



Commonwealth of Virginia  
Virginia Information Technologies Agency

**SOFTWARE**

**Optional Use Contract**

Date: December 2, 2009

Contract #: VA-060130-CEA

Authorized User: State Agencies, Institutions, and other Public Bodies  
as defined in the VPPA

Contractor: Chmura Economics and Analytics  
1309 East Cary Street  
Richmond, VA 23219

FIN: 54-1923150

Contact Person: Chris Chmura  
Phone: 804-649-1107

Term: January 30, 2010 - January 30, 2011

Pricing: Exhibit B

Payment: Net 30 days

For Additional Information, Please Contact:

Contract Information:  
Virginia Information Technologies Agency  
Supply Chain Management

Mike Novak  
Phone: 804-416-6168  
E-Mail: [mike.novak@vita.virginia.gov](mailto:mike.novak@vita.virginia.gov)  
Fax: 804-416-6361

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

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

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



**MODIFICATION #6  
TO  
CONTRACT NUMBER VA-060130-CEA  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
CHMURA ECONOMICS ANALYTICS**

This MODIFICATION #6 is an agreement between the Commonwealth of Virginia, through the Virginia Information Technologies Agency, hereinafter referred to as "VITA" or "Commonwealth", and Chmura Economics Analytics, hereinafter referred to as "Contractor", relating to Contract VA-060130-CEA as amended, hereinafter referred to as the "Contract" or "Agreement". This Modification #6 is hereby incorporated into and made an integral part of the Agreement.

The purpose of Modification #6 is to document the parties' agreement to the following:

Referencing Section 3 of the Contract, "Term and Termination", the parties agree that the term shall be extended from January 30, 2010 through January 30, 2011.

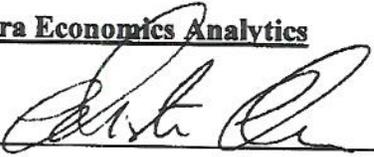
The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-060130-CEA. Contract VA-060130-CEA cannot be modified, except by a writing signed by a duly authorized representative of both parties.

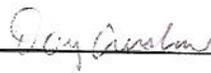
**ALL OTHER TERMS AND CONDITIONS OF CONTRACT VA-060130-CEA REMAIN UNCHANGED.**

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

Chmura Economics Analytics

Commonwealth of Virginia

BY: 

BY: 

NAME: CHRISTINE CHMURA

NAME: Doug Cranshaw

TITLE: PRESIDENT

TITLE: Senior Manager

DATE: 12/1/09

DATE: 12/1/09

**MODIFICATION #5  
TO  
CONTRACT NUMBER VA-060130-CEA  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
CHMURA ECONOMICS & ANALYTICS**

This MODIFICATION #5 is an agreement between the Commonwealth of Virginia, through the Virginia Information Technologies Agency, hereinafter referred to as "VITA" or "Commonwealth", and Chmura Economics & Analytics, hereinafter referred to as "Contractor", relating to Contract VA-060130-CEA as amended, hereinafter referred to as the "Contract" or "Agreement". This Modification #5 is hereby incorporated into and made an integral part of the Agreement.

The purpose of Modification #5 is to document the parties' agreement to the following:

Referencing Section 3 of the Contract, "Term and Termination", the parties agree that the term shall be extended from January 30, 2009 through January 30, 2010.

In Exhibit B, Section A "General", remove the first paragraph;

"Supplier's pricing, as shown in this Exhibit, provides discounts for any Authorized User who places an order hereunder within ninety (90) days of the Effective Date of the Contract. After the discount period, Supplier's standard pricing, or any additional discounts offered by Supplier, shall apply."

In Exhibit B, Section B, make the following changes;

The heading "JobsEQ Pricing for 90 Days After Effective Date of Contract" is changed to "JobsEQ Pricing".

The sub-heading "Geographic Reach" is changed to "Description".

The description of JobsEQ Gold is changed from "Statewide" to "State Agency".

Change the Annual Pricing Per License for "JobsEQ Platinum, Workforce Investment Areas (WIA)" from \$30,000 to \$9,995.

Change the Annual Pricing Per License for "JobsEQ Plus, Regions (Tobacco)" from \$30,000 to \$4,995.

Change the Annual Pricing Per License for "JobsEQ Plus, Regions (MSA, PDC)" from \$30,000 to the following two new pricing categories: "JobsEQ Plus, Regions (MSA, PDC) 1

million or more people" at \$9,995, and "JobsEQ Plus, Regions (MSA, PDC) less than 1 million people" at \$4,995.

The sub-heading "Additional Seats For Individual Authorized Users After Purchasing 2 Licenses" is changed to "Additional Seats for Individual Authorized Users". The sub-heading under that "Statewide" is changed to "State Agency".

Change the Annual Pricing Per License for "WIA" from \$3,995 to \$1,000.

Change the Annual Pricing Per License for "Regions" from \$3,995 to \$1,000.

Change the Annual Pricing Per License for "County / City" from \$2,995 to \$500.

Change the Annual Pricing Per License for "Customized Regions" from \$5,000 to \$2,000.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-060130-CEA. Contract VA-060130-CEA cannot be modified, except by a writing signed by a duly authorized representative of both parties.

**ALL OTHER TERMS AND CONDITIONS OF CONTRACT VA-060130-CEA REMAIN UNCHANGED.**

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

Chmura Economics Analytics

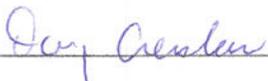
BY: 

NAME: CHRISTINE CHMURA

TITLE: PRESIDENT

DATE: 1/20/09

Commonwealth of Virginia

BY: 

NAME: Doug Crenshaw

TITLE: 1-22-09

DATE: Sourcing mgr.

**MODIFICATION # 4  
TO  
CONTRACT NUMBER VA-060130-CEA  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
CHMURA ECONOMICS ANALYTICS**

This MODIFICATION # 4 is an Agreement between the Commonwealth of Virginia, hereinafter referred to as "Commonwealth," and CHMURA ECONOMICS ANALYTICS Incorporated, hereinafter referred to as "Contractor."

Reference Contract VA-060130-CEA, Page C-9 of C-30, Para 9 entitled " Suppliers Report of Sales and Industrial Funding Adjustment" .

Both Commonwealth and Contractor do hereby agree to replace the language of Para 9 of the Contract with the following revised language effective as of the date signed by Contractor below.

**"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/scm/default.aspx?id=4450> 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/scm/default.aspx?id=4450> under "Supplier Reporting".

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

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

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

CHIMURA ECONOMICS ANALYTICS

BY: John L. Chmura

NAME: John L. Chmura

TITLE: Director of IT

DATE: 8/26/2008

COMMONWEALTH OF VIRGINIA

BY: Doug Evans

NAME: Sourcing Manager  
Doug Evans

TITLE: \_\_\_\_\_

DATE: 8/26/08

**MODIFICATION #3  
TO  
CONTRACT NUMBER VA-060130-CEA  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
CHMURA ECONOMICS ANALYTICS**

This MODIFICATION #3 is an agreement between the Commonwealth of Virginia, through the Virginia Information Technologies Agency, hereinafter referred to as "VITA" or "Commonwealth", and Chmura Economics Analytics, hereinafter referred to as "Contractor", relating to Contract VA-060130-CEA as amended, hereinafter referred to as the "Contract" or "Agreement". This Modification #3 is hereby incorporated into and made an integral part of the Agreement.

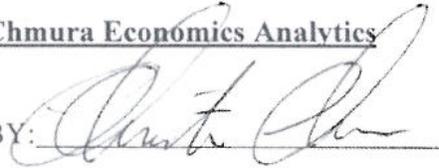
The purpose of Modification #3 is to document the parties' agreement to the following:

Referencing Section 3 of the Contract, "Term and Termination", the parties agree that the term shall be extended from January 29, 2008 through January 30, 2009.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-060130-CEA. Contract VA-060130-CEA cannot be modified, except by a writing signed by a duly authorized representative of both parties.

**ALL OTHER TERMS AND CONDITIONS OF CONTRACT VA-060130-CEA REMAIN UNCHANGED.**

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

<u>Chmura Economics Analytics</u> BY:  NAME: <u>CHRIST NECHMURA</u> TITLE: <u>PRESIDENT</u> DATE: <u>12/28/07</u>	<u>Commonwealth of Virginia</u> BY:  NAME: <u>Doug Crenshaw</u> TITLE: <u>Sovereignty</u> DATE: <u>1/3/08</u>
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MODIFICATION # 2  
TO  
CONTRACT NUMBER VA-060130-CEA  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
CHMURA ECONOMICS ANALYTICS

This MODIFICATION #2 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and Chmura Economics Analytics hereinafter referred to as "Contractor" relating to the modification of the above contract. This Modification #2 is hereby incorporated into and made an integral part of Contract VA-060130-CEA, as modified.

Both of the above referenced parties agree to the following:

Reference: Exhibit B, Application License Fee, Service Charges and Payment Schedule:

Change: Paragraph B. "Pricing for Orders Placed Within Ninety (90) Days of Effective Date of Contract to": Pricing for Orders for JobsEQ are effective as of the execution date of this modification.

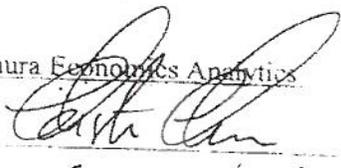
Delete: Paragraph C Page 27 of 30 Pricing for Orders Placed After Ninety (90) days of Effective Date of Contract JobsEQ Pricing After Initial Period Expires.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-060130-CEA and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

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

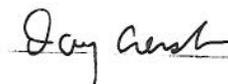
Chmura Economics Analytics

BY:   
NAME: CHRISTINE CHMURA

TITLE: PRESIDENT

DATE: 5/1/07

COMMONWEALTH OF VIRGINIA

BY:   
NAME: Doug Crenshaw

TITLE: Strategic Sourcing Manager

DATE: 5/1/07

**MODIFICATION # 1  
TO  
CONTRACT NUMBER VA-060130-CEA  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
CHMURA ECONOMICS ANALYTICS**

This MODIFICATION #1 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and Chmura Economics Analytics hereinafter referred to as "Contractor" relating to the modification of the above contract. This Modification #1 is hereby incorporated into and made an integral part of Contract VA-060130-CEA, as modified.

Both of the above referenced parties agree to the following:

**Reference: Page 4 of 30, Section 3. TERM AND TERMINATION.:**

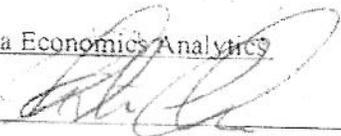
The term of Contract VA-060130-CEA shall be extended from January 30, 2007 through January 29, 2008.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-060130-CEA and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.**

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

Chmura Economics Analytics

BY: 

NAME: CHRISTINE CANOVA

TITLE: PRESIDENT

DATE: 1/10/07

COMMONWEALTH OF VIRGINIA

BY: 

NAME: J.B. Edmonds

TITLE: Acquisition Manager

DATE: 1/14/07

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**APPLICATION LICENSE CONTRACT  
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## **APPLICATION LICENSE CONTRACT**

THIS APPLICATION LICENSE CONTRACT ("Contract") is entered into by and between the Virginia Information Technologies Agency (VITA) pursuant to §2.2-2012 of the Code of Virginia, (hereinafter referred to as "VITA") and Chmura Economics & Analytics (Supplier) to be effective as of January 30, 2006 (Effective Date). VITA and Supplier are referred to herein individually as "Party" and collectively as the "Parties."

### **1. PURPOSE**

This Contract sets forth the terms and conditions under which Supplier agrees to grant to Authorized Users a license to access and use its Jobs EQ™ application and to provide various other services to such Authorized Users as required to permit such access and usage.

### **2. DEFINITIONS**

#### **A. Acceptance**

Acceptance shall take the form of completed acceptance testing in conformance with the Requirements as determined by Authorized User in applicable order.

#### **B. Agent**

Any third party independent agent of any Authorized User.

#### **C. Application**

The products and/or services identified on Exhibit B hereto which Supplier shall provide to, and which shall be accessed by, Authorized User over the Internet pursuant to this Contract.

#### **D. Authorized User**

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

#### **E. Authorized User Data**

Any data, including the selection, arrangement and organization of such data, entered, uploaded to the Application, or otherwise supplied to Supplier by Authorized User, and any software and related documentation, from whatever source, supplied by Authorized User to Supplier in connection with this Contract. With the exception of any applicable third-party rights, Authorized User shall exclusively own all right, title and interest in Authorized User Data, including all copyrights and any other intellectual property rights. Nothing in this Contract shall be construed as conveying any rights or interest in Authorized User Data to Supplier. Authorized User data shall not include data that is owned or licensed by the Commonwealth or any public body and that is made publicly available, or data that is owned or licensed by the Commonwealth or any public body and purchased by or licensed to Supplier.

#### **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 the other Party in connection with or as a result of discussions related to this Contract, and which at the time of disclosure either (i) is marked as being "Confidential" or "Proprietary", (ii) is otherwise reasonably identifiable as the confidential or proprietary information of the Disclosing Party, or (iii) under the circumstances of disclosure should reasonably be considered as confidential or proprietary information of the disclosing Party.

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**H. Coverage Period (for Application support)**

Monday through Friday, except Commonwealth holidays, from 9 am to 5 pm Eastern time.

**I. Documentation**

Those materials detailing the information and instructions needed in order to allow any Authorized User and its Agents to make productive use of the Application.

**J. Electronic Self-Help**

Any use of electronic means to exercise Supplier's termination rights upon breach or cancellation, termination or expiration of this Contract.

**K. Requirements**

The functional, performance, operational, compatibility, Acceptance testing criteria and other parameters and characteristics of the Application described in the applicable documentation, Supplier's Proposal and such other parameters, characteristics, or performance standards that may be agreed upon in writing by the Parties.

**L. Services**

Any services, including software modifications, implementation, support and training provided by Supplier under this Contract.

**M. Supplier**

Includes any individual who is an employee, sub-contractor, or independent contractor of Supplier to provide Application access and/or Services under this Contract.

**N. Supplier's Proposal**

Proposal submitted by Supplier and accepted by VITA, attached hereto as part of Exhibit A.

**O. VITA**

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

**P. Work Product**

The discovery, creation or development, at the expense of the Commonwealth, of inventions, combinations, machines, methods, formulas, techniques, processes, improvements, software designs, computer programs, strategies, specific computer-related know-how, data and original works of authorship (collectively, the "Work Product").

**3. TERM AND TERMINATION**

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 one (1) year. Subject to the mutual written agreement of both Parties, this Contract may be extended for up to four (4) additional one (1) year periods after the expiration of the initial one (1) year period. VITA will issue a written notification to the Supplier stating the extension period, 30 days prior to the expiration of any current term.

VITA may terminate this Contract, in whole or in part, upon not less than forty-five (45) days prior written notice at any time for any reason. Supplier shall submit any contractual dispute to VITA for resolution according to the terms of the Dispute Resolution Section. Upon termination, VITA shall have no future liability except for Services rendered or Application access provided by Supplier prior to the termination date.

**4. APPLICATION LICENSE**

**A. License Grant**

Supplier hereby grants each Authorized User an annual non-transferable, non-exclusive, U.S. license to access and use the Application during the term of this Contract via the Internet. The license fee for the rights shall be as set forth in Exhibit B, and shall apply regardless of access mode.

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## **B. License Type**

All licenses granted, regardless of the type, include all uses set forth above.

The license(s) granted under this Section authorizes Authorized Users to use the Application on and access the Application from any system based on the total number of Concurrent Users.

The number of "Concurrent Users" is defined as the number of concurrent Sessions connected at a given point in time. A "Session" is defined as an active user executing the Application. The initial number of Concurrent User licenses granted herein is listed on Exhibit B. An Authorized User may increase the number of Concurrent User licenses upon issuing an order for additional Concurrent User licenses. The license fee for additional Concurrent User licenses and payment terms of the license fee are set forth on Exhibit B.

## **5. RESTRICTIONS**

### **A. General Use Restrictions**

An 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, but not resell, any Application output (e.g., reports) generated by Authorized User. **The Authorized User shall use the Application solely in support of Commonwealth business.**

### **B. Specific Use Restrictions**

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 viruses, Trojan horses, worms, time bombs, cancel bots or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information.

### **C. Security**

Authorized User shall make all commercially reasonable efforts not to violate or attempt to violate the security of the Application.

### **D. Reverse Engineering**

Except as provided or allowed by law, Authorized Users 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.

## **6. RIGHTS TO WORK PRODUCT**

### **A. Work Product**

VITA and Supplier each acknowledge that performance of this Contract may result in Work Product. The parties agree to document all Work Product specifications and make such specifications an incorporated Exhibit to this Contract. Supplier agrees that it shall promptly and fully disclose to VITA any and all Work Product generated, conceived, reduced to practice or learned by Supplier or any of its employees, either solely or jointly with others, during the term of this Contract, which is the direct result of Supplier's collaboration with employees, subcontractors or independent contractors of VITA or any Authorized User. Supplier further agrees that neither Supplier or Supplier's employees, nor any party claiming through Supplier or Supplier's employees, shall, other than in the performance of this Contract, make use of or disclose to others any proprietary information relating to the Work Product. All Services performed hereunder shall include delivery of all source and object code and all executables and documentation. Supplier agrees that VITA shall have a copy of the most recent source code for all Work Product at all times.

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## **B. Ownership**

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

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

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

## **C. Pre existing Rights**

Supplier represents and warrants that it is the sole and exclusive owner, or has the right to use, all of the inventions, software, technology, expertise, know-how, materials, analytics and Intellectual Property Rights that are contained in or that are a part of the Application. Supplier's intellectual property rights shall in any event include the Application and any works based on or derived from the Application and developed at Supplier's expense, including any future versions, releases, upgrades or enhancements of the Application.

If and to the extent that any preexisting rights are embodied or reflected in the Work Product, Supplier hereby grants to VITA the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to (i) use, execute, reproduce, display, perform, distribute copies of and prepare derivative works based upon such preexisting rights and any derivative works thereof and (ii) authorize others to do any or all of the foregoing.

## **D. Return of Materials**

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

# **7. SUPPLIER SERVICES**

## **A. Security**

Supplier shall provide a secure environment for Authorized User Data 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 Authorized User Data. Access to facilities housing the Application and Authorized User Data shall be restricted to only allow access to personnel who have a need to know in connection with operation and support of the Application. Additionally, Supplier shall comply with all security

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obligations, specifications and event reporting procedures as required in any applicable Exhibit. Failure by Supplier to use reasonable care 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.

**B. Resources and Support**

Supplier shall, throughout the term of this Contract, make available such resources, including Supplier personnel, as are reasonably required to: (i) train designated employee(s) of Authorized Users in the use of the Application in accordance with Exhibit X; (ii) develop modifications to the Application as agreed to by the Parties in any Exhibit hereto; and (iii) otherwise support the Application as provided under this Contract and any Exhibits hereto. Supplier shall also make available to any ordering Authorized User technical support for the Application within twenty-four (24) hours of receiving an inquiry by electronic mail or telephone, provided such inquiry was received during the Coverage Period, and respond to problems or issues in accordance with the service levels and warranties set forth in this Contract and Exhibit B. If an Authorized User submits an inquiry outside of the Coverage Period, Supplier shall provide technical support within twenty-four (24) hours of the start of the following business day.

**C. Additional Services**

Supplier shall provide access to additional features and functionalities of the Application as are provided by Supplier to other Supplier customers who require functionality similar to the Application provided to Authorized Users on the same cost basis that Supplier is supplying to other Supplier customers. All such additional features and functionality, where reasonably necessary, shall be accompanied by updated Documentation, whether in written format or distributed online via email or the Supplier web site. Notwithstanding the provisions of this Subsection and except as agreed to in writing by the Parties, 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.

**8. AUTHORIZED USER RESPONSIBILITIES**

**A. Authorized User Data**

Unless otherwise agreed, Authorized User shall be responsible for creating and modifying Authorized User Data, and ensuring that Authorized User Data input into the Application is current and accurate. Supplier shall have no responsibility for assisting any Authorized User in creating, modifying or inputting Authorized User Data, unless otherwise agreed to by the Parties in writing.

**B. Authorized Use**

If Supplier provides an Authorized User with a password to access the Application, then the Authorized User is responsible for protecting the password and for any authorized or unauthorized use made of the password. The Authorized User shall cooperate fully with law enforcement authorities in the detection and prosecution of illegal activity related to unauthorized use of the Application.

**9. LICENSE FEES, ORDERING AND PAYMENT PROCEDURE**

**A. License Fees and Charges**

As consideration for the Application license(s) granted herein, an Authorized User shall pay Supplier the license fee(s) set forth on Exhibit B, which lists any and all license 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 3% or the annual increase in the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, All Items, Seasonally Adjusted (SA), 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

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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. Ordering**

Notwithstanding all Authorized User's rights to license Supplier's products under this Contract, an Authorized User is under no obligation to purchase or license from Supplier any of Supplier's products. This Contract is 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 through the eVA electronic procurement website portal (<http://www.eva.state.va.us>). eVA is the Commonwealth of Virginia's total electronic procurement solution. 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). Any order/payment transaction processed through the Commonwealth of Virginia's contract with American Express (AMEX). Each order must not exceed \$5,000, or the then-current charge card limit.
- 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 access to and use of the Application and for Services available under this Contract. Under no circumstances shall any Authorized User have the authority to modify this Contract.

Supplier shall make available all appropriate and/or related Documentation at the same time it grants Authorized User access to the Application. Application access granted without the appropriate and required Documentation shall be considered "shipped short" until the applicable documentation has been received.

**C. Invoice Procedures**

Supplier shall remit each invoice to the bill-to address provided with the order promptly after access to the Application has been granted or Acceptance of Services has occurred. Payment for Application support Services shall be annually in advance unless otherwise stated herein, or in any executed order referencing this Contract. No invoice shall include any costs other than those identified in Exhibit B or the executed order referencing this Contract. 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). Application or Service type and description
- ii). Quantity, charge and extended pricing for each Application and/or Service item
- iii). Applicable order date
- iv). This Contract number and the applicable order number
- v). Supplier's Federal Employer Identification Number (EIN).

ALL CONTRACTUAL OBLIGATIONS UNDER THIS CONTRACT IN CONNECTION WITH AN ORDER PLACED BY ANY PUBLIC BODY (as that term is defined in §2.2-4301 of the Code of Virginia) OF ANY COUNTY, CITY OR TOWN LOCATED WITHIN THE COMMONWEALTH OF VIRGINIA ARE THE SOLE OBLIGATION OF THE COUNTY CITY OR TOWN PLACING THE ORDER AND NOT THE RESPONSIBILITY OF VITA.

**D. Purchase Payment Terms**

All payment obligations under this Contract are subject to the availability of legislative appropriations for this purpose. In the event of non-appropriation of funds for the items under this Contract, VITA may terminate this Contract, or any order, for those goods or services for which

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funds have not been appropriated. However, Supplier will be paid a pro-rated fee based on the length of time the Authorized Users had possessed a password to the Application. Written notice will be provided to the Supplier as soon as possible after legislative action is completed.

If any purchases are to be supported by federal funding, and such funding is not made available, VITA may terminate this Contract, or an Authorized User may terminate an order, for goods or services dependent on such federal funds without further obligation.

Supplier is responsible for the accuracy of its billing information. Supplier agrees not to issue invoices hereunder until the Application has been made available to the Authorized User.

Charges older than ninety (90) days may not be paid.

In the event Application access is granted without 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. All payment terms are net 30 days after Acceptance.

**E. Supplier's Report of Sales and Industrial Funding Adjustment**

The Supplier shall submit the "Supplier Monthly Report of Sales" which will be provided upon Contract award. The report shall be submitted in electronic form via electronic mail to the VITA Contract Administrator and the VITA Controller (email addresses to be provided upon award), by the 10<sup>th</sup> day of every month, reporting all invoices paid by VITA for the preceding month. The report shall also show a cumulative record of all sales which shall carry forward for the duration of the Contract. The Supplier Monthly Report of Sales template (in MS Excel format) indicated at the link above is required to be used by the Supplier and provided to VITA.

The "Supplier Monthly Report of Sales" is a detailed record that is prepared from actual invoices submitted to and paid by the Authorized User pursuant to this Contract. Data submitted shall include Name of Project, Supplier's tax identification number, invoice date, invoice number, order number, name of requesting entity, User name and telephone number, amount billed for services performed for previous month, and IT service category.

The Supplier shall submit Industrial Funding Adjustment payment at the same time as submitting the "Supplier Monthly Report of Sales" in the form of a check or electronic funds disbursement made payable to the Controller of VITA, based on 2% of total sales under this Contract. Supplier shall include this Contract number, "report amounts" and "report period" with all Industrial Funding Adjustment payments. Supplier shall remit Industrial Funding Adjustment payments made via check to: VITA, ATTN: Controller; 110 South 7th Street, 3rd Floor; Richmond, VA 23219-3931. Failure to comply with reporting and payment requirements of this section shall result in default of Contract.

**10. TRAINING AND DOCUMENTATION**

Supplier will provide training to the Authorized Users. Supplier shall offer one quarterly six hour training session to be conducted at an Authorized User facility in the Richmond metropolitan area. Supplier shall notify Authorized Users of its scheduled training sessions at least forty-five (45) days prior to each session. Each order placed by an Authorized User shall entitle such Authorized User to attendance at one such quarterly training session without charge. Upon Authorized User request, Supplier shall provide each Authorized User with one (1) web training session at no charge to such Authorized User. Supplier shall offer additional on-site training at the rates set forth in Exhibit B plus travel expenses in accordance with the per diem amounts set forth by the Virginia Department of Accounts and published at:

(<http://www.doa.virginia.gov/procedures/AdminServices/capp/pdfdocs/20335.pdf>). Web-based training will not incur travel charges to the Authorized User. Pursuant to a mutually agreed upon schedule, Supplier shall provide sufficient personnel experienced and qualified to conduct such training. Exhibit A describes the technical configurations required for training. The training handbook shall be deemed Confidential Information and shall be labeled as such by Supplier.

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Supplier shall deliver to any Authorized User, one (1) complete hard copy or electronic media of Documentation, as requested by such Authorized User. All Documentation supplied under this Contract by Supplier shall be deemed Confidential Information. All copies of Documentation shall be accounted for (by number, location and use) upon Supplier's request. No Authorized User shall have the right, as part of the license granted herein, to make any additional copies of the Documentation, in whole or in part. However, Supplier shall, at Authorized User's request, provide additional copies of the Documentation for Authorized User's own use. 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. The Authorized User shall not have the right, as part of the license granted herein, to modify or customize the Documentation.

## **11. DELIVERY**

Supplier shall provide access to the Application according to the delivery dates agreed upon between Supplier and Authorized User as set forth on the appropriate order.

## **12. ACCEPTANCE**

### **A. Acceptance Criteria**

The Application shall be accepted when the Authorized User reasonably determines that it can successfully access and use all functionalities of the Application which have been licensed to such Authorized User. Such Authorized User agrees to complete Acceptance testing within ten (10) business days after receiving a password to the Application. After such ten (10) business day 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/procedures/AdminServices/capp/pdfdocs/20335.pdf>).

### **B. 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 within thirty (30) days of written notice of inability to access, or as otherwise agreed between the Authorized User and Supplier. In the event that Supplier fails 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.

## **13. GENERAL WARRANTY**

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

### **A. Ownership**

Supplier is the owner of the Application and all data contained or processed therein, except Authorized User Data, or otherwise has the right to grant to all Authorized Users the license to use the Application and such data granted hereunder without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party.

### **B. Application and Documentation**

Supplier warrants the following with respect to the Application:

- i). If the Application is pursuant to a particular Request for Proposal ("RFP"), such Application shall be fit for the particular purposes specified by VITA and Supplier is possessed of

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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 Application;

- ii). If such license granted is pursuant to a particular RFP and such RFP specified the hardware equipment an Authorized User shall use to run the Application, then Supplier warrants the Application, and any subsequent release, is compatible with and shall perform well with such hardware equipment;
- iii). The Application provided hereunder is at the current release level unless an Authorized User specifies an older version in its order;
- iv). No corrections, work arounds or future Application releases provided by Supplier under the warranty provisions or under maintenance shall degrade the Application, cause any other warranty to be breached, or, for a period of one year after commencement of this Contract, require an Authorized User to acquire additional hardware equipment or software;
- v). 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 fully the Application without reference to any other materials or information.

**C. Limited Warranty**

Supplier warrants that the Application shall not contain any material errors and shall function properly and in conformity with the Requirements. Supplier shall correct all errors that result in a failure of the Application to function as specified in Supplier's Proposal that are identified during the Warranty Period at no additional cost to any Authorized User.

**D. 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 at the time access is granted to an Authorized User; and the Application does not contain any embedded device or code (e.g., time bomb) that is intended to obstruct or prevent any Authorized User's use of the Application. 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.

**E. Open Source**

Supplier will notify all Authorized Users if the Application contains any Open Source code (source code that is made generally available and may be modified by programmers accessing such source code) and identify the specific Open Source License that applies to any embedded code or 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 threaten 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 the Application is operating in a production environment and has been used by a non-related third party without significant problems due to the Software or Supplier.

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

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## 14. APPLICATION SUPPORT SERVICES

Supplier shall provide the following services without additional charge to any Authorized User to maintain the Application in accordance with the Requirements:

### A. Known Defects

Promptly notify all Authorized Users of any defects or malfunctions in the Application or Documentation of which it learns from any source other than an Authorized User, correct any such defects or malfunctions or provide a work around until corrected, within ten (10) business days of knowledge of such defect or malfunction and provide all Authorized Users with access to such corrected Application.

### B. New Releases

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

### C. Coverage

Except for maintenance as provided below, the Application shall be available to Authorized Users twenty-four (24) hours per day, seven (7) days per week. During the Coverage Period, provide to any Authorized Users all reasonably necessary telephone or written consultation requested by such Authorized Users in connection with use, problems and operation of the Application.

### D. Service Levels

The Application will go offline from time to time for maintenance. Authorized Users will be notified of those maintenance periods at least 24 hours in advance. Every effort will be made to perform maintenance on weekends or after 5 pm Eastern time on weekdays.

Respond to problems with the Application identified by an Authorized User in no more than twenty-four (24) hours after notification, provided notification occurs during the Coverage Period. If notification is made by an Authorized User outside of the Coverage Period, Supplier shall respond to Authorized User within twenty-four (24) hours of the start of the following business day. Resolve all problems according to the following:

- i). Priority 1 (Application down) within twelve (12) hours;
- ii). Priority 2 (certain processing interrupted or malfunctioning but Application able to process) within forty-eight (48) hours;
- iii). Priority 3 (minor intermittent malfunctioning, Application able to process data) within three to five business days.

The level of severity (e.g., 1, 2, 3), shall be defined by the technical point of contact of VITA or the Authorized User identified in each order issued hereunder.

### E. 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 receive enhancements, releases, upgrade or support for the Application.

### F. Escalation Procedures

When reporting problems, please follow the escalation procedures outlined bellow:

- i). Level 1: Authorized User contacts Supplier's Client Support Group by sending an email to the email address specified in the applicable order. The email should clearly indicate the priority level (e.g., 1, 2, 3) in the message subject.

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- ii). Level 2: If Supplier's Client Support Group has not responded to the initial email within 24 hours, Authorized User shall contact Supplier's technical point of contact as identified in the applicable order.
  - iii). Level 3: If Supplier's technical point of contact is unavailable or has not returned the call within thirty (30) minutes, Authorized User shall contact Supplier's emergency contact as identified in the applicable order.

**G. Remedies**

Should a priority 1 problem not be resolved within twenty-four (24) hours, Supplier shall extend the license grant to the Authorized User by one (1) additional day for each 24-hour period that the Application is unavailable. Should a priority 2 problem not be resolved within seventy-two (72) hours, Supplier shall extend the license grant to the Authorized User by one (1) additional day for each 24-hour period that the Application is unavailable. Should a priority 3 problem not be resolved within six business days, Supplier shall extend the license grant to the Authorized User by one (1) additional day for each 24-hour period that the Application is unavailable.

If Supplier is unable to make the Application conform, in all material aspects, within thirty (30) days following notification by an Authorized User, Supplier shall, at such Authorized User's request, terminate Authorized User's access to the Application, and return all monies paid by such Authorized User for use of the Application and Documentation accrued after the development of the non-conformity. Supplier shall no longer be required to provide access to the Application to such Authorized User.

**15. COMPETITIVE PRICING**

Supplier warrants and agrees that each of the charges, economic or product terms or warranties granted to VITA pursuant to this Contract are comparable to or better than the equivalent charge, economic or product term or warranty being offered to any commercial or government customer of Supplier. If Supplier enters into any arrangements with another customer of Supplier or with an Authorized User to provide Application access or 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.

**16. CONFIDENTIALITY**

**A. Treatment and Protection**

Each Party agrees to (i) hold in strict confidence all Confidential Information of the 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 a non-disclosure contract 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). independently developed by the receiving Party without reference to the Confidential Information of the other Party; or

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

**17. LIABILITY AND INDEMNIFICATION**

Supplier agrees to indemnify, defend and hold harmless any Authorized User, its officers, directors, agents and employees ("Authorized User's Indemnified Parties") from and against any and all third party claims, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, fines, judgments, settlements, expenses (including attorneys' and accountants' fees and disbursements) and costs (each, a "Claim" and collectively, "Claims"), incurred by, borne by or asserted against any of Authorized User's Indemnified Parties to the extent such Claims in any way relate to, arise out of or result from: (i) any intentional or willful conduct or negligence of any employee or subcontractor of Supplier, (ii) breach of any representation, warranty or covenant of Supplier contained herein, (iii) any defect in the Application or the Services, or (iv) any actual or alleged infringement or misappropriation of any third party's intellectual property rights by the Application or any data contained or processed therein or any of the Services. 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 reasonably satisfactory to the Authorized User against whom the claim has been asserted.

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 data contained or processed therein or by any of the 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 the right to continue use of such infringing Application or Services, or any component thereof; or (b) replace or modify such infringing Application or services, or any component thereof, with non-infringing products or services satisfactory to VITA. And in addition, Supplier shall provide any Authorized User with access to a comparable temporary replacement Application or reimburse any Authorized User for the reasonable costs incurred by such Authorized User in obtaining an alternative product 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 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.

**EXCEPT WITH REGARD TO CLAIMS FOR TANGIBLE PROPERTY DAMAGE, PERSONAL INJURY OR INFRINGEMENT, AND THE INDEMNIFICATION AND CONFIDENTIALITY OBLIGATIONS, WITH RESPECT TO EACH OF WHICH LIABILITY SHALL NOT BE LIMITED PURSUANT TO THIS SECTION, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY (OR THE INDEMNIFIED PARTIES OF SUCH PARTY) FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING (WITHOUT LIMITATION) LOSS OF PROFIT, INCOME OR SAVINGS, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, EXCEPT WHEN SUCH DAMAGES ARE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE PARTY, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS. SUPPLIER'S PER INCIDENT LIABILITY FOR INTANGIBLE PROPERTY DAMAGE SHALL BE LIMITED TO TWO (2) TIMES THE AMOUNT OF MONEY PAID TO THE**

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**SUPPLIER UNDER THIS CONTRACT AS OF THE DATE OF THE EVENT OR CIRCUMSTANCE GIVING RISE TO SUCH LIABILITY.**

**18. SECURITY COMPLIANCE**

Supplier agrees to comply with all provisions of VITA's then current security procedures as are pertinent to Supplier's operation and have been supplied to Supplier by VITA and further agrees to comply with all applicable federal, state and local laws. Supplier shall indemnify, defend, and hold VITA, its 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 VITA, its officers, directors, agents or employees, on account of the failure of Supplier to perform its obligations pursuant to this Section.

**19. 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 on notice to Supplier unless Supplier immediately gives VITA adequate assurance of the future performance of this Contract. If bankruptcy proceedings are commenced with respect to Supplier, and if this Contract has not otherwise terminated, then VITA may suspend all further performance of this Contract until Supplier assumes this Contract and provides adequate assurance of performance thereof or rejects this Contract pursuant to Section 365 of the Bankruptcy Code or any similar or successor provision, it being agreed by the Parties 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 VITA's right to pursue or enforce any of its rights under this Contract or otherwise.

**20. GENERAL**

**A. Relationship Between VITA and Supplier**

Supplier has no authority to contract for VITA or in any way to bind, to commit VITA to any agreement of any kind, or to assume any liabilities of any nature in the name of or on behalf of VITA. Under no circumstances shall Supplier, or any of its employees, hold itself out as or be considered an agent or an employee of VITA, and VITA shall have no 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 VITA is not 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, shall be reimbursed by Supplier upon demand by VITA.

**B. Incorporated Contractual Provisions**

The contractual provisions at the following URL are statutorily mandated provisions that are hereby incorporated by reference, including the contractual claims provision §2.2-4363 of the Code of Virginia: [http://www.vita.virginia.gov/procurement/documents/terms\\_05-06sw.pdf](http://www.vita.virginia.gov/procurement/documents/terms_05-06sw.pdf)

**C. 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.

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#### **D. 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 VITA 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. VITA 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 purchasing agency's decision on the claim, unless that agency fails to render its decision within thirty (30) days. The decision of the purchasing agency 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 VITA's alternative dispute resolution (ADR) procedures. Supplier may invoke VITA's ADR procedures at any time and concurrently with any other statutory remedies prescribed by the Code of Virginia.

In the event of any breach by VITA, 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.

#### **E. Advertising and Use of Proprietary Marks**

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

#### **F. 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. Either Party may change its address for notice purposes by giving the other Party notice of such change in accordance with this Section.

#### **G. No Waiver**

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

#### **H. Assignment**

This Contract shall be binding upon and shall inure to the benefit of the permitted successors and assigns of each party hereto. 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 and VITA obtains the prior written consent of Supplier.

If any law limits the right of the Parties 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.

The Supplier shall notify VITA in writing should its intellectual property, associated business, or all or substantially all of its assets be acquired by a third party. The Supplier further agrees that the Contract's terms and conditions, including any and all license rights and related services, shall not be affected by the acquisition. Prior to completion of the acquisition, the Supplier shall

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obtain, for the Commonwealth's benefit and deliver thereto, the assignee's agreement to fully honor the terms of the Contract.

**I. Captions**

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

**J. Severability**

Invalidity of any term of this Contract, in whole or in part, shall not affect the validity of any other term. The Parties 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.

**K. Survival**

The provisions of this Contract regarding Software License, Rights To Work Products, Warranty, Escrow, Confidentiality, Liability and Indemnification, and the General Provisions shall survive the expiration or termination of this Contract.

**L. Force Majeure**

Neither 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.

**M. Remedies**

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

**N. Offers of Employment**

During the first twelve (12) months of the Contract, should Supplier hire an employee of an Authorized User who has substantially worked on any project covered by this Contract without prior written consent, the Supplier shall be billed for 30% of the employee's annual salary in effect at the time of termination. During the first twelve (12) months of the Contract, should VITA hire an employee of Supplier who has substantially worked on any project covered by this Contract without prior written consent, VITA shall be billed for 30% of the employee's annual salary in effect at the time of termination.

**O. 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 Functional Requirements
- ii). Exhibit B Application License Fee, Service Charges and Payment Schedule
- iii). Exhibit C Statement of Work (SOW) template

This Contract, its Exhibits, and any prior non-disclosure agreement constitute the entire agreement between the Parties and supersede any and all previous representations, understandings, discussions or agreements between VITA and Supplier as to the subject matter hereof. 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: the Contract, Exhibit A, any executed Statements of Work, Exhibit B.

VITA and Supplier each acknowledge that it has had the opportunity to review this Contract with its legal counsel.

Executed as of the last date set forth below by the undersigned authorized representatives of the Parties.

Supplier

By: 

(Signature)

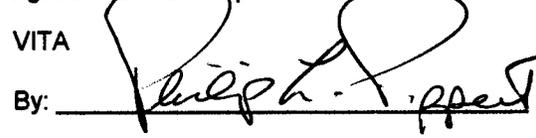
Name: Leslie Peterson

(Print)

Title, Its: Director of Operations

Date: 1/30/2006

VITA

By: 

(Signature)

Name: PHILIP L. PIPPERT

(Print)

Title, Its: ASSOCIATE DIRECTOR, SCM

Date: 1/31/06

Address for Notice:

CHMURA ECONOMICS & ANALYTICS

1309 E. CARY ST.

RICHMOND, VA. 23219

Attention: Leslie Peterson

Address for Notice:

VITA

110 South Seventh Street

Richmond, VA 23219

Attention: Contract Administrator

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## **EXHIBIT A, APPLICATION FUNCTIONAL REQUIREMENTS**

### **Goal**

The Commonwealth of Virginia seeks to develop a user-friendly, web based integrated database application to assist economic developers, workforce development organizations, and educational institutions in linking available data on a regional basis so as to foster improved access to industry demand for occupations and the supply of labor and occupations in specified areas of Virginia, as well as a comprehensive inventory of training and educational offerings that can be used to promote more efficient alignment of these offerings with anticipated demand for identified occupations.

### **Rationale**

The availability of a tool of this nature should serve to maximize efficiencies in matching area demand with supply, allow for improved planning and delivery of needed training resources and curricula to meet demand, assist in strengthening the competitiveness of existing Virginia businesses, leading to further capital expansions and employment opportunities, and assist economic development programs at the state, local, and regional levels sharpen their recruitment and retention activities.

### **Specific Attributes of Desired System**

1. Be able to use data from standard Federal or State sources  
Standard Occupational Codes; NAICS, VEC's ES-202 data; VEC's ES-203 data; O\*Net; National Center for Education Statistics crosswalk (CIP)
2. Ability to select a specific industry using a discrete unit such as a 4-digit NAICS code for a specified region or area of Virginia, or the entire state of Virginia, to be able to determine:
  - a. Employment in that industry
  - b. Number of firms/establishments in that industry
  - c. Wages paid in that industry (regionally, state, or nationally)
  - d. Occupations that are used in that industry or group/cluster of industries (with some discrete level of detail such as a 6-digit SOC)
3. From the selection of occupations or groups of occupations, the user should be able to drill down further with the tool to allow a determination of the specific skills required for the detailed Occupation or Occupation Group
4. Likewise a user should be able to have the ability to match an occupation to other occupations that share the same skills.
5. From the selected grouping of Occupations noted above, the user should be able to drill down further to determine the specific Training or Education Requirements associated with these occupations
  - a. This could be classified by minimum years of education or level of training, and type of program or degree/certification required for those skills
  - b. The tool should be able to document the specific number of graduates within specific disciplines by region and statewide.

6. The tool should be able to display the degree to which a region or area has a documented current “occupation gap” for a particular industry; ultimately the tool should be able to provide some forecasting capability of future “occupation gaps” for the next 5-10 years
7. The data should be updated quarterly, annually, and biannually, depending on the analytic and relevant cycle time for updates.

The remainder of this exhibit (Exhibit A) provides information about the functional specifications of JobsEQ™. These functional specifications meet the requirements stated in the ‘Specific Attributes of Desired System’ section above. Application is designed to run with Microsoft Internet Browser, Windows Explorer, and is not designed to run with any other browser such as Netscape, Foxfire, etc. Application is a Personal Computer (PC) application and is not designed to run on a MacIntosh (MAC) computer.

In the example below, the circles to the far right represent the current digital dashboard which allows users to drill down for more granular information for that particular analytic. The example shows the drilldown for Labor Inventory; the other digital dashboard analytics have similar drilldowns; however, because those permutations are so numerous, the drilldown example has been limited to Labor Inventory.

**Example of navigating JobsEQ™ for Labor Information:**

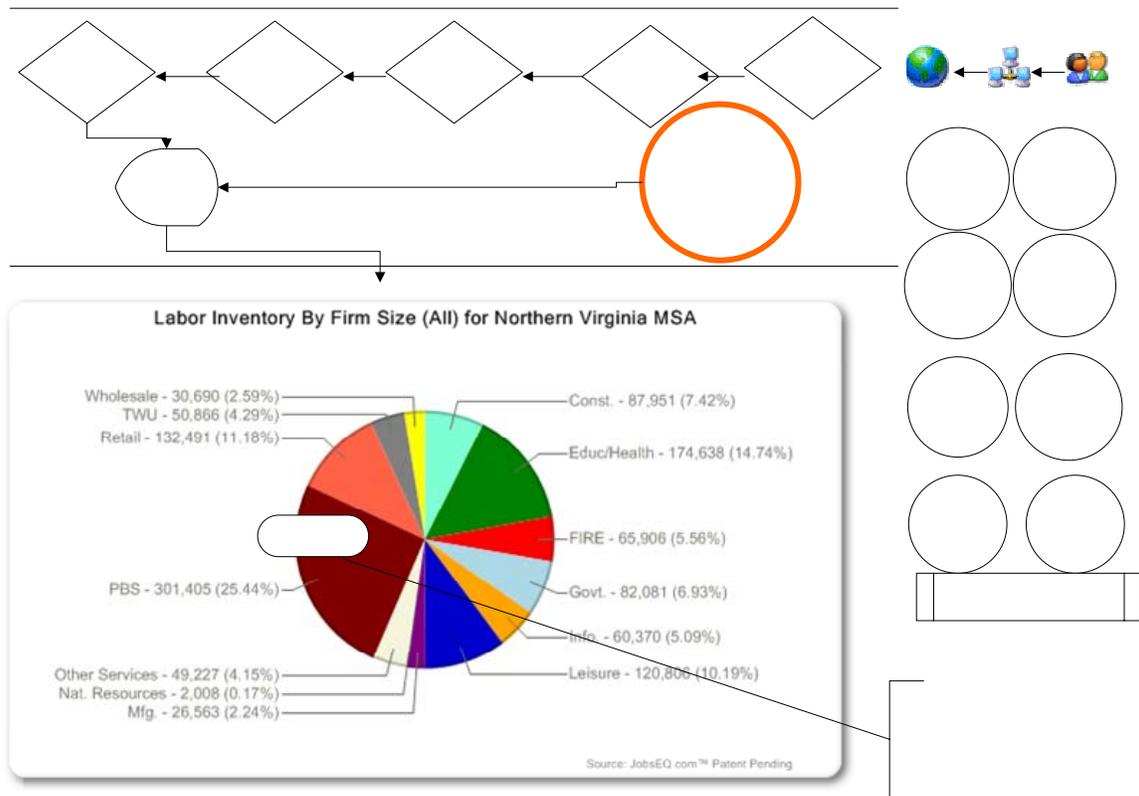


Figure 1: Employment Inventory by Occupation

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Five main categories currently exist for JobsEQ™ analytics:<sup>1</sup>

1. Labor Analytics
2. Knowledge Analytics
3. Career Analytics
4. Demographic Analytics
5. Development and Policy Supporting Analytics

The more granular data/analytics available from the dashboard or from the menu include:

**Maps** - The maps tool provides a geographic visual of statistics by Virginia's counties. Selection criteria enable the user to choose from one of seven maps:

- % Change in Employment From Last Quarter
- % Change in Employment From Last Year
- Unemployment Rate
- Commute From Region
- Commute Into Region
- Rural Scale - 1993
- Rural Scale - 2003

There are two ways to view data on the maps:

1. Beneath the map is a legend with scrolling capabilities that lists data for all of the state's counties and independent cities. This alphabetical listing includes independent cities that do not appear on the map. To use the scrolling feature, click on the scroll bar and drag it horizontally.
2. By moving the mouse pointer and holding it over a county, data for that county will be displayed in a pop-up box. (Also, this method will highlight all counties having the same color code.)

**Ad-hoc reports** - The Ad-Hoc Reports function enables users to create customized reports based on specific criteria. There are six analytics from which the user can choose. When crossed with the dimension and calculation variables, the user has 26 types of reports to access. These options can be seen in the table below.

Analytic	Dimension	Calculation	Display
Wages	Industry (with 3 industry category selections) FIPS Code High-tech occupations	Total or Annual Average	Chart or Table

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<sup>1</sup> Analytics in addition to those noted in the remainder of this document are under development for these five main categories that include separate dashboards as well as lead and lag indicators where possible.

	Firm Size		
Workers	Industry (with 3 industry category selections) Worker Experience Occupation (with 4 occupation category selections) FIPS Code High-tech occupations Firm Size	Total	Chart or Table
Firms	Industry (with 3 industry category selections) FIPS Code Firm Size	Total	Chart or Table
Unemployed	FIPS Code Age Education Industry Sector Race Sex Occupation	Total	Table
Training	Occupation (with 4 occupation category selections)	Total	Table
Education Profile	Instructional Program	Total	Table

Each of the Ad-Hoc reports can also be modified by regional selection criteria found at the top of the Ad-Hoc report page.

**Total wages** - This chart, found on the [digital dashboard](#), displays the total wages earned in a region over time.

[Annual Average Wages per Worker](#) - This chart displays the annual average wages per worker over time. These data display quarterly changes. Recessions are identified by shading.

**Percent Change in Employment** - The data are displayed in quarterly increments (though % changes are calculated over 12 months). Recessions are identified by shading.

**Labor Inventory** - The Labor Inventory tool, found on the digital dashboard, provides information on the composition of the workforce in a given region as well as detailed information on any given occupation. The following charts and tables are available in this tool (with applications listed below):

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[Labor Inventory Charts](#) - the initial charts show

% of workforce by industry in a given region

% of workforce by firm size

% of workforce by industry and given firm size

[Employment by Occupation Chart](#) - obtained by clicking on an industry slice of the Labor Inventory by Industry Chart (Labor Inventory Charts)

% employment by occupation within an industry

[Average Wages by Industry](#) & [Employment Occupation by Detail](#) - obtained by clicking on an occupation slice of the Employment by Occupation Chart

average wages in a region by industry

% employment by minor occupation

[Occupation Profile](#) - obtained by clicking on a slice of the Employment Occupation by Detail Chart

occupation attributes by knowledge, skills, ability, and activity

**Entrepreneurial Activities Quarterly** - This chart, found on the [digital dashboard](#), shows the number of entrepreneurial firms entering or exiting a selected region and industry per quarter.

**Entrepreneurial Activities Yearly** - This chart, found on the [digital dashboard](#), shows the number of entrepreneurial firms entering or exiting a selected region and industry per year.

**Labor Supply and Demand** - This tool, found on the [digital dashboard](#), forecasts the supply and demand of labor for a given region. Labor can be analyzed by industry or occupation.

Eight different scenarios are offered to illustrate the interpretations and uses of the typical output graphs.

Industry Drill-Downs:

[I. Industry in decline; component occupations faring better](#)

[II. Industry in decline; component occupations declining faster](#)

[III. Industry in expansion; component occupations trailing](#)

[IV. Industry in expansion; component occupations faring better](#)

Occupation Drill-Downs:

[V. Regional industries in decline; occupation faring better](#)

[VI. Regional industries in decline; occupation declining faster](#)

[VII. Regional industries in expansion; occupation trailing](#)

[VIII. Regional industries in expansion; occupation faring better](#)

**Unemployment Rate** - The Unemployment Rate chart, found on the [digital dashboard](#), displays the percentage of the labor force that is unemployed. The unemployment rate is determined by dividing the total number of unemployed workers by the total labor force. The total labor force is the sum of both the employed workers and the unemployed workers.

**Top Ten Rankings** - Regional rankings are calculated by:

Firm

Occupation - at the 5-digit SOC level

Industry - at the 4-digit NAICS level (see exclusions note below)

and the top-ten rankings are shown for:

Largest Increase in the Number Employed from a Year Ago

Largest Decrease in the Number Employed from a Year Ago

Largest Increase in the Total Wages from a Year Ago

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### Largest Decrease in the Total Wages from a Year Ago

For occupation and industry:

Largest Projected Annual Increase

Largest Projected Annual Decrease

For these tables, "a year ago" is defined as of the date of the latest available data . (A note at the top of the Top Ten Ranking page will have this information.) So if, for example, the last data period used was the fourth quarter of 2003, the changes represented in the top-ten rankings would be for the 12 months ending with the fourth quarter of 2003.

Because of non-disclosure issues, data for some industries cannot be shown. This may also affect the ability of the user to view data of industries above and below the non-disclosable industry.

**Employment Characteristics** (ES-203) - Unemployment in the selected region can be broken down by: Age, Education, Industry, Race, Sex, and Occupation.

**Occupation Staffing** - By using the selection criteria to choose an occupation, the top industries that use an occupation are displayed (only industries that use more than 1.0% of the selected occupation are shown).

**Career Training Ladders** - Career training ladders identify the career paths that individuals may follow (across or within industries) as they increase their knowledge and capabilities. Career training ladders are particularly useful to job-seekers and training professionals. The career training ladders shown in JobsEQ™ detail the vertical relationships among occupations. Within each occupation family, a worker in lower-level occupations can move to a higher-level through proper training and experience.

**First-Time Workers** - First-time workers are those workers who are no longer pursuing an education, but are first entering into the labor market. The new workers are grouped by educational attainment:

High School graduates, 2-year college graduates, and 4-year college graduates.

This JobsEQ™ analytic forecasts the number of first-time workers for the selected region. The forecast is shown over a seven-year period.

**Industry Clusters** - A cluster is a geographic concentration of interrelated industries.

Clusters form and grow because of a region's competitive advantages such as location, trained labor, and education systems.

**The Cluster Charts are based on three variables:**

**Location Quotient** - This value is shown by the size of the circle; the larger the circle, the larger the location quotient.

**Average Wages** - This value is shown on the vertical axis. The higher the industry circle is shown on the chart, the higher the average wages in that industry.

**Forecast Growth** - The forecast growth rate for an industry is the total percentage change in employment expected over the given period. This value is shown along the horizontal axis.

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Thus, the further to the right an industry's circle is shown, the greater the growth expected in that industry.

**Desirability Index** - The Desirability Index represents how 'desirable' an industry is for a region.

**What-if Scenario** - What-If Scenario enables users to examine the impact of a firm relocation.

Questions that can be answered here include:

- If a firm enters a region, what occupations will be needed?
- Are skilled workers available in the region to fill these positions?
- Does the region have currently unemployed workers with skills similar enough to fill the new firms needs?
- If a firm is leaving a region, what occupations are expected to be lost?

**Willing and Able** - The Willing and Able tool allows the user to specify an occupation and to then examine related occupations for their appeal as career-change options.

For this analysis, the user must first select a major occupation and then a minor occupation (see occupation selection for more details). The data for the minor occupation will then be displayed when the Go button is clicked. Regional selection is also an option for this analytic.

**True Gaps** - True gaps identify the potential need or surplus for a particular occupation or curriculum based on occupation forecasts for a region. Gaps are created for an optimistic and most likely scenario as well as 3, 7, and 10 year gaps.

**Additional Notes** -

1. Drill down by NAICS is available for analytics related to industries while drill downs by SOC occur for occupation-related analytics. Department of Labor nondisclosure rules are applied where appropriate.
2. Drill downs are available by metropolitan area, planning district commission, workforce investment area, county/city, and tobacco region. The Virginia Council on the Future regions can be added at additional cost.
3. A help tool is incorporated into the software that allows users to obtain additional background on the creation of the analytic as well as how to apply it to a region.

**Hardware/software requirements of CEA or purchaser**

Irregardless of the hardware requirements for a specific implementation, JobsEQ™ has the following minimum server software requirements:

- Windows Server 2003
- .NET Framework versions 1.1 and 2.0
- Microsoft SQL Server 2005 Enterprise Edition  
(JobsEQ™ does not support database engines run on virtual servers such as Virtual Server or VMWare.)
- Access to a standard SMTP server

Client Requirements:

- Internet Explorer 6.0
- .NET Framework version 1.1 (required for interactive charts)

**EXHIBIT B, APPLICATION LICENSE FEE, SERVICE CHARGES AND PAYMENT SCHEDULE**

**A. General**

Supplier’s pricing, as shown in this Exhibit, provides discounts for any Authorized User who places an order hereunder within ninety (90) days of the Effective Date of the Contract. After the discount period, Supplier’s standard pricing, or any additional discounts offered by Supplier, shall apply.

For all orders placed against the Contract, should an Authorized User purchase additional licenses during the term of its initial order under this Contract, license fees shall be pro-rated for the additional licenses to allow for co-termination of all licenses for each Authorized User.

Any Authorized User who purchases a JobsEQ Bronze license shall be entitled to use the Application to perform the functions described in Exhibit A as they relate to such Authorized User’s county or city and one peer county or city.

Any Authorized User who purchases a JobsEQ Plus license shall be entitled to use the Application to perform the functions described in Exhibit A as they relate to such Authorized User’s region, as defined herein, and one peer region.

An Authorized User may order a license to use the Application to perform the functions described in Exhibit A as they relate to a Workforce Investment Area, Metropolitan Statistical Area, or Planning District Commission that is not defined in Section D of this Exhibit. In such instance, Supplier may charge a customization fee.

**B. Pricing for Orders Placed Within Ninety (90) Days of Effective Date of Contract**

**JobsEQ Pricing for 90 Days After Effective Date Of Contract**

Product Identification	Geographic Reach	Annual Pricing Per License
JobsEQ Gold	Statewide	\$ 38,000.00
JobsEQ Platinum	Workforce Investment Areas (WIA)	\$ 30,000
JobsEQ Bronze	County/City	\$ 4,995
JobsEQ Plus	Regions (MSA, PDC, Tobacco)	\$ 30,000
<b>Additional Seats For Individual Authorized Users After Purchasing 2 licenses</b>		
	<i>Statewide</i>	\$ 5,000.00
	<i>WIA</i>	\$ 3,995.00
	<i>Regions</i>	\$ 3,995.00
	<i>County/City</i>	\$ 2,995.00
Service Charges	Not Applicable	

Definitions:

WIA = Workforce Investment Area.

MSA = Metropolitan Statistical Area.

PDC = Planning District Commission.

One-Time Fee to Customize Regions Customized Regions \$ 5,000

NOTE: Pricing for additional training sessions: \$95 per hour plus travel expenses.

**C. Pricing for Orders Placed After Ninety (90) Days of Effective Date of Contract  
JobsEQ Pricing After Initial Period Expires**

Product Identification	Geographic Reach	Annual Pricing Per License
JobsEQ Gold	Statewide	\$ 79,000.00
JobsEQ Platinum	Workforce Investment Areas	30,600.00
JobsEQ Bronze	County/City	9,950.00
JobsEQ Plus	Regions (MSA, PDC, etc.)	30,600.00

**Additional Seats For Individual Agency After Purchasing 2 Licenses**

<i>Statewide</i>	\$ 9,995.00
<i>WIA</i>	\$ 3,995.00
<i>Regions</i>	\$ 3,995.00
<i>County/City</i>	\$ 2,995.00

Service Charges Not Applicable

Definition of Regions:

WIA = Workforce Investment Area.

MSA = Metropolitan Statistical Area.

PDC = Planning District Commission.

One-Time Fee to Customize Regions	Customized Regions	5,000.00
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NOTE: Pricing for additional training sessions: \$95 per hour plus travel expenses.

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## **D. Currently Available Regions**

### **Definition of Current Regions (not subject to customization fees):**

#### ***WIA = Workforce Investment Area.***

Southwest Virginia, Local Workforce Investment Area #1  
New River/Mount Rogers, Local Workforce Investment Area #2  
Western Virginia, Local Workforce Investment Area #3  
Shenandoah Valley, Local workforce Investment Area #4  
Northern Shenandoah Valley, Local Workforce Investment Area #5  
Piedmont Workforce Network, Local Workforce Investment Area #6  
Region 2000/Central VA, Local Workforce Investment Area #7  
South Central, Local Workforce Investment Board #8  
Capital Area, Local Workforce Investment Board #9  
City of Richmond, Workforce Investment Area #10  
Northern Virginia, Local Workforce Investment Area #11  
Alexandria/Arlington, Local Workforce Investment Area #12  
Bay Area, Local Workforce Investment Area #13  
Peninsula Worklink, Local Workforce Investment Board #14  
Crater Area, Local Workforce Investment Board #15  
Opportunity Inc., Local Workforce Investment Board #16  
West Piedmont Workforce Investment Board #17

#### ***MSA = Metropolitan Statistical Area.***

Blacksburg  
Charlottesville  
Danville  
Harrisonburg  
Bristol  
Lynchburg  
Richmond  
Roanoke  
Hampton Roads  
Northern Virginia  
Winchester

#### ***PDC = Planning District Commission.***

Accomack-Northampton (PDC 22)	Northern Shenandoah Valley RC (PDC 7)
Central Shenandoah (PDC 6)	Northern Virginia (PDC 8)
Commonwealth Regional Council (PDC 14)	RADCO (PDC 16)
Crater (PDC 19)	Rappahannock-Rapidan RC (PDC 9)
Cumberland Plateau (PDC 2)	Region 2000 (PDC 11)
Hampton Roads (PDC 23)	Richmond Regional (PDC 15)
Lenowisco (PDC 1)	Roanoke Valley-Alleghany RC (PDC 5)
Middle Peninsula (PDC 18)	Southside (PDC 13)
Mount Rogers (PDC 3)	Thomas Jefferson (PDC 10)
New River Valley (PDC 4)	West Piedmont (PDC 12)
Northern Neck (PDC 17)	

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**EXHIBIT C, STATEMENT OF WORK TEMPLATE**

**FIXED PRICE OR TIME AND MATERIALS STATEMENT OF WORK**

**Task Name**

A project will usually have many "Tasks". Task Name will track the project management tool used by Authorized User's customers. Note: A completed template will substitute the Authorized User's name where VITA appears below.

**1. Project Scope and Key Assumptions**

**2. Roles and Responsibilities of Supplier and VITA**

Detail Supplier responsibilities

Detail VITA's responsibilities

**VITA shall use the Application solely in support of Commonwealth business.**

**3. Work Location**

All work is to be performed at the VITA's/Supplier's location(s) unless otherwise indicated.

**4. Knowledge Transfer [use if Work Product is to be developed]**

As part of this Deliverable, Supplier shall make reasonable effort to allow VITA's employees working with Supplier on this Deliverable, to observe and learn the following documented items, steps or procedures:

**5. Hours to Complete / Duration / Due Date**

\_\_\_ hours / \_\_\_ weeks / \_\_\_\_\_, 200\_\_

**6. Acceptance Criteria**

All Custom Work Product and other Deliverables of a nature suitable for testing shall be subject to Acceptance (by VITA) under the following procedures:

- i). Testing of Deliverables. For a Deliverable commissioned under an SOW, a reasonable period for testing and error correction shall be considered a normal part of the development process. Supplier shall provide reasonable on-site assistance in testing of Deliverables. Following delivery / installation, VITA shall have \_\_\_ business days (Test Period) to conduct reasonable testing of the Deliverable to determine whether it performs substantially in accordance with the SOW. VITA shall provide reasonable access to its premises, proper environmental and site conditions, any required test data in proper format and the cooperation of its staff and Agents to assist Supplier during installation and testing of the Deliverable. On-site testing shall be conducted according to a written test plan written by VITA/Supplier and approved by Supplier/VITA. VITA shall provide Supplier timely sign-offs as each function on the test plan is demonstrated.
- ii). Correction of Defects. If no material variances from the test plan are identified in writing during the Test Period, the Deliverable shall be deemed accepted by VITA. If material defects are identified during the Test Period, VITA shall provide a written punchlist identifying the particular specification at issue and provide detailed reasons why the tested feature does not meet the specification. Supplier shall not be required to correct minor imperfections or defects that do not materially impair the operation or quality of the Service. Supplier shall have a reasonable opportunity to correct, replace or provide functional workarounds for all punchlist items or to commence corrective action reasonably acceptable to VITA and proceed with reasonable diligence to completion.

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iii). Acceptance of Services. A Deliverable or Service shall be deemed accepted if VITA does not notify Supplier of any material defects during the Test Period or, if VITA makes beneficial use of the Deliverable or Service, it shall conclusively be deemed accepted and any outstanding punchlist items shall be covered to the extent provided under the Warranty section of the Contract.

**7. Installation**

TBD

**8. Deliverable Value, Holdbacks and Payment Milestone**

The amount due upon completion of this Deliverable is \$ \_\_\_\_\_. Supplier shall invoice VITA upon delivery, Acceptance and payment in full shall be due thirty (30) days from invoice date, Acceptance

**9. Technical Points of Contact**

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

VITA: \_\_\_\_\_

Supplier: \_\_\_\_\_

Supplier's Emergency Contact: \_\_\_\_\_

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

Supplier

VITA

By: \_\_\_\_\_

By: \_\_\_\_\_

(Signature)

(Signature)

Name: \_\_\_\_\_

Name: \_\_\_\_\_

(Print)

(Print)

Title, Its: \_\_\_\_\_

Title, Its: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_