



Commonwealth of Virginia
Virginia Information Technologies Agency

SECTION 508 APPLICATION SERVICE PROVIDER SOLUTION

Date: June 20, 2011

Contract #: VA-080612-EEI

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

Contractor: EEI Communications
66 Canal Center Plaza
Suite 200
Alexandria, VA 22314

FIN: 54-1063402

Contact Person: Tamara Curtis
Phone: 703-683-0683
Email: tcurtis@eeicom.com

Term: July 3, 2011 – July 2, 2012

Payment: Net 30 days

For Additional Information, Please Contact:

Supply Chain Management
Virginia Information Technologies Agency

John Tackley
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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>



COMMONWEALTH *of* VIRGINIA

Sam A. Nixon, Jr.
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TDD VOICE -TEL. NO.
711

June 15, 2011

VIA EMAIL

TO: EEI Communications

RE: VA-080612-EEI

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 July 2, 2012.

Regards,

 Virginia Information Technologies Agency
John Tackley
On behalf of the
Commonwealth of
Virginia
Chester, VA 23836
2011.06.15 14:46:36
-04'00'

John Tackley
Supply Chain Management

c: contract file



Section 508 Application Service Provider Solution Contract

between

The Virginia Information Technologies Agency

on behalf of

The Commonwealth of Virginia

and

EI Communications

**SECTION 508 APPLICATION SERVICE PROVIDER CONTRACT
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SECTION 508 APPLICATION SERVICE PROVIDER CONTRACT

THIS Section 508 APPLICATION SERVICE PROVIDER 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 EEI Communications (Supplier), a corporation headquartered at 66 Canal Center Plaza, Suite 200 Alexandria, VA 22314 , to be effective as of (Effective Date will be VITA sign date).

1. PURPOSE

[The purpose statement should be a clear and concise description of what is to be provided under the contract. It should be more specific than the following generic (template) language.] This Contract sets forth the terms and conditions under which Supplier agrees to provide the Licensed Services, including access to the Application(s), and any related products and services to the Authorized Users and to any Application Users as required by such Authorized Users.

2. DEFINITIONS

A. Acceptance

Successful performance of the Services at the location designated in the applicable Statement of Work, or completed and successful Acceptance testing in conformance with the Requirements as determined by the Authorized User in the applicable Statement of Work. [add "in applicable order" at end if Requirements may vary by order].

B. Agent

Any third party independent agent of any Authorized User.

C. Application

The software programs in object code and other related data, including intellectual data, proprietary information and Documentation contained and applicable to the Licensed Services hosted and supported by Supplier under this Contract, as described in Exhibit A, including any Updates, enhancements, and replacements to the Application.

D. Application Users

Application Users shall include, as specified in the applicable order, employees of an Authorized User, independent contractors engaged by an Authorized User, or entities contracting with an Authorized User for services, as well as customers, suppliers, members of the general public, and other entities with whom an Authorized User may find it necessary or desirable to process or communicate electronically in pursuit of its business.

E. Authorized Users

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

F. Computer Virus

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

G. Confidential Information

Any confidential or proprietary information of a Party that is disclosed in any manner, including oral or written, graphic, machine readable or other tangible form, to any other Party in connection with or as a result of discussions related to this Contract or any order or SOW issued hereunder. Any information provided by an Application User which type of information is designated by the

Authorized User as "Confidential" or "Proprietary" or which information is otherwise reasonably identifiable as the confidential or proprietary information of the Application User providing such information.

H. Content

Any data, including the selection, arrangement and organization of such data, entered, uploaded to the Application, or otherwise provided to Supplier by Authorized User or by any Application User, and any software and related documentation, from whatever source, provided by Authorized User to Supplier in connection with this Contract.

I. Documentation

The Supplier's user manuals, training materials, guides, product descriptions, technical manuals, product specifications, supporting materials and Updates describing the Application, Licensed Services and Supplier Product provided to Authorized User, in printed and/or electronic form.

J. Electronic Self-Help

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

K. Licensed Services

The operation of the Application and the necessary operating system software, hardware and utilities on Supplier's host computer system, furnishing Supplier Product to Application Users, storing Content and making the Application, Content, and Supplier Product available to Application User(s) via the Web Site, as more fully described in Exhibit A.

L. Party

Supplier, VITA, or any Authorized User.

M. Requirements

The functional, performance, operational, compatibility, Acceptance testing criteria and other parameters and characteristics of the Licensed Services and Application as set forth in the applicable Statement of Work, Exhibit A and such other parameters, characteristics, or performance standards that may be agreed upon in writing by VITA and Supplier or the Parties to an order issued hereunder. [In case of conflict, see the Entire Contract clause for order of precedence.]

N. Statement of Work (SOW)

Any document in substantially the form of Exhibit D (describing the deliverables, due dates, assignment duration and payment obligations for a specific project, engagement, or assignment for which Supplier shall be providing the Licensed Services, including access to the Application(s), to an Authorized User and its designated Application Users) which, upon signing by both Parties, shall be deemed a part of this Contract..

O. Supplier

Includes any individual who is an employee, agent, sub-contractor, or independent contractor of Supplier to provide Licensed Services and/or any products or services related thereto under this Contract.

P. Supplier Product

Supplier's proprietary reports, information and data made available to Authorized User and its Application Users as part of the Licensed Services.

Q. Update

As applicable, any update, modification or new release of the Application, Documentation or Supplier Product that Supplier makes generally available to its customers at no additional cost.

R. VITA

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

S. Web Site

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

3. TERM AND TERMINATION

A. Contract Term

This Contract is effective and legally binding as of the Effective Date and, unless terminated as provided for in this section, shall continue to be effective and legally binding for a period of three(3) years. VITA may, in its sole discretion, extend this Contract for up to two (2) additional one (1) year periods after the expiration of the initial three (3) year period. VITA will issue a written notification to the Supplier stating the extension period not less than thirty (30) days prior to the expiration of any current term. Performance of an order or SOW may survive the expiration of the term of this Contract, in which case all terms and conditions required for the operation of such order or SOW shall remain in full force and effect until Supplier has completely rendered the Licensed Services pursuant to such order or SOW.

B. Termination for Convenience

VITA may terminate this Contract, in whole or in part, or any order or SOW issued hereunder, in whole or in part, or an Authorized User may terminate an order or SOW, in whole or in part, upon not less than thirty (30) days prior written notice at any time for any reason. 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 prompt written notice to VITA if federal debarment proceedings are instituted against Supplier. Supplier shall submit for resolution any contractual dispute or order dispute to VITA, or any dispute regarding an order terminated by an Authorized User to such Authorized User, according to the terms of the Dispute Resolution Section of 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 or SOW issued hereunder, in whole or in part, or an Authorized User may terminate an order or SOW, in whole or in part, for breach and/or default of Supplier. Supplier shall be deemed in breach and/or default in the event that Supplier fails to meet any material obligation set forth in this Contract or in any order or SOW issued hereunder..

If VITA deems the Supplier to be in breach and/or default, VITA shall provide Supplier with notice of breach and/or default and allow Supplier fifteen (15) days to cure the breach and/or default.. If Supplier fails to cure the breach as noted, VITA may immediately terminate this Contract or any order or SOW issued hereunder, in whole or in part. If an Authorized User deems the Supplier to be in breach and/or default of an order or SOW, such Authorized User shall provide Supplier with notice of breach and/or default and allow Supplier fifteen (15) days to cure the breach and/or default. If Supplier fails to cure the breach and/or default as noted, such Authorized User may immediately terminate its order or SOW, in whole or in part. Any such termination shall be deemed a Termination for Breach or Termination for Default. In addition, if Supplier is found by a court of competent jurisdiction to be in violation of or to have violated 31 USC 1352, or if Supplier becomes a party excluded from Federal Procurement and Nonprocurement Programs, VITA may immediately terminate this Contract, in whole or in part, for breach. VITA shall provide written

notice to Supplier of such termination, and Supplier shall provide prompt written notice to VITA if Supplier is charged with violation of 31 USC 1352 or if federal debarment proceedings are instituted against Supplier.

D. Termination for Non-Appropriation of Funds

All payment obligations 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 any order or SOW, in whole or in part, or an Authorized User may terminate its order or SOW, in whole or in part, for those goods or services for which funds have not been appropriated. Written notice will be provided to the Supplier as soon as possible after legislative action is completed.

E. Effect of Termination

Upon termination, neither the Commonwealth, nor VITA, nor any Authorized User shall have any future liability except for Licensed Services rendered or Application components delivered by Supplier prior to the termination date.

In the event of a Termination for Breach or Termination for Default, the affected Authorized User(s) shall not be liable for any cost related to the terminated Contract, order, SOW, or portion thereof. Supplier shall accept return of any products or software provided to the affected Authorized User(s), and Supplier shall refund any monies paid by any affected Authorized User for Licensed Services not accepted by such Authorized User pursuant to the Contract, order, SOW, or portion thereof terminated for breach and/or default. All costs of de-installation and return of product or software shall be borne by Supplier.

Termination by Supplier will not be considered.

4. DESCRIPTION OF LICENSED SERVICES

During the term of any order issued pursuant to this Contract, Supplier hereby agrees to host the Application(s) listed and described in Exhibit A and specified in such order by the ordering Authorized User on servers owned, operated, housed, and maintained by Supplier and shall make such Application(s) available to Authorized User's designated Application Users through the Internet.

Supplier has acquired any and all license rights in the Application(s) necessary and appropriate for Supplier to provide the Licensed Services as listed and described in Exhibit A for all Authorized Users. Supplier hereby grants each ordering Authorized User and its Application Users a non-exclusive, transferable, worldwide license to access and use by any method the Application during the term of the applicable order issued pursuant to this Contract. The license fee for the rights shall be as set forth in Exhibit B, and shall apply regardless of access mode.

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.

Notwithstanding any other provision or other unilateral license terms which may be issued by Supplier after the Effective Date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of an order for Licensed Services, including access to the Application(s), or the fact that such other agreement may be presented to an Authorized User or its Application Users at the time of accessing the Application(s) ("click wrap"), the terms and conditions set forth herein shall supersede and govern licensing and use of all products and services hereunder.

5. SUPPLIER RESPONSIBILITIES

A. Standard Application Responsibilities

Unless otherwise indicated in Exhibit A, Supplier shall acquire and maintain, at no charge to Authorized User, the hardware and software required to host the Application(s). The hardware and software on which the Application(s) is hosted will be maintained in good operating condition, consistent with or exceeding generally accepted industry practices and procedures. In addition:

- i). Supplier shall maintain sufficient hardware capacity to satisfy the technical requirements and the bandwidth and required storage capacity indicated in Exhibit A.
- ii). Supplier shall be responsible for all telecommunication connections from the server hosting the Application to the Internet.
- iii). Supplier may collect user-specific data only as necessary to provide the Licensed Services ordered by an Authorized User. No information regarding any Authorized User or any Application User shall be disclosed, provided, rented or sold to any third party for any reason unless required by law or regulation or by an order of a court of competent jurisdiction. This obligation shall extend beyond the term of the Contract.
- iv). The Application will be made available to Authorized User and/or designated Application Users, as specified in the applicable SOW, twenty-four (24) hours a day, seven (7) days a week ("Uptime") less Excusable Downtime. For the purposes of this Contract, "Excusable Downtime" is defined as that period of time when the Licensed Services are not available to Authorized User or its Application Users due to scheduled network, hardware or service maintenance and/or upgrades. Except in cases of emergency, Authorized User shall be provided a two (2) business day advance notification of such maintenance and/or upgrade. In cases of emergency, Supplier will use its best efforts to notify Authorized User of a planned Downtime as soon as practicable. Maintenance or upgrades are not to exceed thirty-six (36) hours in duration in a single month and cannot occur Monday through Friday, between the hours of 6:00 a.m. and 8:00 p.m. Eastern Time.
- v). Excusable Downtime shall not include (i) an electronic hardware failure, (ii) a failure in the Supplier's Application, (iii) an electric utility failure at Supplier's facility where the Application is hosted, or (iv) a network failure up to, but not including, the interconnection point of Supplier's network to the public switched telephone network.
- vi). Supplier guarantees the Application will be available for use at least ninety-nine percent (99%) of the total time during each month, excluding Excusable Downtime.
- vii). If non-Excusable Downtime exceeds the parameters listed above, Supplier will credit to Authorized User the total recurring fees that would otherwise be owed by Authorized User under this Contract during the month of such failure. Such credit will be issued in the month immediately following the failure.
- viii). Supplier shall be required to back up Content on a daily basis and shall retain the backed-up Content on a separate and dedicated secure server. Only Content supplied by or to an Authorized User may reside on such server. Authorized User reserves the right to request a copy of such back-up Content at any time.

In addition, and at no additional cost to Authorized Users, Supplier shall provide access to additional Updates, features, and functionalities of the Application as are provided by Supplier to other customers of Supplier who require functionality similar to that of the Application provided to Authorized Users. All such additional features and functionality, where reasonably necessary, shall be accompanied by updated Documentation, whether in hard copy format or distributed electronically via email or the Supplier website. Notwithstanding the provisions of this Section and except as agreed to in writing by VITA and Supplier, nothing in the Contract shall oblige Supplier to undertake any modifications to the Application, and all such modifications are at Supplier's sole discretion whether suggested by an Authorized User or another party.

B. Ancillary Responsibilities

Supplier shall, throughout the term of this Contract, make available such resources, including Supplier personnel, as are reasonably required to: (i) train designated Authorized User personnel in the use of the Application; (ii) develop modifications to the Application as agreed by VITA and Supplier in any exhibit hereto or as agreed in any order issued hereunder; and (iii) otherwise support the Application as provided under this Contract and any exhibits hereto or as agreed in any order issued hereunder.

C. Import/Export

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

6. AUTHORIZED USER RESPONSIBILITIES

Unless otherwise agreed and as applicable, Authorized User or its Agent, or an Application User, will be responsible for input of Content into Supplier's Application and Authorized User or its Agent will be responsible for keeping said Content current and accurate. Supplier will have no responsibility for assisting Authorized User in creating, modifying or inputting the Content, unless specified in Exhibit A.

If Supplier issues unique USERID's and passwords to an Application User:

- i). Authorized User is responsible for protecting said passwords and for any authorized and unauthorized use made of the passwords. Authorized User will fully cooperate with law enforcement authorities in the detection and prosecution of illegal activity related to unauthorized use of the Licensed Services.
- ii). Authorized User shall have the right to add, change access for, or delete USERID's at its sole discretion.
- iii). Upon notification by Authorized User of an Application User's deletion, Supplier shall remove said Application User from its server within one (1) hour of receipt of such notification. If Supplier fails to make such a deletion, Authorized User shall not be held liable for any charges or damages incurred due to use of the unauthorized USERID.

7. CONTENT SECURITY

Supplier shall provide a secure environment for Content and any hardware and software, including servers, network and data components, to be provided by Supplier as part of its performance under this Contract in accordance with best industry practices in order to prevent unauthorized access to and use or modification of, and to otherwise protect, the Application and Content. Supplier shall, at a minimum, implement the following procedures designed to protect the security of Content:

- i). User identification and access controls designed to limit access to Content to Application Users;
- ii). External connections to the World Wide Web which will have appropriate security controls including industry standard intrusion detection and countermeasures that will detect and terminate any unauthorized activity prior to entering the firewall maintained by Supplier;
- iii). Industry standard firewalls regulating all data entering Supplier's internal data network from any external source which will enforce secure connections between internal and external systems and will permit only specific types of data to pass through;
- iv). Industry standard encryption techniques which will be used when Content is transmitted by Supplier on behalf of Authorized User;
- v). Physical security measures, including securing all Content on a secure server, in locked data cabinets within a secure facility. Access to facilities housing the Application and Content

restricted to only allow access to personnel and agents of Supplier who have a need to know in connection with operation and support of the Application;

- vi). Supplier's maintaining and following a disaster recovery plan designed to maintain Application User access to the Application and Licensed Services, and to prevent the unintended destruction of Content; and which plan, unless otherwise specified herein, shall provide for daily back-up of Content and archival of such Content at a secure facility. The disaster recovery plan shall provide for and be followed by Supplier such that in no event shall the Application, Licensed Services, Supplier Product and/or Content be unavailable to any Application User for a period in excess of twenty-four (24) hours;
- vii). Regular training for Supplier personnel regarding the security and data recovery programs referenced in this Section;
- viii). Regular testing of the systems and procedures outlined in this Section; and
- ix). Audit controls that record and monitor Application and Licensed Services activity continuously.

Failure by Supplier to use best industry practices in fulfilling these security obligations shall eliminate any limitation of Supplier's liability to VITA, Authorized Users, or third parties, including the limitation on lost profits and consequential damages.

8. PROPRIETARY RIGHTS

A. Supplier's Proprietary Rights

Except as otherwise stated herein, as between VITA and Supplier, the Licensed Services (including without limitation, the Application and Updates, and Supplier Product, except to the extent that Supplier Product contains Content) and Documentation are and shall remain the sole and exclusive property of Supplier and its licensors. All modifications, enhancements, Updates, and translations of the Licensed Services shall be deemed a part thereof.

B. Authorized User Requirements and License Restrictions

Except as otherwise provided in this Contract or as provided by law:

- i). Authorized User will use commercially reasonable efforts to ensure that Application Users comply with all of the terms and conditions hereof.
- ii). Authorized User shall not reverse engineer, decompile, disassemble, or otherwise attempt to derive source code or other trade secrets from any of the software comprising or in any way making up a part of the Application.
- iii). Authorized User shall not directly or indirectly copy or reproduce all or any part of the Application, whether electronically, mechanically or otherwise, in any form including, but not limited to, the copying of presentation, style or organization, without prior written permission from Supplier; provided, however, an Authorized User may reproduce and distribute any Application output generated from the relevant Authorized User Content, and an Application User may reproduce and distribute any Application output generated pursuant to the permissions set forth in the applicable Authorized User's order.
- iv). Authorized User shall not rent, lease, sublicense, resell for profit, loan, distribute, network or modify the Application or Supplier Product or any component thereof, provided as part of the Licensed Services, except as otherwise authorized by Supplier; however, an Authorized User may reproduce and distribute any Application output (e.g., reports) generated by Authorized User using the Application, and an Application User may reproduce and distribute any Application output generated by the Application User using the Application and pursuant to the permissions set forth in the applicable Authorized User's order.
- v). Authorized User shall only use the Application and Supplier Product in the normal course of business, in connection with, and as part of, the Licensed Services.

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- vi). Authorized User shall not attempt to gain unauthorized access to the Application or Licensed Services, other user accounts, computer systems or networks connected to the Licensed Services;
 - vii). Authorized User shall not remove, obscure or alter Supplier's proprietary notices, disclaimers, trademarks, or other proprietary rights notices of any kind affixed or contained in the Application or Licensed Services or any written or electronic report, output or result generated in connection with the Licensed Services;
 - viii). Authorized User shall take reasonable care not to, and shall not intentionally or knowingly, use the Application to post, transmit, distribute, store or destroy any information: (i) in violation of any applicable law, statute, ordinance or regulation; (ii) in a manner that shall infringe the intellectual property rights of others; (iii) that is defamatory or trade libelous, or (iv) that contains any Computer Viruses.
 - ix). Authorized User shall not use the Application or Licensed Services for any illegal, obscene, offensive or immoral purpose.

C. Authorized User Proprietary Rights

Except as otherwise stated herein and with the exception of any applicable third-party rights, Content is and shall remain the sole and exclusive property of Authorized User, including all applicable rights to patents, copyrights, trademarks, trade secrets or other proprietary property rights thereto. Additionally, all right, title and interest in and to any Content relating to Authorized User's business shall remain the property of Authorized User, whether or not supplied to Supplier or uploaded into the Application. Nothing in this Contract shall be construed as conveying any rights or interest in Content to Supplier. Upon termination of an order issued hereunder, Supplier agrees to either provide the Content to the applicable Authorized User, or, at such Authorized User's request, certify in writing that said Content in all formats, have been destroyed.

9. TRANSITION ASSISTANCE

Upon execution of an order or SOW pursuant to this Contract, Supplier and Authorized User will develop a transition plan ("Transition Plan") detailing each Party's respective tasks in connection with the orderly transition and migration of (i) all Content stored by Supplier pursuant to such order to Authorized User's archive and/or to a system or application maintained by Authorized User or a third party application service provider and, if applicable and agreed in writing by Authorized User and Supplier, (ii) the Application and Licensed Services to Authorized User or a third party service provider, such transition and migration to occur upon termination or expiration of the Contract or the applicable order.

At a minimum, the Transition Plan shall provide that upon expiration or termination of this Contract or the applicable order for any reason, Supplier will return all Content in its possession to the Authorized User in a format accessible without the use of Supplier's Application and, at Authorized User's option, continue to provide Licensed Services for up to six (6) months after the date of expiration or termination in order to facilitate Authorized User's transition to a new service provider and Supplier shall provide such reasonable assistance as may be requested by Authorized User to effectuate such transition.

In any event, regardless of whether a Transition Plan has been developed or implemented, Supplier shall, within thirty (30) days of expiration, completion, or termination of this Contract or any order issued hereunder, provide to all affected Authorized Users a complete set of all Content provided to Supplier by the relevant Authorized User and/or its Application Users and stored by the Application on behalf of such Authorized User. Supplier's failure to do so shall constitute a material breach of this Contract and, in addition to the remedies set forth in this Contract, VITA or the affected Authorized User may exercise all available rights and remedies under law and equity.

The obligations set forth in this section and in any Transition Plan developed pursuant to an order issued pursuant to this Contract 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, Supplier shall perform such obligations at no charge or fee to VITA or any Authorized User; otherwise,

Supplier shall perform such obligations at the hourly rate or a charge agreed upon by Supplier and VITA or an Authorized User.

10. FEES, ORDERING AND PAYMENT PROCEDURE

A. Fees and Charges

As consideration for the Licensed Services, including the rights of the Authorized User and its Application Users to access and use the Application(s) and any additional products and services provided hereunder, an Authorized User shall pay Supplier the fee(s) set forth on Exhibit B, which lists any and all fees and charges. The fees and any associated discounts shall be applicable throughout the term of this Contract; provided, however, that in the event the fees or discounts apply for any period less than the entire term, Supplier agrees that it shall not increase the fees more than once during any twelve (12) month period, commencing at the end of year one (1). No such increase shall exceed the lesser of three percent (3%) or the annual increase in the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, All Items, Not Seasonally Adjusted, as published by the Bureau of Labor Statistics of the Department of Labor (<http://www.bls.gov/cpi/home.htm>), for the effective date of the increase compared with the same index one (1) year prior. Any such change in price shall be submitted 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.

B. Application Demonstration

At the request of any Authorized User, Supplier shall perform a demonstration of its Application and the Licensed Services at such Authorized User's location and at no charge.

C. Statement of Work (SOW)

An SOW shall be required for any Licensed Services ordered by an Authorized User pursuant to this Contract. All Licensed Services shall be provided in accordance with the Requirements and service levels set forth herein or in the applicable SOW and at the rates set forth in Exhibit B herein. An SOW shall be of a fixed price type but may contain a cost-reimbursable line item(s) for pre-approved travel expenses which shall be reimbursable by the Authorized User in accordance with the then-current per diem amounts as published by the Virginia Department of Accounts at http://www.doa.virginia.gov/Admin_Services/CAPP/CAPP_Topics/20335_Meals_Lodging_102007.pdf or a successor URL(s).

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

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 such SOW.

D. Ordering

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

Supplier is required to accept any order placed by an Authorized User through the eVA electronic procurement website portal (eVA Home Page). 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 Licensed Services and products or services related thereto and 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.

E. Invoice Procedures

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

- i). Dates during which Supplier provided the Licensed Services to the Authorized User
- ii). Quantity, charge and extended pricing for each Licensed Service
- iii). Applicable order 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.

F. Purchase Payment Terms

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

In the event an Authorized User does not receive or have access to the applicable Documentation, payment shall not be due until the required Documentation is provided.

If there are any disputed items, an 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 the Authorized User, provide the 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 thirty (30) days after Acceptance.

G. 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 and contact information for submission is available at <http://www.vita.virginia.gov/uploadedFiles/SCM/SupplierReportofSalesTemplate.xls> under "Supplier Reporting". The report shall be submitted via electronic mail to the VITA IFA Coordinator and shall report total sales (defined for purposes of this report as all invoiced payments received by Supplier from all Authorized Users) for this Contract during the preceding month. Supplier shall be responsible for submitting the monthly report of sales even if Supplier has had no sales (i.e., a \$0.00 total sales value) for the reporting period.

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 after submitting the "Supplier Monthly Report of Sales". The IFA payment is equal to two percent (2%) of total sales reported during the relevant month.

The IFA payment shall be submitted to VITA, Attention VITA Controller in the form of a check or electronic payment, made payable to the Treasurer of Virginia. The IFA payment shall reference this Contract number, "report amounts", and "report period" and shall be accompanied by a copy of the relevant "Supplier Monthly Report of Sales". Contact information for submission of IFA payments is available at <http://www.vita.virginia.gov/uploadedFiles/SCM/SupplierReportofSalesTemplate.xls> under "Supplier Reporting".

Failure to comply with reporting, payment and distribution requirements of this section may result in default of the Contract.

H. Small Business 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 Businesses as subcontractors and second-tier suppliers under this Contract.

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

In addition, by the 10th day of every month, Supplier shall submit to VITA the Small Business Subcontracting Monthly Report (template to be provided). 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 small businesses. Supplier shall submit the report to SWaM@vita.virginia.gov.

11. TRAINING AND DOCUMENTATION

The Licensed Service fee includes all costs for the training of one (1) Authorized User trainer at an Authorized User's designated location on the use and operation of the Application, including instruction in any necessary conversion of such Authorized User's Content and data for such use. Pursuant to a mutually agreed upon schedule, Supplier shall provide sufficient personnel experienced and qualified to conduct such training. Available optional training, and applicable pricing and discounts, are described in Exhibit B.

Supplier shall deliver to any Authorized User, three (3) complete hard copies or electronic media of Documentation, as requested by such Authorized User. Any Authorized User shall have the right, as part of the license granted herein, to make as many additional copies of the Documentation, in whole

or in part, for its own use as required. This Documentation shall include, but not be limited to, overview descriptions of all major functions, detailed step-by-step operating procedures for each screen and activity, and technical reference manuals. Such Documentation shall be revised to reflect any modifications made by Supplier to the Application. Any Authorized User shall have the right, as part of the license granted herein, at its own discretion, to take all or portions of the Documentation, modify or completely customize it in support of the authorized use of the Application and may duplicate such Documentation and include it in such Authorized User's document or platform. All Authorized Users shall continue to include Supplier's copyright notice.

12. COMMENCEMENT AND ACCEPTANCE OF LICENSED SERVICES

A. Licensed Services Commencement Date

The Supplier shall begin delivery of Licensed Services on the date requested by the Authorized User and agreed to by the Supplier in an order. An Authorized User may delay the Licensed Services commencement date by notifying the Supplier at least ten (10) days before the scheduled Licensed Services commencement date.

B. Acceptance

The Application shall be deemed accepted when the Authorized User reasonably determines that such Authorized User and its Application Users can successfully access and use all functionalities of the Application which Supplier is required to provide to such Authorized User and its Application Users. Such Authorized User agrees to complete Acceptance testing within ten (10) days after receiving written notice from Supplier of the ability of such Authorized User and its Application Users to access the Application, or within such other period as set forth in the applicable order. After such period, unless Authorized User notifies Supplier to the contrary, the Application shall be deemed accepted. Supplier agrees to provide to such Authorized User such assistance and advice as such Authorized User may reasonably require, at no additional cost, during such Acceptance testing, other than pre-approved travel expenses incurred which will be reimbursable by such Authorized User at the then current per diem amounts set forth by the Virginia Department of Accounts and published at: http://www.doa.virginia.gov/Admin_Services/CAPP/CAPP_Topics/20335_Meals_Lodging_102007.pdf or a successor URL(s). Authorized User shall provide to Supplier written notice of Acceptance upon completion of successful Acceptance testing. Should Authorized User fail to provide Supplier written notice of successful or unsuccessful Acceptance testing within five (5) days following the Acceptance testing period, the Service shall be deemed Accepted.

C. Cure Period

If during the Acceptance test period, Authorized User is unable to access the licensed functionalities of the Application, Supplier shall provide Authorized User with such access, and such Authorized User's Application Users with their required access, within seven (7) days of written notice of inability to access, or as otherwise agreed between the Authorized User and Supplier in the applicable order. Should Supplier fail to provide access to the licensed functionalities of the Application, such Authorized User may, in its sole discretion: (i) reject the Application in its entirety and recover amounts previously paid hereunder; (ii) issue a "partial Acceptance" of the Application access with an equitable adjustment in the price to account for such deficiency; or (iii) conditionally accept the applicable Application access while reserving its right to revoke Acceptance if timely correction is not forthcoming.

If the Authorized User and its Application Users are unable to access the licensed functionalities of the Application after a second set of acceptance tests, Supplier shall be deemed in default of the order. In the event of such default, the Authorized User may, at its sole discretion, terminate its order, in whole or in part, for the Licensed Services to be provided thereunder by Supplier. Supplier shall accept return of any products provided to such Authorized User, and Supplier shall refund any monies paid by such Authorized User pursuant to the order, or portion thereof terminated. All costs of de-installation and return of product shall be borne by Supplier. This

remedy is in addition to and not in lieu of any other remedies of the Authorized User set forth herein or available at law or in equity.

13. GENERAL WARRANTY

Supplier warrants and represents to VITA the Licensed Services and the Application described in Exhibit A as follows:

A. Ownership

Supplier has the right to provide the Licensed Services, including access by any Authorized User and its Application Users to the Application, without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party.

B. Licensed Services, Application, and Documentation

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

- i). The Application is pursuant to a particular Request for Proposal ("RFP"), and therefore such Application 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 Application and is aware that all Authorized Users are relying on Supplier's skill and judgment in providing the Licensed Services, including the Application and Supplier is possessed of superior knowledge with respect to the Application and is aware that all Authorized Users are relying on Supplier's skill and judgment in providing the Licensed Services, including the Application;
- ii). Supplier represents and warrants (i) that it shall perform the Licensed Services in conformity to the specifications set forth in Exhibit A in a professional and workmanlike manner and (ii) that the Licensed Services shall not infringe any third party proprietary rights including (without limitation) any trademark, trade name, trade secret, copyright, moral rights, patents or similar intellectual property rights.
- iii). Supplier warrants that the Application and Licensed Services will conform in all material respects to the Requirements set forth in this Contract and any order issued hereunder, and the applicable specifications and Documentation, not including any post-Acceptance modifications or alterations to the Documentation which represent a material diminishment of the functionality of the Application, Licensed Services or Supplier Product; and that such Application and Licensed Services are compatible with and will operate successfully when used on the equipment in accordance with the Documentation and all of the terms and conditions hereof.
- iv). The Application provided hereunder is at the current release level unless an Authorized User specifies an older version in its order;
- v). No corrections, work arounds or future Application releases provided by Supplier shall degrade the Application, cause any other warranty to be breached, or require an Authorized User to acquire additional hardware equipment or software;
- vi). Supplier warrants that all post-Acceptance Updates, changes, alterations or modifications to the Application, Licensed Services and Documentation by Supplier will be compatible with, and will not materially diminish the features or functionality of the Application, Licensed Services and/or Supplier Product when used on the equipment in accordance with the Documentation and all of the terms and conditions hereof.
- vii). Supplier warrants that the Documentation and all modifications or amendments thereto which Supplier is required to provide under this Contract shall be sufficient in detail and content to allow a user to understand and utilize fully the Application without reference to any other materials or information.

C. Malicious Code

Supplier has used its best efforts through quality assurance procedures to ensure that there are no Computer Viruses or undocumented features in the Application accessed by an Authorized

User or its Application Users; and the Application does not contain any embedded device or code (e.g., time bomb) that is intended to obstruct or prevent any use of or access to the Application by any Authorized User or its Application Users. Notwithstanding any rights granted under this Contract or at law, Supplier hereby waives under any and all circumstances any right it may have or may hereafter have to exercise Electronic Self-Help. Supplier agrees that an Authorized User may pursue all remedies provided under law in the event of a breach or threatened breach of this Section, including injunctive or other equitable relief.

D. Access to Product and Passwords

Supplier warrants that the Application and Licensed Services do not contain disabling code (defined as computer code designed to interfere with the normal operation of the Licensed Services or hardware or software of any Authorized User or its Application Users) or any program routine, device or other undisclosed feature, including but not limited to, viruses, worms, trojan horses, or other malicious code which is specifically designed to permit unauthorized access, delete, disable, deactivate, interfere with or otherwise harm the Application, Licensed Services or the hardware or software of any Authorized User or its Application Users. In addition, Supplier warrants that Authorized User and its Application Users will be provided commercially reasonable uninterrupted access to the Application and that Supplier will not cancel or otherwise terminate access to the Application by disabling passwords, keys or tokens that enable continuous use of the Application by the Authorized User and its Application Users during the term of this Contract or any order issued hereunder. Supplier further warrants that the Application and Licensed Services are compatible with and will operate successfully on the equipment.

E. Open Source

Supplier will notify all Authorized Users if the Application contains any Open Source code and identify the specific Open Source License that applies to any embedded code dependent on Open Source code, provided by Supplier under this Contract.

F. Supplier's Viability

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

G. Supplier's Past Experience

Supplier warrants that Supplier has provided the Licensed Services to a non-related third party customer of Supplier without significant problems due to the Licensed Services, the Application, 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.

14. RECORDS AND AUDIT

Supplier shall maintain accurate records and other evidence pertaining to the costs and expenses for all Licensed Services performed/delivered under any order issued pursuant to this Contract in support of its charges invoiced to Authorized User. The records will be to the extent and in such detail as will properly reflect all direct and indirect costs associated with such order. In addition, Supplier shall maintain accurate records of the Licensed Services, including but not limited to, the "Uptime" and "Downtime" as set forth in the Supplier Responsibilities Section. Authorized User shall have the right, at any reasonable time during regular business hours after giving reasonable advance notice, to inspect and audit the records applicable to its order(s). Supplier shall preserve such records for five (5) years after termination/completion of the Licensed Services agreed to under this Contract or any order issued hereunder.

15. APPLICATION AND LICENSED SERVICES SUPPORT

At any time during the term of any order issued pursuant to this Contract, Supplier shall provide the following Application Services (including unlimited telephonic support and all necessary travel and labor) without additional charge to any Authorized User in order to ensue such Authorized User and its Application Users are able to access and use the Application in accordance with the Requirements.

A. Coverage

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

B. Service Levels

Within twelve (12) hour after a request from an Authorized User, Supplier will respond to such request for support of Licensed Services regarding the Application and Licensed Services, including Application, Supplier Product and Documentation in accordance with the procedures identified below. In each case, Authorized User may describe the problem by telephone, facsimile or electronic mail or via a web site provided by Supplier. Supplier shall use its best efforts/commercially reasonable efforts to meet Response Time and Resolution Time and other obligations under this Contract.

Severity (Sample Problem)	Response Time	Resolution Time (Fix/work-around within)	Internal Escalation Procedure
1 (Application down)		Twenty four (24) hours	
2 (certain processing interrupted or malfunctioning but Application is able to process)		Forty Eight (48) hours	
3 (minor intermittent malfunctioning, Application able to process data)		Five (5) days	

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

C. Application Evolution

Should Supplier merge or splinter the Application previously provided to any Authorized User, such action on the part of Supplier shall not in any way result in any Authorized User being charged additional license or support fees in order to access the Application, to enable its Application Users to access the Application, or to receive enhancements, releases, upgrades or support for the Application.

16. SERVICE LEVELS AND REMEDIES

Supplier's failure to make the Licensed Services Available to Authorized User and its Application Users at least 99% of the time in any given month during the term of such Authorized User's order, excluding scheduled maintenance, shall be deemed a service level default ("Service Level Default") and Authorized User may obtain the non-exclusive remedies set forth below. For purposes of this Contract, "Available" means that Authorized User and its Application Users are able to access all features and functions of the Application and Licensed Services required by Authorized User, including but not limited to the Application and Supplier Product.

Service Level (Monthly)	Service Level Credit (Prorated Fees – Monthly)
Above 99%	0
98.99 – 97%	10%
96.99 – 95%	25%
94.99 – 93%	50%
Below 93%	100% and, at Authorized User's sole discretion, termination of such Authorized User's order

In the event Authorized User is eligible for a 100% Service Level Credit under this Section during any given month of the term of such Authorized User's order, Authorized User may terminate such order without penalty upon written notice to Supplier and, in addition to the remedies available under this Section, receive any additional remedies set forth in the Contract.

Credits shall be applied against the next invoice. In the event a Service Level Default occurs after VITA or an Authorized User has given notice of termination pursuant to the Term and Termination section of this Contract or due to non-appropriation of funds, or Authorized User has made final payment to Supplier for the Application and Licensed Services and no further invoices shall issue as a result, Supplier shall refund to Authorized User the amount of the appropriate Service Level Credit due for the period of default.

A. Reporting

Once each calendar month during the term of an order issued pursuant to this Contract, Supplier shall provide Authorized User with a written report that shall contain information with respect to the performance of the Application and Licensed Services, unless otherwise agreed upon by the Parties, and in conformity with the reporting Supplier provides to its other customers utilizing an application and licensed services identical or similar to the Application and Licensed Services provided to the Authorized User. Representatives of Supplier and Authorized User shall meet as often as may be reasonably requested by either Party, but no less often than once each calendar quarter, to review Supplier's performance of Licensed Services and the performance of the Application and to discuss technical plans, financial matters, system performance, service levels and for any other matters related to this Contract or such Authorized User's order that may be reasonably requested by either Supplier or Authorized User. Authorized User may independently audit the report at its expense no more than two (2) times annually.

B. Failure to Meet Service Level Commitments

In the event that such Application fails to meet the Service Levels specified herein, Supplier will: (i) promptly replace the Application with an Application that conforms to this Contract and such specifications; (ii) repair the Application, at Supplier's expense, so that it conforms to this Contract and such specifications; or (iii) refund to Authorized User all fees paid for the Application and the Licensed Services after the failure of the Application to meet the Service Levels. In the event Supplier fails to comply with these remedies, Authorized User may exercise all available rights and remedies under law and equity.

C. Escalation Procedures

[To be provided by Supplier]

17. ESCROW AGREEMENT

[Request a copy of the supplier's escrow agreement as part of supplier's proposal. Be sure that it includes source code and not object code, and is otherwise consistent with this section. NOTE: SUPPLIER MUST PROVIDE AN EXECUTED COPY OF THE ESCROW AGREEMENT PRIOR TO EXECUTION OF THIS CONTRACT.] Supplier shall maintain copies of all Application source code and related technical and user Documentation, in English, in an escrow account, and shall maintain with escrow agent the executed agreement attached hereto as Exhibit C-1 (Application Escrow

Agreement). Supplier shall maintain, in a separate escrow account for each Authorized User, copies of all Content provided by or to such Authorized User in a format accessible without use of Supplier's Application (Content Escrow Account(s)). A template for the escrow agreement providing for any such Content Escrow Account is attached hereto as Exhibit C-2. VITA acknowledges that, prior to the Effective Date of this Contract, Supplier delivered to VITA and VITA received a copy of the executed Application Escrow Agreement naming the Commonwealth of Virginia as a third party beneficiary. VITA has reviewed Application Escrow Agreement to ensure that such Application Escrow Agreement does not impose upon the Commonwealth any requirements other than administrative responsibilities necessary for the operation of the Application Escrow Agreement. If events give rise to a need for the escrow agent to release escrowed materials to the Commonwealth, the Commonwealth's sole responsibility shall be to request the release of such materials from the escrow agent. Supplier agrees to notify VITA in writing not less than thirty (30) calendar days prior to termination or any modification of the Application Escrow Agreement. [Review Application Escrow Agreement for terms and procedures related to termination or modification of the agreement.] Any Content Escrow Agreement shall name as a third party beneficiary the Authorized User whose Content is kept in escrow pursuant to such Content Escrow Agreement.

Supplier warrants that the information and materials to be kept in escrow in a media safe environment for the benefit of the Commonwealth pursuant to the Application Escrow Agreement are specifically identified and listed in Attachment A to the Application Escrow Agreement and include the most current version used by all Authorized Users of:

- i). the source code for the Application software,
- ii). all Documentation related thereto as well as all necessary and available information, proprietary information in English, and
- iii). technical Documentation in English which shall enable VITA, any Authorized User, or an Agent of VITA or any Authorized User to create, maintain and/or enhance the Application without the aid of Supplier or any other person or reference to any other materials, maintenance tools (test programs and program specifications), or proprietary or third party system utilities (compiler and assembler descriptions); descriptions of the system/program generation; and descriptions of any Supplier tools required to enable VITA and all Authorized Users and their Application Users to continue to use the Application.

Supplier warrants that the information and materials to be kept in escrow in a media safe environment for the benefit of an Authorized User pursuant to a Content Escrow Agreement shall be specifically identified and listed in Attachment A to such Content Escrow Agreement and include a monthly back up of the Content repository for such Authorized User.

Supplier warrants that the Escrow Agreements provide or shall provide for, among other items, the release of the list of items on Attachment A of each Escrow Agreement upon the happening of certain events, including, but not limited to, Supplier's failure to carry out its support and maintenance obligations imposed by this Contract for a period of sixty (60) days, Supplier's breach or default under this Contract, Supplier's bankruptcy, Supplier's failure to continue to do business in the ordinary course. Any Content Escrow Agreement shall also provide for the release of the escrowed items in the event the Authorized User's Content is destroyed, lost, or damaged or following the termination or expiration of Authorized User's order for Licensed Services. Supplier agrees to pay all expenses associated with establishing and maintaining the escrow accounts and the contents mentioned above.

Subject to the information and materials listed on Attachment A of the Application Escrow Agreement being released to the Commonwealth pursuant to the terms of the Application Escrow Agreement, which is an agreement supplementary hereto, Supplier hereby grants to the Commonwealth a royalty-free, perpetual, irrevocable license, that permits disclosure to a third party support-vendor of a complete and accurate copy of then-current source code for the Application licensed hereunder, along with all related documentation.

Any Authorized User which is not 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 may require Supplier to execute an additional Application escrow agreement subject to the same requirements and

binding Supplier to the same obligations as described above but naming such Authorized User as the beneficiary of the Application escrow agreement. Subject to the information and materials listed in such Application escrow agreement being released to such Authorized User, Supplier hereby grants to such Authorized User a royalty-free, perpetual, irrevocable license, that permits disclosure to a third party support-vendor of a complete and accurate copy of then-current source code for the Application licensed to such Authorized User, along with all related documentation.

18. COMPETITIVE PRICING

Supplier warrants and agrees that each of the charges, economic or product terms or warranties granted 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 to provide Licensed 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.

19. 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.

20. INDEMNIFICATION AND LIABILITY

A. Indemnification

Supplier agrees to indemnify, defend and hold harmless the Commonwealth, VITA, any Authorized User, their officers, directors, agents and employees (collectively, "Commonwealth's Indemnified Parties") from and against any and all third party claims, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, assessments, fines, penalties (whether criminal or civil), judgments, settlements, expenses (including attorneys' and accountants' fees and disbursements) and costs (each, a "Claim" and collectively, "Claims"), 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 Application or the Licensed Services, (v) any actual or alleged infringement or misappropriation of any third party's intellectual property rights by the Application or any of the Licensed Services, or (vi) loss of Content provided to Supplier due to Supplier's failure to back up Content in accordance with the Contract. 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 the Application or that the provision of Licensed 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 the Application or any of the Licensed Services, and in addition to all other obligations of Supplier in this Section, Supplier shall at its expense, either (a) procure for all Authorized Users and their Application Users the right to continue use of such infringing Application or Licensed Services, or any component thereof; or (b) replace or modify such infringing Application or Licensed Services, or any component thereof, with non-infringing products or services satisfactory to VITA. And in addition, Supplier shall provide any Authorized User with a comparable temporary replacement Application or reimburse VITA or any Authorized User for the reasonable costs incurred by VITA or such Authorized User in obtaining an alternative product or service in the event such Authorized User cannot use the affected Application. 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 Application or Licensed Services, 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.

B. Liability

Supplier shall have unlimited liability with respect to (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) claims for bodily injury, including death, and real and tangible property damage, (iv) Supplier's indemnification obligations, (v) Supplier's confidentiality obligations, and (vi) Supplier's security compliance obligations. Supplier agrees that

it is fully responsible for all acts and omissions of its employees, agents, and subcontractors, including their gross negligence or willful misconduct.

FOR ALL OTHER CONTRACTUAL CLAIMS, IN NO EVENT WILL ANY PARTY BE LIABLE TO ANY OTHER 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.

21. INSURANCE

In addition to the insurance coverage required by law as referenced in the Incorporated Contractual Provisions section of this Contract, Supplier shall carry errors and omissions insurance coverage in the amount of \$2,000,000 per occurrence.

22. SECURITY COMPLIANCE

Supplier agrees to comply with all provisions of the then-current Commonwealth of Virginia security procedures, published by the Virginia Information Technologies Agency (VITA) and which may be found at (<http://www.vita.virginia.gov/library/default.aspx?id=537#securityPSGs>) or a successor URL(s), as are pertinent to Supplier's operation. Supplier further agrees to comply with all provisions of the relevant Authorized User's then-current security procedures as are pertinent to Supplier's operation and which have been supplied to Supplier by such Authorized User. 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 to this Section.

23. BANKRUPTCY

If Supplier becomes insolvent, takes any step leading to its cessation as a going concern, fails to pay its debts as they become due, or ceases business operations continuously for longer than fifteen (15) business days, then VITA may immediately terminate this Contract, and an Authorized User may terminate an order, 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 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.

24. STEERING COMMITTEE

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

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

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

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

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

25. 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 then-current contractual provisions at the following URL are mandatory contractual provisions, required by law or by VITA, and that are hereby incorporated by reference: <http://www.vita.virginia.gov/uploadedFiles/SCM/StatutorilyMandatedTsandCs.pdf>

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

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

C. Compliance with the Federal Lobbying Act

Supplier's signed certification of compliance with 31 USC 1352 (entitled "Limitation on use of appropriated funds to influence certain Federal Contracting and financial transactions") or by the regulations issued from time to time thereunder (together, the "Lobbying Act") is incorporated as Exhibit F 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, if any, at any time and concurrently with any other statutory remedies prescribed by the Code of Virginia.

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

F. Advertising and Use of Proprietary Marks

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

G. Notices

Any notice required or permitted to be given under this Contract shall be in writing and shall be deemed to have been sufficiently given if delivered in person, or if deposited in the U.S. mails, postage prepaid, for mailing by registered, certified mail, or overnight courier service addressed to the addresses shown on the signature page. VITA or Supplier may change its address for notice purposes by giving the other 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, Warranty, Escrow, Confidentiality, and 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 Application or any components thereof and Licensed 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 Software delivery or 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.

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

P. 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 Application and Licensed Services Requirements
- ii). Exhibit B Application Options List; Fees, Licensed Service Charges, and Payment Schedule
- iii). Exhibit C-1 Application Escrow Agreement
- iv). Exhibit C-2 Content Escrow Agreement Template
- v). Exhibit D Statement of Work (SOW) Template
- vi). Exhibit E End User Licensing Agreement (for reference only)
- vii). Exhibit F Certification Regarding Lobbying

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

An Authorized User and Supplier may enter into an ordering agreement pursuant to this Contract. To the extent that the terms and conditions of such ordering agreement, or any order or SOW issued hereunder, are inconsistent with the terms and conditions of this Contract, the terms of this Contract shall supersede.

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.

EEL Communications

VITA

By: _____

By: Philip L. Pickett

(Signature)

(Signature)

Name: James T. DeGraffenreid

Name: Philip L. Pickett

(Print)

(Print)

Title: JAMES T. DEGRAFFENREID

Title: ASSOC. DIRECTOR, SCM

Date: 6/10/08

Date: 7/3/08

Address for Notice:

Attention: 

Address for Notice:

VITA
1171- Meadowville Lane
Chester, VA 23836

Attention: Contract Administrator

EEI Communications, in Alexandria, Virginia, is uniquely qualified to assist State of Virginia agencies in preparing accessible electronic communication. At EEI Communications, we have a thriving practice in outsourced accessibility compliance implementation, compliance auditing, and maintenance. People with disabilities who use assistive technologies to interact with computer-based information can utilize those tools only if the document, Web site, or other communication incorporates specific design and programming attributes.

MS Word Documents

EEI can assist agencies with guidelines for preparation of MS Word documents for optimal accessibility as well as assess and remediate legacy documents. Below are some of the key elements necessary to create MS Word documents that are optimized for user-assistive technologies:

- Providing alternative text to describe images
- Providing alternate text and a text description for charts and graphs
- Creating accessible data tables
- Creating an accessible document structure
- Formatting text as an enhancement, not as the only way to convey information
- Using color as an enhancement, not as the only way to convey information

MS PowerPoint Documents

MS PowerPoint documents typically include elements that are not properly structured for accessibility purposes. When creating or assessing such documents, or during the remediation process, consideration must focus on their visual aspects and structure. Presentations often include graphic representations of ideas that may not convey meaning to users of assistive technology. To make PowerPoint presentations accessible, we consider the following possibilities:

- Converting the document to PDF format
- Converting the document to MS Word
- Providing closed captions and audio descriptions for embedded multimedia
- Creating a plain text alternative

PDF Documents

Documents distributed in PDF format can be made accessible via various methods. Adobe Acrobat Professional has built-in accessibility tools to assist in making existing PDF documents accessible, as well as tools for verifying the level of compliance. Third-party software that adds functionality to Adobe Acrobat is beneficial for preparing compliant documents in PDF format. Because most PDF documents are created in other software, best practices in the source application can make the adaptation process more efficient.

HTML Documents

At EEI, we use our extensive experience and expertise to enable Web pages to function with assistive devices. As with all electronic communications methods, it is desirable to create these documents with accessibility in mind so that minimal effort is required to achieve compliance. When best practices are not observed during the page creation process, a careful analysis is necessary to determine the level of effort suitable for each HTML page. Below are some key considerations for compliant HTML pages:

- Providing closed captions and audio descriptions for embedded multimedia
- Analyzing the use of color
- Checking compliance for various disabilities, including vision impairment, hearing impairment, and mobility impairment

DETAILED DESCRIPTION OF PROPOSED SOLUTION

Please see Appendix A for additional information on the EEI Team comprehensive solution.

#	Requirement	A (Y/F/N)	B (comments)
<p>Category 4: Services which aid in making users' access to software applications and operating systems compliant</p> <p>These are services that help agencies bring their electronic and information technology (E&IT) software applications and operating systems into compliance with Virginia's <i>Information Technology Accessibility Standard</i> (GOV103-00) (or to create new compliant software applications). Such services include (but are not limited to):</p> <ul style="list-style-type: none"> • Analysis of existing applications and operating systems for compliance and creation of detailed reports regarding missed requirements • Correcting compliance problems in existing applications <p>For each service you offer please price out the service (i.e. remediation, training, etc.) in the cost section.</p> <p>(Note: Web applications are addressed in category 5.)</p>			
1.	Do you provide IT accessibility reports?	Y	<p>We provide a variety of reports in support of Category 4 including:</p> <ul style="list-style-type: none"> • Section 508 Assessment Findings (Summary) Report • Section 508 Assessment Findings (Detailed) Report • Section 508 Assessment Recommendations Report • Visual Inspection Report • Section 508 Standards Violations Matrix • Accessibility Problem Prioritization Report • Section 508 Screen Catalog Report <p><i>NOTE: See Appendix A for further description of reports</i></p>

<p>2a 2b</p>	<p>Can you identify non compliance in software applications and operating systems? Do you perform remediation, to implement the requirements in the <i>Virginia IT Accessibility Standard</i>?</p> <p>Identify the application languages and operating systems you can identify for remediation, remediate, or both.</p>	<p>Y</p>	<p>Our services include support for problem identification and remediation. We have the capability to identify and remediate problems associated with Windows operating systems such as Windows 2000, XP, and Vista. Application language support includes C/C++, Visual Basic, and JAVA.</p> <p>We typically <i>ONLY</i> perform identification for remediation analysis; however we have engaged operating system vendors to assist in client remediate activities.</p>
<p>a.</p>	<p>What items are included in a report regarding accessibility issues with an application or operating system?</p>	<p>Y</p>	<p>Our reports include the following items:</p> <ul style="list-style-type: none"> • Area of Accessibility Problems - Visual Inspection • Area of Accessibility Problems - using Screen Reader • Section 508 Standard Violated • Overview of Problem(s) • Detailed Findings w/Screen and Code Examples • Remediation Recommendations with Examples
<p>b.</p>	<p>Would the report tell developers where in the code the problem lies?</p> <p>Please provide a sample report detailing the accessibility issues.</p>	<p>Y</p>	<p>Our reports will identify code-related 508 problems including code module name and module line number(s).</p>
<p>5</p>	<p>Do you offer training to developers in how to create IT accessible applications?</p> <p>Please describe.</p>	<p>Y</p>	<p>We offer specific training to developers covering the following topics:</p> <ul style="list-style-type: none"> • Section 508 Standards Training - includes a general overview of Section 508 and detail discussions on each standard under the Software and Operating System (1194.21) standards. • Section 508 Evaluation Training - includes specific evaluation and test techniques used to avoid compliance violations with <i>Virginia Information Technology Accessibility Standard</i>. • Section 508 Tools Training - specific training to used manual and automated testing tools during development and unit test activities.

<p>6</p>	<p>Do you have any other services or critical pieces of your service that we have not addressed in the above questions? Please describe.</p>	<p>Y</p>	<p>Program Services: Our team is prepared to develop a compliance program strategy and plan(s) to achieve and maintain an acceptable level of compliance with the VITA Standard for all software application(s) and procurement activities. Our program plan will outline the approach, resources needed, staff participation, and timeframes to address all EIT developed and procured under VITA and other public bodies. Three program stages will be used to implement the "Roadmap to Compliance". These stages are Discovery, Assessment and Evaluation, and Remediation and Monitoring.</p> <p>In accordance with program deliverable schedules, the "<i>e-VITA Partnership (eVP)</i>" strategy will be focused on moving the compliance program forward to be compliant with the law by identifying and addressing current and future application software releases, associated COTS products, system interfaces, hardware, supporting documentation delivered using EIT, and the implementation of program processes supportive of the VITA Standard.</p> <p>Accessibility Lab Services: Our team can establish an Accessibility Lab equipped with the necessary tools and services required to implement a formal assessment and evaluation test environment for testing Section 508 compliance. As new custom applications and COTS products are being evaluated for a production environment, this lab will be used to test emerging technologies and identify potential problems and solutions to non-compliant products.</p> <p>Custom Training and Mentoring: Our team can provide custom classroom training, on-site mentoring to design/development teams, development of online web-based training, and supplemental accessibility tool training.</p> <p>Evaluation and Monitoring Services: Our team can provide services that continually monitor compliance on software and COTS products. These services can be requested periodically to achieve an independent evaluation of certain products in order to assess the overall success of the eVP Compliance Program.</p>
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#	Requirement	A (Y/F/N)	B (comments)
<p>Category 5: Services which aid in making users' access to Web sites and Web applications compliant</p> <p>These are services that help agencies bring their web sites and web applications in to compliance with Virginia's <i>Information Technology Accessibility Standard</i> (GOV103-00) or that help agencies create new compliant pages and sites. Such services include (but are not limited to):</p> <ul style="list-style-type: none"> • Testing and reporting on the compliance of existing pages • Updating existing pages to be compliant • Providing training to agency Web developers in creating compliant pages and applications <p>For each service you offer please price out the service (i.e. remediation, training, etc.) in the cost section.</p>			
1.	<p>Does your service identify for remediation or remediate or both in order to implement the requirements in the <i>Virginia IT Accessibility Standard</i>?</p> <p>Identify the application languages and operating system you can identify for remediation, remediate, or both.</p>	Y	<p>Our services include support for problem identification and remediation. We have compliance identification expertise in web-based applications.</p> <p>Application language support includes HTML, XML, Javascript, ASP, and JAVA on J2EE applications and .NET applications.</p> <p>We typically perform identification for remediation and remediate activities.</p>
2.	<p>Do you analyze or create "back end" code (e.g. for example help remediate problems in server-side code that caused the HTML to be non-compliant)?</p> <p>Please list the languages and/or development environments you work in.</p>	Y	<p>Our services include analyzing and creating code on front-end and back-end server code. Back-end code analysis includes support for:</p> <p>J2EE environment - using XML, JAVA, SQL, and Javascript on Websphere and Apache server(s)</p> <p>.NET environment - XML, ASP, SQL, and VBScript on Microsoft IIS servers</p>

<p>3.</p>	<p>Do you provide accessibility reports?</p> <p>What items are included in a report regarding accessibility issues with a Web application or Web site? Would the report tell developers where in the code the problem lies?</p> <p>Please provide a sample report detailing the accessibility issues.</p>		<p>In addition to the standard reports from Accessibility Automated Test Tools (e.g. HiSoftware, etc.) we provide a variety of custom reports including:</p> <ul style="list-style-type: none"> • Section 508 Assessment Findings (Summary) Report • Section 508 Assessment Findings (Detailed) Report • Section 508 Assessment Recommendations Report • Visual Inspection Report • Screen Reader Test Results • Section 508 Standards Violations Matrix • Accessibility Problem Prioritization Report • Section 508 Screen Catalog Report <p>Please see a sample report in Appendix B.</p>
<p>4.</p>	<p>Do you offer training to developers in how to create IT accessible Web applications and/or Web sites? Please describe.</p>	<p>Y</p>	<p>We offer specific training to web developers covering the following topics:</p> <ul style="list-style-type: none"> • <i>Section 508 Standards Training</i> - includes a general overview of Section 508 and detail discussions on each standard. • <i>Section 508 Web/Application Design Training</i> - includes specific design techniques used to avoid compliance violations with <i>Virginia Information Technology Accessibility Standard</i>. • <i>Section 508 Evaluation Techniques Training</i> - includes specific evaluation and test techniques used to avoid compliance violations with <i>Virginia Information Technology Accessibility Standard</i>. • <i>Section 508 Accessibility Tools Training</i> - specific training to used manual and automated testing tools during development and unit test activities.

<p>5.</p>	<p>Do you have any other services or critical pieces of your service that we have not addressed in the above questions?</p> <p>Please describe.</p>	<p>Y</p>	<p>Program Services: Our team can develop a compliance program strategy and plan(s) to achieve and maintain an acceptable level of compliance with the VITA Standard for all web-based application(s). Our program plan will outline the approach, resources needed, staff participation, and timeframes to address all web-based EIT developed and procured under VITA and other public bodies. Three program stages will be used to implement the "Roadmap to Compliance". These stages are Discovery, Assessment and Evaluation, and Remediation and Monitoring.</p> <p>In accordance with program deliverable schedules, the e-VITA Partnership (eVP) strategy will be focused on moving the compliance program forward to be compliant with the law by identifying and addressing current and future web application software releases, associated COTS products, system interfaces, hardware, supporting documentation delivered using EIT, and the implementation of program processes supportive of the Virginia Information Technology Accessibility Standard.</p> <p>Accessibility Lab Services: Our team can establish an Accessibility Lab equipped with the necessary tools and services required to implement a formal assessment and evaluation test environment for testing Section 508 compliance. As new custom web-based applications and COTS products are being evaluated for a production environment, this lab will be used to test emerging technologies and identify potential problems and solutions to non-compliant products.</p> <p>Custom Training and Mentoring: Our team can provide classroom training, on-site mentoring to design/development teams, development of online web-based training, and supplemental accessibility tool training.</p> <p>Evaluation and Monitoring Services: Our team can provide services that continually monitor compliance on software and COTS products. These services will be requested periodically to achieve an independent evaluation of certain products in order to assess the success of the eVP Compliance Program.</p>
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#	Requirement	A (Y/F/N)	B (comments)
<p>Category 6: Services which aid in making users' access to electronic documents compliant</p> <p>These are services that help agencies that help agencies make existing and future common electronic documents compliant with Virginia's <i>Information Technology Accessibility Standard</i> (GOV103-00). Common electronic documents include:</p> <ol style="list-style-type: none"> 1. Portable Document Format (PDF) 2. Word documents 3. PowerPoint presentations 4. Excel spreadsheets 5. Others <p>A given vendor need not cover all document types. Remediation might entail creating an accessible alternative format instead of making the original document compliant. Services include (but are not limited to):</p> <ul style="list-style-type: none"> • Testing and reporting on the compliance of existing documents • Updating existing documents so they become compliant (or creates alternate accessible versions) • Providing training to agency developers and content providers in creating compliant documents <p>For each service you offer please price out the service (i.e. remediation, training, etc.) in the cost section.</p>			
1	<p>Do you address more than one type of electronic document?</p> <p>What document types do your services address?</p>	Y	Our team can address 508 compliance in PDF and HTML documents.
2	<p>List the document types you can identify for remediation, remediate, or both.</p> <p>Please describe.</p>	Y	We remediate PDF and HTML documents.
3	<p>Do you provide reports on encountered accessibility issues?</p> <p>What items are included in a report regarding IT accessibility issues with documents?</p> <p>Please provide a sample report detailing the accessibility issues.</p>	Y	Reports include details regarding document structure, alternative text for photos and figures. Please see Appendix B for sample report.

4	<p>Do you offer training in how to create IT accessible documents or training in how to make existing documents IT accessible?</p> <p>Please describe.</p>	Y	<p>EEI offers customized training on accessibility as well the following regularly scheduled classes: Adobe Acrobat Section 508 Accessibility Training (1-day, PC or Mac) and Accessible Web Design Training. (1-day, PC or Mac)</p>
5	<p>Do you have any other services or critical pieces of your service that we have not addressed in the above questions?</p> <p>Please describe.</p>	Y	<p>EEI has created customized solutions and applications for structured document production, streamlining 508 document creation. This includes an application which produces accessible HTML tables from Excel files virtually automatically, enabling agencies to produce accessible documents economically.</p>

**EEl Communications Exhibit B
PRICING**

Labor Categories in Original Proposal Highlighted in Yellow

Category 4: Services which aid in making users' access to software applications and operating systems compliant			
Labor Category	Hourly Rate	Daily Rate	Description of Services
Project Manager	\$96.80	\$774.40	In Support of all Services in Task 4
Project Coordinator	\$83.52	\$668.16	Program Services Only
Sr. Consultant/Analyst	\$75.00	\$600.00	Evaluation and Assessment, Remediation and Monitoring
Consultant/Programmer Analyst	\$65.00	\$520.00	Evaluation and Assessment, Remediation and Monitoring
Jr. Analyst	\$55.00	\$440.00	Accessibility Lab, Independent Verification and Validation
Administrative	\$42.30	\$338.40	Program Services Only
Category 5: Services which aid in making users' access to Web sites and Web applications compliant			
Labor Category	Hourly Rate	Daily Rate	Description of Services
Web Project Manager	\$89.00	\$712.00	In support of XHTML, Flash, CSS, Javascript, etc projects
Web Site Designer (508/Accessibility Specialist)	\$89.00	\$712.00	(XHTML, Flash, CSS etc.)
Web Site Programmer Developer (508/Accessibility Specialist)	\$99.00	\$792.00	(XHTML, Flash, Actionscript, Javascript, .NET, PHP, Java, etc.)
Multimedia QA/Testing Specialist (508/Accessibility Specialist)	\$69.00	\$552.00	(XHTML, Flash, Actionscript, Javascript, .Net, PHP, Java, CSS, etc.)
Copyeditor (508/Accessibility Specialist)	\$39.00	\$312.00	(XHTML, Flash, Actionscript, Javascript, .Net, PHP, Java, CSS, etc.)
Substantive Editor (508/Accessibility Specialist)	\$59.00	\$472.00	(XHTML, Flash, Actionscript, Javascript, .Net, PHP, Java, CSS, etc.)
Writer (508/Accessibility Specialist)	\$79.00	\$632.00	(XHTML, Flash, Actionscript, Javascript, .Net, PHP, Java, CSS, etc.)
Category 6: Services which aid in making users' access to electronic documents compliant			
Labor Category	Hourly Rate	Daily Rate	Description of Services
Project Manager	\$69.00	\$552.00	In support of Word, Excel, Powerpoint, and PDF projects
Desktop Publisher (508/Accessibility Specialist)	\$59.00	\$472.00	Word, Excel, Powerpoint, PDFs
Graphic Designer (508/Accessibility Specialist)	\$69.00	\$552.00	Word, Excel, Powerpoint, PDFs
Art Director (508/Accessibility Specialist)	\$89.00	\$712.00	Word, Excel, Powerpoint, PDFs
Publications Production QC (508/Accessibility Specialist)	\$39.00	\$312.00	Word, Excel, Powerpoint, PDFs
Copyeditor (508/Accessibility Specialist)	\$39.00	\$312.00	Word, Excel, Powerpoint, PDFs
Substantive Editor (508/Accessibility Specialist)	\$59.00	\$472.00	Word, Excel, Powerpoint, PDFs
Writer (508/Accessibility Specialist)	\$79.00	\$632.00	Word, Excel, Powerpoint, PDFs

EXHIBIT D – STATEMENT OF WORK TEMPLATE

EXHIBIT D
CONTRACT NUMBER VA-080612-EEI
BETWEEN
VIRGINIA INFORMATION TECHNOLOGIES AGENCY
AND
EEI Communications

Exhibit D is hereby incorporated into and made an integral part of Contract Number VA-080612-EEI (“Contract”) between the Virginia Information Technologies Agency (“VITA” or “Commonwealth” or “State”) and EEI Communications (“Supplier”).

In the event of any discrepancy between this Exhibit D and Contract No. VA-080612-EEI, the provisions of Contract No. VA-080612-EEI 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			
Final documentation of requirements	Final requirements document	Execution + 20 days	---	---	---
Training	Training manual	Execution + 30 days			
Customer training	---	Execution + 30 days			
Project completion	Final report	Execution + 45 days			

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
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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 D
- 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 F

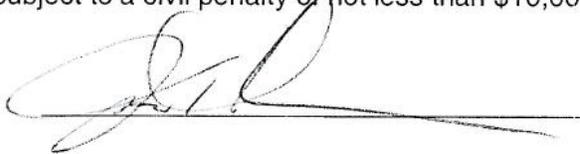
ATTACHMENT F: CERTIFICATION REGARDING LOBBYING

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 or 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:



Printed Name:

John O'Brien

Organization:

EEI Communications

Date:

March 12, 2008