



Commonwealth of Virginia
Virginia Information Technologies Agency

**PERFORMANCE BUDGETING INFORMATION TECHNOLOGY SOLUTION
(Optional Use)**

Date: June 16, 2016

Contract #: VA-090724-PPC

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

Contractor: Project Performance Company, LLC
1760 Old Meadow Road, 1st Floor
McLean, VA 22102
www.ppc.com

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FIN: 54-1571030

Term: July 24, 2016 – July 23, 2017

Payment: Net 30 days

For Additional Information, Please Contact:

Virginia Information Technologies Agency
Supply Chain Management

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

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

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

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



COMMONWEALTH of VIRGINIA

Virginia Information Technologies Agency

Nelson P. Moe
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711

June 15, 2016

Paul Meyers
Project Performace Company Llc
1760 Old Meadow Road
Mclean Virginia 22102

Mr. Meyers,

Per Section 3.A. ("Term and Termination") of contract VA-090724-PPC, The Virginia Information Technologies Agency has elected to exercise its option to renew the contract for one year, from July 24, 2016 through July 23, 2017. Should you have any questions, please feel free to contact me.

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

**MODIFICATION NO. 2
TO
CONTRACT NUMBER VA-090724-PPC
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
PROJECT PERFORMANCE COMPANY, LLC**

This MODIFICATION No. 2 is hereby incorporated into and made an integral part of Contract VA-090724-PPC

The purpose of this Modification is to add the clause(s) and clarifications listed below:

1. Add to the definition of "Authorized Users" in Section 2 Subsection C on Contract Page 1.
"Authorized Users also include private institutions of higher education chartered in Virginia and granted tax-exempt status under §501(c)(3) of the Internal Revenue Code. A list of the private institutions eligible to use this contract can be found at <http://www.cicv.org/our-Colleges/Profiles.aspX>
2. Add to the definition of "SOFTWARE LICENSE" in Section 4 on Contract Page 5.
"If Authorized User is a state agency, board, commission, or other quasi-political entity of the Commonwealth of Virginia or other body referenced in Title 2.2 of the Code of Virginia, the license shall be held by the Commonwealth. If Authorized User is a locality, municipality, school, school system, college, university, local board, local commission, or local quasi-political entity, the license shall be held by that public body. If Authorized User is a private institution, the license shall be held by that private institution."
3. Add to the definition of "RIGHTS TO WORK PRODUCT" in Section 5 on Contract Page 7.
"If Authorized User is a private institution of higher education chartered in Virginia and granted tax-exempt status under §501(c)(3) of the Internal Revenue Code, any license to pre-existing work shall be held by, and all rights in, title to, and ownership of Work Product shall vest with that institution."
4. Add to the definition of "Software and Deliverable Acceptance Criteria" in Section 9 Subsection A on Contract Page 11.
"If the authorized User is a private institution chartered in Virginia and granted tax-exempt status under §501(c)(3) of the Internal Revenue Code, such private institution may have its own per diem amounts applicable to Supplier's pre-approved travel expenses."
5. Add to the definition of "Indemnification" in Section 18 Subsection A on Contract Page 20.
"In the event of settlement between Supplier and privative institution of higher education who is an Authorized User of this contract, the settlement shall be satisfactory to such institution."

6. Add to the definition of "Dispute Resolution" in Section 23 Subsection F on Contract Page 23.
"In the event of any breach by a public body or a private institution, Supplier's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section. In no event shall Supplier's remedies include to the right to terminate any license or support services hereunder."

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-090724-PPC by this Modification No. 2.

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.

PROJECT PERFORMANCE COMPANY, LLC

BY: 
NAME: Keith L. Dill
TITLE: Vice President, Contracts
DATE: August 5, 2014

COMMONWEALTH OF VIRGINIA

BY: 
NAME: Day Crenshaw
TITLE: UtA Security mgmt
DATE: 8/11/14

**MODIFICATION # 1
TO
CONTRACT NUMBER VA-090724-PPC
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
PROJECT PERFORMANCE CORPORATION**

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 Project Performance Corporation, hereinafter referred to as "Contractor". This Modification is hereby incorporated into and made an integral part of Contract VA-090724-PPC (the Agreement).

The purpose of this Modification is to document both parties' agreement to modify the Contract as follows:

Per Section 19. "Insurance", the Commonwealth grants a waiver for ICS, a subcontractor. The insurance requirement for ICS will be as follows:

- a. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the Code of Virginia during the course of the contract shall be in noncompliance with the contract.
- b. Employer's Liability - \$100,000.
- c. Commercial General Liability - \$2,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.
- d. Automobile Liability - \$1,000,000 per occurrence. (Only used if motor vehicle is to be used in the contract.)
- e. Errors and Omissions - \$1,000,000 per occurrence.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-090724-PPC 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.

PROJECT PERFORMANCE CORPORATION

BY: Peter Dierbeck

NAME: Peter Dierbeck

TITLE: Director of Contracts

DATE: 11/16/10

COMMONWEALTH OF VIRGINIA

BY: Dorey Cranshaw

NAME: Dorey Cranshaw

TITLE: VITA Sourcing Manager

DATE: 11/16/10



Performance Budgeting Information Technology Solution Contract

between

The Virginia Information Technologies Agency

on behalf of

The Commonwealth of Virginia

and

Project Performance Corporation

**PERFORMANCE BUDGETING INFORMATION TECHNOLOGY SOLUTION
CONTRACT
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PERFORMANCE BUDGETING INFORMATION TECHNOLOGY SOLUTION CONTRACT

THIS PERFORMANCE BUDGETING INFORMATION TECHNOLOGY SOLUTION CONTRACT ("Contract") is entered into by and between the Virginia Information Technologies Agency ("VITA") pursuant to §2.2-2012 of the Code of Virginia and on behalf of the Commonwealth of Virginia, ("the Commonwealth") and Project Performance Corporation ("Supplier"), a Virginia corporation headquartered at 1760 Old Meadow Road, Mclean, VA 22102, to be effective as of July 24, 2009 (Effective Date).

1. PURPOSE

This Contract sets forth the terms and conditions under which Supplier agrees to provide and implement for the Commonwealth and Authorized Users a solution for the Software and related Services required to implement a Performance Budgeting (PB) system for the Commonwealth of Virginia ("Solution"), and to provide various Services to the Authorized Users.

2. DEFINITIONS

A. Acceptance

Successful performance of the Solution at the location designated in the applicable Statement of Work, or completed and successful Acceptance testing in conformance with the Requirements as determined by the Designated Project Manager in the applicable Statement of Work.

B. Agent

Any third party independent agent of any Authorized User.

C. Authorized Users

Any public bodies, including VITA, as defined by §2.2-4301 and referenced by §2.2-4304 of the Code of Virginia as identified in an applicable Statement of Work.

D. Component

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

E. Component Warranty Period

For any Software or Deliverable ("Component"), the applicable warranty period shall be the period from Acceptance of the Component until Final Acceptance of the Solution, as defined in the applicable Statement of Work.

F. Computer Virus

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

G. Confidential Information

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

H. Deliverable

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

I. Designated Project Manager

The individual, also known as COVA PM, designated by the Commonwealth of Virginia to lead the project management team for a Statement of Work issued under the Contract, accept all Solution Deliverables for that Statement of Work and make determinations regarding a breach of the Statement of Work.

J. 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 Solution, and to implement and develop self-sufficiency with regard to the Solution as may be specified in a Statement of Work issued hereunder.

K. Enterprise

Any state agency, which includes any court, department, institution, office, board, council or other unit of state government located in the legislative, judicial or executive departments or group of independent agencies, or central appropriations, as shown in the current Virginia Appropriations Act, and which is designated in that act by title and a three-digit agency code.

L. Electronic Self-Help

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

M. Party

Supplier, VITA, or any Authorized User.

N. Requirements

The functional, performance, operational, compatibility, testing and other parameters and characteristics of the Service(s) and Deliverables as set forth in Exhibits A and B and the applicable Statement of Work and further defined in the requirements traceability matrix and such other parameters, characteristics, or performance standards that may be agreed upon in writing by the Parties.

O. Services

Any work performed or service provided, including development and maintenance of the Solution, software modifications, installation, support, training, and provision to the Authorized User of any Deliverable described in the applicable Statement of Work, provided by Supplier under this Contract for an Authorized User. Services include the discovery, creation, or development of Work Product, if any.

P. Software

The programs and code provided by Supplier under this Contract as a component(s) of the Solution, and any subsequent modification of such programs and code, excluding Work Product.

Q. Software Publisher

The licensor of the Software provided by Supplier under this Contract.

R. Solution Warranty Period

The Solution Warranty Period shall be defined in the applicable Statement of Work and shall follow Final Acceptance of the Solution.

S. Statement of Work (SOW)

Any document in substantially the form of Exhibit D describing the deliverables, due dates, assignment duration and payment obligations for a specific project, engagement, or assignment for which Supplier shall be providing a Solution and/or Services to an Authorized User, which, upon signing by both Parties, shall be deemed a part of this Contract.

T. Supplier

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

U. Work Product

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

3. TERM AND TERMINATION

A. Contract Term

This Contract is effective and legally binding as of the Effective Date and, unless terminated as provided for in this section, shall continue to be effective and legally binding for a period of seven (7) years. VITA, in its sole discretion, may extend this Contract for up to three (3) additional one (1) year periods after the expiration of the initial seven (7) year period. VITA will issue a written notification to the Supplier stating the extension period thirty (30) days prior to the expiration of any current term. In addition, performance of an order or SOW issued during the term of this Contract may survive the expiration of the term of this Contract, in which case all terms and conditions required for the operation of such order or SOW shall remain in full force and effect until the Solution and all Services pursuant to such order or SOW have met the final Acceptance criteria of the applicable Authorized User.

B. Termination for Convenience

VITA may terminate this Contract, in whole or in part, or any order or SOW issued hereunder, in whole or in part, or an Authorized User may terminate an order or SOW, in whole or in part, upon not less than ten (10) days prior written notice at any time for any reason.

C. Termination for Breach

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

If VITA or the Designated Project Manager on behalf of an Authorized User deems the Supplier to be in breach, VITA or the Designated Project Manager shall issue, in writing, a "Show Cause Notice" to the Supplier identifying the failure and providing Supplier fifteen (15) days to cure the failure/nonperformance. If Supplier fails to answer the Show Cause Notice, or does not correct the deficiencies noted, VITA may immediately terminate this Contract or any SOW issued hereunder, in whole or in part, or the Authorized User may immediately terminate its SOW, in whole or in part. Such termination shall be deemed a Termination for Breach. In addition, if Supplier is found by a court of competent jurisdiction to be in violation of or to have violated 31 USC 1352, VITA may immediately terminate this Contract, in whole or in part, for breach, and VITA shall provide written notice to Supplier of such termination. Supplier shall provide prompt written notice to VITA if Supplier is charged with violation of 31 USC 1352.

In the event of a Termination for Breach, the affected Authorized User(s) may elect to not be liable for any cost related to the terminated Contract, SOW, or portion thereof. In the event that the affected Authorized User(s) elects such a remedy, Supplier shall accept return of any products or Software provided to the affected Authorized User(s) that are determined to be deficient, and Supplier shall refund any monies paid by any Authorized User pursuant to the Contract, SOW, for the portion thereof terminated for breach. A breach of a portion of the Contract or SOW does not automatically constitute a breach of the whole Solution. All costs of de-installation and return of product or Software terminated for breach, shall be borne by Supplier. In addition, the affected

Authorized User(s) shall retain the right to claim any and all other remedies that may be available at law or in equity.

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

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

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

D. Termination for Non-Appropriation of Funds

All payment obligations under this Contract are subject to the availability of legislative appropriations at the federal, state, or local level, for this purpose. In the event of non-appropriation of funds, irrespective of the source of funds, for the items under this Contract and upon ten (10) days prior written notice, VITA may terminate this Contract, in whole or in part, or any order, in whole or in part, or an Authorized User may terminate an order, in whole or in part, for those goods or services for which funds have not been appropriated or for which funds are not available provided such goods or services have not yet been delivered and accepted.

E. Effect of Termination

Upon termination for convenience or non-appropriation of funds, neither the Commonwealth, nor VITA, nor the Designated Project Manager, nor any Authorized User shall have any future liability except for Deliverables accepted by the Designated Project Manager or Services rendered by Supplier and accepted by the Designated Project Manager prior to the termination date or on a pro-rated basis based on Exhibit C for work authorized in writing by the Commonwealth, VITA, or the Designated Project Manager up to the notice of termination and for reasonable costs incurred between the notice and effective date of termination. Such costs shall be submitted to Commonwealth and may be audited by the Commonwealth.

In the event of a Termination for Breach or Termination for Default, VITA and the Commonwealth may return for a refund accepted Deliverables which are rendered unusable without the Solution. Supplier shall have recourse as provided by this contract, including Dispute Resolution, and applicable law.

F. Transition of Services

Upon termination of this Contract and at the request of VITA, Supplier shall provide all assistance as VITA or an Authorized User may reasonably require to transition Performance Budgeting-related Services to any other supplier with whom VITA or such Authorized User contracts for provision of a Performance Budgeting solution(s). This obligation may extend beyond termination of the Contract for a period not to exceed six (6) months. In the event of a termination for breach and/or default of Supplier, Supplier shall provide such assistance as deemed reasonable at no charge or fee to VITA or any Authorized User; in the event of termination for convenience, Supplier shall provide such assistance at the hourly rate or a charge agreed upon by Supplier and VITA or an Authorized User in a Statement of Work to be issued under the Contract.

G. Contract Kick-Off Meeting

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

location of this meeting will be coordinated with Supplier and other meeting participants by the VITA contract manager.

H. Contract Closeout

Prior to the contract's expiration date, Supplier may be provided contract close out documentation and shall complete, sign and return to VITA Supply Chain Management within 30 days of receipt. This documentation may include, but not be limited to: Patent/Royalty Certificate, Tangible Property/Asset Certificate, Escrow Certificate, SWaM Reports Completion Certificate, Sales Reports/IFA Payments Completion Certificate, and Final Payment Certificate. Supplier is required to process these as requested to ensure completion of close-out administration and to maintain a positive performance reputation with the Commonwealth of Virginia. Any closeout documentation not received within 30 days of Supplier's receipt of our request, unless an extension is granted in writing by VITA, will be documented in the contract file as Supplier non-compliance. Supplier's non-compliance may affect any pending payments due the Supplier, including final payment, until the documentation is returned.

4. SOFTWARE LICENSE

Software licenses used to provide the Solution may be held by Supplier, by the Commonwealth or an Authorized User, as specified in the applicable Statement of Work. Upon request of the Commonwealth or Authorized User, or as specified in the applicable Statement of Work, licenses held by the Supplier for the development or provision of the Solution shall be assignable to the Commonwealth or Authorized User. If Authorized User is a state agency, board, commission, or other quasi-political entity of the Commonwealth of Virginia or other body referenced in Title 2.2 of the Code of Virginia, the license shall be held by the Commonwealth. If Authorized User is a locality, municipality, school, school system, college, university, local board, local commission, or local quasi-political entity, the license shall be held by that public body.

If Software is licensed to the Commonwealth or an Authorized User, the following terms shall apply,

A. License Grant

- i). Supplier grants to the Commonwealth and all Authorized Users a fully paid, perpetual, worldwide, nonexclusive, transferable, irrevocable object code license to use, copy, modify, transmit and distribute the Software and Documentation including any subsequent revisions, in accordance with the terms and conditions set forth herein and subject only to the limitations and/or restrictions explicitly set forth in this Contract. It is expressly understood that "perpetual" license rights shall commence upon delivery of the Software to the Authorized User and shall exist in perpetuity unless otherwise terminated in accordance with the applicable provisions of the Contract. The Software is the property of Supplier, and no title or ownership of the Software or any of its parts, including Documentation, shall transfer to the Commonwealth or any Authorized User.
- ii). The Commonwealth and all Authorized Users shall have the right to use, copy, modify, transmit and distribute the Software for their benefit, for government use and purposes, and for the benefit of their Agents, including internal and third-party information processing provided such copies retain all copyrights, trademark and other proprietary notices placed on the Software by the Supplier, subject to reasonable reformatting by VITA.
- iii). The Commonwealth and any Authorized User may allow access to the Software by third party vendors who are under contract with an Authorized User to provide services to or on behalf of such Authorized User, or by other entities as required for conducting the business of government. Access includes loading or executing the Software on behalf of such Authorized Users or their Agents.
- iv). The license fee includes the right to use the Software for non-production purposes, including but not limited to, problem/defect identification, remediation, and resolution, debugging, new version evaluation, Software interface testing, training, and disaster recovery technique analysis and implementation.

- v). In the event that all of an Authorized User's copies of the Software, including all backup copies, are destroyed, irreparably damaged or otherwise lost due to fire, explosion, sabotage, flood or other disaster provided that such loss is not the result of acts of negligence or willful misconduct on the part of Authorized User, Supplier shall provide to such Authorized User, at no additional cost, replacement copies of the Software and Documentation. In the event that loss is the result of negligence or willful misconduct by an Authorized User, replacement price for Software shall be the costs of media, and reasonable shipping and handling. Nothing contained in this Section shall obligate Supplier to replace or assist in the recovery of data lost concurrent with the loss of the Software.
- vi). An Authorized User may make a reasonable number of copies of the Software and Documentation for use in training, support, demonstrations, backup, archiving, disaster recovery and development, and may run the Software concurrently at a back-up site, for no additional license fees or costs. Such Authorized User agrees that any copies of the Software or Documentation that it makes under this Contract shall bear all copyright, trademark and other proprietary notices included therein by Supplier. An Authorized User may add its own copyright or other proprietary notice, or copyright or other proprietary notice of the Commonwealth, to any copy of the Software or Documentation, which contains modifications to which the Commonwealth or such Authorized User has ownership rights pursuant to this Contract.
- vii). Except as expressly authorized, an Authorized User shall not distribute the Software to any third party without Supplier's prior written consent.
- viii). Except as provided or allowed by law, no Party shall reverse engineer, decompile, disassemble, or otherwise attempt to derive source code or other trade secrets from any software or other intellectual property of any other Party.

B. Third Party Software

Supplier shall provide Software from a third party as part of its Solution. Such Software may be licensed directly from the Software Publisher, under terms consistent with the Third Party Software Licensing Terms and Conditions, attached hereto as Exhibit F.

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

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

C. License Type

All licenses granted, regardless of the type, include all uses set forth above. License type may vary by Software product and shall be set forth in Exhibit C and identified in any Statement of Work issued pursuant to this Contract.

1. Server Processor Unit License

The license(s) granted under this Section authorizes the Licensees and their Agents to use the Software only on the number of Server Processor Units listed in the applicable License Certificate. A Licensee may transfer the Software to a different machine to the extent that the license price for such new Server Processor Units is equivalent to the Server Processor Units initially licensed. A Server Processor Unit is a single core in a multi-core processor.

2. User License

"User(s)" shall mean an individual(s) authorized by the Licensee(s) to use the Software, regardless of whether the individual is actively using the Software at any given time. The Licensee may replace a User as necessary to reflect personnel changes provided that the number of individuals authorized to use the Software does not exceed the maximum number of Users

authorized at any time. The maximum number of Users that may use or access the applicable Software is specified in the License Certificate(s).

3. Enterprise Wide License

The Enterprise Wide License authorizes use of the Software on any number of Server Processor Units, on any system, and by any user within the "Enterprise", as such term is defined in this contract, without limitation as to the quantity or location or project.

D. No Subsequent, Unilateral Modification of Terms by Supplier ("Shrink Wrap")

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

5. RIGHTS TO WORK PRODUCT

If Authorized User is a state agency, board, commission, or other quasi-political entity of the Commonwealth of Virginia or other body referenced in Title 2.2 of the Code of Virginia, ownership of Work Product shall be held by, and all rights in, title to, and license to Work Product shall vest with the Commonwealth. If Authorized User is a locality, municipality, school, school system, college, university, local board, local commission, or local quasi-political entity, any ownership of Work Product shall be held by, and all rights in, title to, and license to Work Product shall vest with that public body.

A. Work Product

VITA AND SUPPLIER (TO INCLUDE ITS EMPLOYEES, AGENTS, CONTRACTORS AND SUBCONTRACTORS) HEREIN AGREE THAT PERFORMANCE OF THIS CONTRACT MAY RESULT IN THE CREATION OF WORK PRODUCT AS DEFINED ABOVE. ALL WORK PRODUCT CREATED DURING THE PERFORMANCE OF THIS CONTRACT BY SUPPLIER SHALL BE PROMPTLY DISCLOSED TO THE COMMONWEALTH OR PUBLIC BODY. SUPPLIER AGREES TO KEEP CONFIDENTIAL AND NOT TO DISCLOSE TO ANY PARTY NOT A PARTY TO THIS CONTRACT ANY WORK PRODUCT THAT CONTAINS THE PROPRIETY INFORMATION OF THE COMMONWEALTH OR PUBLIC BODY. ALL SERVICES PERFORMED UNDER THIS CONTRACT SHALL INCLUDE THE DELIVERY OF ALL SOURCE AND OBJECT CODE AND ALL DELIVERABLES AND DOCUMENTATION FOR ALL WORK PRODUCT CREATED IN THE PERFORMANCE OF THE CONTRACT. SUPPLIER SHALL GIVE FULL ACCESS TO THE WORK PRODUCT REGARDLESS OF FORM TO THE COMMONWEALTH OR PUBLIC BODY.

WHETHER OR NOT CONSIDERED "WORKS MADE FOR HIRE," SUPPLIER AGREES THAT ALL WORK PRODUCT CREATED IN THE PERFORMANCE OF THIS CONTRACT IS AND SHALL REMAIN THE PROPERTY OF THE COMMONWEALTH OR PUBLIC BODY;; PROVIDED, HOWEVER, SUBJECT TO SUPPLIER'S OBLIGATION NOT TO DISCLOSE ANY PROPRIETARY OR CONFIDENTIAL INFORMATION OF COVA, SUPPLIER MAY DEVELOP DERIVATIVE APPLICATIONS OF THE WORK PRODUCT OR OTHERWISE APPLY KNOW-HOW OR OTHER KNOWLEDGE OBTAINED DURING ITS ENGAGEMENT UNDER THIS AGREEMENT FOR PURPOSES OF MARKETING OR SALE TO OTHER CUSTOMERS OF SUPPLIER. TO THE EXTENT SUPPLIER UNDER APPLICABLE LAW IS ENTITLED TO CLAIM AN OWNERSHIP INTEREST IN THE WORK PRODUCT, SUPPLIER HEREBY GRANTS THE COMMONWEALTH OR PUBLIC BODY AN IRREVOCABLE, PERPETUAL, NON-EXCLUSIVE, WORLDWIDE, ROYALTY-FREE RIGHT AND LICENSE TO USE THE WORK PRODUCT FOR ALL PURPOSES AS SET FORTH IN THIS CONTRACT.

B. Pre-existing Rights

If and to the extent that any pre-existing rights are embodied or reflected in the Work Product, Supplier hereby grants to the Commonwealth or the Authorized User 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 pre-existing rights and any derivative works thereof and (ii) authorize others to do any or all of the foregoing.

C. Return of Materials

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

6. SUPPLIER PERSONNEL

A. Selection and Management of Supplier Personnel

Supplier shall take such steps as may be necessary to ensure that all Supplier personnel performing under this Contract are competent and knowledgeable of the contractual arrangements and the applicable SOW between Authorized User and Supplier. Supplier shall be solely responsible for the conduct of its employees, agents, and subcontractors, including all acts and omissions of such employees, agents, and subcontractors, and shall ensure that such employees and subcontractors comply with the appropriate Authorized User's site security, information security and personnel conduct rules, as well as applicable federal, state and local laws, including export regulations. The Commonwealth, through the Designated Project Manager of any Authorized User, shall have the right to request the removal of any Supplier employee, subcontractor or agent personnel if the Authorized User reasonably considers the individual to be performing unsatisfactorily or otherwise unsuited. If, the Designated Project Manager requests in writing that Supplier effectuate a change in the Supplier's, its subcontractor's or its agent's personnel, Supplier shall, within a reasonable period of time after receipt of such written notice, replace the individual with another person reasonably satisfactory to the Authorized User

B. Supplier Personnel Supervision

Supplier acknowledges that Supplier or any of its agents, contractors, or subcontractors, is and shall be the employer of Supplier personnel, and shall have sole responsibility to supervise, counsel, discipline, review, evaluate, set the pay rates of and terminate the employment of Supplier personnel.

C. Key Personnel

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

D. Subcontractors

Supplier shall not use subcontractors to perform the Services unless specifically authorized in writing to do so by the Authorized User. Execution of the Contract and Statement of Work constitutes written authorization for the subcontractors named as a part of the Solution for that Statement of Work. If an order or SOW issued pursuant to this Contract is supported in whole or in part with federal funds, Supplier shall not subcontract any Services pursuant to such order or SOW to any subcontractor that is a party excluded from Federal Procurement and Non-procurement Programs. In no event shall Supplier subcontract any Services to any subcontractor which is debarred by the Commonwealth of Virginia or which owes back taxes to the Commonwealth and has not made arrangements with the Commonwealth for payment of such back taxes.

7. GENERAL WARRANTY

Supplier warrants and represents to VITA as follows:

A. Ownership

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

B. Solution and Documentation

Supplier warrants the following with respect to the Solution:

- i). The Solution is pursuant to Request for Proposal ("RFP") 2009-06 or a Statement of Work and therefore such Solution shall be fit for the particular purposes specified in the RFP or order and in this Contract. Further, Supplier is possessed of superior knowledge with respect to the Solution and is aware that all Authorized Users are relying on Supplier's skill and judgment in providing the Solution;
- ii). The Solution provided hereunder includes component Software at the current release level unless an Authorized User specifies an older version in its order;
- iii). 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/programmer/administrator to understand fully the Solution without reference to any other materials or information.

C. Limited Warranty

During the applicable Component or Solution Warranty Period, or as specified in the applicable SOW, Supplier warrants that the Component or Solution shall meet or exceed the Requirements as documented in Exhibits A (General, Functional, and Technical Requirements) and B (Project Management and Implementation Service Requirements), including the assumptions in Exhibit C (Solution Options List; Fees, Service Charges, and Payment Schedule) and the requirements traceability matrix. Supplier shall correct, at no additional cost to any Authorized User, all errors identified during the warranty period that result in a failure of the Solution to meet the Requirements.

During the applicable Component or Solution Warranty Period, if a Statement of Work specifies the hardware equipment an Authorized User shall use to run the Solution, then Supplier warrants the Solution, and any subsequent release of a Solution component provided by Supplier or its subcontractors, is compatible with and shall perform well with such hardware equipment provided such hardware is properly installed and tested in accordance with the original equipment manufacturer's instructions

No corrections, work arounds or future Software or Solution component Software releases provided by Supplier during an applicable Component or Solution Warranty Period shall degrade the Solution, cause any other warranty to be breached, or require an Authorized User to acquire additional hardware equipment or software.

D. Malicious Code

Supplier has used reasonable efforts through quality assurance procedures, which at a minimum shall include those specified in Supplier's proposal, Appendix B, to ensure that there are no Computer Viruses or undocumented features in the Solution at the time of delivery to an Authorized User. Supplier warrants that the Solution 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 Solution. 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 Solution or any Component contains any Open Source code and identify the specific Open Source License that applies to any embedded code dependent on Open Source code, provided by Supplier under this Contract.

F. Supplier's Viability

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

G. Interoperability

Supplier warrants that each Component delivered under a Statement of Work shall be interoperable with other Components so as to meet or exceed the performance specified in the Requirements and Statement of Work.

H. Supplier's Past Experience

Supplier warrants that a solution of similar scope and complexity as the Solution required by this Contract, including all component products and services, has been installed and is operating in a production environment in a non-related third party's facility without significant problems due to the solution or Supplier.

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

8. DELIVERY AND INSTALLATION

A. Scheduling

Supplier shall deliver the Solution, including any component parts, and complete performance of Services according to the delivery dates set forth on the appropriate order, subject to additional time for delays caused by the Commonwealth's failure to meet material milestones and to timely deliver resources as specified in applicable assumptions in Exhibit C, Schedule 8., and the Contract schedule.

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

B. Deployment of Solution

1. Supplier Deployment of Solution

The Solution fee includes initial deployment of the complete Solution. Supplier is required to deploy the Solution in accordance with the deployment schedule set forth on the order. Deployment shall include the installation of any Software component and, if agreed, any hardware component, of the Solution. Supplier shall conduct its standard appropriate diagnostic evaluation at the Authorized User's user site to determine that the Solution is properly deployed and fully ready for productive use, and shall supply such Authorized User with a copy of the results of the diagnostic evaluation promptly after completion of deployment.

2. Authorized User Installation of Software

If the Solution includes Software which may be installed by a qualified systems administrator and such systems administrator elects to install the Software itself, the Software shall be deemed to be installed when all programs, program libraries and user interfaces are copied to and initialized on the appropriate equipment as executable by having the ordering systems administrator invoke the primary function of each major component of the Software or when Acceptance criteria have been met. Systems administrator shall provide to Supplier written notice of Acceptance upon completion of installation and successful Acceptance testing. Supplier shall proceed with full deployment of the Solution concurrently with or after systems

administrator's installation of the Software, as agreed between the Authorized User and Supplier in the SOW.

C. Documentation of Software Configuration

If the Solution includes configuration of Software by Supplier, Supplier shall provide to the appropriate Authorized User documentation containing a description of the configuration. Such documentation shall be sufficiently detailed such that any appropriately trained employee or Agent of any Authorized User may reconstruct the configuration of the Software.

9. ACCEPTANCE

A. Software and Deliverable Acceptance Criteria

Software and Deliverables shall be accepted when the Designated Project Manager determines that such Software and Deliverables successfully operate in accordance with the Requirements or Statement of Work, if applicable, and the Designated Project Manager has delivered to Supplier a written, signed and dated notification that Authorized User accepts the Software or Deliverable. Acceptance Criteria for Software and Deliverables, and for the Solution as a whole, shall ensure that all of the functionality described in the Contract Requirements as stated in Exhibits A (General, Functional, and Technical Requirements) and B (Project Management and Implementation Service Requirements), including the assumptions in Exhibit C (Solution Options List; Fees, Service Charges, and Payment Schedule) and the requirements traceability matrix and the applicable Statement of Work has been delivered to the Authorized User. Acceptance of any one Deliverable shall not imply Designated Project Manager's concurrence that the Deliverable will function properly with or within the Solution. Supplier shall be responsible for ensuring that all Deliverables functions within the Solution in accordance with the Requirements. Should a previously Accepted Deliverable require further modification in order to work properly with or within the Solution, Supplier shall be responsible for all costs associated with such modification.

Supplier agrees to provide to such Designated Project Manager such assistance and advice as such Designated Project Manager may reasonably require, at no additional cost, during such Acceptance testing, other than pre-approved travel expenses for time and materials type SOWs or for fixed price type SOWs in which travel expenses were expressly excluded from the total price of the SOW. Any such travel expenses must be pre-approved by the Designated Project Manager and shall be reimbursable by such Designated Project Manager at the then-current per diem amounts as published by the Virginia Department of Accounts (http://www.doa.virginia.gov/Admin_Services/CAPP/CAPP_Topics/20335_Meals_Lodging_102007.pdf, or a successor URL(s)). Designated Project Manager shall provide to Supplier written notice of Acceptance upon completion of successful Acceptance testing.

B. Software and Deliverable Cure Period

Supplier shall correct any non-conformities identified prior to final acceptance and re-submit such non-conforming Software or Deliverable for re-testing within fifteen (15) days or as otherwise agreed of the appropriate Designated Project Manager's written notice of non-conformance, or as otherwise agreed between such Designated Project Manager and Supplier in the applicable SOW. The Designated Project Manager shall complete testing of the resubmitted Software or Deliverable within fifteen (15) days or other agreed upon period. Should Supplier fail to cure the non-conformity or deliver Software or a Deliverable which meets the Requirements, such Designated Project Manager may, in its sole discretion: (i) issue a "partial Acceptance" of the Software or Deliverable with an equitable adjustment in the price to account for such deficiency; or (ii) conditionally accept the applicable Software or Deliverable while reserving its right to revoke Acceptance if timely correction is not forthcoming. Failure of the Software or a Deliverable to meet, in all material respects, the Requirements during the acceptance testing period shall after the Supplier is given fifteen (15) days or as otherwise agreed to cure the failure, constitute a default by Supplier. In the event of such default, the Authorized User may, at its sole discretion, terminate its order or SOW, in whole or in part, for the Solution to be provided thereunder by Supplier.

C. Solution Acceptance Criteria

Solution shall be deemed accepted when the Designated Project Manager determines that such Solution successfully operates in accordance with the Requirements in Exhibits A (General, Functional, and Technical Requirements) and B (Project Management and Implementation Service Requirements), including the assumptions in Exhibit C (Solution Options List; Fees, Service Charges, and Payment Schedule) and the requirements traceability matrix or applicable Statement of Work, and the Designated Project Manager has delivered to Supplier a written, signed and dated notification that the Designated Project Manager accepts the Software or Deliverable. Supplier agrees to provide to such Designated Project Manager such assistance and advice as such Designated Project Manager may reasonably require, at no additional cost, during such Acceptance testing, other than pre-approved travel expenses for time and materials type SOWs or for fixed price type SOWs in which travel expenses were expressly excluded from the total price of the SOW. Any such travel expenses must be pre-approved by the Designated Project Manager and shall be reimbursable by such Authorized User at the then-current per diem amounts as published by the Virginia Department of Accounts (http://www.doa.virginia.gov/Admin_Services/CAPP/CAPP_Topics/20335_Meals_Lodging_102007.pdf, or a successor URL(s)). Designated Project Manager shall provide to Supplier written notice of Acceptance upon completion of successful Acceptance testing.

D. Solution Cure Period

Supplier shall correct any non-conformities identified prior to final acceptance and shall thereafter re-submit such previously non-conforming Solution or component products or Services for re-testing within fifteen (15) days or other agreed upon period of written notice of non-conformance to Supplier, or as otherwise agreed between the Designated Project Manager and Supplier. Designated Project Manager shall complete testing of the resubmitted Software or Deliverable within fifteen (15) days or other agreed upon period. Should Supplier fail to deliver a Solution which meets the Requirements, such Designated Project Manager may, in its sole discretion: ; (i) issue a "partial Acceptance" of the Solution with an equitable adjustment in the price to account for such deficiency; or (ii) conditionally accept the applicable Solution while reserving its right to revoke Acceptance if timely correction is not forthcoming. Failure of the Solution to meet, in all material respects, the specifications and performance standards during the acceptance testing period shall after the Supplier is given fifteen (15) days or as otherwise agreed to cure the failure, constitute a default by Supplier. In the event of such default, the Authorized User may, at its sole discretion, terminate its order, in whole or in part, for the Solution to be provided thereunder by Supplier.

10. WARRANTY AND MAINTENANCE SERVICES

During the Warranty Period, Supplier shall provide services (including telephonic support and all necessary travel and labor) to maintain the Solution. During the Warranty Period, such services shall be performed without additional charge to any Authorized User.

During the Maintenance Period, Supplier shall provide services (including telephonic support and all necessary travel and labor) to maintain the accepted Solution. During the Maintenance Period, charges shall be in accordance with this Section and Exhibit C.

A. Known Defects

Promptly notify Designated Project Manager in writing of any defects or malfunctions in the Solution 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 fifteen (15) days of Supplier's knowledge of such defect or malfunction, or as otherwise agreed, and provide all Authorized Users with corrected copies of same.

B. New Releases

Provide at no cost to all Authorized Users identified in the applicable Statement of Work, no later than the first day of general release, copies of the Software and Documentation revised to reflect any enhancements, including all new releases, upgrades, and access modes, to the Software made by Supplier, including, without limitation, modifications to the Software which can increase

the speed, efficiency or base of operation of the Software or add additional capabilities to or otherwise improve the functionality of the Software. Supplier will support versions for a minimum of three (3) years after the availability of the next major version in general release or availability to VITA. Upon request, Supplier will provide support for earlier versions past the Version Support Period under a separate order or Statement of Work.

C. Service Levels

Services levels and remedies under this Agreement shall be defined in Exhibit H ("Service Levels").

D. Software Evolution

Should Supplier or Software Publisher merge or splinter the Software previously provided to any Authorized User, such action on the part of Supplier or Software Publisher shall not in any way result in any Authorized User being charged additional license or support fees in order to receive enhancements, releases, upgrade or support for the Software beyond annual maintenance fees provided under this Agreement or applicable third-party agreement.

If Supplier or Software Publisher reduces or replaces functionality contained in a licensed Software product and provides the same or substantially similar functionality as or within a separate or renamed Software product, then the Commonwealth or the Authorized User shall be entitled to license such Software product at no additional license or maintenance fee, and subject to the terms and conditions herein beyond annual maintenance fees provided under this Agreement or applicable third-party agreement.

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

E. Escalation Procedures

The Help Desk support will be provided during core COVA business hours via telephone and email. It is the responsibility of the Help Desk team to track each inquiry. Monthly reports will be provided to COVA with the details of the inquiries, the resolution, and the resolution duration. The Help Desk support will reply to all inquiries within 2 hours of receipt (during the core COVA business hours) and metrics will be provided on the average resolution time. If the Help Desk support is not able to answer the inquiry, the issue will be escalated to technical support. For each phone call or e-mail received, the Help Desk staff will document the nature of the problem, any relevant specific information, and the resolution of the call. Regardless of the source, all tickets will be tracked in the same manner with the same information. All tickets go through a quality review before being closed. A ticket will be considered "Resolved" once a solution has been found and implemented to the user's satisfaction. Once the ticket has been reviewed to ensure proper documentation has been completed and the resolution was correct, the ticket status will be updated to Closed. If the ticket is found deficient, it will be returned to the owner for correction. Escalation for the software will be provided in accordance with the software publisher's Escalation Procedures.

F. Solution Support Services (Maintenance) and Renewal Options

Sixty (60) days prior to the expiration of the Solution Warranty Period, Supplier shall notify the Authorized User in writing of such expiration, and the Authorized User, at its sole discretion, may order from Supplier Solution support Services ("Maintenance Services"), including new Software releases, updates and upgrades, and repair of defects for a period of one (1) year ("Maintenance Period") and for an annual fee of seventeen (17%) of the Software license fee paid by any Authorized User for then current installed base. Supplier shall notify the Authorized User sixty (60) days prior to the expiration of the Maintenance Period, and the Authorized User, at its sole

discretion, may renew Maintenance Services for additional one (1) year periods while the Solution is in use by an Authorized User. The annual fee for Maintenance Services shall not change during the first two years that Maintenance Services are provided under this Contract; thereafter, the annual fee for Maintenance Services shall not exceed the fee charged for the preceding year's Maintenance Services by more than three percent (3%), or the annual change in CPI, as defined in the Fees and Charges section, in effect at the time, whichever is less. Supplier warrants that it shall make Maintenance Services available for all the Solution components listed in Exhibit C. Cancellation of Maintenance Services by an Authorized User shall not affect this Contract or the grant of any license by Supplier. Should VITA or Authorized User elect to not subscribe to, to not renew or to cancel Maintenance Services, VITA or Authorized User may obtain from Supplier all materials, including documentation, source and object code, required to independently maintain the Solution. Such materials shall be used solely for the purpose of maintaining the Solution, pursuant to license or Work Products rights under this Contract, which shall survive the expiration or termination of the Contract.

G. Voidability of warranties

General warranties will be voidable if source code is irreversibly modified without authorization from the Supplier and in a manner materially affecting the warranty.

11. TRAINING AND DOCUMENTATION

The Solution fee includes all costs for the training and supporting Documentation for users as specified in the applicable Statement of Work. at an Authorized User's designated location on the use and operation of the Solution, including instruction in any necessary conversion of such Authorized User's data for such use, as well as all necessary training documentation and manuals. Pursuant to a mutually agreed upon schedule, Supplier shall provide personnel sufficiently experienced and qualified to conduct such training. Available optional training, and applicable pricing and discounts, are described in Exhibit C.

Supplier shall deliver to any Authorized User, three (3) complete hard copies or electronic media of Documentation, as requested by such Authorized User. Any Authorized User shall have the right, as part of the license granted herein, to make as many additional copies of the Documentation, in whole or in part, for its own use as required. This Documentation shall include, but not be limited to, overview descriptions of all major functions, detailed step-by-step operating procedures for each screen and activity, and technical reference manuals. Such Documentation shall be revised by Supplier to reflect any modifications made by Supplier to the Solution. Any Authorized User shall have the right, as part of the license granted herein, at its own discretion, to take all or portions of the Documentation, modify or completely customize it in support of the authorized use of the Solution and may duplicate such Documentation and include it in such Authorized User's document or platform. All Authorized Users shall continue to include Supplier's copyright notice.

12. FEES, ORDERING AND PAYMENT PROCEDURE

A. Fees and Charges

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

At an Authorized User's request, Supplier shall provide the Authorized User with a reproducible diskette or CD of Solution Software or Documentation. Such Authorized User shall be responsible for making copies and distributing the Solution Software or Documentation as required. Such Authorized User agrees that any copies of the Software or Documentation that it makes under this Contract shall bear all copyright, trademark and other proprietary notices included therein by Supplier, subject to reasonable reformatting by VITA. Within thirty (30) days of the end of each calendar quarter, such Authorized User shall provide to Supplier a report of the net number of additional copies of the Solution Software deployed during the quarter.

C. Solution Demonstration

At the reasonable request of the Designated Project Manager for any Authorized User, Supplier shall perform a demonstration of its Solution at such Authorized User's location subject to the hourly rates shown in Exhibit C herein, which may be waived at Supplier's discretion.

D. Statement of Work (SOW)

All Services to be provided by the Supplier to implement the PB Solution for the Commonwealth of Virginia and provide various support Services to Authorized Users in accordance with the PB system Requirements shall be specified in an SoW. The General Function and Technical Requirements and the Project Management and Implementation Service Requirements for the initial PB system implementation are defined in the documents PB RFP 2009-06 Appendix A PPC—Revised. zip and PB RFP 2009-05 Appendix B—Revised, respectively, as transmitted by PPC to the PB RFP point of contact on June 1, 2009. These documents define the Requirements, Services and Deliverables to be specified in the initial PB Solution SoW and will serve as the initial definition of Requirements for the Requirements Traceability Matrix to be further refined during system design. All Services shall be performed at the times and locations set forth in the SOW. Payment for Deliverables and Services defined in these documents are specified in Exhibit C, Solution Options List, Fees, Service Charges and Payment Schedule.

An SOW shall be required for any Solution ordered by an Authorized User pursuant to this Contract. All Services shall be performed at the times and locations set forth in the applicable SOW and at the rates set forth in Exhibit C herein. Unless VITA issues a written authorization for a time and materials type SOW, any SOW shall be of a fixed price type but May, with the written approval of VITA, contain a cost-reimbursable line item(s) for pre-approved travel expenses. For time and materials type SOWs, Supplier personnel shall maintain daily time records of hours and tasks performed, which shall be submitted or made available for inspection by the Authorized User upon forty-eight (48) hours advance written notice.

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

E. Ordering

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

Supplier is required to accept any order placed by an Authorized User through the eVA electronic procurement website portal ([eVA Home Page](#)). eVA is the Commonwealth of Virginia's e-procurement system. State agencies, as defined in §2.2-2006 of the Code of Virginia, shall order

through eVA. All other Authorized Users are encouraged to order through eVA, but may order through the following means:

- i). Purchase Order (PO): An official PO form issued by an Authorized User.
- ii). Any other order/payment charge or credit card process, such as AMEX, MASTERCARD, or VISA under contract for use by an Authorized User.

This ordering authority is limited to issuing orders for the Solution and products or Services related to the Solution available under this Contract. Under no circumstances shall any Authorized User have the authority to modify this Contract. An order from an Authorized User may contain additional terms and conditions; however, to the extent that the terms and conditions of the Authorized User's order are inconsistent with the terms and conditions of this Contract, the terms of this Contract shall supersede.

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

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

F. Invoice Procedures

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

- i). Solution, product/Solution component, or Service type, or project milestone, and description
- ii). Quantity, charge and extended pricing for each Solution and/or Service item or milestone
- iii). Applicable order date
- iv). This Contract number and the applicable order number
- v). Supplier's Federal Employer Identification Number (FEIN).

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

G. Purchase Payment Terms

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

In the event any Deliverable is shipped 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. If such charges remain in dispute, such dispute shall be resolved in accordance with the Dispute Resolution section of this Contract. In the absence of the Supplier's

written evidence identifying the merit of the disputed amounts, Authorized User may not pay the disputed amounts and may consider the matter concerning the specific identified amounts closed. All payment terms are net thirty (30) days after Acceptance.

13. REPORTING

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

By the 10th day of every month, the Supplier shall submit the "Supplier Monthly Report of Sales". A template showing the format in which the report is to be submitted and contact information for submission is available at

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

The Supplier shall submit the Industrial Funding Adjustment (IFA) payment for the period covered by such "Supplier Monthly Report of Sales" within thirty (30) days after submitting the "Supplier Monthly Report of Sales". The IFA payment is equal to two percent (2%) of total sales reported during the relevant month.

The IFA payment shall be submitted to VITA, Attention VITA Controller in the form of a check or electronic payment, made payable to the Treasurer of Virginia. The IFA payment shall reference this Contract number, "report amounts", and "report period" and shall be accompanied by a copy of the relevant "Supplier Monthly Report of Sales". Contact information for submission of IFA payments is available at

<http://www.vita.virginia.gov/uploadedFiles/SCM/SupplierReportofSalesTemplate.xls>.

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

B. Small Business Participation

Supplier and VITA agree to meet promptly after the Effective Date of this Contract to discuss the participation of Virginia Department of Minority Business Enterprise (DMBE)-certified Small Businesses as subcontractors and second-tier suppliers under this Contract.

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

In addition, by the 10th day of every month, Supplier shall submit to VITA the Small Business Subcontracting Monthly Report (template to be provided). Supplier's report should include spend on all Supplier's contracts with second-tier suppliers which provide products or services under this Contract. The report should specify the amount of such spend provided to small businesses.

Supplier shall submit the report to SWaM@vita.virginia.gov.

14. AUTHORIZED USER SELF-SUFFICIENCY

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

15. ESCROW AGREEMENT

Supplier shall maintain copies of all Software source code and related technical and user Documentation, in English, in an escrow account, and shall maintain with escrow agent the executed agreement attached hereto as Exhibit C (Escrow Agreement). VITA acknowledges that, prior to the Effective Date of this Contract, Supplier delivered to VITA and VITA received a copy of the executed Escrow Agreement naming the Commonwealth of Virginia as a third party beneficiary. VITA has reviewed Escrow Agreement to ensure that such Escrow Agreement does not impose upon the Commonwealth any requirements other than administrative responsibilities necessary for the operation of the Escrow Agreement. If events give rise to a need for the escrow agent to release escrowed materials to the Commonwealth, the Commonwealth's sole responsibility shall be to request the release of such materials from the escrow agent. Termination or any modification of Escrow Agreement shall be made only with VITA's written approval. Termination or modification shall not relieve Supplier of its obligations under this section. Supplier warrants that the information and materials to be kept in escrow in a media safe environment for the benefit of the Commonwealth are specifically identified and listed in Attachment A to the Escrow Agreement and include the most current version used by all Authorized Users of:

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

Supplier warrants that the Escrow Agreement provides for, among other items, the release of the list of items on Attachment A of the Escrow Agreement upon the happening of certain events, including, but not limited to, Supplier's failure to carry out its support and maintenance obligations imposed by this Contract for a period of sixty (60) days, Supplier's breach or default under this Contract, Supplier's bankruptcy, Supplier's failure to continue to do business in the ordinary course. Supplier agrees to pay all expenses associated with establishing and maintaining the escrow account and the contents mentioned above.

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

Any Authorized User which is not a state agency, board, commission, or other quasi-political entity of the Commonwealth of Virginia or other body referenced in Title 2.2 of the Code of Virginia may require Supplier to execute an additional escrow agreement subject to the same requirements and binding Supplier to the same obligations as described above but naming such Authorized User as the beneficiary of the escrow agreement. Subject to the information and materials listed in such escrow agreement being released to such Authorized User, Supplier hereby grants to such Authorized User a royalty-free, perpetual, irrevocable license, that permits disclosure to a third party support-vendor of a complete and accurate copy of then-current source code for the Software licensed to such Authorized User, along with all related documentation.

16. COMPETITIVE PRICING

Supplier warrants and agrees that each of the charges, economic or product terms or warranties granted pursuant to this Contract are comparable to or better than the equivalent charge,

economic or product term or warranty being offered to any commercial or government customer of Supplier based upon similar quantities and terms and conditions. If Supplier enters into any arrangements with another customer of Supplier or with an Authorized User to provide software or Services under more favorable prices, based upon similar quantities and terms and conditions 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.

17. CONFIDENTIALITY

A. Treatment and Protection

Each Party shall (i) hold in strict confidence all Confidential Information of any other Party, (ii) use the Confidential Information solely to perform or to exercise its rights under this Contract, and (iii) not transfer, display, convey or otherwise disclose or make available all or any part of such Confidential Information to any third-party. However, an Authorized User may disclose the Confidential Information as delivered by Supplier to subcontractors, contractors or agents of such Authorized User that are bound by non-disclosure contracts with such Authorized User. Each Party shall take the same measures to protect against the disclosure or use of the Confidential Information as it takes to protect its own proprietary or confidential information (but in no event shall such measures be less than reasonable care). However, a Party may disclose Confidential Information if required by The Virginia Freedom of Information Act (§§2.2-3700 et seq. of the Code of Virginia) unless such information is deemed to be a trade secret or proprietary information pursuant to subsection B of §2.2-4317 of the Code of Virginia as protected by prequalification application or similar laws or pursuant to a court order.

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; or
- iii). developed independently by the receiving Party without reference to the Confidential Information of the other Party.

C. Return or Destruction

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

VITA or the Authorized User shall retain and dispose of Supplier's Confidential Information in accordance with the Commonwealth of Virginia's records retention policies or, if Authorized User is not subject to such policies, in accordance with such Authorized User's own records retention policies.

D. Confidentiality Statement

All Supplier personnel, contractors, agents, and subcontractors performing Services pursuant to this Contract shall be required to sign a confidentiality statement or non-disclosure agreement. Any violation of such statement or agreement by Supplier personnel shall be deemed a breach of this Contract and may result in termination of the Contract or any order or SOW issued hereunder.

18. INDEMNIFICATION AND LIABILITY

A. Indemnification

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

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

In the event of a Claim pursuant to any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Solution or 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 Solution or Services, or any component thereof; or (b) replace or modify such infringing Solution 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 a comparable temporary replacement Solution or reimburse VITA or any Authorized User for the reasonable costs incurred by VITA or such Authorized User in obtaining an alternative product in the event such Authorized User cannot use the affected Solution. 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 Solution 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.

B. Liability

EXCEPT WITH REGARD TO CLAIMS FOR PROPERTY DAMAGE, PERSONAL INJURY OR INFRINGEMENT, AND INDEMNIFICATION, INFORMATION SECURITY AND CONFIDENTIALITY OBLIGATIONS, A PARTY'S LIABILITY SHALL BE LIMITED TO THE AGGREGATE VALUE OF THE CONTRACT, INCLUDING FEES AND EXPENSES PAID TO SUPPLIER, FEES FOR THIRD PARTY LICENSES AND SERVICES PROVIDED BY SUPPLIER AND ESTIMATED FEES INCLUDED IN STATEMENTS OF WORK OR REQUIREMENTS BY ALL AUTHORIZED USERS UNDER THIS AGREEMENT.

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

19. INSURANCE

The Supplier will have the following insurance coverages at the time the Contract is awarded. The Contractor and any subcontractors will maintain these insurance coverages during the entire term of the Contract. All insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

a. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the Code of Virginia during the course of the contract shall be in noncompliance with the contract.

b. Employer's Liability - \$100,000.

c. Commercial General Liability - \$5,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.

d. Automobile Liability - \$1,000,000 per occurrence. (Only used if motor vehicle is to be used in the contract.)

e. Errors and Omissions - \$2,000,000 per occurrence.

20. SECURITY COMPLIANCE

Supplier agrees to comply with all provisions of the then-current Commonwealth of Virginia security procedures, published by the Virginia Information Technologies Agency (VITA) and which may be found at (<http://www.vita.virginia.gov/library/default.aspx?id=537#securityPSGs>) or a successor URL(s), as are pertinent to Supplier's operation. Supplier further agrees to comply with all provisions of the relevant Authorized User's then-current security procedures as are pertinent to Supplier's operation and which have been supplied to Supplier by such Authorized User. Supplier shall also comply with all applicable federal, state and local laws and regulations. For any individual Authorized User location, security procedures may include but not be limited to: background checks, records verification, photographing, and fingerprinting of Supplier's employees or agents. Supplier may, at any time, be required to execute and complete, for each individual Supplier employee or agent, additional forms which may include non-disclosure agreements to be signed by Supplier's employees or agents acknowledging that all Authorized User information with which such employees and agents come into contact while at the Authorized User site is confidential and proprietary. Any unauthorized release of proprietary information by the Supplier or an employee or agent of Supplier shall constitute a breach of this Contract.

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

21. IMPORT/EXPORT

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

22. BANKRUPTCY

If Supplier becomes insolvent, takes any step leading to its cessation as a going concern, fails to pay its debts as they become due, or ceases business operations continuously for longer than fifteen (15) business days, then VITA may immediately terminate this Contract, and an Authorized User may terminate an order, on notice to Supplier unless Supplier immediately gives VITA or such Authorized User adequate assurance of the future performance of this Contract or the applicable order. If bankruptcy proceedings are commenced with respect to Supplier, and if this Contract has not otherwise terminated, then VITA may suspend all further performance of this Contract until Supplier assumes this Contract and provides adequate assurance of performance thereof or rejects this Contract pursuant to Section 365 of the Bankruptcy Code or any similar or successor provision, it being agreed by VITA and Supplier that this is an executory contract. Any such suspension of further performance by VITA or Authorized User pending Supplier's assumption or rejection shall not be a breach of this Contract, and shall not affect the rights of VITA or any Authorized User to pursue or enforce any of its rights under this Contract or otherwise.

23. GENERAL PROVISIONS

A. Relationship Between VITA and Authorized User and Supplier

Supplier has no authority to contract for VITA or any Authorized User or in any way to bind, to commit VITA or any Authorized User to any agreement of any kind, or to assume any liabilities of any nature in the name of or on behalf of VITA or any Authorized User. Under no circumstances shall Supplier, or any of its employees, hold itself out as or be considered an agent or an employee of VITA or any Authorized User, and neither VITA nor any Authorized User shall have any duty to provide or maintain any insurance or other employee benefits on behalf of Supplier or its employees. Supplier represents and warrants that it is an independent contractor for purposes of federal, state and local employment taxes and agrees that neither VITA nor any Authorized User is responsible to collect or withhold any federal, state or local employment taxes, including, but not limited to, income tax withholding and social security contributions, for Supplier. Any and all taxes, interest or penalties, including, but not limited to, any federal, state or local withholding or employment taxes, imposed, assessed or levied as a result of this Contract shall be paid or withheld by Supplier or, if assessed against and paid by VITA or any Authorized User, shall be reimbursed by Supplier upon demand by VITA or such Authorized User.

B. Incorporated Contractual Provisions

The then-current contractual provisions at the following URL are mandatory contractual provisions, required by law or by VITA, and that are hereby incorporated by reference:

<http://www.vita.virginia.gov/uploadedFiles/SCM/StatutorilyMandatedTsandCs.pdf>

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

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

C. Compliance with the Federal Lobbying Act

Supplier's signed certification of compliance with 31 USC 1352 (entitled "Limitation on use of appropriated funds to influence certain Federal Contracting and financial transactions") or by the

regulations issued from time to time thereunder (together, the "Lobbying Act") is incorporated as Exhibit G hereto.

D. Governing Law

This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without regard to that body of law controlling choice of law. Any and all litigation shall be brought in the circuit courts of the Commonwealth of Virginia. The English language version of this Contract prevails when interpreting this Contract. The United Nations Convention on Contracts for the International Sale of Goods and all other laws and international treaties or conventions relating to the sale of goods are expressly disclaimed. UCITA shall apply to this Contract only to the extent required by §59.1-501.15 of the Code of Virginia.

E. Good Faith Resolution

In the event of a dispute between the parties, they shall attempt to resolve the dispute in good faith, including escalation to their respective managers, if initial efforts are unsuccessful. However, in the event of a breach of the Contract that by its nature requires immediate notice to and cure by the breaching party to prevent significant, irrevocable harm, the non-breaching party will not be precluded from resorting to other remedies available to it under this contract or at law or equity.

F. Dispute Resolution

In accordance with §2.2-4363 of the Code of Virginia, Contractual claims, whether for money or other relief, shall be submitted in writing to the public body from whom the relief is sought no later than sixty (60) days after final payment; however, written notice of the Supplier's intention to file such claim must be given to such public body at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment. The relevant public body shall render a final decision in writing within thirty (30) days after its receipt of the Supplier's written claim.

The Supplier may not invoke any available administrative procedure under §2.2-4365 of the Code of Virginia nor institute legal action prior to receipt of the decision of the relevant public body on the claim, unless that public body fails to render its decision within thirty (30) days. The decision of the relevant public body shall be final and conclusive unless the Supplier, within six (6) months of the date of the final decision on the claim, invokes appropriate action under §2.2-4364, Code of Virginia or the administrative procedure authorized by §2.2-4365, Code of Virginia.

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

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

G. Advertising and Use of Proprietary Marks

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

H. Notices

Any notice required or permitted to be given under this Contract shall be in writing and shall be deemed to have been sufficiently given if delivered in person, or if deposited in the U.S. mails, postage prepaid, for mailing by registered, certified mail, or overnight courier service addressed to the addresses shown on the signature page. VITA or Supplier may change its address for notice purposes by giving the other notice of such change in accordance with this Section.

I. No Waiver

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

J. Assignment

This Contract shall be binding upon and shall inure to the benefit of the permitted successors and assigns of VITA and Supplier. Supplier may not assign, subcontract, delegate or otherwise convey this Contract, or any of its rights and obligations hereunder, to any entity without the prior written consent of VITA, and any such attempted assignment or subcontracting without consent shall be void. VITA may assign this Contract to any entity, so long as the assignee agrees in writing to be bound by the all the terms and conditions of this Contract.

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

K. Captions

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

L. Severability

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

M. Survival

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

N. Force Majeure

No Party shall be responsible for failure to meet its obligations under this Contract if the failure arises from causes beyond the control and without the fault or negligence of the non-performing Party. If any performance date under this Contract is postponed or extended pursuant to this section for longer than thirty (30) calendar days, VITA, by written notice given during the postponement or extension, may terminate Supplier's right to render further performance after the effective date of termination without liability for that termination, and in addition an Authorized User may terminate any order affected by such postponement or delay.

O. Remedies

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

P. Right to Audit

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

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

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

Q. Contract Administration

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

R. Entire Contract

The following Exhibits, including all subparts thereof, are attached to this Contract and are made a part of this Contract for all purposes:

- i). Exhibit A Reserved
- ii). Exhibit B Reserved
- iii). Exhibit C Solution Options List; Fees, Service Charges, and Payment Schedule
- iv). Exhibit D Statement of Work (SOW) Template
- v). Exhibit E Three-Party Escrow Service Agreement
- vi). Exhibit F Third Party License(s)
- vii). Exhibit G Certification Regarding Lobbying
- viii). Exhibit H Service Levels)
- ix). Exhibit I PPC Non-Production Server Hosting- (until Phase 1 go-live)

This Contract, its Exhibits, RFP 2009-06, and any prior non-disclosure agreement constitute the entire agreement between VITA and Supplier and supersede any and all previous representations, understandings, discussions or agreements between VITA and Supplier as to the subject matter hereof, including any and all terms and conditions contained in, incorporated into, or referenced by the Supplier's Proposal. The provisions of the Virginia Department of General Services, Division of Purchases and Supply Vendor's Manual shall not apply to this Contract or any order issued hereunder. This Contract may only be amended by an instrument in writing signed by VITA and Supplier. In the event of a conflict, the following order of precedence shall apply: this Contract document, Exhibits A and B, any individual SOW, Exhibit C.

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

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

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

Supplier

By: Peter Dienbeck

(Signature)

Name: Peter Dienbeck

(Print)

Title: Director of Contracts

Date: 7/24/09

VITA

By: James T. Roberts

(Signature)

Name: James T. Roberts

(Print)

Title: Director Finance & Administration

Date: 7/24/09

Contract # VA-090724-PPC

Address for Notice:

Attention: _____

Address for Notice:

Attention: Contract Administrator