



Commonwealth of Virginia
Virginia Information Technologies Agency

ARMICS CONSULTING SERVICES

Date: June 10, 2010

Contract #: VA-070622-ZELS

Contractor: ZELOS
PO Box 1300
Midlothian, VA 23113

FIN: 20-4037165

Contact Person: Lou O'Boyle
Phone: 804-873-3657
Email: lou.oboyle@zelosinc.com

Term: June 22, 2010 – June 21, 2011

Payment: Net 30 days

Contract Information:

Supply Chain Management
Virginia Information Technologies Agency

Doug Crenshaw
Phone: 804-416-6160
E-Mail: doug.crenshaw@vita.virginia.gov
Fax: 804-416-6361

NOTES: Individual Commonwealth of Virginia employees are not authorized to purchase equipment or services for their personal use from this Contract.

For updates, please visit our Website at <http://www.vita.virginia.gov/procurement/contracts.cfm>

VIRGINIA INFORMATION TECHNOLOGIES AGENCY (VITA): Prior review and approval by VITA for purchases in excess of \$100,000.00 is required for State Agencies and Institutions only.



COMMONWEALTH of VIRGINIA

Virginia Information Technologies Agency

11751 Meadowville Lane
Chester, Virginia 23836-6315
(804) 416-6100

TDD VOICE -TEL. NO.
711

Samuel A. Nixon, Jr.
Chief Information Officer
E-mail: cio@vita.virginia.gov

June 9, 2010

Mr. Lou O'Boyle
Zelos

Mr. O'Boyle,

Per Section 3.A. ("Term and Termination") of contract VA-070622-ZELS, The Virginia Information Technologies Agency has elected to exercise its option to renew the contract for one year, from June 22, 2010 through June 21, 2011. Should you have any questions, please feel free to contact me.

Respectfully,
Doug Crenshaw
Strategic Sourcing Manager
Virginia Information Technologies Agency
(804) 416-6160



COMMONWEALTH *of* VIRGINIA

CIO of the Commonwealth
Email: lem.stewart@vita.virginia.gov
Lemuel C. Stewart, Jr.

VIRGINIA INFORMATION TECHNOLOGIES AGENCY
11751 Meadowville Lane
Chester, VA 23836
(804) 416-6100

TDD VOICE -TEL. NO.
711

May 28, 2009

VIA EMAIL

TO: ZELOS

RE: VA-070622-ZELS

In accordance with Section 3 of the above referenced contract, entitled "Term and Termination" please consider this correspondence your notification of the Commonwealth's extension of the above referenced contract.

The expiration of the agreement is now extended to June 21, 2010.

Regards,
Doug Leslie

VITA/Supply Chain Management

c: contract file

**MODIFICATION #2
TO
CONTRACT NUMBER VA-070622-ZELS
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
ZELOS**

This MODIFICATION #2 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and ZELOS, hereinafter referred to as "Contractor" relating to the modification of the above contract. This Modification #2 is hereby incorporated into and made an integral part of Contract VA-070622-ZELS, as modified.

Both of the above referenced parties agree to the following:

Reference: Page 5 of 22, paragraph 3, entitled " Term and Termination" of the VITA contract VA-070622-ZELS , Information Technology Services Terms and Conditions.

The term of Contract VA-070622-ZELS shall be extended from June 22, 2008 to June 21, 2009.

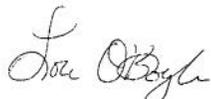
The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-070622-ZELS and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

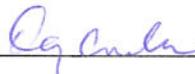
ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.

ZELOS

COMMONWEALTH OF VIRGINIA

BY: 

BY: 

NAME: Lou O'Boyle

NAME: Doug Crenshaw

TITLE: Managing Partner

TITLE: Strategic Sourcing Manager

DATE: June 17, 2008

DATE: 6-17-08



ARMICS Consulting Services Contract

between

The Virginia Information Technologies Agency

on behalf of

The Commonwealth of Virginia

and

ZELOS

**ARMICS CONSULTING SERVICES CONTRACT
TABLE OF CONTENTS**

1. PURPOSE AND SCOPE	4
2. DEFINITIONS	4
A. Acceptance	4
B. Agent	4
C. Authorized Users	4
D. Confidential Information	4
E. Deliverable	4
F. Party	4
G. Requirements	4
H. Service	4
I. Statement of Work (SOW)	4
J. Supplier	5
K. VITA	5
L. Warranty Period	5
M. Work Product	5
3. TERM AND TERMINATION	5
A. Contract Term	5
B. Termination for Convenience	5
C. Termination for Breach or Default	5
D. Transition of Services	6
4. SERVICES	6
A. Nature of Services and Engagement	6
B. Subcontractors	7
C. Statement of Work (SOW)	7
D. Acceptance	8
E. Cure Period	8
F. Training and Documentation	9
5. LICENSE GRANT	9
6. RIGHTS TO WORK PRODUCT	9
A. Work Product	9
B. Ownership	10
C. Return of Materials	10
7. SUPPLIER PERSONNEL	10
A. Selection and Management of Supplier Personnel	10
B. Supplier Personnel Supervision	10
8. GENERAL WARRANTY	11
A. Ownership	11
B. Performance	11
C. Limited Warranty Period and Remedy	11
D. Supplier's Viability	11
E. Supplier's Past Experience	11
9. ORDERS AND COMPENSATION	11
A. Order	11
B. Purchase Price and Price Protection	12
C. Invoice Procedures	12
D. Invoice and Payment Terms	13
E. Reimbursement of Expenses	13
F. Supplier's Report of Sales and Industrial Funding Adjustment	13
G. Small, Woman, and Minority-Owned Business (SWaM) Participation	14
10. COMPETITIVE PRICING	14

11. CONFIDENTIALITY	14
A. Treatment and Protection	14
B. Exclusions	14
C. Return or Destruction	15
D. Confidentiality Statement	15
12. LIABILITY AND INDEMNIFICATION	15
13. INSURANCE	16
14. SECURITY COMPLIANCE	16
15. IMPORT/EXPORT	17
16. BANKRUPTCY	17
17. STEERING COMMITTEE	17
18. GENERAL PROVISIONS	18
A. Relationship Between VITA and Authorized User and Supplier	18
B. Incorporated Contractual Provisions	18
C. Compliance with the Federal Lobbying Act	18
D. Governing Law	19
E. Dispute Resolution	19
F. Advertising and Use of Proprietary Marks	19
G. Notices	19
H. No Waiver	19
I. Assignment	19
J. Captions	20
K. Severability	20
L. Survival	20
M. Force Majeure	20
N. Remedies	20
O. Right to Audit	20
P. Offers of Employment	20
Q. Contract Administration	20
R. Limitation on Future Contracting	21
S. Entire Contract	21

ARMICS CONSULTING SERVICES CONTRACT

THIS ARMICS CONSULTING SERVICES 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 ZELOS ("Supplier") to be effective as of June 22, 2007

("Effective Date").

1. PURPOSE AND SCOPE

This Contract sets forth the terms and conditions under which Supplier shall provide to the Authorized Users consulting services to assist such Authorized Users in meeting the requirements of Comptroller of Virginia Directive 1-07, Agency Risk Management and Internal Control Standards (ARMICS).

2. DEFINITIONS

A. Acceptance

Acceptance shall take the form of successful performance of the Services at the designated location, or completed and successful Acceptance testing in conformance with the Requirements as determined by the Authorized User in the applicable order/Statement of Work.

B. Agent

Any third party independent agent of any Authorized User.

C. Authorized Users

All public bodies, including VITA, as defined by §2.2-4301 and referenced by §2.2-4304 of the Code of Virginia.

D. 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 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.

E. Deliverable

The tangible embodiment of the Services, including the development or creation of Work Product, performed or provided by Supplier as identified in the applicable Statement of Work.

F. Party

Supplier, VITA, or any Authorized User.

G. Requirements

The parameters and characteristics of the Service(s) and Deliverables described in the applicable documentation, Exhibit A and such other parameters, characteristics, or performance standards that may be agreed upon in writing by the VITA and Supplier or the Parties to an order issued hereunder.

H. Service

Any work performed or service provided, including provision to the Authorized User of any Deliverable described in the applicable SOW, by Supplier under this Contract for an Authorized User. Service includes the discovery, creation, or development of Work Product, if any.

I. Statement of Work (SOW)

Any document in substantially the form of Exhibit B to this Contract which, upon signing by both Parties to the agreement in accordance with the requirements set forth herein, shall be deemed a part of this Contract, and which describes the deliverables, due dates, assignment duration and payment obligations for a specific project, engagement, or assignment for which Supplier shall be providing Services to an Authorized User. Any Statement of Work shall constitute an order.

J. Supplier

Includes any individual who is an employee, agent, sub-contractor, or independent contractor of Supplier who is assigned by Supplier to perform Services under this Contract.

K. VITA

Virginia Information Technologies Agency, an agency of the Commonwealth of Virginia pursuant to Chapter 20.1 (§§2.2-2005 et seq.) of the Code of Virginia.

L. Warranty Period

One (1) year from Acceptance of the Deliverable. One-hundred eighty (180) days from performance of the Services.

M. Work Product

Inventions, combinations, machines, methods, formulae, techniques, processes, improvements, software designs, strategies, specific computer-related know-how, data and original works of authorship (collectively, the "Work Product") discovered, created, or developed by Supplier, or jointly by Supplier and an Authorized User(s) in the performance of this Contract or any order issued hereunder.

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 1 years. VITA, in its sole discretion, may extend this Contract for up to 3 additional 1 year periods after the expiration of the initial 1 year period. VITA will issue a written notification to the Supplier stating the extension period, not less than thirty (30) days prior to the expiration of any current term. Expiration of the term of the Contract shall not affect any perpetual license granted hereunder. Nor shall expiration of this Contract affect any ownership of Work Product by the Commonwealth or any Authorized User pursuant to this Contract. In addition, performance of an order may survive the expiration of the term of this Contract, and all terms and conditions required for the operation of such order shall remain in full force and effect until Services pursuant to such order 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 issued hereunder, in whole or in part, or an Authorized User may terminate an order, in whole or in part, upon not less than thirty (30) days prior written notice at any time for any reason ("Termination for Convenience"). In addition, VITA may immediately terminate this Contract, in whole or in part, or any order issued hereunder, if Supplier becomes a party excluded from Federal Procurement and Nonprocurement Programs. VITA shall provide written notice to Supplier of such termination, and Supplier shall provide written notice to VITA if federal debarment proceedings are instituted against Supplier. Supplier shall submit any contractual dispute or order dispute to VITA or any dispute regarding an order terminated by an Authorized User for resolution according to the terms of the Dispute Resolution Section of this Contract. 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 rendered by Supplier and accepted by the Authorized User prior to the termination date. Termination of this Contract or any order shall not affect any perpetual license granted pursuant to this Contract, provided all fees for such license have been paid. Nor shall termination of this Contract or any order for Convenience affect any ownership of Work Product by the Commonwealth or any Authorized User pursuant to this Contract.

C. Termination for Breach or Default

VITA shall have the right to terminate this Contract, in whole or in part, or any order issued hereunder, in whole or in part, or an Authorized User may terminate an order, in whole or in part, for breach and/or default of Supplier ("Termination for Breach" or "Termination for Default"). 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 issued hereunder.

If VITA or an Authorized User deems the Supplier to be in breach and/or default, VITA or the Authorized User shall issue a "Show Cause Notice" identifying the failure/nonperformance and providing Supplier fifteen (15) days to cure the failure/nonperformance. If Supplier fails to answer the Show Cause Notice, or does not correct the deficiencies noted, VITA may immediately terminate this Contract or any order issued hereunder, in whole or in part, or the Authorized User may immediately terminate its order, in whole or in part. Such termination shall be deemed a Termination for Breach or a 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, VITA may immediately terminate this Contract, in whole or in part, for breach. VITA shall provide written notice to Supplier of such termination and Supplier shall provide written notice to VITA if Supplier is charged with violation of 31 USC 1352.

Upon Termination for Breach or Termination for Default, neither the Commonwealth, nor VITA, nor any Authorized User shall have any future liability except for Services rendered by Supplier and accepted by the Authorized User or Deliverables provided by Supplier and accepted by the Authorized User prior to the termination date. 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.

The failure of VITA or an Authorized User to exercise its right to terminate for breach and/or default under this provision shall not be construed as a waiver of its right to terminate for breach and/or default, rescind or revoke this Contract or any order issued hereunder in the event of any subsequent breach and/or default of any provisions of such agreements.

Supplier shall submit any contractual or order dispute to VITA or the terminating Authorized User for resolution according to the terms of the Dispute Resolution Section.

The terms of the Termination for Convenience and Termination for Breach or Default Sections shall not apply to termination for non-appropriation of funds.

Termination by Supplier will not be considered.

D. Transition of Services

Prior to or upon expiration or termination of this Contract and at the request of VITA, Supplier shall provide all assistance as VITA or an Authorized User may reasonably require to transition Services to any other supplier with whom VITA or such Authorized User contracts for provision of services identical or similar to the Services provided by Supplier pursuant to this Contract. This obligation may extend beyond expiration or termination of the Contract for a period not to exceed six (6) months. In the event of a termination for breach and/or default of Supplier or a termination due to Supplier's status as a party excluded from Federal Procurement and Nonprocurement Programs, Supplier shall provide such assistance at no charge or fee to VITA or any Authorized User; otherwise, Supplier shall provide such assistance at a reasonable hourly rate or a charge agreed upon by Supplier and VITA or an Authorized User.

4. SERVICES

A. Nature of Services and Engagement

Supplier is an independent contractor engaged to perform certain Services, including but not limited to consulting and support activities on behalf of an Authorized User as set forth in any Statement of Work. Notwithstanding all Authorized User's rights to purchase Supplier's products or Services under this Contract, an Authorized User is under no obligation to purchase 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 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.

This Contract is not intended to be or to be used as a staff augmentation contract. Unless otherwise authorized in writing by VITA, no individual employee or contractor of Supplier, whether employed by Supplier or a contractor or subcontractor of Supplier, shall perform more than one thousand (1,000) hours of work for any one Authorized User during any six (6) month period; nor

shall any such individual employee or contractor perform Supplier's Services for any one Authorized User for more than eight (8) months in any twelve (12) month period.

B. Subcontractors

Supplier shall not use subcontractors to perform the Services unless specifically authorized in writing to do so by the Authorized User. Supplier represents and warrants that any authorized subcontractors performing the Services shall perform the Services in accordance with the warranties set forth in this Contract. If an order issued pursuant to this Contract is supported in whole or in part with federal funds, Supplier shall not subcontract any Services pursuant to such order to any subcontractor that is a party excluded from Federal Procurement and Nonprocurement Programs. In no event shall Supplier subcontract any Services 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.

C. Statement of Work (SOW)

All Services shall be performed at the times and locations set forth in the applicable SOW and at the rates set forth in Exhibit D herein. Unless VITA issues a written authorization for a time and materials type SOW, a 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. Supplier personnel shall maintain daily time records of hours and tasks performed, which shall be submitted or made available for inspection by the Authorized User upon forty-eight (48) hours advance written notice.

All changes to the Services to be provided must be described in a written change request which includes any appropriate adjustments to the SOW. 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. An SOW or any other order 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 are inconsistent with the terms and conditions of this Contract, the terms of this Contract shall supersede. In no event shall any SOW or any modification thereto require the Supplier to perform any work beyond the scope of this Contract as such scope is defined in Exhibit A hereto.

An 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 SOW. Failure of Supplier to perform in accordance with such obligations may be deemed a default of this Contract or of the applicable SOW.

An SOW may be written as follows:

1. Fixed Price Type

A Fixed Price type SOW should be used when the Authorized User's requirements can be set forth in sufficient detail as to allow for a fixed price to be developed. A Fixed Price type SOW may include a cost-reimbursable line item(s) for such expenses as travel, incidentals, and materials; however, any such travel, incidental, and material expenditures must be approved in advance by the Authorized User and reimbursement of such pre-approved travel expenses shall be in accordance with the then-current per diem amounts as published by the Virginia Department of Accounts (http://www.doa.virginia.gov/Admin_Services/CAPP/CAPP_Topics/20335_1206.pdf, or a successor URL(s)). A Fixed Price type SOW should also include Deliverables and a milestone payment schedule associated with such Deliverables.

2. Time and Materials Type

A Time and Materials type SOW should be used when the Authorized User's requirements are not sufficiently defined as to allow for a fixed price to be developed. A Time and Material type SOW shall list the Services to be performed by labor category of personnel, and, for each labor category: a) the number of hours allocated thereto, b) the hourly rate, and c) an extended price. A Time and Materials SOW may also include line item funding for travel, incidentals, and materials, as applicable; however, any such travel, incidental, and material

expenditures must be approved in advance by the Authorized User and reimbursement of such pre-approved travel expenses shall be in accordance with the then-current per diem amounts as published by the Virginia Department of Accounts (http://www.doa.virginia.gov/Admin_Services/CAPP/CAPP_Topics/20335_1206.pdf, or a successor URL(s)).

A Time and Materials SOW shall contain a Not to Exceed funding limitation, which shall be considered a reasonably accurate estimate. Supplier shall notify the Authorized User in writing when billable amounts reach eighty percent (80%) of the funding limitation, and, for a time and materials type order, Supplier's notice shall include an estimate to complete the requirements of the order. Supplier shall not be obligated to incur costs in excess of such limitation, and the Authorized User shall not be obligated to reimburse Supplier for costs in excess of such limitation.

Any SOW valued at or above US\$100,000 shall be signed and approved by VITA and Supplier prior to Supplier's commencement of work pursuant to such SOW. If an SOW initially valued below US\$100,000 is modified such that the total value of such SOW after modification is at or above US\$100,000, the modification of such SOW must be signed by VITA and Supplier prior to Supplier's commencement of work pursuant to such modification. [Note: dollar values may be lower than \$100,000 but not greater.]

In addition, any SOW with a period of performance of one (1) year or longer shall be signed and approved by VITA and Supplier prior to Supplier's commencement of work pursuant to such SOW. If an SOW with an initial period of performance of less than one (1) year is extended such that the period of performance is one (1) year or longer, the extension of the period of performance of such SOW must be signed by VITA and Supplier prior to Supplier's performance of work beyond one (1) year after the start of such period of performance.

D. Acceptance

Service(s) and Deliverables shall be deemed accepted when the Authorized User determines that such Service(s) and Deliverables meet the Requirements or written criteria set forth in the applicable SOW. If applicable, Supplier shall be responsible for ensuring that any individual Deliverable is consistent with any other Deliverable provided pursuant to the SOW. Should a previously Accepted Deliverable require further modification in order to be consistent with any other Deliverable, Supplier shall be responsible for all costs associated with such modification.

Authorized User shall commence review of the Service or Deliverable for purposes of Acceptance within 10) days after receipt of the Service or Deliverable. Review for Acceptance will be no longer than 30) days, or such longer period as may be agreed in writing between Authorized User and Supplier, for each Deliverable or for the first instance of each Service type set forth in Exhibit B. Supplier agrees to provide to the Authorized User such assistance and advice as the Authorized User may reasonably require, at no additional cost, during such review. Any travel expenses not included in the total price of a fixed price type SOW 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/Admin_Services/CAPP/CAPP_Topics/20335_1206.pdf, or a successor URL(s)). Authorized User shall provide to Supplier written notice of Acceptance upon completion of a successful review.

E. Cure Period

Supplier shall correct any non-conformities identified hereunder and shall thereafter re-submit such previously non-conforming Service or Deliverable for a second review within seven (7) days of the appropriate Authorized User's written notice of non-conformance, or as otherwise agreed between such Authorized User and Supplier. In the event that Supplier fails to deliver a Service or Deliverable which meets the Requirements, the Authorized User may, in its sole discretion: (i) reject the Service or Deliverable in its entirety, and any Service or Deliverable rendered unusable due to the non-conforming Service or Deliverable, and recover amounts previously paid hereunder for all such Services and Deliverables; (ii) issue a "partial Acceptance" of the Service or Deliverable with an equitable adjustment in the price to account for such deficiency; or (iii) conditionally accept the applicable Service or Deliverable while reserving its right to revoke

Acceptance if timely correction is not forthcoming. Failure of a Service or a Deliverable to meet, in all material respects, the specifications after the second set of reviews may constitute a default by Supplier. In the event of such default, the Authorized User may, at its sole discretion, terminate its order, in whole or in part, for the Services to be provided thereunder by Supplier. Supplier shall accept return of the non-conforming Deliverable, and any product or Deliverable rendered unusable due to the non-conforming Service or Deliverable, and Supplier shall refund any monies paid by such Authorized User pursuant to the order, or portion thereof terminated. All costs of return of products or Deliverables shall be borne by Supplier. Notwithstanding the foregoing, VITA or the Authorized User shall be entitled to pursue any other remedies that are available to it under this Contract and at law or in equity.

F. Training and Documentation

Any training or documentation necessary for an Authorized User to have full benefit of the Service shall be deemed included in the scope of the SOW unless expressly excluded.

5. LICENSE GRANT

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 and to the extent that any pre-existing rights are embodied or reflected in the Service Deliverables, Supplier hereby grants to the Commonwealth or the Authorized User an irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to (i) use, modify, transmit, execute, reproduce, display, perform, distribute copies of and prepare derivative works based upon such pre-existing rights and any derivative works thereof, and (ii) authorize others to do any or all of the foregoing. It is expressly understood that "perpetual" license rights shall commence upon delivery of the Service Deliverables and shall exist in perpetuity unless otherwise terminated in accordance with the applicable provisions of the Contract.

6. 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, all rights in, title to, and ownership of Work Product shall vest with the Commonwealth. If Authorized User is a locality, municipality, school, school system, college, university, local board, local commission, or local quasi-political entity, all rights in, title to, and ownership of Work Product shall vest with that public body.

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 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, either solely or jointly with others, during the term or performance of this Contract, which in any way relates to the business of the Commonwealth, VITA, or any Authorized User. Supplier further agrees that neither Supplier nor any of Supplier's employees, 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 proprietary information relating to the Work Product. All Services performed hereunder shall include delivery of all Work Product source code, object code, executables, and documentation. Supplier agrees that a copy of the most recent Work Product source code shall be provided to the Commonwealth or to the Authorized User pursuant to whose order the Work Product was discovered, created, or developed.

B. Ownership

Supplier agrees that, whether or not the Services are considered “works made for hire” or an employment to invent, all Work Product discovered, created or developed under this Contract shall be and shall remain the sole and exclusive property of the Commonwealth of Virginia and its assigns or the Authorized User and its assigns. Except as specifically set forth in writing and signed by both VITA and Supplier, or Authorized User and Supplier, Supplier agrees that the Commonwealth or the Authorized User shall have all rights with respect to any Work Product discovered, created or developed under this Contract without regard to the origin of the Work Product.

If and to the extent that Supplier may, under applicable law, be entitled to claim any ownership interest in the Work Product, Supplier hereby transfers, grants, conveys, assigns and relinquishes exclusively to the Commonwealth or the Authorized User any and all right, title and interest it now has or may hereafter acquire in and to the Work Product under patent, copyright, trade secret and trademark law in perpetuity or for the longest period otherwise permitted by law. If any moral rights are created, Supplier waives such rights in the Work Product. Supplier further agrees as to the Work Product to assist the Commonwealth or the Authorized User in every reasonable way to obtain and, from time to time, enforce patents, copyrights, and other rights and protection, and in protecting trade secrets, with respect to such Work Product, and to that end, Supplier and its employees shall execute all documents for use in applying for and obtaining such patents, copyrights, and other rights and protection with respect to such Work Product, as the Commonwealth or the Authorized User may reasonably request, together with any assignments thereof to the Commonwealth or the Authorized User or entities designated by the Commonwealth or the Authorized User. Supplier's and its employees' obligations to assist the Commonwealth or the Authorized User in obtaining and enforcing such rights shall continue beyond the termination of this Contract.

The Supplier hereby agrees that, notwithstanding anything else in this Contract, in the event of any breach of this Contract by VITA or any Authorized User, the Supplier's remedy shall not include any right to rescind, otherwise revoke, or invalidate the provisions of this Section. Similarly, no termination of the Contract by VITA shall have the effect of rescinding the provisions of this Section.

C. Return of Materials

Upon termination of this Contract, Supplier shall immediately return to VITA or the appropriate Authorized User all copies, in whatever form, of any and all Confidential Information, Work Product and other properties provided by VITA or such Authorized User, which are in Supplier's possession, custody or control.

7. 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 Services under this Contract are competent and knowledgeable of the contractual arrangements and the applicable 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 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 and terminate the employment of Supplier personnel.

8. GENERAL WARRANTY

With respect to the Services provided by Supplier, Supplier represents and warrants the following:

A. Ownership

Supplier has the right to provide the Services, including Deliverables, without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party.

B. Performance

- i). All Services shall be performed with care, skill and diligence, consistent with or above applicable professional standards currently recognized in its profession, and Supplier shall be responsible for the professional quality, technical accuracy, completeness and coordination of all plans, information, specifications, Deliverables and Services furnished under this Contract;
- ii). The Services are pursuant to a particular Request for Proposal ("RFP"), and therefore such Services and any associated Deliverables shall be fit for the particular purposes specified by VITA in the RFP and in this Contract, and Supplier is possessed of superior knowledge with respect to the Services and Deliverables and is aware that all Authorized Users are relying on Supplier's skill and judgment in providing the Services and Deliverables;
- iii). The Services and Deliverables shall meet or exceed the Requirements;
- iv). The Services shall be performed in a professional manner;
- v). The documentation which Supplier is required to provide under this Contract shall be sufficient in detail and content to allow a user to understand and fully utilize the Deliverables without reference to any other materials or information.

C. Limited Warranty Period and Remedy

During the Warranty Period, Supplier warrants that the Deliverables shall not contain any material errors and shall meet the Requirements. Supplier shall correct, at no additional cost to any Authorized User, all errors and omissions identified during the Warranty Period in any of the Services or Deliverables. If Supplier is unable to make the Deliverable conform, in all material respects, to the Requirements within ten (10) days following written notification by an Authorized User, Supplier shall, at such Authorized User's request, accept return of such Deliverable and any other related Deliverable(s) rendered unusable, and return all monies paid by such Authorized User for the non-conforming Deliverable and such other related Deliverable(s) rendered unusable.

D. 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 an actual or 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.

E. Supplier's Past Experience

Supplier warrants that the Services have been successfully performed for a non-related third-party without significant problems due to the Services or Supplier.

THE OBLIGATIONS OF SUPPLIER UNDER THIS GENERAL WARRANTY SECTION ARE MATERIAL. SUPPLIER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY CONCERNING MERCHANTABILITY OR FITNESS FOR ANY OTHER PARTICULAR PURPOSE.

9. ORDERS AND COMPENSATION

A. Order

Supplier is required to accept any order placed by an Authorized User through the eVA electronic procurement website portal (<http://www.eva.state.va.us>). 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 for the Services available under this Contract. Under no circumstances shall any Authorized User have the authority to modify this Contract. An order 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 are inconsistent with the terms and conditions of this Contract, the terms of this Contract shall supersede.

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

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

B. Purchase Price and Price Protection

Exhibit D sets forth the fees and the appropriate Commonwealth discounts. Fees shall not increase and discounts shall not decrease for a period of not less than two (2) years from the Effective Date. 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 to all Authorized Users in writing in accordance with the above and shall not become effective for sixty (60) days thereafter. Supplier agrees to offer price reductions to ensure compliance with the Competitive Pricing Section.

C. Invoice Procedures

For an order with a period of performance not expected to exceed one (1) month, Supplier shall remit each invoice to the "bill-to" address provided with the order promptly after all Deliverables or Services have been accepted and in accordance with the milestone payment schedule, if any, in the applicable order. For a time and materials type Statement of Work with a period of performance expected to exceed one (1) month, Supplier shall submit invoices to the ordering Authorized User monthly in arrears, unless otherwise specified in such Statement of Work. For a fixed price type Statement of Work, Supplier shall invoice in accordance with the milestone payment schedule, if any, in the applicable order; if such order does not include a milestone payment schedule, Supplier shall invoice after all Deliverables or Services have been accepted by the ordering Authorized User. No invoice shall include any costs other than those identified in the executed order or Statement of Work, which costs shall be in accordance with Exhibit D. Without limiting the foregoing, all shipping costs are the Supplier's responsibility except to the extent such charges are identified in Exhibit D, or as noted in any executed order or Statement of Work referencing this Contract. Invoices issued by the Supplier shall identify at a minimum:

- i). Deliverable or Service type, or project milestone, and description
- ii). Quantity, charge and extended pricing for each Deliverable and/or Service item or milestone; or, for a time and materials type order, the name(s) of the assigned employee(s), the hourly rate(s), and the number of hours worked;
- iii). Applicable order date or Statement of Work date
- iv). This Contract number and the applicable order number

v). Supplier's Federal Employer Identification Number (FEIN).

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

D. Invoice and Payment Terms

All payment obligations 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 Statement of Work, in whole or in part, or an Authorized User may terminate an order, 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. Termination for lack of appropriations shall not affect any perpetual license granted pursuant to this Contract, provided all fees for such license have been paid.

Supplier is responsible for the accuracy of its billing information. Supplier agrees not to issue invoices hereunder until Services have been performed or milestones have met Acceptance criteria. Charges for Services accepted more than ninety (90) days prior to receipt of a valid invoice may not be paid, except in accordance with a milestone payment schedule. Should Supplier repeatedly over bill Authorized User, Authorized User may assess a one percent (1%) charge for the amount over billed for each month that such over billing continues.

If there are any disputed items, the appropriate Authorized User shall pay all undisputed charges and promptly notify Supplier in writing of any disputed amount. Supplier shall thereupon review its records, and, if it does not concur with such Authorized User, provide such Authorized User with documentation to support the charge. If such charges remain in dispute, such dispute shall be resolved in accordance with the Dispute Resolution section of this Contract. In the absence of the Supplier's written evidence identifying the merit of the disputed amounts, Authorized User may not pay the disputed amounts and may consider the matter concerning the specific identified amounts closed. All payment terms are net 30 days after Acceptance.

E. Reimbursement of Expenses

If allowable pursuant to an Authorized User's SOW, 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 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/Admin_Services/CAPP/CAPP_Topics/20335_1206.pdf), or a successor URL(s)).

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.

F. Supplier's Report of Sales and Industrial Funding Adjustment

By the 10th day of every month, the Supplier shall submit the "Supplier Monthly Report of Sales". A template showing the format in which the report is to be submitted is available at <http://www.vita.virginia.gov/procurement/supplierResources.cfm>. The report shall be submitted via electronic mail to the VITA IFA Coordinator and the VITA Controller (contact information provided below), and shall report all invoices submitted by Supplier pursuant to the Contract to all Authorized Users during the preceding month. The report shall also show a cumulative record of all invoices submitted to all Authorized Users pursuant to the Contract.

The Supplier shall submit the Industrial Funding Adjustment (IFA) payment for the period covered by such "Supplier Monthly Report of Sales" within thirty (30) days of submitting the "Supplier Monthly Report of Sales". The IFA payment shall be submitted in the form of a check or electronic funds disbursement made payable to the Treasurer of Virginia. The IFA payment is equal to two percent (2%) of total sales under this Contract during the relevant month, as determined by the

amount invoiced to Authorized Users. The IFA payment shall reference this Contract number, "report amounts", and "report period".

Supplier shall remit IFA payments made via check to VITA, Attention VITA Controller. Supplier shall also provide a copy of the IFA payment to the VITA IFA Coordinator via email or fax. Failure to comply with reporting and payment requirements of this section may result in default of Contract.

Contact information for the VITA Controller and the VITA IFA Coordinator submission of the Supplier Monthly Report of Sales and the IFA payment, as applicable, is available at <http://www.vita.virginia.gov/procurement/supplierResources.cfm> under "Supplier Reporting".

G. Small, Woman, and Minority-Owned Business (SWaM) Participation

Supplier and VITA agree to meet promptly after the Effective Date of this Contract to discuss the participation of Virginia Department of Minority Business Enterprise (DMBE)-certified Small, Woman, and Minority Owned Businesses (SWaMs) as subcontractors and second-tier suppliers under this Contract. Supplier and VITA will review Supplier's SWaM subcontracting plan, which was submitted with Supplier's proposal, and SWaM subcontract reporting, and will discuss ways of encouraging SWaM participation and increasing subcontracting spend with SWaM suppliers.

Supplier and VITA agree to meet annually thereafter to review SWaM subcontracting reports and discuss further action with respect to SWaM subcontracting and spend.

Discussions regarding SWaM subcontracting may be held in conjunction with meetings of the Steering Committee, as described in the Steering Committee section of this Contract.

In addition, by the 10th day of every month, Supplier shall submit to VITA the Small, Woman, and Minority Owned Business (SWaM) Subcontracting Monthly Report (template available at <http://www.vita.virginia.gov/procurement/supplierResources.cfm>). Supplier's report should include spend on all Supplier's contracts with second-tier suppliers which provide products or services under this Contract. The report should specify the amount of such spend provided to SWaM vendors, by SWaM category, regardless of such SWaM vendors' certification status. Supplier shall submit the report to SWaM@vita.virginia.gov.

10. COMPETITIVE PRICING

Supplier warrants and agrees that each of the charges, economic or product terms or warranties granted to VITA pursuant to this Contract are comparable to or better than the equivalent charge, economic or product term or warranty being offered to any commercial or government customer of Supplier. If Supplier enters into any arrangements with another customer of Supplier or with an Authorized User to provide Services under more favorable prices, as the prices may be indicated on Supplier's current U.S. and International price list or comparable document, then this Contract shall be deemed amended as of the date of such other arrangements to incorporate those more favorable prices, and Supplier shall immediately notify VITA of such change.

11. CONFIDENTIALITY

A. Treatment and Protection

Each Party shall (i) hold in strict confidence all Confidential Information of any other Party, (ii) use the Confidential Information solely to perform or to exercise its rights under this Contract, and (iii) not transfer, display, convey or otherwise disclose or make available all or any part of such Confidential Information to any third-party. However, an Authorized User may disclose the Confidential Information as delivered by Supplier to subcontractors, contractors or agents of such Authorized User that are bound by non-disclosure contracts with such Authorized User. Each Party shall take the same measures to protect against the disclosure or use of the Confidential Information as it takes to protect its own proprietary or confidential information (but in no event shall such measures be less than reasonable care).

B. Exclusions

The term "Confidential Information" shall not include information that is:

- i). in the public domain through no fault of 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.

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

All Supplier personnel, contractors, agents, and subcontractors performing Services pursuant to this Contract shall be required to sign a confidentiality statement or non-disclosure agreement. 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 issued hereunder.

12. LIABILITY AND INDEMNIFICATION

Supplier agrees to indemnify, defend and hold harmless the Commonwealth, VITA, or any Authorized User, their officers, directors, agents and employees ("Commonwealth's Indemnified Parties") from and against any and all third party claims, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, fines, judgments, settlements, expenses (including attorneys' and accountants' fees and disbursements) and costs (each, a "Claim" and collectively, "Claims"), incurred by, borne by or asserted against 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 misconduct or negligence of any employee, agent, or subcontractor of Supplier, (ii) any act or omission of any employee, agent, or subcontractor of Supplier, (iii) breach of any representation, warranty or covenant of Supplier contained herein, (iv) any defect in the Services or Deliverables provided by Supplier, or (v) any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Services or Deliverables. 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 all cases the selection and approval of counsel and approval of any settlement shall be satisfactory to VITA or the Authorized User against whom the claim has been asserted.

In the event that a Claim is commenced against any of Commonwealth's Indemnified Parties alleging that use of any Deliverable or that the provision of Services 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 immediately 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 protect the interests of the Commonwealth's Indemnified Parties and secure a continuance to permit VITA and the affected Authorized User(s) to appear and

defend their interests in cooperation with Supplier as is appropriate, including any jurisdictional defenses VITA or the affected Authorized User(s) may have.

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 Services or Deliverables, and in addition to all other obligations of Supplier in this Section, Supplier shall at its expense, either (a) procure for all Authorized Users the right to continue use of such infringing Services or Deliverables, or any component thereof; or (b) replace or modify such infringing Services or Deliverables, or any component thereof, with non-infringing products or services satisfactory to VITA. And in addition, Supplier shall provide any Authorized User with comparable temporary replacement deliverables and services, or reimburse VITA or any Authorized User for the reasonable costs incurred by VITA or such Authorized User in obtaining alternative products and services in the event such Authorized User cannot use the affected Deliverable or benefit from the affected Services. If Supplier cannot accomplish any of the foregoing within a reasonable time and at commercially reasonable rates, then Supplier shall accept the return of the infringing component of the Services or Deliverable, along with any other components of any products rendered unusable by any Authorized User as a result of the infringing component, and refund the price paid to Supplier for such components.

EXCEPT WITH REGARD TO CLAIMS FOR PROPERTY DAMAGE, PERSONAL INJURY OR INFRINGEMENT, AND THE INDEMNIFICATION AND CONFIDENTIALITY OBLIGATIONS, WITH RESPECT TO EACH OF WHICH LIABILITY SHALL NOT BE LIMITED PURSUANT TO THIS SECTION, IN NO EVENT WILL ANY PARTY BE LIABLE TO ANY OTHER PARTY (OR THE INDEMNIFIED PARTIES OF SUCH PARTY) FOR ANY INDIRECT, 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 THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE PARTY, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS.

13. INSURANCE

In addition to the insurance coverage required by law as specified in the URL identified in the Incorporated Contractual Provisions section of this Contract, Supplier shall carry errors and omissions insurance coverage in the amount of \$1,000,000 per occurrence.

14. SECURITY COMPLIANCE

Supplier agrees to comply with all provisions of the then-current Commonwealth of Virginia security procedures, published by the Virginia Information Technologies Agency (VITA) and which may be found at (<http://www.vita.virginia.gov/docs/psg.cfm>) 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 information by the Supplier or an employee or agent of Supplier shall constitute a breach of this Contract.

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.

15. IMPORT/EXPORT

Any product generated from any data collected, developed, analyzed, or otherwise used or obtained by Supplier pursuant to Supplier's performance of this Contract shall be considered Data Product.

Supplier shall not export or re-export any data collected, developed, analyzed, or otherwise used or obtained by Supplier pursuant to Supplier's performance of this Contract, or any Data Product, to any country, person, entity or end user subject to U.S. export restrictions. Supplier specifically agrees not to export, re-export, or download such data or Data Product: (a) to any country to which the U.S. has embargoed or restricted the export of goods or services, which currently include, but are not necessarily limited to Cuba, Iran, Iraq, Libya, North Korea, Sudan, Syria, Federal Republic of Yugoslavia, or to any national of any such country; (b) to any end-user who Supplier knows or has reason to know will utilize the data or Data Product or portion thereof in the design, development or production of nuclear, chemical, or biological weapons, or for any purpose which may, directly or indirectly, pose a security threat to the United States or its territories; or (c) to any end-user who has been prohibited from participating in U.S. export transactions by any federal agency of the U.S. government. Supplier is responsible for complying with local laws in Supplier's jurisdiction, as well as all federal and state laws and regulations regarding import and export, which might impact its right to import, export, or use the data or Data Product.

In addition, 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.

16. 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, or an Authorized User may terminate an order, on notice to Supplier unless Supplier immediately gives VITA or such Authorized User adequate assurance of the future performance of this Contract or the applicable order. If 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 the VITA and Supplier that this is an executory contract. Any such suspension of further performance by VITA 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.

17. STEERING COMMITTEE

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

Roles of the Steering Committee will include but 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.

The Steering Committee will meet within thirty (30) days of the Effective Date of this Contract and will meet annually thereafter during the term of the Contract, including any extension thereto. One or more additional 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 Statement of Work issued pursuant to this Contract.

18. 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, imposed, assessed or levied as a result of 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 contractual provisions at the following URL are mandatory contractual provisions, required by law or by VITA, that are hereby incorporated by reference:

<http://www.vita.virginia.gov/procurement/documents/MandatoryContractTsandCs.pdf>

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

The 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. 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 shall not, in connection with this Contract, engage in any activity prohibited by 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"), and shall promptly perform all obligations mandated by the Lobbying Act in connection with this Contract, including, without limitation, obtaining and delivering to the Commonwealth all necessary certifications and disclosures.

Supplier is hereby advised that a significant percentage of the funds used to pay Supplier's invoices under this Contract may be federal funds. Under no circumstances shall any provision of this Contract be construed as requiring or requesting the Supplier to influence or attempt to influence any person identified in 31 USC 1352(a)(1) in any matter.

Supplier's signed certification of compliance with the foregoing is incorporated as Exhibit E hereto.

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 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, Supplier's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section. In no event shall Supplier's remedies include the right to terminate any license or support services hereunder.

F. Advertising and Use of Proprietary Marks

Supplier shall not use the name of VITA or any Authorized User's name 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 US mails, postage prepaid, for mailing by registered, certified mail, or overnight courier service addressed to the addresses shown on the signature page. VITA or Supplier may change its address for notice purposes by giving the other Party notice of such change in accordance with this Section.

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 assign this Contract to any entity, so long as the assignee agrees in writing to be bound by the all the terms and conditions of this Contract.

If any law limits the right of VITA or Supplier to prohibit assignment or nonconsensual assignments, the effective date of the assignment shall be thirty (30) days after the Supplier gives VITA prompt written notice of the assignment, signed by authorized representatives of both the Supplier and the assignee. Any payments made prior to receipt of such notification shall not be covered by this assignment.

J. Captions

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

K. Severability

Invalidity of any term of this Contract, in whole or in part, shall not affect the validity of any other term. VITA and Supplier further agree that in the event such provision is an essential part of this Contract, they shall immediately begin negotiations for a suitable replacement provision.

L. Survival

The provisions of this Contract regarding License, Rights To Work Products, Warranty, Confidentiality, Liability and 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 affected by such postponement or delay.

N. Remedies

The remedies set forth in this Contract are intended to be cumulative. In addition to any specific remedy, VITA and all Authorized Users reserve any and all other remedies that may be available at law or in equity.

O. Right to Audit

VITA reserves the right to audit those Supplier records that relate to the Services rendered or the amounts due Supplier for such Services under this Contract. VITA's right to audit shall be limited as follows:

- i). Three (3) years from Service performance date;
- ii). Performed at Supplier's premises, during normal business hours at mutually agreed upon times; and
- iii). Excludes access to Supplier cost information.

The Supplier shall not have the right to audit, or require to have audited, VITA or any Authorized User.

P. Offers of Employment

During the first twelve (12) months of the Contract, should Supplier hire an employee of an 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. Limitation on Future Contracting

VITA and Supplier agree that there may be a potential for conflict of interest that could arise in the course of Supplier's providing audit Services to an Authorized User. Such conflict of interest is properly mitigated by precluding the Supplier from bidding on or participating in the implementation of any of the remedial activities that Supplier may recommend to such Authorized User. Supplier agrees that by accepting an order from an Authorized User to perform Services pursuant to this Contract, it agrees to not bid on or participate in the implementation of such recommendations in any capacity for a period of three (3) years. The three year period begins with the completion of the order under which such services were performed. Notwithstanding the foregoing, VITA may, at its sole discretion, waive the limitation on future contracting, at the request of an Authorized User and for such Authorized User, if it is determined, in VITA's sole discretion, to be in the best interest of the Commonwealth.

S. 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:

- i). Exhibit A Service Requirements
- ii). Exhibit B Statement of Work (SOW) Template
- iii). Exhibit C Reserved
- iv). Exhibit D Service Fees
- v). Exhibit E Certification Regarding Lobbying

This Contract, its Exhibits, and any prior non-disclosure agreement constitute the entire agreement between VITA and Supplier and supersede any and all previous representations, understandings, discussions or agreements between VITA and Supplier as to the subject matter hereof. Any and all terms and conditions contained in, incorporated into, or referenced by the Supplier's Proposal shall be deemed invalid. The provisions of the Virginia Department of General Services, Division of Purchases and Supply Vendor's Manual shall not apply to this Contract or any order issued hereunder. This Contract may only be amended by an instrument in writing signed by VITA and Supplier. In the event of a conflict, the following order of precedence shall apply: this Contract document, Exhibit A, any SOW issued hereunder, Exhibit D.

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

VITA and Supplier each acknowledge that it has had the opportunity to review this Contract and to obtain appropriate legal review if it so chose.

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

Supplier
 By: 
 (Signature)
 Name: AUSTIN MATTHEWS
 (Print)
 Title: MANAGING PARTNER

VITA
 By: 
 (Signature)
 Name: PHILIP L. PIPPERT
 (Print)
 Title: ASSOC. DIRECTOR, SEM

Date: 6/29/07

Address for Notice:

P.O. Box 1300

MIDLOTHIAN, VA 23113

Attention: AUSTIN MATTHEWS

Date: 6/29/07

Address for Notice:

Attention: Contract Administrator

**EXHIBIT A
CONTRACT NUMBER VA-070622-ZELS
BETWEEN
VIRGINIA INFORMATION TECHNOLOGIES AGENCY
AND
ZELOS**

Exhibit A is hereby incorporated into and made an integral part of Contract Number VA-070622-ZELS

("Contract") between the Virginia Information Technologies Agency ("VITA" or "Commonwealth" or "State") and ZELOS ("Supplier").

In the event of any discrepancy between this Exhibit A and Contract No. VA-070622-ZELS, the provisions of Contract No. VA-070622-ZELS shall control.

Detailed Description of Proposed Services

A. Functional

	<i>Requirements</i>	A	B
1	<p>Can you provide all resources necessary to fully meet the requirements of Comptroller's Directive 1-07, ARMICS?</p> <p>Describe how you will comply. Provide examples if available.</p>	Y	<p>Zelos has the manpower and experience that is required to meet the Comptroller's directive. We understand VITA's operations and statutory requirements as well as the Commonwealth's requirements. This is in addition to having direct work experience in VITA's financial arena of over two years.</p>
2	<p>Can you develop a detailed assessment and implementation plan to be approved by the VITA's controller? Describe how you will comply. Provide examples if available.</p>	Y	<p>The following work plan will be followed during this engagement:</p> <p><i>Stage 1: Development of Agency-Level Internal Control Assessment</i></p> <ol style="list-style-type: none"> 1. Gather daily operational information from the functional entities of the organization: Service Management, Security and Risk Management, Customer Account Management, IT Investment & Enterprise Solutions, Communications, Finance, CIO, and Internal Audit 2. Develop scope for entire project and identify compliance and success criteria 3. Develop agenda for site visits, discussions with department managers and employees 4. Analyze process flow, identify any concerns that department managers may have or be aware of in daily operations 5. Obtain all current job descriptions, organization charts, previous audits, and operational or procedures guide books 6. Observe financial posting, receipts, disbursements of funds, and G/L preparation on finance department and identify areas of weakness and threats in the remaining departments 7. Conduct meetings with department managers and customers of VITA to discuss service transactions and flow of intra-entity information 8. Identify points within the process where misstatements could occur 9. Identify controls that have been implemented to address potential misstatements 10. Identify controls that have been implemented to prevent unauthorized acquisition or disposition of assets 11. Conduct tests of the overall control

		<p>environment</p> <ol style="list-style-type: none"> 12. Develop threat and risk summary 13. Complete internal controls assessment 14. Meet with management weekly to provide updates on the project 15. Provide written reports and recommendations as each stage is completed 16. Meet with the ITIB if required to provide project updates <p>Stage 2: Process and Transaction Assessment</p> <ol style="list-style-type: none"> 1. Conduct meetings with department managers and customers of VITA to discuss service transactions and flow of intra-entity information 2. Document all existing processes, procedures and controls for all departments 3. Review management reports and assess the adequacy of the reports 4. Develop testing procedures to be included in the engagement that will be in accordance with section 404 5. Meet with management to discuss testing schedules 6. Meet with outside auditor to synchronize internal audit testing with their annual audit procedures 7. Execute control tests and document test results including, but not limited to: <ol style="list-style-type: none"> a. Test for controls over initiating, recording, processing and reporting transactions b. Test for period-ending reporting procedures c. Tests of IT controls d. Tests of correctness of accounting procedures authorized by the Commonwealth e. Antifraud controls f. Proper authorization for acquisition from supply chains and vendors g. Cash controls 8. Identify potential process improvements 9. Establish “best practice” benchmarking metrics and develop monitoring procedures for ARMICS compliance 10. Refine existing processes and control procedures to achieve ARMICS compliance 11. Meet with managers to discuss implementation responsibility and time tables
--	--	---

			<ol style="list-style-type: none"> 12. Define on-going monitoring procedures 13. Meet with management weekly to provide updates on the project 14. Provide written reports and recommendations as stage is completed 15. Meet with the ITIB if required to provide project updates <p>Stage 3: Development of Corrective Action Plans</p> <ol style="list-style-type: none"> 1. Identification of deficiencies requiring corrective action plans 2. Identification of persons participating in the procedural deficiency 3. Description of the deficiency 4. Development of timelines for correction 5. Development of new standards of operations 6. Implementation of reports with quantifiable indicators to mark improvement in the new operating standards 7. Meet with management weekly to provide updates on the project 8. Provide written reports and recommendations as stage is completed 9. Meet with the ITIB if required to provide project updates <p>Stage 4: Internal Control Monitoring Process</p> <ol style="list-style-type: none"> 1. Provide annual checklist 2. Identify testing that ensures internal controls continue to work
--	--	--	--

B. Stage 1 Agency-Level Internal Control Assessment Due no later than September 15, 2007

	<i>Requirements</i>	A	B
1	Can you identify VITA's significant fiscal processes? Describe how you will comply. Provide examples if available.	Y	Our proposed consultant's training and experience as an auditor and CPA provide the necessary tools to be able to identify significant accounting and fiscal policies in the normal course of business operations. Interview, observation, and testing are used to make initial judgments about operating standards in accordance with GASB and GAAP.

	<p>Can you assess agency level control activities applicable to:</p> <p>VITA's significant fiscal processes</p> <p>VITA's accounting administration</p> <p>VITA's general ledger</p> <p>VITA's information systems</p> <p>Describe how you will comply. Provide examples if available.</p>	Y	<p>Testing is used to assess internal control in the areas of general ledger reporting, administrative flow of paperwork, approval of expenditures, adherence to fiscal policy and security of information systems. Some of the testing utilized include:</p> <ol style="list-style-type: none"> 1. Testing for controls over initiating, recording, processing and reporting transactions 2. Testing for period ending reporting procedures 3. Tests of IT controls 4. Tests of correctness of accounting procedures authorized by the Commonwealth 5. Antifraud controls 6. Proper authorization for acquisition from supply chains and vendors 7. Cash controls
2	<p>Can you provide complete documentation that includes a description of the design of the agency-level controls across the five components of internal control (control environment, risk assessment, control activities, information and communication, and monitoring)? This documentation includes the development of a Code of Ethics. Describe how you will comply. Provide examples if available.</p>	Y	<p>After observation and testing, documentation of all control activities throughout the agency is provided, including a flow chart of activities by department, identification of all paperwork sent through the system, levels of approval, and validity of results. If a code of ethics that explains how to report improprieties does not exist for the employees of the agency, one shall be provided as part of the internal control documentation package.</p>
3	<p>Can you provide complete documentation of the methods used to test the effectiveness of the agency-level controls and the results of those tests? Describe how you will comply. Provide examples if available.</p>	Y	<p>All testing performed, the results of those tests, and copies of the tests used will become part of the agency's permanent records of internal control. This will be done in accordance with generally accepted auditing standards.</p>

C. Stage 2 – Process and Transaction Level Internal Control Assessment (Due no later than March 1, 2008)

	<i>Requirements</i>	A	B
1	<p>Can you provide a complete description of each significant fiscal process including:</p> <p>A description of the fiscal process with examples of pertinent process documents. The use of process flow diagrams to graphically document the steps of the process is encouraged.</p> <p>Policies and procedures governing the process.</p> <p>Computer information systems used to support the process.</p> <p>Describe how you will comply with the above</p>	Y	<p>Each fiscal process involved in VITA operations shall be given a complete description, including those participating in the processes, those who approve the processes, origination of paperwork, disbursement of funds, and the utilization of existing internal controls. A flow chart of the administrative and IT systems will be designed that shows the flow and approvals of paperwork all way from the original source document to presentation in the financial statements. All policies and procedures that are utilized or under utilized governing the administrative processes and IT systems at VITA will be documented. New internal control standards and procedures will also be documented.</p>

	and provide examples if available.		Note: Zelos will utilize existing IT systems documentation where available and not duplicate existing work already done by VITA.
2	<p>Can you provide a risk assessment of each significant fiscal process including:</p> <p>An identification of potential events or conditions that could have an impact on the functioning or conditions that could have an impact on the functioning or outcome of the process. The use of SWOT analysis is encouraged.</p> <p>An assessment of the likelihood of the events and impact of the events on the agency.</p> <p>A description of the associated agency risk responses.</p> <p>Describe how you will comply and provide examples if available.</p>	Y	Once the current system of internal controls has been identified, tested, and documented, a SWOT analysis will be developed that shows the areas of greatest vulnerability and strengths in the system of internal controls. Estimates with the likelihood of negative occurrences will be included as part of the SWOT analysis. Suggestions for improvements will be made along with a step by step program of enhancement that will identify key participants and processes in the targeted areas.
3	<p>Can you provide an internal control evaluation and control tests including:</p> <p>A description of the control activities in place to accomplish the related control objectives for the business process.</p> <p>Documentation of the methods used to test the effectiveness of the fiscal process control activities and the results of those tests.</p> <p>Describe how you will comply and provide examples if available.</p>	Y	Once the existing controls have been identified, they will be analyzed against existing best practices and evaluated in accordance with GASB and current standards of internal controls procedures. Procedures or practices that fall short will be described and documented as to their existing impact on the agency and their potential for harm to the entity. Tests of effectiveness will be developed using standard auditing procedures and the results will be confirmed, documented, and presented to the Controller and managers at VITA.

D. Stage 3 – Corrective Action Plans (due no later than June 1, 2008)

	<i>Requirements</i>	A	B
1	<p>If significant weakness in internal control are identified in Stages 1 and/or 2 that are not mitigated through offsetting controls, can you complete a corrective action plan, which must include the following elements:</p> <p>Summary description of the deficiency in internal control.</p> <p>When the deficiency was identified.</p> <p>A target date for the completion of corrective action in consultation with the VITA Controller.</p> <p>Agency personnel responsible for monitoring</p>	Y	A plan to correct deficiencies in the existing internal controls program at VITA will be developed that involves all persons participating in the procedural deficiency. This could include persons who initially handle source documents, those who approve them, and/or those who produce documents, payments, or reports. A complete description of the deficiency, along with the first date of the activity and those involved will be provided. Timelines for correction and new standards of operations will be developed with the Controller, and persons responsible for monitoring progress will be identified. Reports with quantifiable indicators to mark improvement in the new operating standards

	<p>progress.</p> <p>Indicators or statistics used to gauge resolution progress.</p> <p>A quantifiable target or qualitative characteristic that will indicate that the deficiency in internal control has been corrected.</p> <p>Describe how you will comply and provide examples if available.</p>	<p>will be developed and implemented with the appropriate personnel.</p>
--	--	--

E. Stage 4

	<i>Requirements</i>	A	B
1	<p>Can you establish an annual internal control monitoring process?</p> <p>Describe how you will comply and provide examples if available.</p>	Y	<p>Once all of the deficiencies have been identified and corrected, and a strong system of internal controls has been developed and documented, an annual checklist of systems, procedures, and tests can be provided that will ensure that the internal controls at VITA continue to work. These tests can be conducted by outside personnel or by persons independent of the procedures being tested, but still employed by VITA.</p>

F. Additional Orders

	<i>Requirements</i>	A	B
1	<p>Can you provide the services identified in stages 1 through 4 for public bodies other than VITA which may issue orders pursuant to a contract, if any, awarded as a result of this solicitation? (Note that required due dates will vary by order.)</p> <p>Describe how you will comply and provide examples if available.</p>	Y	<p>Zelos holds the capacity to provide the services identified in stages 1 – 4 for other public bodies. Zelos will negotiate the scope of work, due dates and pricing with those public bodies as appropriate.</p>
2	<p>Do you agree to comply with any updates or modifications to the Directive, if any?</p>	Y	<p>Zelos will comply with any updates or modifications to the Directive. Any substantive changes may require a review and renegotiation of the awarded contract.</p>

EXHIBIT B – STATEMENT OF WORK TEMPLATE

EXHIBIT B
CONTRACT NUMBER VA-070622-ZELS
BETWEEN
VIRGINIA INFORMATION TECHNOLOGIES AGENCY
AND
ZELOS

Exhibit B is hereby incorporated into and made an integral part of Contract Number VA-070622-ZELS (“Contract”) between the Virginia Information Technologies Agency (“VITA” or “Commonwealth” or “State”) and Supplier (“Supplier”).

In the event of any discrepancy between this Exhibit b and Contract No. VA-070622-ZELS, the provisions of Contract No. VA-070622-ZELS shall control.

[Note: Instructions for using this template to draft a Statement of Work are in gray. These instructions should be deleted after the appropriate text has been added to the Statement of Work. Contractual language is not in gray and should remain in the document. Text that is highlighted in blue is contractual language that is variable based on the nature of the project. Text that is highlighted in green is deemed non-negotiable and may not be modified by the Authorized User without VITA’s consent.]

[Authorized User should delete the title “Exhibit D – Statement of Work Template” prior to issuing this SOW.]

STATEMENT OF WORK

This Statement of Work is issued by Authorized User, hereinafter referred to as “Authorized User”. The objective of the project described in this Statement of Work is for the Supplier to provide the Authorized User with [describe the services] services (“Services”).

1. PROJECT SCOPE AND REQUIREMENTS

Provide information on the scope of the project and the Authorized User’s requirements for this particular engagement including:

- i). [For SOWs issued under an Advanced IT Resources contract, Authorized User MUST include:] Approved IT Agency Procurement Request (APR) number
- ii). Project Name
- iii). general description of the Services
- iv). project boundaries
- v). Authorized User-specific requirements
- vi). special considerations for implementing technology at Authorized User’s location(s)
- vii). other characteristics of this project that must be addressed to insure the success of the engagement

2. ADDITIONAL CONTRACT SERVICES TO SUPPORT THE REQUIREMENTS

A. Training and Knowledge Transfer

Provide an overview of training services to be provided to the Authorized User and any special requirements for specific knowledge transfer to support the Authorized User’s successful utilization of Service Deliverables.

B. Support

Document the level of support, as available under the Contract, required by the Authorized User to utilize the Service Deliverables. This may include conversion support, legacy system integration, transition assistance, or other specialized consulting.

3. PROJECT EVENTS AND TASKS

Provide a high-level overview of project events and tasks to be accomplished to perform the required Services.

4. PERIOD OF PERFORMANCE

The period of performance for Services shall be [start date] to [end date] and may be extended, pursuant to and unless otherwise specified in the Contract.

5. PLACE OF PERFORMANCE

Tasks associated with this engagement will be performed at the Authorized User's location(s) in [redacted], Virginia, at Supplier's location(s) in [Wherever], or other locations as required by the effort.

6. MILESTONES, DELIVERABLES, PAYMENT SCHEDULE, AND HOLDBACKS

The following table identifies milestone events and deliverables, the associated schedule, any associated payments, any retainage amounts, and net payments.

Milestone Event	Deliverable	Schedule	Payment	Retainage	Net Payment
Project kick-off meeting	---	Execution + 5 days	---	---	---
Site survey	Site survey report	Execution + 10 days	---	---	---
Draft of requirements	Requirements draft	Execution + 20 days	\$10,000	\$1,000	\$9,000
Final documentation of requirements	Final requirements document	Execution + 20 days	---	---	---
Training	Training manual	Execution + 30 days	\$10,000	\$1,000	\$9,000
Customer training	---	Execution + 30 days	\$20,000	\$2,000	\$18,000
Project completion	Final report	Execution + 45 days	\$10,000	(\$4,000)	\$14,000

The total price for Services shall not exceed \$US XXX.

Supplier's invoices shall show retainage of ten percent (10%). Following completion of Services, Supplier shall submit a final invoice to the Authorized User, for the final milestone payment amount plus the total amount retained by the Authorized User.

Required Deliverables are as follows: [Provide a description of all Deliverables for this engagement.]

- i). Site survey report:
- ii). Requirements draft
- iii). Final requirements document
- iv). Training manual

In addition, Supplier will provide copies of any briefing materials, presentations, or other information developed to support this engagement.

Any inventions, combinations, machines, methods, formulae, techniques, processes, improvements, software designs, computer programs, strategies, specific computer-related know-how, data and original works of authorship discovered, created, or developed by Supplier, or jointly by Supplier and an Authorized User(s) in the execution of this Statement of Work shall be deemed Work Product. Configuration of software shall not be deemed Work Product. All provisions of the Contract regarding Work Product shall apply to this Statement of Work.

If travel expenses are not included in the fixed price of the Services, such expenses shall be reimbursed in accordance with Commonwealth of Virginia travel policies as published by the Virginia Department of Accounts (<http://www.dca.virginia.gov/procedures/adminservices/capp/pdfdocs/20335.pdf>).

7. TESTING AND ACCEPTANCE

A. User Acceptance Test Plan

Acceptance Criteria for Deliverables will be based on the Requirements set forth in Contract Exhibit A and Section 1 of this Statement of Work. Supplier shall design a written User Acceptance Test (UAT) Plan, acceptable to the Authorized User, which will ensure that all of the functionality required for the Deliverables been delivered. Supplier will provide the Authorized User with a detailed Acceptance check-list based on the Requirements. The UAT Plan, including the Acceptance check-list, will be incorporated as Attachment 1 to this Exhibit D-X.

B. Review / Testing of Deliverables

Following delivery / performance / completion of each Deliverable, on-site review/testing shall be conducted in accordance with the Acceptance test provisions of the Contract and the UAT Plan. The Authorized User shall provide Supplier with reasonable access to its premises, proper environmental and site conditions, any required test data in proper format, and the cooperation of its staff and any other contractors to assist Supplier during testing of the Deliverable.

C. Deliverable Acceptance Receipt

Each Deliverable provided by Supplier under this Statement of Work will be delivered to the Authorized User with a Deliverable Acceptance Receipt. This document will describe the Deliverable and provide the Authorized User's Project Manager with space to indicate if the Deliverable is accepted, rejected, or partially accepted. For partially accepted Deliverables, the Authorized User's Project Manager shall list on the Deliverable Acceptance Receipt any deficiencies that must be corrected in order for the Deliverable to be accepted by the Project Manager. The Project Manager will have five (5) days, or such longer period as mutually agreed to by the Supplier and the Authorized User in advance, from the completion of review/testing to provide Supplier with the signed Acceptance Receipt. If no material variances from the Requirements are identified within such time period, the Deliverable shall be deemed accepted by the Authorized User.

D. Correction of Defects

Correction of defects and Cure Period shall be in accordance with the applicable provisions of the Contract. Supplier shall not be required to correct minor imperfections or defects that do not materially impair the operation or quality of the Deliverable.

8. ASSUMPTIONS AND PROJECT ROLES AND RESPONSIBILITIES

This section contains assumptions specific to this engagement.

State assumptions here.

The following roles and responsibilities have been defined for this engagement:

(Sample Responsibility Matrix)

Responsibility Matrix	Supplier	Authorized User
-----------------------	----------	-----------------

Infrastructure – Preparing the system infrastructure that meets the recommended configuration defined in Section 2B herein		√
Server Hardware		√
Server Operating		√
Server Network Connectivity		√
Relational Database Management Software (Installation and Implementation)		√

9. SECURITY REQUIREMENTS

Provide (or reference as an Attachment) Authorized User's security requirements. 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 information by the Supplier or an employee or agent of Supplier shall constitute a breach of the Contract.

At a minimum, Supplier shall adhere to all of VITA's standard security requirements.

10. PERSONNEL [THIS SECTION IS OPTIONAL]

A. Key Personnel

Supplier acknowledges and agrees that Authorized User selected Supplier, and is entering into this Statement of Work, because of the special qualifications of certain of Supplier's personnel ("Key Personnel") identified below.

[Insert names and titles of Key Personnel]

Supplier's Key Personnel shall not delegate performance of their powers and responsibilities with respect to this SOW to another Supplier employee(s) without the prior written consent of the Authorized User. Further, Supplier shall not re-assign or transfer the Key Personnel to other duties or positions such that the Key Personnel are no longer available to provide the Authorized User with their expertise, experience, judgment, and personal attention, without the Authorized User's prior written consent to such re-assignment or transfer, which Authorized User shall not unreasonably withhold. Notwithstanding the foregoing, Supplier may replace Key Personnel without Authorized User's consent in the event any Key Personnel are no longer available due to death, illness or termination of employment with Supplier.

In the event Supplier requests that the Authorized User approve a re-assignment or transfer of the Key Personnel, or if Supplier must replace Key Personnel due to death, illness or termination of employment with the Supplier, the Authorized User shall have the right to review the qualifications of and approve or disapprove the proposed replacement(s) for the Key Personnel. Any such replacement shall have substantially equivalent or better qualifications than the Key Personnel being replaced, and shall perform the Services in accordance with the warranties set forth in the Contract. Any replacement personnel approved by Authorized User shall thereafter be deemed a Key Personnel for purposes of this SOW and this SOW shall be deemed amended to include such Key Personnel.

[Use only for time and materials SOWs] Supplier shall not charge Authorized User and Authorized User shall not pay for any proposed replacement Key Personnel while such replacement acquires the necessary skills and project knowledge to proceed with the Services required hereunder; however, such period of non-charge may not exceed twenty-eight (28) calendar days, but shall last for a minimum of fourteen (14) calendar days, after which time Authorized User shall pay for such Key Personnel if Supplier demonstrates to Authorized User's satisfaction that such replacement has acquired the necessary skills and project knowledge to proceed with the Services required hereunder.

B. Project Manager

Supplier shall designate one of the Key Personnel as Project Manager for providing the Services to the Authorized User. The Project Manager shall be familiar with Authorized User's business operations and objectives, and shall perform the Services in accordance with the warranties set forth in the Contract. The Project Manager will participate with Authorized User in periodic review sessions and will provide, at the Authorized User's request, detailed progress reports that identify completed tasks and the status of the remaining Services.

11. RISK MANAGEMENT

Risk is a function of the probability of an event occurring and the impact of the negative effects if it does occur. Negative effects include schedule delay, increased costs, and poor quality of deliverables.

Depending on the level of risk of this project, as assessed by the Authorized User, this section may contain any or all of the following components, at a level of detail commensurate with the level of risk:

- i). Identification of risk factors.
- ii). Initial risk assessment.
- iii). Risk management/mitigation plan, including determination of roles and responsibilities of the Authorized User and Supplier.
- iv). Risk monitoring plan, including frequency and form of reviews, project team responsibilities, steering and oversight committee responsibilities, documentation.

12. REPORTING

The following are examples of reporting requirements which may be included in the Statement of Work by the Authorized User. [Note: In an effort to help VITA monitor Supplier performance, it is strongly recommended that the Statement of Work include "Supplier Performance Assessments". These assessments may be performed at the discretion of the Authorized User and are not mandated by VITA.]

Weekly/Bi-weekly Status Update. The weekly/bi-weekly status report, to be submitted by Supplier to the Authorized User, should include: accomplishments to date as compared to the project plan; any changes in tasks, resources or schedule with new target dates, if necessary; all open issues or questions regarding the project; action plan for addressing open issues or questions and potential impacts on the project; risk management reporting.

Supplier Performance Self-Assessment. Within thirty (30) days of execution of the Statement of Work, the Supplier and the Authorized User will agree on Supplier performance self-assessment criteria. Supplier shall prepare a monthly self-assessment to report on such criteria. Supplier shall submit its self-assessment to the Authorized User who will have five (5) days to respond to Supplier with any comments. If the Authorized User agrees with Supplier's self-assessment, such Authorized User will sign the self-assessment and submit a copy to the VITA Supplier Relationship Manager.

Supplier Performance Assessments. The Authorized User may develop assessments of the Supplier's performance and disseminate such assessments to other Authorized Users of the Contract. Prior to dissemination of such assessments, Supplier will have an opportunity to respond to the assessments, and independent verification of the assessment may be utilized in the case of disagreement.

13. POINT OF CONTACT

For the duration of this project, the following project managers shall serve as the points of contact for day-to-day communication:

Authorized User: _____

Supplier: _____

This Statement of Work is issued pursuant to and, upon execution, shall become an incorporated exhibit to the Contract. In the event of conflict, the following order of precedence shall apply:

- i). The Contract
- ii). This Exhibit B
- iii). The User Acceptance Test Plan

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

Supplier
By: _____
(Signature)
Name: _____
(Print)
Title: _____
Date: _____

Authorized User
By: _____
(Signature)
Name: _____
(Print)
Title: _____
Date: _____

**EXHIBIT D
CONTRACT NUMBER VA-070622-ZELS
BETWEEN
VIRGINIA INFORMATION TECHNOLOGIES AGENCY
AND
ZELOS**

Exhibit D is hereby incorporated into and made an integral part of Contract Number VA-070622-ZELS

("Contract") between the Virginia Information Technologies Agency ("VITA" or "Commonwealth" or "State") and ZELOS ("Supplier").

In the event of any discrepancy between this Exhibit D and Contract No. VA-070622-ZELS, the provisions of Contract No. VA-070622-ZELS shall control.

Pricing Information

For the VITA effort:

	Estimated Hours	Dollars
Stage 1 Agency-Level Internal Control Assessment Due no later than September 15, 2007	1,100	\$200,200
Stage 2 – Process and Transaction Level Internal Control Assessment (Due no later than March 1, 2008)	1,250	\$227,500
Stage 3 – Corrective Action Plans (due no later than June 1, 2008)	250	\$45,500
Stage 4 – Internal Control Monitoring Process	20	\$3,640

The above costs are inclusive of all expenses except printing, are based on utilizing local staff that will not incur any travel expenses and include a 10% discount. Should travel expenses be incurred, they shall be billed and reimbursed in accordance with Commonwealth of Virginia Travel Regulations. We anticipate using VITA printers/copiers and supplies to meet printing requirements directly associated with this project.

Because we are familiar with VITA operations, we are able to offer an additional 10% discount to the above prices to VITA only for their ARMICS requirements.

Additional Orders:

The following hourly rates are in effect for any subsequent orders. A 5% discount is available for more than 40 hours of work effort and a 10% discount is available for more than 100 hours of work effort. Travel, lodging and per diem expenses will be billed in addition to these rates.

Labor Category	Hourly Rates
Project Manager	\$211
Senior Consultant	\$203
Consultant	\$178
Staff Analyst	\$71 (no discount)
Administrative Support	\$38 (no discount)

EXHIBIT E: CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

- i). No Federal appropriated funds have been paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal Contract, grant, loan, or cooperative agreement.
- ii). If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- iii). The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and Contracts under grants, loans and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature: _____

AM

Printed Name: _____

Austin Matthews

Organization: _____

Zelos

Date: _____

June 12, 2007