C. Authorized Users

Except for telecommunications contracts, means all public bodies, including VITA, as defined by §2.2-4301 and referenced by §2.2-4304 of the Code of Virginia. Authorized Users shall include private institutions of higher education that are listed at: <http://www.cicv.org/Our-Colleges/Profiles.aspx>. Authorized Users may also be referred to as “Customers”.

D. Business Day/Hour

Normal operating hours for the Commonwealth of Virginia: Monday-Friday, 8 a.m.-5 p.m. Eastern Standard/Daylight Time, unless otherwise specified on the applicable order or Statement of Work, excluding Commonwealth-designated holidays.

E. Component

Software or Deliverable delivered by Supplier under this Contract, including under all orders or Statements of Work.

F. Computer Virus

Any malicious code, program, or other internal component (e.g., computer virus, computer worm, computer time bomb, or similar component), which could damage, destroy, alter or disrupt any computer program, firmware, or hardware or which could, in any manner, reveal, damage, destroy, alter or disrupt any data or other information accessed through or processed by such software in any manner.

G. Confidential Information

Any confidential or proprietary information of a Party that is disclosed in any manner, including oral or written, graphic, machine readable or other tangible form, to any other Party in connection with or as a result of discussions related to this Contract or any order or SOW issued hereunder, and which at the time of disclosure either (i) is marked as being “Confidential” or “Proprietary”, (ii) is otherwise reasonably identifiable as the confidential or proprietary information of the disclosing Party, or (iii) under the circumstances of disclosure should reasonably be considered as confidential or proprietary information of the disclosing Party or (iv) is identifiable or should be reasonably considered as protected health information; (v) any personally identifiable information,

including information about VITA's employees, contractors, and customers, that is protected by statute or other applicable law.

H. Deliverable

The tangible embodiment of the work performed or Services, Maintenance Services, Licensed Services, Solution, Component, Software, plans, reports, data, Product, Supplier Product and Updates provided by the Supplier in fulfilling its obligations under the Contract or as identified in the applicable Statement of Work or order, including the development or creation of Work Product, if Work Product is authorized under the Contract.

I. (reserved)

J. 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 or Application Users to make productive use of the Application, Software, Solution, Component, Product, Service, Licensed Services or Deliverable, and to implement and develop self-sufficiency with regard to the Application, Software, Solution, Component, Product, Service, Licensed Services or Deliverable, provided by Supplier in fulfilling its obligations under the Contract or as may be specified in any Statement of Work or order issued hereunder.

K. Electronic Self-Help

Any use of electronic means to exercise Supplier's license termination rights, if allowable pursuant to the Contract, upon breach or cancellation, termination or expiration of this Contract or any Statement of Work or order placed hereunder.

L. Health Record

"Health record" means any written, printed or electronically recorded material maintained by a health care entity in the course of providing health services to an individual concerning the individual and the services provided. "Health record" also includes the substance of any communication made by an individual to a health care entity in confidence during or in connection with the provision of health services or information otherwise acquired by the health care entity about an individual in confidence and in connection with the provision of health services to the individual. (§ 32.1-127.1:03, Code of Virginia)

M. (reserved)

N. Maintenance Level

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

O. Maintenance Services (or "Maintenance" or "Software Maintenance")

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

P. Party

Supplier, VITA or any Authorized User.

Q. Protected Health Information

Protected health information means 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. Protected health information 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. (§ 37.2-1032, Code of Virginia)

R. Receipt

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

S. Requirements

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

T. Services

Any work performed or service provided by Supplier in fulfilling its obligations under the Contract or, as applicable, any Statement of Work or order issued under the Contract, including design, and development of software and modifications, software updates, solution, products, implementation, installation, maintenance, support, testing, training, or other provision to the Authorized User of any Deliverable described in the applicable Statement of Work or order, as authorized by the Contract scope. As permitted by the scope of the Contract, may include the discovery, creation, or development of Work Product, if any. If Work Product is authorized, refer to definition for Work Product. This definition does not include Licensed Services.

U. Software

If Software is authorized under the Contract, means the programs and code provided by Supplier under the Contract or any order or SOW issued hereunder as a component(s) of any Deliverable or Component of any Solution, and any subsequent modification of such programs and code, excluding Work Product. For COTS (boxed) software, means the programs and code, and any subsequent releases, provided by Supplier under this 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 Statement of Work. For Software Maintenance contracts Software also includes the programs and code provided by Supplier under the Contract or any order or SOW issued hereunder in the form of Software Updates.

V. Software Publisher

If Software is authorized under the Contract, means the licensor of the Software, other than Supplier, provided by Supplier under this Contract.

W. Solution

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

X. Statement of Work (SOW)

The document template attached as Exhibit D (describing the deliverables, due dates, assignment duration and payment obligations for a specific project, engagement, or assignment that Supplier commits to provide to an Authorized User), which, upon signing by both Parties, shall be deemed a part of the Contract.

Y. Supplier

Means the Supplier and any of its Affiliates (i.e., an entity that controls, is controlled by, or is under common control with Supplier).

Z. Update

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

AA. 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 (collectively, the "Work Product") discovered, created, or developed by Supplier, or jointly by Supplier and an Authorized User(s) in the performance of this Contract. Work Product shall not include configuration of software.

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, shall continue to be effective and legally binding for a period of three (3) years. VITA, in its sole discretion, may extend this Contract for up to two (2) additional one (1) year periods after the expiration of the initial three (3) year period. VITA will issue a written notification to the Supplier stating the extension period thirty (30) days prior to the expiration of any current term. In addition, performance of an order or SOW issued during the term of this Contract may survive the expiration of the term of this Contract, in which case all contractual terms and conditions required for the operation of such order or SOW shall remain in full force and effect until all of Supplier's obligations pursuant to such order or SOW have met the final Acceptance criteria of the applicable Authorized User.

B. Termination for Convenience

VITA may terminate this Contract, in whole or in part, or any order or SOW issued hereunder, in whole or in part, or an Authorized User may terminate an order or SOW, in whole or in part, upon not less than thirty (30) days prior written notice at any time for any reason.

C. Termination for Breach or Default

VITA shall have the right to terminate this Contract, in whole or in part, or any order or SOW issued hereunder, in whole or in part, or an Authorized User may terminate an order or SOW, in whole or in part, for breach and/or default of Supplier. Supplier shall be deemed in breach and/or default in the event that Supplier fails to meet any material obligation set forth in this Contract or in any order or SOW issued hereunder.

If VITA deems the Supplier to be in breach and/or default, VITA shall provide Supplier with notice of breach and/or default and allow Supplier thirty (30) days to cure the breach and/or default. If Supplier fails to cure the breach as noted, VITA may immediately terminate this Contract or any order or SOW issued hereunder, in whole or in part. If an Authorized User deems the Supplier to be in breach and/or default of an order or SOW, such Authorized User shall provide Supplier with notice of breach and/or default and allow Supplier thirty (30) days to cure the breach and/or default. If Supplier fails to cure the breach and/or default as noted, such Authorized User may immediately terminate its order or SOW, in whole or in part. Any such termination shall be

deemed a Termination for Breach or Termination for Default. In addition, if Supplier is found by a court of competent jurisdiction to be in violation of or to have violated 31 USC 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 USC 1352 or if federal debarment proceedings are instituted against Supplier.

D. Termination for Non-Appropriation of Funds

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

E. Effect of Termination

Upon termination, neither the Commonwealth, nor VITA, nor any Authorized User shall have any future liability except for Deliverables accepted by the Authorized User.

In the event of a Termination for Breach or Termination for Default, Supplier shall accept return of any Deliverable that was not accepted by the Authorized User(s), and Supplier shall refund any monies paid by any Authorized User for such Deliverable, and all costs of de-installation and return of Deliverables shall be borne by Supplier.

F. Reserved

G. Transition of Services

Prior to or upon expiration or termination of this Contract and at the request of VITA, Supplier shall provide all assistance as VITA or an Authorized User may reasonably require to transition the Supplier's contractual obligations, or any portion thereof, as requested by VITA or the Authorized User, to any other supplier with whom VITA or such Authorized User contracts for provision of same. This obligation may extend beyond expiration or termination of the Contract for a period not to exceed six (6) months. Supplier shall provide such assistance at the hourly rate or a charge agreed upon by Supplier and VITA or an Authorized User.

H. Contract Kick-Off Meeting

Within 30 days of Contract award, Supplier may be required to attend a contract orientation meeting, along with the VITA contract manager/administrator, the VITA and/or other agency project manager(s) or authorized representative(s), technical leads, VITA representatives for SWaM and Sales/IFA reporting, as applicable, and any other significant stakeholders who have a part in the successful performance of this Contract. The purpose of this meeting will be to review all contractual obligations for both parties, all administrative and reporting requirements, and to discuss any other relationship, responsibility, communication and performance criteria set forth in the Contract. The Supplier may be required to have its assigned account manager as specified in Section 6.0 and a representative from its contracts department in attendance. The time and location of this meeting will be coordinated with Supplier and other meeting participants by the VITA contract manager.

I. Contract Closeout

Prior to the contract's expiration date, Supplier may be provided contract close out documentation and shall complete, sign and return to VITA Supply Chain Management within 30 days of receipt. This documentation may include, but not be limited to: Patent/Royalty Certificate, Tangible Property/Asset Certificate, Escrow Certificate, SWaM Reports Completion Certificate, other required Small Business (SWaM) Procurement Plan compliance/variance and non-SWaM spend documentation as described in the Reporting section of this Contract, Sales Reports/IFA Payments Completion Certificate, and Final Payment Certificate. Supplier is required to process

these as requested to ensure completion of close-out administration and to maintain a positive performance reputation with the Commonwealth of Virginia. Any closeout documentation not received within 30 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 the Supplier, including final payment, until the documentation is returned.

4. SUPPLIER PERSONNEL

A. Selection and Management of Supplier Personnel

Supplier shall take such steps as may be necessary to 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 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'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 employee, subcontractor or agent of Supplier whom such Authorized User believes has failed to comply with the above or whose conduct or behavior is unacceptable or unprofessional or results in a security or safety breach.

B. Supplier Personnel Supervision

Supplier acknowledges that Supplier or any of its agents, contractors, or subcontractors, is and shall be the employer of Supplier personnel, and shall have 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 personnel. Neither VITA nor an Authorized User shall have any such responsibilities for Supplier or subcontractor personnel.

C. Key Personnel

An order or SOW may designate certain of Supplier's personnel as Key Personnel or Project Managers. Supplier's obligations with respect to Key Personnel and Project Managers shall be described in the applicable order or SOW. Failure of Supplier to perform in accordance with such obligations may be deemed a default of this Contract or of the applicable order or SOW.

D. Subcontractors

Supplier shall not use subcontractors to perform its contractual obligations under the Contract or any order or SOW issued thereunder 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 shall not subcontract to any subcontractor that is a party excluded from Federal Procurement and Nonprocurement Programs. In no event shall Supplier subcontract to any subcontractor which is debarred by the Commonwealth of Virginia or which owes back taxes to the Commonwealth and has not made arrangements with the Commonwealth for payment of such back taxes.

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

5. NEW TECHNOLOGY

A. Access to New Technology

Supplier will bring to VITA's attention any new products or services within the scope of the Contract that it 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 Service Offerings Not Available from Supplier

If new or replacement product or service offerings become available to VITA under the scope of the Contract, and cannot be competitively provided by the Supplier, VITA may purchase such new or replacement products or services from a third party, and Supplier will reasonably assist VITA to migrate to such products or services, if VITA elects to use such new or replacement product or service offerings. Supplier shall provide such assistance at the hourly rate or a charge agreed upon by Supplier and VITA or an Authorized User.

6. SOFTWARE LICENSE

If Authorized User is a state agency, board, commission, or other quasi-political entity of the Commonwealth of Virginia or other body referenced in Title 2.2 of the Code of Virginia, the license shall be held by the Commonwealth. If Authorized User is a locality, municipality, school, school system, college, university, local board, local commission, or local quasi-political entity, the license shall be held by that public body. If Authorized User is a private institution of higher education which is listed at: <http://www.cicv.org/Our-Colleges/Profiles.aspx>, the license shall be held by that private institution.

A. License Grant

For license grant terms related to distributed software, view the following link:

[http://www.ibm.com/software/sla/sladb.nsf/pdf/ipla/\\$file/ipla_en.pdf](http://www.ibm.com/software/sla/sladb.nsf/pdf/ipla/$file/ipla_en.pdf).

For license grant terms related to mainframe, view the Machine Code and Built In Capacity section of the IBM Client Relationship Agreement at the following link: http://www-05.ibm.com/support/operations/files/pdf/cra_us.pdf

In the event an Authorized User wishes to engage a SaaS (Software as a Service) agreement between themselves and Supplier, Supplier and VITA will negotiate the additional required terms and conditions.

B. License Type

All licenses granted, regardless of the type, include all uses set forth above. License type may vary by Software product and shall be set forth in Exhibit B and identified on any order or SOW issued pursuant to this Contract. License type will be defined between the Authorized User and Supplier in the applicable Statement of Work.

C. No Subsequent, Unilateral Modification of Terms by Supplier (“Shrink Wrap”)

Notwithstanding any other provision or other unilateral license terms which may be issued by Supplier after the Effective Date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of an order for a Solution, the components of which are licensed under this Contract, or the fact that such other agreement may be affixed to or accompany Software upon delivery (“shrink wrap”), the terms and conditions set forth in the Supplier urls in Section 6.A. above, shall supersede and govern licensing and delivery of all products and services hereunder.

7. RIGHTS TO WORK PRODUCT

If Authorized User is a state agency, board, commission, or other quasi-political entity of the Commonwealth of Virginia or other body referenced in Title 2.2 of the Code of Virginia, any license to pre-existing work shall be held by, and all rights in, title to, and ownership of Work Product shall vest with the Commonwealth. If Authorized User is a locality, municipality, school, school system, college, university, local board, local commission, or local quasi-political entity, any license to pre-existing work shall be held by, and all rights in, title to, and ownership of Work Product shall vest with that public body. If Authorized User is a private institution of higher education which is listed at: <http://www.cicv.org/Our-Colleges/Profiles.aspx>, any license to pre-existing work shall be held by, and all rights in, title to, and ownership of Work Product shall vest with that private institution.

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.

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.

A. Return of Materials

Upon termination of this Contract or in the event Authorized User terminates any order or SOW issued hereunder, 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 such Authorized User, which are in Supplier's possession, custody or control.

8. GENERAL WARRANTY

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

A. Hardware Warranty

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

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

D. 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. 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.

E. 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. In addition, Supplier provides the following warranties:

i). Reserved

ii). 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.

iii). Reserved

iv). Performance

F. 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. Reserved

G. Malicious Code

H. 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 deliver the Services. Open Source

Supplier will notify all Authorized Users if the Solution, Solution Components, Deliverables, Product, Software, Updates, Application and/or Licensed Services, as obligated and provided by Supplier, contains 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.

I. Supplier's Viability

Supplier warrants that it has the financial capacity to perform and continue to perform its obligations under this Contract; that 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; and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction.

J. Reserved

9. 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. DELIVERY AND INSTALLATION

A. Scheduling

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

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

B. Deployment of Solution

1. Supplier Deployment of Solution

The Solution fee includes initial deployment of the complete Solution. Supplier is required to deploy the Solution in accordance with the deployment schedule set forth on the order or SOW. Deployment shall include the installation of any Software Component and, if agreed, any

hardware Component, of the Solution. Supplier shall conduct its standard appropriate diagnostic evaluation at the Authorized User's user site to determine that the Solution is properly deployed and fully ready for productive use, and shall supply such Authorized User with a copy of the results of the diagnostic evaluation promptly after completion of deployment.

Supplier agrees that failure to deploy the Solution in accordance with the delivery schedule in the applicable order or SOW shall constitute a material breach of this Contract resulting in damages to such Authorized User. As an estimate of the damages such Authorized User shall suffer, Supplier agrees to credit such Authorized User an amount equal to one percent (1%) of the total Solution fee, for each day after the scheduled deployment date that the Solution has not been deployed for a period of thirty (30) days following the agreed upon delivery date. If the delay lasts longer than thirty (30) days, such Authorized User may immediately cancel the order or SOW and collect damages for each day of that period of late delivery. Such Authorized User reserves any and all other remedies available at law or in equity for delays lasting longer than thirty (30) days or for non-deployment.

2. Authorized User Installation of Software

If the Solution includes Software which may be installed by an Authorized User and such Authorized User elects to install the Software itself, the Software shall 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 invoke the primary function of each major Component of the Software or when Acceptance criteria as specified in the Authorized User's order or SOW have been met. Authorized User shall provide to Supplier written notice of Acceptance upon completion of installation and successful Acceptance testing. Supplier shall proceed with full deployment of the Solution concurrently with or after Authorized User's installation of the Software, as agreed between the Authorized User and Supplier in the order or SOW.

C. Documentation of Software Configuration

If the Solution includes configuration of Software by Supplier, Supplier shall provide 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.

10. ACCEPTANCE

A. Software and Deliverable Acceptance Criteria

Software and Deliverables shall be deemed accepted when the Authorized User determines that such Software and Deliverables successfully operate in accordance with the Requirements and applicable order or SOW. At a minimum, Acceptance Criteria for Software and Deliverables, and for the Solution as a whole, shall ensure that all of the functionality described in the Requirements set forth in Exhibit A and required by the Authorized User in the applicable order or SOW has been delivered to the Authorized User. Acceptance of any one Deliverable shall not imply Authorized User's concurrence that the Deliverable will function properly with or within the Solution. Supplier shall be responsible for ensuring that all Deliverables function properly within the Solution. Should a previously Accepted Deliverable require further modification in order to work properly with or within the Solution, Supplier shall be responsible for all costs associated with such modification. Such Authorized User agrees to commence Acceptance testing within five (5) days, or within such other period as set forth in the applicable order or SOW, after receipt of the Software or Deliverable. Acceptance testing will be no longer than fifteen (15) days, or such other period as may be agreed in writing between Authorized User and Supplier, for the first instance of each product type set forth in Exhibit B. Supplier agrees to provide to such Authorized User such assistance and advice as such Authorized User may reasonably require, at no additional cost, during such Acceptance testing, other than pre-approved travel expenses for time and materials type orders or SOWs or for fixed price type orders or SOWs in which travel expenses were expressly excluded from the total price of the order or SOW. Any such travel expenses must be pre-approved by the Authorized User and shall be reimbursable by such

Authorized User at the then-current per diem amounts as published by the Virginia Department of Accounts (<http://www.doa.virginia.gov>), or a successor URL(s)). If the Authorized User is a private institution chartered in Virginia and and granted tax-exempt status under §501(c)(3) of the Internal Revenue Code, such private institution may have its own per diem amounts applicable to Supplier's pre-approved travel expenses. Authorized User shall provide to Supplier written notice of Acceptance upon completion of successful Acceptance testing. Should Authorized User fail to provide Supplier written notice of successful or unsuccessful Acceptance testing within five (5) days following the Acceptance testing period, the Service shall be deemed Accepted.

B. Software and Deliverable Cure Period

Supplier shall correct any non-conformities identified during Acceptance testing and re-submit such non-conforming Software or Deliverable for re-testing within thirty (30) days of receipt of the appropriate Authorized User's written notice of non-conformance, or as otherwise agreed between such Authorized User and Supplier in the applicable order or SOW. Should Supplier fail to cure the non-conformity or deliver Software or a Deliverable which meets the Requirements, such Authorized User may, in its sole discretion: (i) reject the Software or Deliverable in its entirety and recover amounts previously paid hereunder; (ii) issue a "partial Acceptance" of the Software or Deliverable with an equitable adjustment in the price to account for such deficiency; or (iii) conditionally accept the applicable Software or Deliverable while reserving its right to revoke Acceptance if timely correction is not forthcoming. Failure of the Software or a Deliverable to meet, in all material respects, the Requirements after the second set of acceptance tests shall constitute a default by Supplier. 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 Solution to be provided thereunder by Supplier.

C. Solution Acceptance Criteria

Solution shall be deemed accepted when the Authorized User determines that such Solution successfully operates in accordance with the Requirements. Such Authorized User agrees to commence Acceptance testing within five (5) days after deployment of the Solution. Acceptance testing will be completed within thirty (30) days, or such other period as may be agreed in writing between Authorized User and Supplier, after deployment of the Solution. Supplier agrees to provide to such Authorized User such assistance and advice as such Authorized User may reasonably require, at no additional cost, during such Acceptance testing, other than pre-approved travel expenses for time and materials type orders or SOWs or for fixed price type orders or SOWs in which travel expenses were expressly excluded from the total price of the order or SOW. Any such travel expenses must be pre-approved by the Authorized User and shall be reimbursable by such Authorized User at the then-current per diem amounts as published by the Virginia Department of Accounts <http://www.doa.virginia.gov>, or a successor URL(s)). If the Authorized User is a private institution chartered in Virginia and and granted tax-exempt status under §501(c)(3) of the Internal Revenue Code, such private institution may have its own per diem amounts applicable to Supplier's pre-approved travel expenses. Authorized User shall provide to Supplier written notice of Acceptance upon completion of successful Acceptance testing. Should Authorized User fail to provide Supplier written notice of successful or unsuccessful Acceptance testing within five (5) days following the Acceptance testing period, the Service shall be deemed Accepted.

D. Solution Cure Period

Supplier shall correct any non-conformities identified hereunder and shall thereafter re-submit such previously non-conforming Solution or Component products or Services for re-testing within thirty (30) business days of receipt of written notice of non-conformance to Supplier, or as otherwise agreed between the Authorized User and Supplier. Should Supplier fail to deliver a Solution which meets the Requirements, such Authorized User may, in its sole discretion: (i) reject the Solution in its entirety and recover amounts previously paid hereunder; (ii) issue a "partial Acceptance" of the Solution with an equitable adjustment in the price to account for such deficiency; or (iii) conditionally accept the applicable Solution while reserving its right to revoke Acceptance if timely correction is not forthcoming. Failure of the Solution to meet, in all material respects, the specifications and performance standards after the second set of acceptance tests

shall constitute a default by Supplier. 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 Solution to be provided hereunder by Supplier.

11. WARRANTY AND MAINTENANCE SERVICES

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

A. Known Defects

Promptly notify all Authorized Users in writing of any defects or malfunctions in the Solution or Documentation of which it learns from any source, correct any such defects or malfunctions or provide a work around until corrected, within five (5) days of Supplier's knowledge of such defect or malfunction and provide all Authorized Users with corrected copies of same.

B. New Releases

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

C. Coverage

Twenty-four (24) hours per day, seven (7) days a week, provide to any Authorized Users all reasonably necessary telephone or written consultation requested by such Authorized Users in connection with use, problems and operation of the Solution.

D. Service Levels

Respond to problems with the Solution identified by an Authorized User in no more than one (1) hour after notification. Resolve all problems according to the following:

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

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

E. Software Evolution

Should Supplier or Software Publisher merge or splinter the Software previously provided to any Authorized User, such action on the part of Supplier or Software Publisher shall not in any way result in any Authorized User being charged additional license or support fees in order to receive enhancements, releases, upgrade 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 shall be entitled to license such Software product at no additional license or maintenance fee, and subject to the terms and conditions herein.

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

F. Escalation Procedures

The following procedure will be followed if resolution is required to a conflict arising during the performance of an SOW.

- a. When a conflict arises between Customer and IBM, the project team member(s) will first strive to work out the problem internally.
- b. Level 1: If the project team cannot resolve the conflict within two (2) working days, the Customer Project Manager and IBM Project Manager will meet to resolve the issue.
- c. Level 2: If the conflict is not resolved within three (3) working days after being escalated to Level 1, the Customer Executive Sponsor will meet with the IBM Project Executive to resolve the issue.
- d. If the conflict is resolved by either Level 1 or Level 2 intervention, the resolution will be addressed in accordance with the Project Change Control Procedure set forth in Appendix B-1
- e. If the conflict remains unresolved after Level 2 intervention, then either party may terminate this SOW. If the conflict is addressed by termination, Customer agrees to pay IBM as described in Section {1.9.1} Termination.

G. f. During any conflict resolution, IBM agrees to provide Services relating to items not in dispute, to the extent practicable pending resolution of the conflict. Customer agrees to pay invoices per this SOW and the Agreement. Remedies

If Supplier is unable to make the Solution or any Component thereof conform, in all material respects to the order or SOW issued by the Authorized User, within thirty (30) days following notification by an Authorized User, Supplier shall, at such Authorized User's request, accept return of the tangible Solution Components, and (a) during the Warranty Period, return all monies paid by such Authorized User for the returned Solution Components and Documentation or (b) during any subsequent Maintenance Period, return all monies paid by such Authorized User for the returned Solution Components and Documentation, pro-rated using the straight-line method for an estimated Solution life cycle of seven (7) years. Authorized User shall discontinue use of any Solution Component Software or product.

H. Solution Support Services (Maintenance) and Renewal Options

Sixty (60) days prior to the expiration of the Warranty Period, Supplier shall notify the Authorized User in writing of such expiration, and the Authorized User, at its sole discretion, may order from Supplier Solution support Services ("Maintenance Services"), including new Software releases, updates and upgrades, for a period of one (1) year ("Maintenance Period") and for an annual fee of ten percent (10%) of the Software license fee paid by any Authorized User for its then current installed base. Supplier shall notify the Authorized User sixty (60) days prior to the expiration of the Maintenance Period, and the Authorized User, at its sole discretion, may renew Maintenance Services for an additional one (1) year period. The annual fee for Maintenance Services shall not exceed the fee charged for the preceding year's Maintenance Services by more than three percent (3%), or the annual change in CPI, as defined in the Fees and Charges section, in effect at the time, whichever is less. Supplier warrants that it shall make Support Services available for all the Solution components listed in Exhibit B for a period of at least five (5) years from the expiration of the initial Warranty Period of any Solution provided to an Authorized User pursuant to this Contract. Cancellation of Maintenance Services by an Authorized User shall not affect this Contract or the grant of any license by Supplier.

12. FEES, ORDERING AND PAYMENT PROCEDURE**A. Fees and Charges**

As consideration for the Supplier's performance obligations and any additional products and services provided hereunder 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, an Authorized User shall pay Supplier the fee(s) set forth on Exhibit B, which lists any and all fees

and charges. The fees and any associated discounts shall be applicable throughout the term of this Contract; provided, however, that in the event the fees or discounts apply for any period less than the entire term, Supplier agrees that it shall not increase the fees more than once during any twelve (12) month period, commencing at the end of year one (1). No such increase shall 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 effective date of the increase compared with the same index one (1) year prior. Any such change in price shall be submitted in writing to VITA and to the Authorized User if such change impacts any SOW or order and in accordance with the above and shall not become effective for sixty (60) days thereafter.

B. Ordering

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

Supplier is required to accept any order or 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.
- 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. 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; however, to the extent that the terms and conditions of the Authorized User's order or SOW 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 or SOW is to be funded, in whole or in part, by federal funds and if, at the time the order or SOW is placed, Supplier is not eligible to be the recipient of federal funds as may be noted on any of the Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs.

ALL 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 SUCH AUTHORIZED USER IS VITA.

C. Reproduction Rights for Supplier-Provided Software

At an Authorized User's request, Supplier shall provide the Authorized User with a reproducible diskette or CD of Software and Updates. Such Authorized User shall be responsible for making copies and distributing the Software and Updates as required. Within thirty (30) days of the end of each calendar quarter, such Authorized User shall provide to Supplier a report of the net number of additional copies of the Software and/or Updates deployed during the quarter. Supplier shall invoice such Authorized User for the net number of new licenses reported as deployed.

D. Reimbursement of Expenses

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

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.

E. Demonstration and/or Evaluation

If the Supplier's contractual obligations include the provision of a Solution, an Application and Licensed Services, or Software-as-a-Service, at the request of any Authorized User, Supplier shall perform a demonstration of its Solution, or its Application and Licensed Services or Software-as-a Service at such Authorized User's location and at no charge.

If the Supplier's contractual obligations include the provision of Software, the Supplier shall make available to any Authorized User the Software 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 thirty (30) days. Each new project is entitled to an evaluation copy regardless of whether an Authorized User has previously purchased the Software.

F. Statement of Work

An SOW, the template provided in Exhibit D, shall be required for any orders placed by an Authorized User pursuant to this Contract. Supplier shall perform any and all contractual obligations at the times and locations set forth in the applicable SOW and at the rates set forth in Exhibit B herein. Unless VITA issues a written authorization for a time and materials type SOW, any SOW shall be of a fixed price type but may, with the written approval of VITA, contain a cost-reimbursable line item(s) for pre-approved travel expenses. In furtherance of compliance, invoicing, and auditing requirements, for time and materials type SOWs, Supplier personnel shall maintain daily time records of hours and tasks performed, which shall be submitted or made available for inspection by the Authorized User upon forty-eight (48) hours advance written notice.

Any change to an SOW must be described in a written change request (template provided as Exhibit E). Either Party to an SOW may issue a change request that will be subject to written approval of the other Party before it becomes part of this Contract. In no event shall any SOW or any modification thereto require the Supplier to provide any products or services that are beyond the scope of this Contract as such scope is defined in Exhibit A hereto.

G. Supplier Quote and Request for Quote

Should an Authorized User determine that a competitive process is required to ensure it receives the best value for its needed solution, product and/or services under this contract, such Authorized User may, at its sole discretion, on a case-by-case basis and upon approval by VITA, use a Request for Quote (RFQ) process to obtain identical or similar solutions, products and/or services to those provided by Supplier pursuant to this Contract. The RFQ process is typically used when an Authorized User requires a complete solution that may be fulfilled by Products and Services herein, but whose complexity or size may result in economies that could not be passed on to the Authorized User within the confines of the established contract catalog discount pricing. When an RFQ is used, the project timing and requirements will be clearly outlined in the RFQ document. In some situations, the Authorized User may not identify the exact specifications required. If that is the case, the RFQ respondents will be given the opportunity to identify and propose their recommended specifications.

Supplier shall respond to the RFQ by providing a quote, which shall include (a) a detailed description of each product or service proposed, including such product and services components, at the Exhibit B line item level, (b) the quantity of each such component, (c) the contract price, (d) any additional percentage discount offered, and (e) an extended price. If requested by the Authorized User, Supplier's quote shall also include a proposal describing the approach Supplier plans to take in developing, implementing, and maintaining its offering for the Authorized User. Should Supplier be unable to respond to the RFQ due, for example, to resource constraints, Supplier shall notify Authorized User in writing of its inability to perform the work requested by such Authorized User, and provide the reasons for such inability to perform, prior to the due date for the submission of quotes in response to the RFQ.

H. Invoice Procedures

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

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

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

I. Purchase Payment Terms

Supplier is responsible for the accuracy of its billing information. Supplier agrees not to issue invoices hereunder until all Supplier's performance obligations have been accepted and in accordance with the milestone payment schedule, if any, in the applicable order or SOW, or until after services have been rendered. Charges for Deliverables, components or services accepted more than ninety (90) days prior to receipt of a valid invoice may not be paid. Should Supplier repeatedly over bill Authorized User, Authorized User may assess a one percent (1%) charge for the amount over-billed for each month that such over-billing continues.

13. REPORTING

Supplier is required to submit to VITA the following monthly reports:

- i. Report of Sales; and
- ii. Small Business Procurement and Subcontracting Report

These reports must be submitted using the instructions and further detailed requirements and templates found at the following URL: <http://www.vita.virginia.gov/scm/default.aspx?id=97>

Suppliers are encouraged to review the site periodically for updates on Supplier reporting requirements and methods.

In conjunction with the requirements in the Invoice Procedures section of this Contract, Supplier shall provide to VITA within 30 days of the date of expiration of the contract an accompanying statement certifying that Supplier has fully complied with the Contract's Small Business (SWaM) Procurement Plan, and if Supplier has not fully complied, provide a written explanation of any variances between such Plan and the actual participation. The Supplier's compliance confirmation and/or written explanation of variance shall be maintained by VITA, in the contract file.

Failure by Supplier to comply with its contractually obligated Small Business (SWaM) Procurement Plan may prohibit or delay any renewals of the Contract. Also, Supplier's failure to comply with its Small Business (SWaM) Procurement Plan or to explain any variance between the proposed Plan and actual SWaM subcontracting spend may result in the withholding of any final payment due Supplier.

Failure to comply with all reporting requirements may result in default of the Contract.

14. STATUS MEETINGS

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

15. STEERING COMMITTEE

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

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

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

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

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

16. RESERVED

17. TRAINING AND DOCUMENTATION

A. Training

In addition to any online tutorial training Supplier may make available, Supplier's fee, unless expressly excluded, includes all costs for any and all training as agreed upon for the training of one (1) Authorized User trainer per order or SOW on the use and operation of the Deliverable provided to Authorized User, to allow full benefit of the applicable Deliverable to Authorized User, including instruction in any necessary conversion, manipulation or movement of such Authorized User's data. Supplier shall provide personnel sufficiently experienced and qualified to conduct

such training at a time and location mutually agreeable to Supplier and Authorized User. Available additional and optional training, and applicable pricing and discounts, are described in Exhibit B.

B. Documentation

Supplier shall deliver to Authorized User three (3), or such number as agreed upon between the parties under an order or SOW, complete hard copies or electronic media of Documentation applicable to Supplier's Deliverable provided to Authorized User, as requested by such Authorized User. Should Supplier revise or replace the Documentation, or should Documentation be modified to reflect Updates, Supplier shall deliver to the Authorized User such updated or replacement Documentation, in the same quantity and media format as originally requested by such Authorized User, or as agreed upon between the parties. Any Authorized User shall 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 shall include, but not be 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 shall be revised to reflect any modifications, fixes or updates made by Supplier. Any Authorized User shall have the right, as part of the license granted by Supplier, at its own discretion, to take all or portions of the Documentation, modify or completely customize it in support of the authorized use of the licensed application or software and may duplicate such Documentation and include it in such Authorized User's document or platform. All Authorized Users shall continue to include Supplier's copyright notice.

18. AUTHORIZED USER SELF-SUFFICIENCY

Prior to or at any time during Supplier's performance of an order or SOW issued pursuant to this Contract, an Authorized User may require that Supplier provide to Authorized User a detailed plan to develop Authorized User self-sufficiency and to transition operation and management to Authorized User or its Agent, which Agent may be VITA, or an agent of VITA, or a third party provider under contract with Authorized User. At Authorized User's request and pursuant to an order or SOW for Supplier's Services issued hereunder, Supplier shall provide all assistance reasonably required by Authorized User to develop Authorized User's self-sufficiency in operating and managing the Solution, Software, Products and/or Services that Supplier provided to Authorized User under the applicable order or SOW. During and/or after the transition period, Authorized User may, at its sole discretion, elect to order or continue Maintenance Services from Supplier, if authorized under the scope of the Contract, for any of the Software or hardware Product, components or Solution Components delivered to Authorized User by Supplier.

19. RESERVED

20. RESERVED

21. 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 such Confidential Information to any third-party. However, an Authorized User may disclose the Confidential Information as delivered by Supplier to subcontractors, contractors or agents of such Authorized User that are bound by non-disclosure contracts with such Authorized User. Each Party shall take the same measures to protect against the disclosure or use of the Confidential Information as it takes to protect its own proprietary or confidential information (but in no event shall such measures be less than reasonable care).

B. Exclusions

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 this Contract or 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.

C. Return or Destruction

D. 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. RESERVED

E. Health Insurance Portability and Accountability Act

22. SHOULD THE SOW SCOPE REQUIRE HIPAA COMPLIANCE, SUPPLIER AND AUTHORIZED USER SHALL MUTUALLY EXECUTE A BUSINESS ASSOCIATE ADDENDUM. 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 SOW. INDEMNIFICATION AND LIABILITY

A. Indemnification

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.

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 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 (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 Product.

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

B. Liability

There shall be no limit to 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 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 informed of their possibility: a) special, incidental, or indirect damages or for any economic consequential damages; b) lost profits, business, revenue, goodwill, or anticipated savings; or c) any third party claims against VITA or Authorized Users except as described in the Indemnification section.

23. INSURANCE

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

24. SECURITY COMPLIANCE

Supplier agrees to comply with all provisions of the then-current Commonwealth of Virginia security procedures, published by the Virginia Information Technologies Agency (VITA) and which may be found at (<http://www.vita.virginia.gov/library/default.aspx?id=537#securityPSGs>) or a successor URL(s), as are pertinent to Supplier's operation. Supplier further agrees to comply with all provisions of the relevant Authorized User's then-current security procedures as are pertinent to Supplier's operation and which have been supplied to Supplier by such Authorized User. It shall be the responsibility of the Authorized Users, using best efforts, to provide Supplier with updated security procedures after publication. Supplier shall also comply with all applicable federal, state and local laws and regulations.

IBM will conduct background checks on those employees of IBM who provide Services under this Agreement on a full time basis at any of your United States facilities (a "Resident IBM Employee"). Background checks will (a) identify federal and county felony and misdemeanor arrest and convictions, including sentences of deferred adjudication; (b) include a search of a national criminal database, (c) include a search of government sanction registries, such as OFAC and (d) and a Social Security Number Death Master Search. The Resident IBM Employee will be asked for their last seven (7) years of addresses.

If a Resident IBM Employee is removed or reassigned from any of your United States facilities as a result of information obtained from a background screening, IBM will notify you that such Resident IBM Employee has been removed or reassigned. We will both cooperate reasonably on addressing those issues (if any) created by the removal or reassignment or a request to remove or reassign a Resident IBM Employee, including (by way of illustration but not limitation) compliance with applicable law and any impact to IBM's ability to provide the Service as provided in applicable Statements of Work.

Non-disclosure agreements to be signed by Supplier's employees or agents acknowledging that all Authorized User information with which such employees and agents come into contact while at the Authorized User site is confidential and proprietary. Any unauthorized release of information by the Supplier or an employee or agent of Supplier shall constitute a breach of its obligations under this Section and this Contract.

Supplier shall immediately notify VITA and Authorized User, if applicable, of any Breach of Unencrypted and Unredacted Personal Information, as those terms are defined in Virginia Code 18.2-186.6, and other personal identifying information, such as insurance data or date of birth, provided by VITA or Authorized User to Supplier. Supplier shall provide VITA the opportunity to participate in the investigation of the Breach and to exercise control over reporting the unauthorized disclosure, to the extent permitted by law.

Supplier shall indemnify, defend, and hold the Commonwealth, VITA, the Authorized User, their officers, directors, employees and agents harmless from and against any and all fines, penalties (whether criminal or civil), judgments, damages and assessments, including reasonable expenses suffered by, accrued against, or charged to or recoverable from the Commonwealth, VITA, the Authorized User, their officers, directors, agents or employees, on account of the failure of Supplier to perform its obligations pursuant this Section.

25. NOTWITHSTANDING THE FOREGOING, SUPPLIER'S ENTIRE AND COLLECTIVE LIABILITY UNDER THIS SECTION SHALL IN NO EVENT EXCEED TWO HUNDRED PERCENT OF THE VALUE (I.E., GREATER OF AMOUNT PAID OR A "NOT TO EXCEED" AMOUNT) OF THE APPLICABLE STATEMENT OF WORK FOR SERVICES, IN THE AGGREGATE, FOR THE SERVICES GIVING RISE TO THE CLAIM UNDER THIS SECTION. 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.

26. BANKRUPTCY

If Supplier files for bankruptcy in the appropriate bankruptcy court, 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 bankruptcy proceedings are commenced with respect to Supplier, and if this Contract has not otherwise terminated, then VITA may suspend all further performance of this Contract until Supplier assumes this Contract and provides adequate assurance of performance thereof 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 such suspension of further performance by VITA or Authorized User pending Supplier's assumption or rejection shall not be a breach of this Contract, and shall not affect the rights of VITA or any Authorized User to pursue or enforce any of its rights under this Contract or otherwise.

27. GENERAL PROVISIONS

A. Relationship Between VITA and Authorized User and Supplier

Supplier has no authority to contract for VITA or any Authorized User or in any way to bind, to commit VITA or any Authorized User 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 shall Supplier, or any of its employees, 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 shall have any duty to provide or maintain any insurance or other employee benefits on behalf of Supplier or its employees. 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 any federal, state or local employment taxes, including, but not limited to, income tax withholding and social security contributions, for Supplier. 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 shall be paid or withheld by Supplier or, if assessed against and paid by VITA or any Authorized User, shall be reimbursed by Supplier upon demand by VITA or such Authorized User.

B. Incorporated Contractual Provisions

The then-current contractual provisions at the following URL are mandatory contractual provisions, required by law or by VITA, and that are hereby incorporated by reference: http://www.vita.virginia.gov/uploadedfiles/VITA_Main_Public/scm/StatutorilyMandatedTsandCs.pdf

The contractual claims provision §2.2-4363 of the Code of Virginia and the required eVA provisions at http://www.vita.virginia.gov/uploadedfiles/VITA_Main_Public/scm/eVATsandCs.pdf are also incorporated by reference.

The then-current terms and conditions in documents posted to the aforementioned URLs are subject to change pursuant to action by the legislature of the Commonwealth of Virginia, change in VITA policy, or the adoption of revised eVA business requirements. If a change is made to the terms and conditions, a new effective date will be noted in the document title. Supplier is advised to check the URLs periodically.

C. Compliance with the Federal Lobbying Act

Supplier's signed certification of compliance with 31 USC 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 (together, the "Lobbying Act") is incorporated as an exhibit to this Contract.

D. Governing Law

This Contract 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 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. UCITA shall apply to this Contract only to the extent required by §59.1-501.15 of the Code of Virginia.

E. Dispute Resolution

In accordance with §2.2-4363 of the Code of Virginia, Contractual claims, whether for money or other relief, shall be submitted in writing to the public body from whom the relief is sought 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 such public body 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. The relevant public body 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 the relevant public body on the claim, unless that public body fails to render its decision within thirty (30) days. The decision of the relevant public body 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.

Upon request from the public body from whom the relief is sought, Supplier agrees to submit any and all contractual disputes arising from this Contract to such public body's alternative dispute resolution (ADR) procedures, if any. Supplier may invoke such public body's ADR procedures, if any, at any time and concurrently with any other statutory remedies prescribed by the Code of Virginia.

In the event of any breach by a public body or a private institution, 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. In no event shall Supplier's remedies include the right to terminate any license or support services hereunder.

F. Advertising and Use of Proprietary Marks

Supplier shall not use the name of VITA or any Authorized User or refer to VITA or any Authorized User, directly or indirectly, in any press release or formal advertisement without receiving prior written consent of VITA or such Authorized User. In no event may Supplier use a proprietary mark of VITA or an Authorized User without receiving the prior written consent of VITA or the Authorized User.

G. Notices

Any notice required or permitted to be given under this Contract shall be in writing and shall 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 to:

i. To VITA and to Supplier, if Supplier is incorporated in the Commonwealth of Virginia, to the addresses shown on the signature page.

ii. To Supplier, if Supplier is incorporated outside the Commonwealth of Virginia, to the Registered Agent registered with the Virginia State Corporation Commission.

Pursuant to Title 13.1 of the Code of Virginia, VITA or Supplier may change its address for notice purposes by giving the other 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 and/or executed 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.

H. No Waiver

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

I. Assignment

This Contract shall be binding upon and shall 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 hereunder, to any entity without the prior written consent of VITA, however, Supplier may assign the Contract to an Affiliate so long as (a) Supplier provides VITA thirty (30) days prior written notice of such assignment, (b) the Affiliate is adequately capitalized and can provide adequate assurances that the Affiliate can perform the Contract and applicable Statement of Work, and (c) a Change Notice will be executed by the parties if necessary under VITA contracting policies. VITA may assign this Contract to any entity, so long as the assignee agrees in writing to be bound by the all the terms and conditions of this Contract.

If any law limits the right of VITA or Supplier to prohibit assignment or nonconsensual assignments, the effective date of the assignment shall be thirty (30) 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 shall not be covered by this assignment.

J. Captions

The captions are for convenience and in no way define, limit or enlarge the scope of this Contract or any of its Sections.

K. Severability

Invalidity of any term of this Contract, in whole or in part, shall 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.

L. Survival

Any provisions of this Contract regarding Software License, Rights To Work Product, Warranty, Escrow, Confidentiality, Content Privacy and Security, Liability, Indemnification, and the General Provisions shall survive the expiration or termination of this Contract.

M. Force Majeure

No Party shall be responsible for failure to meet its obligations under this Contract if the failure arises from causes beyond the control and without the fault or negligence of the non-performing Party. If any performance date under this Contract is postponed or extended pursuant to this section for longer than thirty (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.

N. 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.

O. 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.

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.

P. 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. Reserved

Q. Contract Administration

Supplier agrees that at all times during the term of this Contract an account executive, at Supplier's senior management level, shall be assigned and available to VITA. Supplier reserves the right to change such account executive upon reasonable advance written notice to VITA.

R. 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 - Options List; Fees, Service Charges, and Payment Schedule

Exhibit C - Reserved

Exhibit D - Statement of Work (SOW) Template

Exhibit E - Change Order Template

Exhibit F - Reserved

Exhibit G - Certification Regarding Lobbying

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 hereof. Any and all terms and conditions contained in, incorporated into, or referenced by the Supplier's Proposal shall be deemed invalid. The provisions of the Virginia Department of General Services, Division of Purchases and Supply Vendor's Manual shall not apply to this Contract or any order issued hereunder. This Contract may only be amended by an instrument in writing signed by VITA and Supplier. In the event of a conflict, the following order of precedence shall apply: this Contract document, Exhibit A, any individual SOW, Exhibit B.

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

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.

Executed as of the last date set forth below by the undersigned authorized representatives of VITA and Supplier.

Supplier

VITA

By: *Mb Anderson*
(Signature)

By: *Nelson P. Mae*
(Signature)

Name: *Mb Anderson*
(Print)

Name: *Nelson P. Mae*
(Print)

Title: *Software Client Lead*

Title: *CIO*

Date: *10-15-15*

Date: *11-19-2015*

Address for Notice:

Address for Notice:

9201 Arboretum Pkwy
Richmond VA 23234
mglander@us.ibm.com

11751 Meadowville Lane
Chester, VA 23836

Attention: Supplier Contact

Attention: Contract Administrator