



Information Technology Solution Contract

between

The Virginia Information Technologies Agency

on behalf of

The Commonwealth of Virginia

and

Executive Information Systems, LLC

**INFORMATION TECHNOLOGY SOLUTION CONTRACT
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COMPONENT OR SOLUTION WILL RESULT IN AUTHORIZED USER’S COMPLIANCE, FULFILLMENT OR CONFORMITY WITH THE LAWS, RULES, REGULATIONS, REQUIREMENTS OR GUIDELINES OF ANY GOVERNMENTAL AGENCY.	17
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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 Executive Information Systems, LLC (“Supplier”), a corporation headquartered at 901 Rockledge Drive, Suite 600, Bethesda, MD 20817 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.

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>.

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 applicable 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. Documentation for Software is that Documentation made generally available to Supplier's customers.

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. Reserved

M. (reserved)

N. Reserved

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

Means Software technical support as defined in Section 11 below. 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, including Software Updates.

P. Party

Supplier, VITA or any Authorized User.

Q. Reserved

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, Software, Solution, Component, Service(s), 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 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.

U. Software

If Software is authorized under the Contract, as set forth in Exhibit B, means the Supplier's proprietary executable 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 Updates, excluding Work Product.

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, 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 or Documentation 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 or other materials provided by Supplier as a result of performing Services (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. Work Product does not include the Authorized User's data or any resulting analysis of such data.

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 or Services, including as applicable, Maintenance Services, rendered by Supplier and accepted by the Authorized User prior to the termination date.

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. Termination by Supplier

Termination by Supplier will not be considered.

G. Transition of Services

If set forth in an order or Statement of Work, prior to or upon expiration or termination of this Contract, 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 VITA or the Authorized User. 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.. VITA authorizes Supplier to subcontract with SAS Institute Inc.in performing its obligations under this Contract or any order or SOW issued thereunder.

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. If set forth in the order or SOW, Supplier will reasonably assist VITA to migrate to such products or services at the rates set forth in the order or SOW, if VITA elects to use such new or replacement product or service offerings.

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

6. 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.

This Section 6 governs Authorized User's license of Software included in any order or SOW issued under this Contract and related Documentation made available with each license of Software. The specific Software offerings licensed to an applicable Authorized User are listed on the applicable order or SOW and must be one of the available Software offerings listed on Exhibit H hereto. Some Software offerings include multiple subcomponents. Only those subcomponents which require a choice by the Authorized User (for example, a choice of database access engines) or which are governed by a different Metric than the overall Software offering are listed on the applicable order. "Metric" means the Software usage right set forth under Section 6.B, as applicable to the Software as

listed in Exhibit H. The Authorized User may only use subcomponents as part of the specific Software offering, and not individually. For example, if a Software offering includes Base SAS, the Authorized User may not separately use Base SAS for any purpose other than as part of the Software offering with which it is licensed and packaged. One Authorized User may not access or use a different Authorized User's licensed Software.

A. License Grant

Supplier grants the applicable Authorized User a nonexclusive license to install and use the Software licensed via an order and its Software Documentation in the United States only for the benefit of the Authorized User's operations in the United States. Authorized User may install the Software only within the Authorized Hardware configuration described in the applicable order. Authorized User may use the Software Documentation solely in support of its authorized and licensed usage of the Software. Each license is an annual license renewed at the mutual agreement of the parties. Renewal is accomplished by Supplier sending an invoice for the applicable Software license renewal fees and Authorized User paying the invoice.

Processing Data Through the Software. Authorized User may process only the following types of data through the Software: (a) Authorized User's data derived from Authorized User's operations in the United States, and not an aggregation of data from other sources, including, but not limited to, other Authorized Users; (b) data purchased, licensed or leased from a third party by Authorized User; and (c) publicly available data (for example, national census data) (collectively, "Permitted Data"). Authorized User may not process any data, including Permitted Data, through the Software in a data service provider, application service provider, solution service provider or marketing service provider arrangement, nor in any similar arrangement for which Authorized User provides results derived from use of the Software to third parties nor may Authorized User use such results for the benefit of third parties (use to benefit Authorized User's constituent citizenry generally is not in violation of this provision).

Users. Only Authorized User's employees and contractors who are located in the United States and who are performing work solely for the benefit of Authorized User's operations in the United States (collectively, "Users") may access and use the Software and Documentation.

Authorized Hardware. "Authorized Hardware" is the computer hardware on which Authorized User is authorized to install and use the Software, as described in Exhibit H, which must be hardware for which the applicable Software is generally available. If the Authorized Hardware is mainframe or server hardware, the Authorized Hardware must be owned or leased by Authorized User and located on Authorized User's premises in the United States. If the Authorized Hardware is personal computer hardware, the Authorized Hardware must be owned or leased by Authorized User or Authorized User's employees in the United States. The term "personal computer" includes desktop computers, laptop computers, tablet computers, handheld computers, mobile devices and any other non-server and non-mainframe computers. Some Software is not available for use on all types of Authorized Hardware. Authorized User must notify Supplier of changes to any Authorized Hardware listed on an order. Authorized User may not share its usage of the Software by allowing other parties to time-share Authorized User's Authorized Hardware.

Installations. Unless otherwise set forth in an order, each Software license entitles Authorized User to a single configured installation of the Software. "Single configured installation" means installation of the Software on a single mainframe or a single server or on the number of personal computers listed on the applicable order.

Operating Systems. Authorized User may use the Software only with the operating system as listed on Exhibit H. Authorized User's selected operating system must be an operating system that Supplier generally supports for the applicable Software on the applicable Authorized Hardware.

Product Authorization Code. Authorized User may allow Users to access only Software licensed to Authorized User for which Authorized User receives a Product Authorization Code. Authorized User shall not allow Users to install or attempt to use other software contained on media

containing the Software. The "Product Authorization Code" is a component of the Software that enables the Software to operate for the applicable annual license period and is not considered Electronic Self-Help. At each new license period, or if required as a result of changes in Authorized Hardware or Software, Authorized User must apply a new Product Authorization Code to keep the Software operating. Supplier is not required to provide the Product Authorization Code if Authorized User is in breach of the Contract or has not paid any undisputed amounts due under the Contract. Supplier is not liable for damages caused by the resulting Software interruption. Authorized User may allow only Users to access the Product Authorization Code. Authorized User acknowledges and agrees that the Product Authorization Code is confidential and proprietary information of Supplier.

FOSS. The Software may be provided with certain free and open source software ("FOSS") identified in the Documentation. If Authorized User in its sole discretion decides to use such FOSS, then Authorized User's right to use such FOSS shall be governed by the applicable FOSS license agreement instead of the terms of the Contract. If Authorized User decides not to use the FOSS, then the FOSS license agreement is not applicable. The Software will perform in accordance with the Requirements without use of the FOSS.

Assignment of Licenses. License for Software issued hereunder may be assigned by the Authorized User to either (i) another Authorized User or (ii) a contractor to Authorized User that has entered into a written agreement with Authorized User to perform governmental services on behalf of Authorized User. In such event, the assignee must enter into an appropriate, written license assignment and assumption agreement that protects Supplier's interests in the Software and thereby agree in writing to be bound by all the terms and conditions of this Contract.

Nothing contained herein shall be construed to restrict or limit the rights of the Commonwealth or any Authorized User to use any technical data, which the Commonwealth or such Authorized User may already possess or acquire under proper authorization from other sources.

Compliance with the terms and conditions of any license granted pursuant to this Contract is solely the responsibility of the Authorized User which purchased such license or for which such license was purchased and not the responsibility of VITA, unless VITA purchased such license on its own behalf.

B. License Type

The following Metrics apply to the Software and any Software subcomponents licensed hereunder, as listed in Exhibit H. Prior to any license renewal period, Supplier may propose Metric changes.

(i) PC Use - The Software license fee is based on the greater of either (i) the total number of Users (not concurrent) authorized to access the Software or (ii) the total number of personal computers on which the Software will be installed and available for processing on the designated operating system. Authorized User shall not exceed the licensed number of Users or installs.

(ii) Processor Core Based - The Software license fee is based on the total number of processor cores contained within a single item of Authorized Hardware. Authorized User shall not exceed the licensed number of processor cores.

(iii) Solution Test and Development - The license granted hereunder authorizes Authorized User to implement a single configured installation of the Software in one (1) production environment, one (1) test environment and one (1) development environment. Authorized User may use the Software installed in the production environment for Authorized User's internal production purposes ("Production Environment"). Authorized User may use the Software installed in the test environment solely for the purpose of testing the Software and Software applications and code prior to installation in Authorized User's Production Environment ("Test Environment"). Authorized User may use the Software installed in the development environment solely for the purposes of developing and creating applications and code with the Software for use in Authorized User's Production Environment ("Development Environment"). Authorized User must identify in writing the Authorized Hardware for the Production Environment, the Test Environment and the Development Environment. The operating system for the Test Environment and the Development

Environment must be the same as the operating system for the Production Environment. The Test Environment and Development Environment shall be used only for the test and development purposes described above and shall at no time be used for production purposes or as a fail-over system.

(iv) Reserved.

(v) Site License - Authorized User's use of the Software is dependent upon Authorized User's licensing, under the Contract, certain other SAS software ("Prerequisite Software"). Authorized User may install the Software on, and/or access the Software from, any Authorized Hardware included as part of a single configured installation of the Prerequisite Software.

(vi) Distributed Processor Cores - The Software license fee is based on the total number of processor cores included within the computer hardware architecture where distributed Software computation and processing occurs. Authorized User shall not exceed the licensed number of processor cores.

(vii) Installs - The Software license fee is based on the total number of physical computers and/or Virtual Machines on which the Software is installed during the applicable license period. A "Virtual Machine" is a single virtual computing environment created using commercially available virtualization software. Authorized User shall not exceed the licensed number of installs.

(viii) SAS Data Surveyor for SAP Usage Terms - Authorized User may use the SAS Data Surveyor for SAP software ("Data Surveyor"), including its subcomponents, solely to access SAP data in the licensed SAP database. Authorized User may not use or deploy any individual Data Surveyor subcomponent for any other purpose or as a replacement for any SAS software.

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 regarding Software, 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 herein shall supersede and govern licensing and delivery of all products and services hereunder.

- D. Title; Source Code.** Title to the Software and its Documentation remains with Supplier at all times. Copyright notices and other proprietary rights notices in the Software or Software Documentation shall not be deleted or modified. This Contract does not transfer any ownership rights. Source code from which the Software object code is derived (“Source Code”) is not being provided and is a trade secret to which access is not authorized. Neither Authorized User nor any User shall reverse engineer, reverse assemble or decompile the Software or in any way attempt to recreate the Source Code, except and only to the extent applicable laws specifically prohibit such restriction.
- E. Authorized User Obligations.** Authorized User shall: (a) be responsible for verifying the accuracy of its data input and output while using the Software, (b) inform all parties authorized to use the Software of the relevant terms of the Contract and be responsible for their adherence to such terms, and (c) keep records of where the Software is installed and used and the extent of usage of the Software relative to the applicable Metrics and usage rights and provide a copy of such records to Supplier upon request.
- F.** Upon termination or non-renewal of each Software license hereunder, or when an User, or disaster recovery contractor is no longer authorized to access the Software, Authorized User agrees to reclaim, delete, and destroy the Software at issue, along with any related Software Documentation.

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 the license to the 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 the license to the 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 the license to the Work Product shall vest with that private institution.

A. Work Product

VITA and Supplier each acknowledge that performance of this Contract may result in Work Product. The Parties shall document all Work Product specifications and such specifications shall be set forth in the Statement of Work or order and made an incorporated exhibit to this Contract. Supplier agrees that it shall promptly and fully disclose to the Commonwealth or the Authorized User any and all Work Product generated, conceived, reduced to practice or learned by Supplier or any of its employees during the term or performance of this Contract, which in any way relates to the business of the Commonwealth, VITA or any Authorized User. Supplier further agrees that neither Supplier nor Supplier's employees, contractors, agents or subcontractors, nor any party claiming through Supplier or Supplier's employees, shall, other than in the performance of this Contract, make use of or disclose to others any VITA or Authorized User proprietary information relating to the Work Product. Supplier shall at no time deny access to the licensed Work Product, regardless of form, by the Commonwealth or the Authorized User.

B. Ownership

Supplier grants Authorized User a nonexclusive, nontransferable, non-assignable, royalty-free license to use the Work Product only with the Software with which the Work Product operates and only for as long as Authorized User maintains a license for such Software. Nothing in this Section shall be construed as granting Authorized User a license to any Software, which shall be licensed pursuant to Section 6 above. Supplier has no obligation to provide continued support or maintenance for any Work Product. Ownership of the Work Product, including any intellectual property embodied therein, and any techniques, skills, concepts or know-how that are utilized or developed while performing the Services remains with Supplier or its licensors.

C. Return of Materials

Upon termination of this Contract or in the event Authorized User terminates any order or SOW issued hereunder, Supplier shall promptly return to VITA or the appropriate Authorized User all copies, in whatever form, of any and all Confidential Information 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. Ownership

Supplier has the right to perform and provide all contractual obligations and provide all needed services and products without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party. The exclusive remedy for breach of this warranty is set forth in Section 22, Indemnification.

B. Limited Warranty

During the warranty period of ninety (90) days, or as specified in the applicable order or SOW, Supplier warrants that the Services, Solution, Components, Deliverables, Software, Updates, as authorized and provided by Supplier under this Contract, shall meet or exceed the Requirements. Supplier shall correct, at no additional cost to any Authorized User, all errors identified during the warranty period that result in supplier's failure to meet the Requirement or its contractual obligations. As the exclusive remedy for breach of this warranty, Supplier, at its option and at no additional cost to any Authorized User, shall: (a) repair the Services, Solution, Components, Deliverables, Software, Updates; (b) replace the Services, Solution, Components, Deliverables, Software, Updates; or, if options (a) and (b) are not commercially reasonable, (c) terminate the applicable order or SOW and refund the fees paid under such order or SOW.

C. Component Warranty

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

D. Interoperability Warranty

Supplier warrants that each Component, regardless of the origin of the Component, delivered under this Contract pursuant to an order or SOW shall be interoperable with other Components delivered pursuant to such same order or SOW (or an order or SOW that specifically references it is in relation to such existing order or SOW) so as to meet or exceed the performance specified in the Requirements and the applicable order or SOW. The exclusive remedy for breach of this warranty is refund of fees paid for the Software or Services at issue.

E. Performance Warranty

Supplier warrants and represents the following with respect to Performance of the Services:

- i. The Services shall be performed by qualified personnel with care, skill and diligence in a workmanlike manner and in accordance with the Requirements set forth in the SOW or order. The exclusive remedy for breach of this warranty is refund of fees paid for the Services at issue.

F. Reserved**G. Malicious Code**

Supplier has used its best efforts through quality assurance procedures to ensure that there are no Computer Viruses or undocumented features in any Solution, Component, or Deliverables or Software as obligated and provided by Supplier under the order or SOW, at the time of delivery to the Authorized User. The Solution, Components, Software and Deliverables as obligated and provided by Supplier under the order or SOW do not contain any embedded device or code (e.g., time bomb) that is intended to obstruct or prevent any Authorized User's use of the Solution, Components, Software or Deliverables.

Notwithstanding any rights granted under this Contract or at law, Supplier hereby waives under any and all circumstances any right it may have or may hereafter have to exercise Electronic Self-Help. Supplier agrees that an Authorized User may pursue all remedies provided under law in the event of a breach or threatened breach of this Section, including injunctive or other equitable relief. The parties agree that the Software Product Authorization Code is not a violation of this Section.

H. Open Source

Supplier will notify all Authorized Users if the Solution, Solution Components, Deliverables and Software as obligated and provided by Supplier, contains any FOSS code and identify the specific FOSS license that applies to any embedded code dependent on FOSS code, provided by Supplier under this Contract. With regard to Software, such notice is deemed to be the FOSS reference in the Software Documentation.

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. Supplier's Past Experience

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

K. THE OBLIGATIONS OF SUPPLIER UNDER THIS GENERAL WARRANTY SECTION ARE MATERIAL. SUPPLIER HEREBY DISCLAIMS ALL OTHER WARRANTIES AND MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY CONCERNING MERCHANTABILITY OR FITNESS FOR ANY OTHER PARTICULAR PURPOSE AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM CUSTOM OR USAGE OR A COURSE OF DEALING. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SUPPLIER DOES NOT WARRANT OR REPRESENT THAT AUTHORIZED USER'S USE OF THE SOFTWARE, WORK PRODUCT, DELIVERABLE, COMPONENT OR SOLUTION WILL RESULT IN AUTHORIZED USER'S COMPLIANCE, FULFILLMENT OR CONFORMITY WITH THE LAWS, RULES, REGULATIONS, REQUIREMENTS OR GUIDELINES OF ANY GOVERNMENTAL AGENCY.

I. Certain third party vendors (collectively, "Third Party Licensors") license components that are contained in certain Software. Third Party Licensors require the following additional terms be included herein:

- **THIRD PARTY LICENSORS DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ARISING AS A RESULT OF CUSTOM**

OR USAGE IN THE TRADE OR BY COURSE OF DEALING. THIRD PARTY LICENSORS PROVIDE THEIR SOFTWARE "AS IS."

- THIRD PARTY LICENSORS ARE NOT LIABLE FOR DIRECT, SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE, OR RELIANCE DAMAGES (ARISING IN TORT, CONTRACT OR OTHERWISE), OR ANY CLAIM MADE AGAINST THE AUTHORIZED USER BY A THIRD PARTY EVEN IF THEY HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES.
- NOTHING IN THIS SECTION NULLIFIES SUPPLIER'S EXPRESS WARRANTIES OR LIABILITIES RELATING TO ALL SOFTWARE, INCLUDING COMPONENTS LICENSED BY THIRD PARTY LICENSORS, UNDER THE CONTRACT.

9. 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

If 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. 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.

2. Authorized User Installation of Software

If the Solution relates to 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 Authorized Hardware as executable by having the ordering Authorized User invoke the primary function 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, if set forth in the SOW or order as a Deliverable, provide to the appropriate Authorized User documentation containing a description of the configuration. The detail of such documentation will be mutually agreed upon by the parties and set forth in the SOW or order.

10. ACCEPTANCE

A. Solution, 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 applicable 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. Prior to final acceptance of 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) business days, or within such other period as set forth in the applicable order or SOW, after receipt of the Solution, Software or Deliverable. Acceptance testing will be no longer than fifteen (15) business days, or such other period as may be agreed in writing between Authorized User and Supplier, for the first instance of each Solution, Software or Deliverable. 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 Authorized User is a private institution of higher education which is listed at: <http://www.cicv.org/Our-Colleges/Profiles.aspx>, 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. Failure to reject Software, a Deliverable or the Solution within this timeframe set forth above shall constitute acceptance of the Software, Deliverable or the Solution.

B. Solution, Software and Deliverable Cure Period

If the Solution, Software or Deliverable is not accepted for any reason, Authorized User shall notify Supplier in writing that shall include a reasonably detailed description of the reasons for rejection. Supplier shall correct any non-conformities identified during Acceptance testing and re-submit such non-conforming Solution, Software or Deliverable for re-testing within fifteen (15) 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 a Solution, Software or a Deliverable which meets the Requirements, such Authorized User may, in its sole discretion: (i) reject the Solution, Software or Deliverable in its entirety and recover amounts previously paid for such Solution, Software or Deliverable hereunder; (ii) conditionally accept the applicable Solution, Software or Deliverable while reserving its right to revoke acceptance if timely correction is not forthcoming. If Authorized User elects option (ii) in the preceding sentence, Supplier shall have the right, at its option, to terminate the order applicable to such Solution, Software or Deliverable upon full refund of all fees paid by Authorized User for such Solution, Software or Deliverable. In any case, Authorized User's rejection of a Solution, Software or a Deliverable shall be based on the Solution, Software or Deliverable failing to meet, in all material respects, the Requirements of the applicable SOW or order. If, after the second set of acceptance tests, Authorized User does not fully accept the resubmitted Solution, Software or Deliverable the Authorized User shall terminate its order or SOW in whole and Supplier shall refund in full any amounts paid for such Solution, Software or Deliverable.

C. Reserved

D. Reserved

11. MAINTENANCE SERVICES

During the term of each applicable Software license, Supplier will use reasonable efforts, either by telephone or in writing, to help Authorized User solve specific problems with installation or use of the

Software within the United States. Authorized User may obtain on-site Software support from Supplier by executing an order for Services for such on-site work and paying applicable fees to Supplier. It may not be possible for Supplier to solve all problems or correct all errors in the Software. From time to time, Supplier may make available, and Authorized User agrees to use reasonable efforts to install, new releases, updates and corrective code. During ongoing Software development, Supplier may add, change or delete individual components or functionality in new releases. Such Software modifications shall be subject to the terms of this Contract. If Authorized User chooses not to install the most current release of the Software, the level of technical support may diminish over time. Supplier's obligations in this Section are subject to the following: Authorized User shall: (a) when requesting technical support, notify Supplier of any modifications to the Software not made by Supplier, or at the direction of Supplier; (b) establish technical contacts who will be qualified to provide Supplier with information necessary for Supplier to diagnose and remedy any problems with the Software; and (c) ensure that all data is adequately duplicated, documented, and protected.

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. Exhibit B does not include applicable taxes, if any. Authorized User is responsible for applicable taxes on its orders hereunder. Upon Supplier's request, Authorized User will provide Supplier with applicable documentation establishing tax exempt status. 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, if applicable, 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. Authorized User's payment obligations are net (30) days following acceptance of the applicable Software, Solution or Deliverable and receipt of proper invoice.

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 orders 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.

Authorized Users' orders or SOWs that include Software hereunder must contain (i) the name and address of the Authorized User, (ii) the name of the licensed Software and the number of licensed Processor Cores (or other applicable Metric as noted in Exhibit H hereto) from the list of available Software set forth in Exhibit B attached hereto, (iii) the Authorized Hardware and the location thereof, and (iv) the applicable operating system.

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.

Authorized User shall notify Supplier by phone or in writing to change operating systems, Authorized Hardware or any factor affecting the applicable Metric set forth in Section 6 above or any applicable usage rights. These changes may result in additional license fees which are calculated as of the date of the change and invoiced upon receipt of notice from Authorized User.

C. Back Up Rights for Supplier-Provided Software

Authorized User may also install a single configured installation of the Software on back-up hardware that is inactive or dormant ("Back-up Hardware"). Authorized User may not implement a back-up system with Software that is operable or active. In the event the Software installed on the Authorized Hardware fails to operate due to unforeseen natural or human-induced events, Authorized User may activate the Back-up Hardware until the failure can be rectified. Authorized User must contact Supplier prior to activating the Back-up Hardware to request a Product Authorization Code that will enable the Software to operate on the Back-up Hardware.

Authorized User may copy the Software only for (a) disaster recovery and back-up purposes as permitted in this Section above, and (b) installation of personal computer Software authorized hereunder. All copies remain the property of Supplier's licensor. Authorized User may deliver a copy of the Software to a disaster recovery contractor to perform temporary disaster recovery work for Authorized User. Authorized User shall give Supplier the name and address of the disaster recovery contractor before delivery and be responsible for such contractor's use of the Software. The identical copyright notices and any other proprietary rights notices found on the original Software media must be reproduced on all copies of the Software.

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, at the request of any Authorized User, Supplier shall perform a demonstration of its Solution, 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 subject to the execution of a mutually agreeable evaluation license, to be reviewed and approved by VITA. 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 reasonable 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 Deliverables 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 may respond to the RFQ by providing a quote, which may 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.

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. . 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, 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)
- vii. Applicable taxes

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 the Solution, Software or Deliverables 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 one hundred twenty (120) days prior to receipt of a valid invoice may not be paid.

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. Training

1. SCOPE

a. The Supplier shall provide training at the Supplier’s vendor facility and/or at Authorized User’s location, as agreed to by the Supplier and Authorized User.

b. As used herein the “SAS Training Services” shall mean SAS Training Points.

c. Purchased SAS Training Points do not expire.

2. ORDER

Orders shall be the basis for the purchase of training courses in accordance with the terms of this contract. SOWs for training points Orders shall include the student’s name, course title, course date and time, and contracted dollar amount of the course, except as follows:

For SAS Training Points this information will not be included on the order for the SAS Training Points but will be required at the time the training is scheduled by Authorized User.

3. TIME OF DELIVERY

The Supplier shall conduct training on the date (time, day, month, and year) agreed to by the Supplier and the Authorized User.

4. CANCELLATION AND RESCHEDULING

a. This paragraph only applies to SAS Public Training courses. Authorized User will notify the Supplier at least three (3) calendar days before the scheduled training date, if a student will be unable to attend. The Supplier will then permit Authorized User to either cancel the order or reschedule the training at no additional charge. In the event the training class is rescheduled, Authorized User will modify its original training order to specify the time and date of the rescheduled training class. The applicable fee for SAS Public Training that is cancelled on less than three (3) calendar days' notice by Authorized User shall not be waived or reduced and shall remain due and payable by Authorized User as ordered. However, substitutions (name changes) by Authorized User with respect to SAS Public Training are accepted at any time prior to the event as set forth in paragraph c below. In addition, the Supplier will permit or Authorized User to reschedule attendance of a student at a SAS Public Training course at no additional charge provided that notification of the rescheduling to a later availability date of the course is received at least twenty-four (24) hours prior to the start of the applicable SAS Public Training.

For cancellation and rescheduling with respect to SAS Training Points orders, the cancellation policy set forth in paragraphs n. and o. under the "Guidelines" below shall apply.

b. In the event Authorized User fails to cancel or reschedule a training course within the time frame specified in paragraph a, above, Authorized User will be liable for the contracted dollar amount of the training course or as stated in paragraph a. above. The Supplier agrees to permit Authorized User to reschedule a student who fails to attend a SAS Public Training class within ninety (90) days from the original course date, at no additional charge provided that twenty-four (24) hours' notice of rescheduling is provided as set forth in paragraph a. above, and subject to availability of the course within such ninety (90) day period.

c. For SAS Public Training, Authorized User reserves the right to substitute one student for another up to the first day of class.

d. In the event the Supplier is unable to conduct training on the date agreed to by the Supplier and Authorized User, the Supplier must notify Authorized User at least seventy-two (72) hours before the scheduled training date. The requirement for 72 hours' notice shall apply except where Supplier is unable to conduct training due to circumstances beyond Contractor's reasonable control, including any force majeure event; provided that in such cases Supplier shall provide Authorized User with notice of cancellation as soon as reasonably possible.

5. FOLLOW-UP SUPPORT

The Supplier agrees to provide each student with unlimited telephone support for a period of one (1) year from the completion of the training course. During this period, the student may contact the Supplier's vendor's instructors for refresher assistance and answers to related course curriculum questions.

6. PRICE FOR TRAINING

The price that Authorized User will be charged is set forth in Exhibit B.

7. RESERVED

8. FORMAT AND CONTENT OF TRAINING

a. The Supplier shall provide written materials (i.e., manuals, handbooks, texts, etc.) normally provided with course offerings. Such documentation will become the property of the student upon completion of the training class.

b. For hands-on training courses, there must be a one-to-one assignment of IT equipment to students, except that with respect to any SAS Onsite Training, due to the nature of Onsite Training, Authorized User is responsible for providing IT equipment to the students.

c. The Supplier shall provide each student with a Certificate of Training at the completion of each training course. With respect to SAS Training, Supplier will provide each student with a Certificate of Training provided that the Authorized User furnishes to the Supplier a roster of the students attending the SAS Onsite Training.

d. The Supplier shall provide the following information for each training course offered:

- (1) The course title and a brief description of the course content, to include the course format (e.g., lecture, discussion, hands-on training);
- (2) The length of the course;
- (3) Mandatory and desirable prerequisites for student enrollment;
- (4) The minimum and maximum number of students per class;
- (5) The locations where the course is offered;
- (6) Class schedules; and
- (7) Price (per student, per class (if applicable)).

The foregoing information is currently provided through the website referenced in subparagraph b of the first paragraph of Section 10 below.

e. For those courses conducted at Authorized User's location, the order or SOW will address travel and expenses.

9. SUPPLEMENTAL TERMS

With respect to SAS Training Services the following additional terms shall apply:

a) With respect to SAS Training Services identified as "SAS Onsite Training," the maximum number of students that may attend an Onsite training course shall be twenty (20) students. Additional charges shall apply for each additional student in excess of twenty (20) students attending any such on-site training course to be a maximum of five (5) additional students.

b) SAS Training Services do not include any customized content for any training. The fees for on-site training do not include fees for presenting an on-site course at a SAS training facility.

With respect to SAS Training Services identified as "SAS Training Points" the following additional terms shall apply:

Guidelines

The Authorized User must designate a representative to serve as the contact to register employees for public courses, on-site courses, Business Knowledge Series (BKS) courses, Live Web courses, Six Sigma courses, license fees for all e-Learning products, SAS Certification exam vouchers, training development, SAS training center rental fees, or selected conferences (collectively "SAS Training Points-Eligible Products and Services").

The SAS Training Points offer applies only to courses and events scheduled in the United States.

For students using SAS Training Points units to attend courses in certain states, an additional state tax may be applicable unless an exemption applies.

SAS Training Points units can be used to register for SAS Training Points-Eligible Products and Services. These events will have varying SAS Training Points assigned to them according to their registration or license fees or standard charges.

SAS Training Points units may not be used to satisfy partial billing for a registration.

Class and conference sizes are limited and space is not guaranteed. Onsite classes are limited to 20 students per class. An additional fee per student per day will be charged for each student over 20, not to exceed 25 students in total in the class.

SAS reserves the right to cancel or reschedule any and all SAS Training Points-Eligible Products and Services at its discretion. SAS is not responsible for airline penalties related to the cancellation of SAS courses or events. Please be aware of all airline restrictions regarding nonrefundable airline tickets when purchasing an airline ticket.

The SAS Training Points Administrator will issue an account number to the designated contact upon receipt of an SAS Training Points order. The contact may begin using its SAS Training Points units as soon as it receives an account number, but not before then.

No other discounts are applicable. SAS Training Points fees are non-refundable.

For on-site courses, travel expenses for Supplier's staff are additional. Expenses include roundtrip coach airfare; rental car, including gas or local transportation; taxes; hotel and per diem meal expenses.

CANCELLATION POLICY

SAS Training Points may be reinstated to the account if cancellations are received by phone, mail or e-mail at least 3 (three) calendar days prior to the scheduled start date of an event; after that (7 calendar days or less), SAS Training Points accounts will be charged and invoiced for the full number of corresponding SAS Training Points. Substitutions (name changes) are accepted at any time prior to the event. Transfers are accepted, but they must be received no later than 24 hours from the start date of the event.

18. THE AUTHORIZED USER MAY CANCEL ON-SITE COURSES WITHOUT CHARGE IF NOTIFICATION IS RECEIVED BY SUPPLIER'S VENDOR BY PHONE OR IN WRITING NO LATER THAN 21 DAYS PRIOR TO THE COURSE START DATE. RESCHEDULING A COURSE LESS THAN 21 CALENDAR DAYS PRIOR TO COURSE START DATE IS CONSIDERED A CANCELLATION, AND A CANCELLATION FEE OF \$500 WILL BE CHARGED AND INVOICED SEPARATELY. IN ADDITION, IF NON-REFUNDABLE AIRLINE TICKETS HAVE BEEN PURCHASED FOR SUPPLIER'S PERSONNEL WITH THE AUTHORIZED USER'S APPROVAL, AUTHORIZED USER WILL BE RESPONSIBLE FOR THE COST OF THESE TICKETS AND IF LESS THAN 21 CALENDAR DAYS' NOTICE IS PROVIDED. AUTHORIZED USER SELF-SUFFICIENCY

At any time during Supplier's performance of an order or SOW issued pursuant to this Contract, an Authorized User may, if set forth in the applicable order or SOW, 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 VITA. . 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 and mutually agreed upon by both parties and set forth in the order or SOW.

19. RESERVED

20. ESCROW AGREEMENT

At Authorized User's option, for the fees set forth on Exhibit B hereto, Supplier shall make available to such Authorized User a Software source code escrow account with an escrow agent. If Authorized User elects such option, the Authorized User must enter into a Source Code Escrow Arrangement (for each applicable order for which Authorized User desires an escrow account) directly with Software Publisher in substantially the form attached hereto as Exhibit C (Escrow Agreement). Authorized Users must sign a separate Escrow Agreement and pay the applicable fees for each Software item escrowed in order to obtain the escrow rights as set forth herein. Note that Exhibit C is attached hereto for information purposes only and is not made a part of this Contract.

21. CONFIDENTIALITY

A. Treatment and Protection

Each Party shall (i) hold in 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 the receiving Party or of any other person or entity that is similarly contractually or otherwise obligated;
- ii. obtained independently from a third-party without an obligation of confidentiality to the disclosing Party and without breach of this Contract;
- iii. developed independently by the receiving Party without reference to the Confidential Information of the other Party; or
- iv. required to be disclosed under The Virginia Freedom of Information Act (§§2.2-3700 et seq. of the Code of Virginia) or similar laws or pursuant to a court order.

C. Return or Destruction

Upon the termination or expiration of this Contract or upon the earlier request of the disclosing Authorized User, Supplier shall (i) at its own expense, (a) promptly return to the disclosing Authorized User all tangible Confidential Information (and all copies thereof except the record required by law) of the disclosing Authorized User, or (b) upon written request from the disclosing Authorized User, destroy such Confidential Information and provide the disclosing Authorized User with written certification of such destruction, and (ii) cease all further use of the Authorized User's Confidential Information, whether in tangible or intangible form. The intention of the parties is that Confidential Information will not be provided to the Supplier, except while Supplier is on the Authorized User's premise. Authorized User shall not send any such Confidential Information to Supplier. If Confidential Information is sent in violation of the preceding sentence, Supplier shall not be deemed to be in violation of this Contract and shall not be liable for damages associated with such transfer of Confidential Information. Supplier shall take reasonable efforts, if such transfer occurs, to comply with this Section 21.

VITA or the Authorized User shall retain and dispose of Supplier's Confidential Information in accordance with the Commonwealth of Virginia's records retention policies or, if Authorized User

is not subject to such policies, in accordance with such Authorized User's own records retention policies.

D. Confidentiality Statement

Supplier will inform its personnel, contractors, agents, and subcontractors performing Services pursuant to this Contract of its confidentiality obligations herein. Any violation of such statement or agreement shall be deemed a breach of this Contract and may result in termination of the Contract or any order or SOW issued hereunder.

E. Reserved

22. 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 and against any and all losses, damages, claims, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, assessments, fines, penalties (whether criminal or civil), judgments, settlements, expenses (including attorneys' and accountants' fees and disbursements) and costs (each, a "Claim" and collectively, "Claims") that are finally awarded and arising from actions for which Supplier is legally responsible, incurred by, any of Commonwealth's Indemnified Parties to the extent such Claims in any way relate to, arise out of or result from: (i) any intentional or willful conduct of any employee, agent, or subcontractor of Supplier, (ii) bodily injury, death or damage to property, excluding damage to software or data, (iii) any actual infringement or misappropriation of any third party's intellectual property rights by any of the Supplier-provided services or by the Software. Regarding the foregoing, the Commonwealth agrees to promptly notify Supplier in writing of any such Claim made against the Commonwealth and except as set forth below in this Section, the Commonwealth further agrees to allow Supplier or its designee to participate in the litigation or settlement of any such Claim. Selection and approval of counsel and approval of any settlement shall be accomplished in accordance with all applicable laws, rules and regulations. For state agencies the applicable laws include §§ 2.2-510 and 2.2-514 of the Code of Virginia.

In the event that a Claim is commenced against any of Commonwealth's Indemnified Parties alleging that use of the Supplier-provided products or services, including any components thereof, or that the Supplier's performance or delivery of any product or service under this Contract infringes any third party's intellectual property rights and Supplier is of the opinion that the allegations in such Claim in whole or in part are not covered by this indemnification provision, Supplier shall promptly notify VITA and the affected Authorized User(s) in writing, via certified mail, specifying to what extent Supplier believes it is obligated to defend and indemnify under the terms and conditions of this Contract. Supplier shall in such event seek a continuance to permit VITA and the affected Authorized User(s) to appear and defend their interests in cooperation with Supplier as is appropriate, including any jurisdictional defenses VITA or the affected Authorized User(s) may have.

In the event of a Claim pursuant to any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Supplier-provided Software, Deliverables, Work Product Services, Solution, including Solution Components, Supplier shall at its option and expense, either (a) procure for all Authorized Users the right to continue use of such infringing Software, Deliverables, Work Product, Services, or Solution, including Solution Components, or (b) replace or modify such infringing Software, Deliverables, Work Product, Services, or Solution, including Solution Components, with non-infringing Software, Deliverables, Work Product, Services, Solution or Solution Component(s). If Supplier cannot accomplish the foregoing (a) or (b) within a reasonable time and at commercially reasonable rates, then Supplier shall accept the return of the infringing Software, Deliverables, Work Product, Services, Solution, or Solution Component, rendered unusable by any Authorized User as a result of the infringing component, terminate the license for said infringing Software, Deliverable, Work Product, Solution or Solution Component, and refund the price paid to Supplier for such components. This indemnification

obligation does not apply to the extent that: (i) the claim is based on the Commonwealth's Requirements, or (ii) the claim is based on the Commonwealth's combination of the Software, Deliverable, Solution, Solution Component or Work Product with other software, or modification to the Software, Deliverable, Solution, Solution Component or Work Product, if such claim would not have been made but for the combination or modification.

B. Liability

Except for liability with respect to property damage or personal injury, Supplier's total liability for any claims relating to this Contract arising out of each order or SOW shall be limited to two (2) times the value of the applicable order or SOW.

IN NO EVENT WILL ANY PARTY BE LIABLE TO ANY OTHER PARTY FOR ANY INDIRECT, SPECIAL, RELIANCE, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING (WITHOUT LIMITATION) LOSS OF PROFIT, INCOME OR SAVINGS, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, EXCEPT WHEN SUCH DAMAGES ARE CAUSED BY WILLFUL MISCONDUCT OF THE PARTY, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS.

For purposes of clarification, the parties acknowledge and agree that the liability limitations set forth in this Section apply with regard to intellectual property infringement and damage to information/data and software.

23. INSURANCE

In addition to the insurance coverage required by law as referenced in the Incorporated Contractual Provisions section of this Contract, Supplier shall carry:

Errors and omissions insurance coverage in the amount of \$2,000,000 per occurrence.

24. SECURITY COMPLIANCE

Supplier agrees to comply with all applicable 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. Supplier shall also comply with all applicable federal, state and local laws and regulations. For any individual Authorized User location, security procedures may include but not be limited to: background checks, records verification, photographing, and fingerprinting of Supplier's employees or agents. Supplier may, at any time, be required to execute and complete, for each individual Supplier employee or agent, additional forms which may include 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 proprietary or Personal information by the Supplier or an employee or agent of Supplier shall constitute a breach of its obligations under this Section and the Contract. Supplier shall promptly 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. IMPORT/EXPORT

In addition to compliance by Supplier with all export laws and regulations, VITA requires that 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 becomes insolvent, takes any step leading to its cessation as a going concern, fails to pay its debts as they become due, or ceases business operations continuously for longer than fifteen (15) business days, then VITA may immediately terminate this Contract, and an Authorized User may terminate an order or SOW, on notice to Supplier unless Supplier immediately gives VITA or such Authorized User adequate assurance of the future performance of this Contract or the applicable order or SOW. If 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 aforereferenced 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; Provided that such changes shall only apply to valid orders and SOWs executed after the effective date noted in the document title. 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.

Breach of Supplier's intellectual property rights will lead to damages not adequately remedied by an award of money; therefore, Supplier may protect those intellectual property rights through temporary restraining orders or injunctions, without the obligation of posting bond.

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, or 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, and any such attempted assignment or subcontracting without consent shall be void. VITA may only assign this Contract to any successor entity conducting the business of the Commonwealth, 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, and Security Compliance, 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 contract and billing document records that relate to the Contract or any SOWs or orders issued there under. VITA's right to audit shall be limited as follows:

- i. Three (3) years from end date of the Contract;
- ii. Performed at Supplier's premises, during normal business hours at mutually agreed upon times;
- iii Supplier's receipt of fifteen (15) prior business days' notice;
- iv. VITA's compliance with Supplier's security policies and procedures in effect at the time of said audit; and
- v. Excludes access to Supplier cost information. Other than as set forth in this Section, in no event shall Supplier have the right to audit, or require to have audited, VITA or any Authorized User.

Upon fifteen (15) business days' notice to Authorized User, and no more than once annually, Supplier or its designee will have the right to conduct an audit during Authorized User's normal business hours to verify compliance with the terms and conditions of the Contract. Authorized User shall cooperate with Supplier or its designee by: (a) making applicable records available; and (b) providing copies of the records requested. Supplier shall bear the costs of such audit. If the audit reveals that Authorized User owes additional fees, Authorized User shall pay the amounts owed.

P. Offers of Employment

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

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 - Escrow Agreement (for reference only)
- Exhibit D - Statement of Work (SOW) Template
- Exhibit E - Change Order Template
- Exhibit F - Reserved
- Exhibit G - Certification Regarding Lobbying
- Exhibit H – Available Software and Applicable Metrics

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.

Additional or different terms on VITA, Authorized User or third party purchasing documents are expressly objected to and rejected.

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

Supplier

VITA

By: _____

By: _____

(Signature)

(Signature)

Name: _____

Name: _____

(Print)

(Print)

Title: _____

Title: _____

Date: _____

Date: _____

Address for Notice:

Address for Notice:

Attention: Contract Administrator

Attention: Contract Administrator