



Commonwealth of Virginia
Virginia Information Technologies Agency

SECTION 508 SOFTWARE LICENSE AND SUPPORT SERVICES

Optional Use Contract

Date: August 1, 2013

Contract #: VA-090829-DEQ

Authorized User: All Public Bodies to include VITA as defined by §2.2-4301 and referenced by §2.2-4304 of the *Code of Virginia*

Contractor: Deque Systems Inc.
11130 Sunrise Valley Drive
Suite 140
Reston, VA 20190

FIN: 54-2015044

Contact Person: Preety Kumar
Voice: 703-225-0380
Cell: 703-626-1430
Email: preety.kumar@deque.com

Pricing: Exhibit B

FOB: Destination

Term: September 15, 2013 – September 14, 2014

Payment: Net 30 days

For Additional Information, Please Contact:

Contract Information:

Supply Chain Management
Virginia Information Technologies Agency

Amy Holschuh
Phone: 804-416-6068
Email: amy.holschuh@vita.virginia.gov
Fax: 804-416-6361

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

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

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



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**MODIFICATION NO. 1
TO
CONTRACT NUMBER VA-090829-DEQ
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
DEQUE SYSTEMS INC.**

This MODIFICATION No. 1 is hereby incorporated into and made an integral part of Contract VA-090829-DEQ.

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 4.
"Authorized Users 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 7.
"If Authorized User 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 "Acceptance" in Section 6 Subsection A on Contract Page 9; "Maintenance Services" in Section 10 on Contract Page 12.
"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."
4. Add to the definition of "Indemnification" in Section 16 Subsection A on Contract Pages 16-17.
"In the event of a settlement between Supplier and private institution of higher education who is an Authorized User of this contract, the settlement shall be satisfactory to such institution."
5. Add to the definition of "Dispute Resolution" in Section 20 Subsection E on Contract Page 19.
"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-090829-DEQ by this Modification No. 1.

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.

NAME OF SUPPLIER

BY: Deque Systems Inc.

NAME: Preety Kumar

TITLE: CEO

DATE: July 9, 2014

COMMONWEALTH OF VIRGINIA

BY: Jay Crenshaw

NAME: Doug Crenshaw

TITLE: VITA Sourcing Manager

DATE: 7/10/14



COMMONWEALTH of VIRGINIA

Virginia Information Technologies Agency

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

TDD VOICE -TEL. NO.
711

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

August 1, 2013

Preety Kumar
Deque Systems Inc.

Per Section 3.A. ("Contract Term") of contract VA-090829-DEQ, the Virginia Information Technologies Agency has elected to exercise its option to renew the contract for one year, from September 15, 2013 through September 14, 2014. Should you have any questions, please feel free to contact me.

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



COMMONWEALTH of VIRGINIA

Virginia Information Technologies Agency

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

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

TDD VOICE -TEL. NO.
711

August 2, 2012

Preety Kumar
Deque Systems Inc.

Per Section 3.A. ("Contract Term") of contract VA-090829-DEQ , the Virginia Information Technologies Agency has elected to exercise its option to renew the contract for one year, from September 15, 2012 through September 14, 2013. Should you have any questions, please feel free to contact me.

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



Section 508 Software License Contract

between

The Virginia Information Technologies Agency

on behalf of

The Commonwealth of Virginia

And

Deque Systems, Inc.

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SECTION 508 SOFTWARE LICENSE CONTRACT

THIS SECTION 508 SOFTWARE LICENSE CONTRACT ("Contract") is entered into by and between the Virginia Information Technologies Agency (VITA) pursuant to §2.2-2012 of the Code of Virginia and on behalf of the Commonwealth of Virginia, (hereinafter referred to as "VITA") and Deque Systems, Inc. ("Supplier"), a corporation headquartered at 11130 Sunrise Valley Drive - Suite 140, Reston, Virginia 20191, to be effective as of the date on which all Parties have executed the Contract ("Effective Date").

PURPOSE AND SCOPE

This Contract sets forth the terms and conditions under which Supplier will license certain Software products, which aid in making the following compliant with Section 508 of the Rehabilitation Act:

software applications and operating systems

web applications

electronic documents;

and will provide various Services to Authorized Users of the Software.

DEFINITIONS

A. Acceptance

Acceptance shall take the form of successful delivery or completed and successful Acceptance testing in conformance with the Requirements as determined in the applicable order.

B. Agent

Any third party independent agent of any Authorized User.

C. Authorized Users

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

D. Computer Virus

Any malicious code, program, or other internal component (e.g., computer virus, computer worm, computer time bomb, or similar component), intended to, without the knowledge or consent of the user, damage, destroy, alter or disrupt any computer program, firmware, or hardware or intended to, without the knowledge or consent of the user, in any manner, reveal, damage, destroy, alter or disrupt any data or other information accessed through or processed by such software in any manner.

E. Confidential Information

Information of, or held by, a Party, that is not readily ascertainable by the public by proper means and that is the subject of commercially reasonable efforts by the Party to maintain such information as confidential.

F. Documentation

The standard documentation that Supplier then supplies to its user base generally needed in order to allow any Authorized User and its Agents to install, implement, and make productive use of the Software.

G. Electronic Self-Help

Any use of electronic means to exercise Supplier's license termination rights, if available pursuant to the Software License section of this Contract, upon breach or cancellation, termination or expiration of this Contract or any order issued hereunder. Where any good, service, or software supplied under this Contract is self-limiting by its nature or function (such as functionality that is limited to a number of pages or operations) or where the Documentation discloses such limiting function, no such property or mechanism will be considered Electronic Self-Help.

H. Maintenance Level

The parameters of Maintenance Services, including the times during which and time-frames in which Supplier shall respond to a request for Maintenance Services. The available Maintenance Levels shall be as defined in Exhibit C hereto. The actual Maintenance Level for a unit of Software shall be set forth in the executed order for Maintenance of that Software referencing this Contract.

I. Maintenance Period

The term during which Maintenance is to be provided for a unit of Software.

J. Maintenance Services (or Maintenance)

Those Services, preventive and remedial, provided by Supplier as provided in Exhibit C .

K. Party

Supplier, VITA, or any Authorized User.

L. Requirements

The functional, performance, operational, compatibility, Acceptance testing criteria and other parameters and characteristics of the product as set forth in the applicable documentation, Exhibit A and such other parameters, characteristics, or performance standards for the product that may be agreed upon in writing by VITA and Supplier or the Parties to an order issued hereunder.

M. Services

Any services, including installation, Software configuration, maintenance, support and training provided by Supplier under this Contract.

N. Software

The programs and code, and any subsequent releases, provided by Supplier under this Contract as set forth in Exhibit A or as described on Supplier's US and International price lists in effect at time of order placement.

O. Software Publisher

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

TERM AND TERMINATION

A. Contract Term

This Contract is effective and legally binding as of the Effective Date and, unless terminated as provided for in this section, shall continue to be effective and legally binding for a period of three (3) years. VITA, in its sole discretion, may extend this Contract for up to two (2) additional one (1) year periods after the expiration of the initial three (3) year period. VITA will issue a written notification to the Supplier stating the extension period, not less than thirty (30) days prior to the expiration of any current term. Warranty on or Maintenance Services for any Software ordered during the term of the Contract may extend beyond the term of this Contract. 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 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 issued hereunder, in whole or in part, or an Authorized User may terminate an order, in whole or in part, upon not less than thirty (30) days prior written notice at any time for any reason.

C. Termination for Breach or Default

VITA shall have the right to terminate this Contract, in whole or in part, or any order issued hereunder, in whole or in part, or an Authorized User may terminate an order, in whole or in part, for breach and/or default of Supplier. Supplier shall be deemed in breach and/or default in the event that Supplier fails to meet any material obligation set forth in this Contract or in any order issued hereunder.

If Supplier is in material breach and/or default, VITA shall provide Supplier with notice of breach and/or default and allow Supplier fifteen (15) days to cure the breach and/or default. If Supplier fails to cure the breach, VITA may immediately terminate this Contract or any order issued hereunder, in whole or in part.

If Supplier is in material breach and/or default of an order, such Authorized User shall provide Supplier with notice of breach and/or default and allow Supplier fifteen (15) days to cure the breach and/or default. If Supplier fails to cure the breach and/or default, such Authorized User may immediately terminate its order, in whole or in part.

Any such termination shall be deemed a Termination for Breach or a Termination for Default. In addition, if Supplier is found by a court of competent jurisdiction to be in violation of or to have violated 31 USC 1352, or if Supplier becomes a party excluded from Federal Procurement and Nonprocurement Programs, VITA may immediately terminate this Contract, in whole or in part, for breach. VITA shall provide written notice to Supplier of such termination, and Supplier shall provide prompt written notice to VITA if Supplier is charged with violation of 31 USC 1352 or if federal debarment proceedings are instituted against Supplier.

D. Termination for Non-Appropriation of Funds

All payment obligations under this Contract are subject to the availability of legislative appropriations at the federal, state, or local level, for this purpose. In the event of non-appropriation of funds, irrespective of the source of funds, for the items under this Contract, VITA may terminate any order, in whole or in part, or an Authorized User may terminate its order, in whole or in part, for those goods or services for which funds have not been appropriated. Written notice will be provided to the Supplier as soon as possible after legislative action is completed.

E. Effect of Termination

Upon termination, VITA shall have no future liability except for Software accepted or Services rendered by Supplier prior to the termination date and such obligations as survive the termination of the order or this Contract.

In the event of a Termination for Breach or Termination for Default, Supplier shall accept return of any Software or Services that were not accepted by the Authorized User(s), and Supplier shall refund any monies paid by any Authorized User for such Software or Services and all amounts paid to Supplier for installation of such Software or Services.

F. Transition of Services

Prior to or upon expiration or termination of this Contract and at the request of VITA, Supplier shall provide all assistance as VITA or an Authorized User may reasonably require to transition Services to any other supplier with whom VITA or such Authorized User contracts for provision of Software-related services, provided that under no circumstances will Supplier be required to turn over or disclose to any bona die competitor, identified in writing, any of the Software, Services, or any confidential or trade secret information of Supplier pertaining thereto. This obligation may extend beyond expiration or termination of the Contract for a period not to exceed six (6) months. In the event of a termination for breach and/or default of Supplier, Supplier shall provide such assistance at no charge or fee to VITA or any Authorized User; otherwise, Supplier shall provide such assistance at a reasonable hourly rate or a charge agreed upon by Supplier and VITA or an Authorized User.

G. Contract Kick-Off Meeting

Within 30 days of the effective date of this Contract, 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 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.

SOFTWARE LICENSE

If Authorized User is a state agency, board, commission, or other quasi-political entity of the Commonwealth of Virginia or other body referenced in Title 2.2 of the Code of Virginia, the license shall be held by the Commonwealth, If Authorized User is a locality, municipality, school, school system, college, university, local board, local commission, or local quasi-political entity, the license shall be held by that public body.

A. License Grant

- i). Supplier grants to the Commonwealth and all Authorized Users a such licenses as are provided under the terms of Exhibit B, with the particular form of license selected in an applicable order, to use the Software and Documentation according to the Documentation and the limitations specified in this contract (including, if Maintenance Services are purchased, such subsequent revisions of the Software as are provided for under Supplier's Support and Maintenance description) 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. The Software is the property of Supplier and/or its licensors, 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, the Software for their benefit, for government use and purposes.
- 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, except that neither the Commonwealth nor any Authorized User may make the same available to any bona fide competitor, identified in writing, of Supplier in the market that includes the Software or the Services. Access includes loading or executing the Software on behalf of such Authorized User or its Agents.
- iv). The license fee includes a test system copy, which consists of the right to use the Software for non-production test purposes, including but not limited to, problem/defect identification, remediation, and resolution, debugging, new version evaluation, Software interface testing, 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, Supplier shall provide to such Authorized User, at no additional cost, replacement copies of the Software and Documentation. 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 other non-production purposes and may run the Software concurrently at a back-up site for no additional license fees or costs.
 - vii). 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.
 - viii). Except as expressly authorized, an Authorized User shall not distribute the Software to any third party without Supplier's prior written consent.
 - ix). Except as provided or allowed by law, no Party shall, or permit any third party to, 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.
 - x). Neither the Commonwealth nor any Authorized User may modify or create derivative works of the Software (except that an Authorized User's code written to published APIs for the Software will not be deemed a derivative work).
 - xi). Without Supplier's prior written consent, neither the Commonwealth nor any Authorized User may publish or disclose the results of any benchmark tests or other evaluation run on the Software to any third party, not directly providing services to the Authorized User and not subject to confidentiality obligations for such information.

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

B. 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 B and identified on any order issued pursuant to this Contract.

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

Notwithstanding any other provision or other unilateral license terms which may be issued by Supplier after the Effective Date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of an order for Software 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.

DELIVERY AND INSTALLATION

A. Scheduling

Supplier shall deliver Software and perform the Services according to the delivery dates set forth on the appropriate order.

B. Installation of Software

1. Supplier Installation of Software

The Software license fee includes initial installation. Supplier is required to install the Software in accordance with the installation schedule set forth on the order. Supplier shall

conduct its standard appropriate diagnostic evaluation at the Authorized User's user site to determine that the Software is properly installed and fully ready for productive use, and shall supply the Authorized User with a copy of the results of the diagnostic evaluation promptly after completion of installation.

2. Authorized User Installation of Software

If an Authorized User elects to install the Software itself or to contract with a third party to perform installation services, 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 Authorized User, its Agent, or its third party installer invoke the primary function of each major component of the Software or when Acceptance criteria have been met. Authorized User shall provide to Supplier written notice of Acceptance upon completion of installation and successful Acceptance testing.

C. Documentation of Software Configuration

If the Services include 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.

ACCEPTANCE AND CURE PERIOD

A. Acceptance

Software shall be deemed accepted when such Software is determined to successfully operate in accordance with the Requirements. Such Authorized User agrees to commence Acceptance testing within five (5) days after receipt of the Software, or within such other period as set forth in the applicable order, after receipt of the Software. Acceptance testing will be no longer than five (5) days, or such longer period as may be agreed in writing between Authorized User and Supplier, for the first instance of each product type set forth in Exhibit B. Supplier agrees to provide to such Authorized User such assistance and advice as such Authorized User may reasonably require, at no additional cost, during such Acceptance testing, other than travel expenses pre-approved by the Authorized User which will be reimbursable by such Authorized User at the then-current per diem amounts as published by the Virginia Department of Accounts (http://www.doa.virginia.gov/Admin_Services/CAPP/CAPP_Topics/20335_Meals_Lodging_102007.pdf, or a successor URL(s)). Authorized User shall provide to Supplier written notice of Acceptance upon completion of successful Acceptance testing. Should Authorized User fail to provide Supplier written notice of successful or unsuccessful Acceptance testing within five (5) days following the Acceptance testing period, the Software shall be deemed Accepted.

B. Cure Period

Supplier shall correct any non-conformities identified during Acceptance testing and re-submit such non-conforming Software for re-testing within seven (7) days of the appropriate Authorized User's written notice of non-conformance, or as otherwise agreed between such Authorized User and Supplier in the applicable order. Should Supplier fail to cure the non-conformity or deliver Software which meets the Requirements, such Authorized User may, in its sole discretion: (i) reject the Software in its entirety and recover amounts previously paid hereunder; (ii) issue a "partial Acceptance" of the Software with an equitable adjustment in the price to account for such deficiency; or (iii) conditionally accept the applicable Software while reserving its right to revoke Acceptance if timely correction is not forthcoming. Failure of the Software to meet, in all material respects, the Requirements after the second set of acceptance tests may constitute a default by Supplier. In the event of such default, the Authorized User may, at its sole discretion, terminate its order, in whole or in part, for the Software and Services to be provided thereunder by Supplier.

FUNCTIONALITY WARRANTY

- (a) Supplier warrants that, when delivered, and for a period of 90 days thereafter (and for the entire subscription period for subscription-based licenses and for the entire time that Supplier hosts the Software, if so provided in an order), the Software will conform in all material respects to Supplier's then-current Documentation for such Software.
 - (b) The preceding warranty will not apply if, and to the extent that:
 - (i) The Software is not used in accordance with this Contract or the Documentation;
 - (ii) The Software or any part thereof has been modified by any entity other than Supplier; or
- (iii) A malfunction in the Software has been caused by any of Authorized User's equipment or any third-party software.
- (c) To claim the benefit of this Section 0, Authorized User must notify Supplier before the end of the warranty period, describing in reasonable detail the nature of the nonconformity, and provide to Supplier sufficient detail to allow Supplier to reproduce the problem.
- (d) SUPPLIER'S SOLE AND EXCLUSIVE LIABILITY FOR ANY BREACH OF THE ABOVE WARRANTY SHALL BE LIMITED TO REPAIR OR REPLACEMENT OF THE SOFTWARE UNLESS REPAIR OR REPLACEMENT WOULD BE INADEQUATE OR IMPRACTICAL, IN WHICH CASE SUPPLIER WILL REFUND THE LICENSE FEE PAID FOR THE APPLICABLE SOFTWARE, PRO-RATED FOR THE PORTION OF THE LICENSE PERIOD FROM THE DATE THE MALFUNCTION WAS REPORTED BY THE AUTHORIZED USER OR DISCOVERED BY THE SUPPLIER. SUPPLIER DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE.

OTHER WARRANTIES

A. Software and Documentation

Supplier warrants the following with respect to the Software:

- i). If the RFP specified or Exhibit A specifies the hardware equipment an Authorized User shall use to run the Software, then Supplier warrants the Software, and any subsequent release, is compatible with and shall perform as stated with such hardware for a period of 90 days of the Effective Date. However Supplier will in no event be liable for the failure of Software if such failure is due to changes in the hardware or use of third party software by an Authorized User.
- ii). If an order issued by an Authorized User pursuant to this Contract specified the hardware equipment such Authorized User shall use to run the Software, then Supplier warrants the Software, and any subsequent release, is compatible with and shall perform as stated with such hardware for a period of 90 days of the date of such order. However Supplier will in no event be liable for the failure of Software if such failure is due to changes in the hardware or use of third party software by such Authorized User.
- iii). The Software provided hereunder is, as of the date of delivery, at the then-current release level unless an Authorized User specifies an older version in its order, in which case item (iii) shall not apply and the older version of the Software, and any subsequent release, is compatible with and shall perform as stated with any hardware specified in the applicable order for a period of 90 days after the date of such order;
- iv). No corrections, work arounds or future Software releases provided by Supplier under the warranty provisions or under maintenance or support services shall degrade the Software, cause any other warranty to be breached, or require an Authorized User to acquire additional hardware equipment or software;

- v). Supplier warrants that the Documentation and all modifications or amendments thereto which Supplier is required to provide under this Contract shall be sufficient in detail and content to allow a reasonably skilled Authorized User who has read the Documentation and who is familiar with the operating systems, hardware, and other elements of the Software's environment, to load/use/operate the Software without reference to any other materials or information.

B. Malicious Code

Supplier has used industry-standard methods, means, and databases to detect and eradicate any Computer Viruses from the Software delivered to each Authorized User and that no Software will, at the time of delivery to an Authorized User, contain any Computer Virus detectable by such methods, means, and databases. Supplier warrants that the Software will not, at the time of delivery to any Authorized User, contain any means of Electronic Self-Help. 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 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.

C. Open Source

Supplier will notify all Authorized Users if the Software contains any Open Source Materials and identify the specific license that applies to any Open Source Materials provided by Supplier under this Contract. "Open Source Materials" means materials subject to any license that requires as a condition of use, modification, and/or distribution thereof, that such materials, or materials combined and/or distributed with such materials, be (i) disclosed or distributed in source code or similar form, (ii) licensed for the purpose of making derivative works, or (iii) redistributable at no charge. The term includes materials subject to the GNU General Public License, the GNU Lesser General Public License, an Apache License, a Mozilla Public License, or similar licenses.

D. Supplier's Viability

Supplier warrants that it has the financial capacity to perform and continue to perform its obligations under this Contract; that Supplier has no constructive or actual knowledge of 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.

E. Supplier's Past Experience

Supplier warrants that the Software has been installed and is operating in a production environment in a non-related third party's facility without significant problems due to the Software or Supplier.

WARRANTY DISCLAIMERS AND CONDITIONS

- (a) EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS CONTRACT, SUPPLIER PROVIDES THE SOFTWARE AND ALL ASSOCIATED GOODS AND SERVICES WITH ALL FAULTS, THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AND EFFORT IS WITH AUTHORIZED USER, AND SUPPLIER MAKES NO WARRANTY AGAINST INTERFERENCE WITH AUTHORIZED USER'S ENJOYMENT OF THE SOFTWARE, GOODS OR SERVICES, AGAINST INFRINGEMENT, OR OF FITNESS FOR ANY PARTICULAR PURPOSE OR OF MERCHANTABILITY.
- (b) The Software, Documentation, and other goods, services, and software provided by Supplier are among many tools available for the evaluation of compliance with law. Supplier does not represent or warrant that the use of the Software, the Documentation, or any other good, service, or software provided by Supplier will itself make any person compliant with any particular law or regulatory regime.

- (c) Supplier does not represent or warrant that the use of any Software, Documentation, or any other good, service, or software provided by Supplier will render any website, good, service, or software appropriate or compliant for use by any particular person for any particular purpose. Under no circumstances may Authorized User use the Software, Documentation, or any other good, service, or software provided by Supplier in connection with any good, service, or software that is to be used for the control of nuclear facilities, aircraft, air traffic control, navigation, or any other application where the failure of noncompliance of such good, service, or software is likely to result in personal injury (including, but not limited to, death) or property damage.
- (d) The Software operates utilizing the Internet, which is not under the control of Supplier and which is inherently insecure. Supplier makes no warranties, representations, or guarantees of any kind, express, implied, statutory, or otherwise, oral or written, with respect to the performance or security of the Internet.

MAINTENANCE SERVICES

To the extent that an Authorized User procures Maintenance Services and pays therefor, Supplier shall provide Maintenance Services during the Maintenance Period at the prices identified in Exhibit B without additional charge to maintain the Software in accordance with the Requirements and to provide upgrades, updates, and new releases as they are made generally available.

The prices identified in Exhibit B are inclusive of all necessary labor and, unless otherwise provided therein, all necessary travel. Should travel not be included in the prices identified in Exhibit B, any travel expense must be pre-approved by the Authorized User and shall be reimbursed in accordance with the then-current per diem rates established 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)).

Exhibit C provides detailed descriptions of Supplier's additional maintenance offerings, if any, and Supplier's associated responsibilities, as well as remedies available to the Authorized User in the event Supplier fails to perform its maintenance obligations. Any monetary remedies shall be paid to the Authorized User on a quarterly basis. Exhibit C defines coverage periods, response times, and restore times.

TRAINING AND DOCUMENTATION

Supplier shall deliver to the Authorized User, three (3) complete hard copies or electronic media of Documentation, as requested by such Authorized User. 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 installation and operating procedures for each screen and activity, and technical reference manuals. 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 Software and may duplicate such Documentation and include it in an Authorized User document or platform. Authorized User shall continue to include Supplier's copyright notice.

FEES, ORDERING AND PAYMENT PROCEDURE

A. Fees and Charges

Authorized User shall pay Supplier the fee(s) set forth on Exhibit B, which lists any and all fees and charges. The fees and any associated discounts shall be applicable throughout the term of this Contract; provided, however, that in the event the fees or discounts apply for any period less than the entire term, Supplier agrees that it shall not increase the fees more than once during any twelve (12) month period, commencing at the end of year one (1). No such increase shall exceed the 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. Such Authorized User shall be responsible for making copies and distributing the Software as required. 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 Software deployed during the quarter. Supplier shall invoice such Authorized User for the net number of new licenses reported as deployed.

C. Evaluation Copy of Software

Supplier shall make available to any Authorized User Software for evaluation purposes at no charge. The evaluation period will be determined by the complexity of testing but will be a period not less than five (5) days nor more than 10 days. Each new project is entitled to an evaluation copy regardless of whether an Authorized User has previously purchased the Software.

D. Ordering

Notwithstanding all Authorized User's rights to purchase or license 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, provided that nothing about the use of any such means of ordering or otherwise conducting business will change or revise the effectiveness of any provision of this Contract or impose any contradictory terms. 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.

No substantive provision of any PO in conflict with this Contract will have any effect or add additional duties not of an administrative or logistical nature.

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

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

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

E. Invoice Procedures

Supplier shall send each invoice to the "bill to" address provided with the order promptly after all Software or Services have been accepted. Payment for Software support Services, including Maintenance, 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 B. Without limiting the foregoing, all shipping costs are the Supplier's responsibility except to the extent such charges are identified in Exhibit B, or as noted in any executed order referencing this Contract. Invoices issued by the Supplier shall identify at a minimum:

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

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

F. Purchase Payment Terms

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

In the event Software 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 30 days after Acceptance.

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.

STEERING COMMITTEE

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

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

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

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

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

CONFIDENTIALITY

A. Treatment and Protection

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

B. Exclusions

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

- i). Readily ascertainable by the public by proper means 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 of which the receiving Party knew or had reason to know was without such an obligation, and without breach of this Contract;
- iii). developed independently by the receiving Party without reference to the Confidential Information of the other Party; or
- iv). required to be disclosed under The Virginia Freedom of Information Act (§§2.2-3700 et seq. of the Code of Virginia) or similar laws or pursuant to a court order.

C. Return or Destruction

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.

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 arise out of, or are related to, arise out of or result from: (i) any intentional or willful conduct or negligence of any employee, agent, or subcontractor of Supplier, or (ii) any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Software or Services when used according to the Documentation and as authorized by this Contract.

The foregoing obligation of Supplier under Clause (ii) does not apply with respect to Software or Services or portions or components thereof:

- (a) Not supplied by Supplier;
- (b) Used in a manner not consistent with this Contract
- (c) Made in accordance with an Authorized User's specifications and not offered as part of a general release;
- (d) if the alleged infringement or misappropriation results from any customizations, modifications, alterations or changes not developed by Supplier;
- (e) Combined with other products (hardware or software), processes or materials where the alleged infringement would not exist but for such combination;
- (f) Not the most current Update if infringement would have been avoided by use of the most current update or version thereof and Supplier makes the same available to Authorized User;
- (g) Where Authorized User continues the allegedly infringing activity after being notified thereof and provided modifications that would have avoided the alleged infringement; or
- (h)

In the event that the Software is held by a court of competent jurisdiction to constitute an infringement or the use of the Software is enjoined (or Supplier reasonably believes that any of the foregoing are reasonably likely to occur) Supplier may, at its option, do one of the following things.

- (a) Procure for Authorized User the right to continue use of the Software or Services;
- (b) Provide a modification to the Software or Services so that use becomes non-infringing, which modification Authorized User must immediately implement;
- (c) Replace the Software or Services with software or services that are substantially similar in functionality and performance; or
- (d) If none of the foregoing alternatives is reasonably available to Supplier, Supplier may refund the residual value of the fees paid by Authorized User for the infringing Software and/or Services, depreciated using a straight line method of depreciation over a three-year period from the date of delivery of the Software to Authorized User, in which case Authorized User will cease using the Software and/or Services and return the same to Supplier.

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 Software 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 reasonably 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.

B. Liability

Supplier shall have unlimited liability with respect to (i) any intentional or willful misconduct or negligence of any employee, agent, or subcontractor of Supplier, (ii) claims for bodily injury, including death, and real and tangible property damage, (iii) Supplier's indemnification obligations, (iv) Supplier's confidentiality obligations, and (v) Supplier's security compliance obligations. Supplier agrees that it is fully responsible for all acts and omissions of its employees, agents, and subcontractors, including their gross negligence or willful misconduct

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

INSURANCE

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

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 obligations pursuant to this Section.

BANKRUPTCY

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

GENERAL PROVISIONS

A. Relationship between VITA, 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 core contractual provisions, required by law or by VITA, that are hereby incorporated by reference: [Core Contractual Terms](http://www.vita.virginia.gov/uploaded_files/scm/statutorilymandatedTsandCs.pdf). (www.vita.virginia.gov/uploaded_files/scm/statutorilymandatedTsandCs.pdf)

The contractual claims provision §2.2-4363 of the [Code of Virginia](#) and the required eVA provisions at [eVA Terms and Conditions](http://www.vita.virginia.gov/uploaded_files/scm/eVATsandCs.pdf) (www.vita.virginia.gov/uploaded_files/scm/eVATsandCs.pdf) are also incorporated by reference.

The then-current terms and conditions in documents posted to the aforementioned 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 F hereto.

D. Governing Law

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

E. Dispute Resolution

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

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

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

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

F. Advertising and Use of Proprietary Marks

Supplier shall not use the name of VITA or any Authorized User or refer to VITA or any Authorized User, directly or indirectly, in any press release or formal advertisement without receiving prior written consent

of VITA or such Authorized User. In no event may Supplier use a proprietary mark of VITA or an Authorized User without receiving the prior written consent of VITA or such Authorized User.

G. Notices

Any notice required or permitted to be given under this Contract must be in writing and will be deemed effective (a) if given by personal delivery, upon such personal delivery or (b) if given by nationally-recognized courier or mail service (in either case that has realtime or near-realtime tracking), at the time that the notice is delivered (or an attempt is made to deliver the notice, regardless of whether refused) to the receiver's premises according to the tracking records of the courier or mail service. The addresses for notice for each Party are those in the preamble to this Contract. Either Party may change its address for notice by notice to the other Party.

H. No Waiver

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

I. Assignment

This Contract shall be binding upon and shall inure to the benefit of the permitted successors and assigns of VITA and Supplier. Supplier may not assign, subcontract, delegate or otherwise convey this Contract, or any of its rights and obligations hereunder, to any entity without the prior written consent of VITA, and any such attempted assignment or subcontracting without consent shall be void. Notwithstanding the foregoing, Supplier may assign all, but not less than all, of its rights and obligations, under this Contract to any successor to Supplier's business, whether by transfer of assets, transfer of equity or merger. VITA may assign this Contract to any entity, so long as the assignee agrees in writing to be bound by the all the terms and conditions of this Contract.

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

J. Captions

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

K. Severability

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

L. Survival

The provisions regarding Definitions (§ 2), the Software License (§§3(E), 3(F), 3(H)), Functional Warranty (§7(d)), General Warranty (§9), Fees and Charges (§§12(A), 12(E)), Confidentiality (§16) and Indemnification and Liability (§17), and General Provisions (§20) shall survive indefinitely the expiration or termination of this Contract.

M. Force Majeure

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

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

P. Offers of Employment

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

Q. Contract Administration

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

R. 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:

- a). Exhibit A Software Functional Requirements from supplier response to Section 5 and Section 8 of RFP.
- b). Exhibit B Software Product List, Software License Fee, Service Charges and Payment Schedule
- c). Exhibit C Software Maintenance and Support Services description
- d). Exhibit D Reserved
- e). Exhibit E Reserved
- f). Exhibit F Certification Regarding Lobbying

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

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 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: 
(Signature)

VITA
By: 
(Signature)

Name: PREETY KUMAR

(Print)

Title: CEO & PRESIDENT

Date: AUGUST 21, 2009

Name: George F. Coulter

(Print)

Title: CIO

Date: 9/15/09

Address for Notice:

11130 SUNRISE VALLEY DR.

SUITE 140

RESTON VA 20191

Attention: PREETY KUMAR

Address for Notice:

VITA

Attention: Contract Administrator

EXHIBIT A

DETAILED DESCRIPTION OF PROPOSED SOLUTION

Category 1: Products which aid in making users' access to software and operating systems compliant

Under this Category, Deque is proposing **Worldspace Flash Access** and **Worldspace Visual Studio Access**. These two features are a part of Worldspace Accessibility Practice and are provided at no additional cost when Worldspace Accessibility Practice is licensed. In addition, for Java Swing and Java Applets, Deque recommends using the open source Java Ferret and Java Monkey tools available from Sun Microsystems. Worldspace Flash Access validates Flash (FLA) source files for missing or invalid accessibility properties in Flash CS3 and CS4 set using either the Accessibility panel or ActionScript®. Worldspace Visual Studio Access validates the IAccessible Properties of the UI elements of Windows Applications (C#).

| Category 1: Products which aid in making users' access to software and operating systems compliant | | | |
|--|--|-----------|--|
| These are products that help agencies bring their software applications and operating systems into compliance with Virginia's <i>Information Technology Accessibility Standard</i> (GOV103-00) (or to create new compliant software applications). (Note: Web application accessibility products are covered in Category 2 below.) Such products include (but are not limited to): | | | |
| <ul style="list-style-type: none"> • Products that analyze applications and operating systems for compliance and provide detailed reports regarding missed requirements • Products that correct (or suggest corrections to) compliance problems it finds in analyzed applications • Products that make it easier for developers to bring applications into compliance (e.g. an integrated development environment (IDE) that creates compliant applications or an IDE plug-in). • Products to make compliant software, which lies on top of an existing application or operating systems, interface to make the application or operating system compliant. (e.g. a screen reader). | | | |
| # | Requirement | A (Y/F/N) | B (comments) |
| Commonwealth of Virginia STANDARDS | | | |
| 1. | Is the product written in a language identified in Table APP-S-01 of the Commonwealth's Enterprise Technical Architecture Standard (ITRM Standard EA225-00)? List and describe the language used. | Y | Java, C#, Flash ActionScript |
| 2. | Does the product run on a platform identified in Table PLA-S-01, Table PLA-S-08, or Table PLA-S-09 of the Commonwealth's Enterprise Technical Architecture Standard (ITRM Standard EA225-00)? For each product offering list and describe the platform(s) used. | Y | Consistent with the Strategic operating systems listed in Tables PLA-S-08 and PLA-S-09, Worldspace can be deployed on a Windows-, Linux-, or Solaris-based server environment; specifically, any of the following: <ul style="list-style-type: none"> ❖ Windows 2000 SP4, Windows 2003 SP1 Enterprise Edition 32-bit ❖ Red Hat Linux AS 4.0, AS 5.0 and ES 4.0, ES 5.0 on Intel x86 platforms ❖ Solaris 9, Solaris 10 Worldspace for Flash Access |

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| | | | (plug-in) and Worldspace for Visual Studio run on Windows 2000 SP4, Windows 2003 SP1 Enterprise Edition 32-bit, Windows XP, and Windows Vista. |
| 3. | <p>Does the product run on a Database Management System (DBMS) identified in Table DB-S-01 of the Commonwealth's Enterprise Technical Architecture Standard (ITRM Standard EA225-00)?</p> <p>Identify the DBMS the product utilizes.</p> | Y | <p>Worldspace Flash Access (Server) requires access to a database, which can be Oracle 9i or 10g; MS SQL Server 2000 or 2005; or MySQL 5.0.37, all of which are included as a <u>Strategic DBMS</u> in Table DB-S-01.</p> <p>Worldspace Flash Access (Plugin) and Worldspace Visual Studio Access do not require a DBMS.</p> |
| 4. | <p>If the product uses a DBMS, is the data normalized?</p> <p>Please describe to what level.</p> | Y | <p>Worldspace Flash Access (Server) tables normalize data to third normal form which means all our tables meet the following two criteria:</p> <ul style="list-style-type: none"> a. The table is in second normal form; and b. Every non-prime attribute of the table is non-transitively dependent on every key of the table. <p>Worldspace Flash Access (Plugin) and Worldspace Visual Studio Plugin do not store data in a DBMS</p> |
| 5. | <p>Can you provide a Voluntary Product Accessibility Template (VPAT), located in the Commonwealth of Virginia IT Accessibility Standard?</p> <p>Please provide a VPAT and provide an explanation to questions with answers other than yes or no and be specific.</p> | Y | Please see Appendix B – Voluntary Product Accessibility Template. |
| 6. | <p>Is the product a Commercial Off the Shelf Software (COTS) solution, i.e., a software package that is ready to implement without additional software design and programming?</p> <p>Please describe</p> | Y | Worldspace Flash Access and Worldspace Visual Studio Access are both COTS solutions. |

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| 7. | Will your company work with designated VITA staff to submit a VITA Architectural Review (VAR) ¹ application for approval prior to contract signing? Please describe. | Y | Deque will work with VITA staff to submit a VAR. |
| 8. | Is your product Internet based/server based/thin client? (versus a thick client/installed on individual PCs) Please describe. | Y | The Worldspace Flash Access is available as a plug-in to CS3 and CS4 and as a Worldspace Practice. The Worldspace Flash Access Server component is a thin client. Worldspace Visual Studio Access and Worldspace Flash Access (client) are plug-ins to IDE's |
| OPERATIONAL AND MAINTENANCE | | | |
| 9. | Do you have a system or procedure for product updates and/or releases? Please describe and include how releases and revisions are tested, distributed, and installed. | Y | Deque makes available to Licensee each minor and major functional release of the Software that Deque makes generally available without additional charge to its maintenance licensees to replace a prior Software release ("Updates"). These updates are available for download on a protected site under Deque's support website. Updates do not include any releases or future products that Deque licenses separately. A major functional release is indicated by a change in the first digit of a version number, e.g. from 4.0.0 to 5.0.0; a minor functional release is indicated by a change in the second digit, e.g. from 4.0.0 to 4.1.0. Maintenance releases, which are indicated by a change in the third digit of a version number, e.g. from 5.0.1 to 5.0.2, are provided as needed. Installation of updates and releases ensures backward compatibility and any changes to the database schema accommodate existing data structures. The changes are distributed as executables or JAR files with release notes and instructions. See Appendix I for Release Methodology. |

¹ VAR Explanation: Additions or changes to the VITA infrastructure must undergo an architecture evaluation to prevent negative impact to the infrastructure. The review is performed by the VITA Architectural Review Team (VART) and covers all VAR Domains (subject areas) that could be impacted by the additions or changes.

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| 10. | <p>Does your product have support services and options?</p> <p>Please describe.</p> | Y | <p>Worldspace Gold Level Support will allow the Commonwealth Agencies to get unlimited telephone support and email support for Worldspace related issues. Response is provided by the Deque Support team within 24 hours of a submission via email. Telephone Support is available during normal business hours, 9 a.m. to 5 p.m. Access to the Deque Worldspace Knowledgebase and the “Worldspace Bugzilla reporting center” is also included in the maintenance cost.</p> |
| 11. | <p>Does your product have formal service escalation for problem resolution?</p> <p>Please describe escalation and problem resolution procedures?</p> | Y | <p>The Worldspace support team receives notifications of customer issues and may be contacted via email, telephone, or our support website. The Worldspace support team has access to all the resources in providing resolution to a customer problem. They are also accountable for satisfactory and expedited resolutions. If the priority or attention given by the Worldspace support team is considered inadequate, the customer should call the Deque Headquarters and specify the message “Worldspace Support Escalation”. A contact name and number must be specified. To escalate the issue the problem should have been raised for longer than prescribed for that severity level. Please see Appendix J for Severity Definitions and Escalation Timescales</p> |
| 12. | <p>Do you provide updates regarding outstanding problems, fixes, modifications, and improvements to the customer?</p> <p>Please describe.</p> | Y | <p>Via Worldspace Silver, Gold or Platinum Level Support, Commonwealth Agencies will get all definition updates, upgrades and patches with the maintenance contract. The status of outstanding problem reports and product modification requests is available through our on-line support – please see http://deque.com/support/bugfeatureterms.php. A notification feature is also available upon subscription.</p> |

| TRAINING | | | |
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| 13. | <p>Do you have a user training plan?</p> <p>Please describe.</p> <p>Please submit a user training plan that is optioned for levels of training and a schedule.</p> <p>Include training costs in Section 7, "Pricing."</p> | Y | <p>To train our clients, Deque employs several training methods / venues. This variety of training approaches allows the various users to gain the necessary skills in a method that supports their work load, as well as their preferred learning method. These approaches include:</p> <ul style="list-style-type: none"> ❖ Classroom ❖ Web-Based ❖ Mentoring <p>Please see Appendix C – Training Overview for more detail.</p> |
| REMEDATION | | | |
| 14. | <p>Does your product perform automatic remediation of accessibility problems it encounters?</p> <p>Please describe.</p> | F | <p>Worldspace Flash Access and Worldspace Visual Studio Access are designed as IDE plug-ins. Automated remediation is not possible at this time.</p> |
| 15. | <p>Does your product track remediation from session to session?</p> <p>Please describe.</p> | N | <p>Worldspace Flash Access and Worldspace Visual Studio Access are designed as IDE plug-ins and tracking remediation from session to session does not appear to be relevant</p> |
| GENERAL FEATURES | | | |
| 16. | <p>Does your product support end users with disabilities?</p> <p>Please describe.</p> | Y | <p>Worldspace is designed to work with screen readers and screen magnifiers. The solution is completely web-based and designed to be accessible and usable. Please see the Worldspace VPAT for details.</p> |
| 17. | <p>Does your product support Windows authentication and access protocols?</p> <p>Please describe.</p> | N | <p>Worldspace Flash Access and Worldspace Visual Studio Access are designed as IDE plug-ins so authentication is not relevant</p> |
| 18. | <p>Have you taken steps with your products usability features to simplify their use for the largest number of users?</p> <p>Please describe.</p> | Y | <p>Worldspace Flash Access and Worldspace Visual Studio Access are designed as IDE plug-ins so the user works within the environment they are comfortable in.</p> |
| 19. | <p>Does your product have additional features that we have not addressed in the above questions?</p> <p>Please describe.</p> | N | |

Category 2: Products which aid in making users' access to Web sites and Web applications compliant

Under this Category, Deque is proposing **Worldspace**, which is a comprehensive, scalable and accurate solution for addressing web policies, laws, and standards for large enterprise web sites and applications. It is a web-based enterprise tool that automates testing for "Practices" – Accessibility (Section 508 and WCAG), Privacy, Quality, and Security. Platform independent, **Worldspace** integrates easily with Web Authoring, Content Management, Learning Management, Portal and other familiar applications. An auto Product Accessibility Template generator saves considerable time in producing and tracking compliance of all products and applications used by Commonwealth agencies.

Testing modules for PDF Accessibility, Flash Accessibility, Custom Rules, Privacy, Security and Quality provide a comprehensive web compliance solution for Commonwealth agencies. **Worldspace** provides a robust solution for governing websites and applications so that Commonwealth agencies will not have to worry about "outgrowing" the solution. Trend and management reports will document the progress of the Commonwealth agencies' accessibility efforts.

Deque **Worldspace** solution is the only industrial strength J2EE Web Compliance solution available on the market. This allows our clients to better integrate with existing and new solutions. With the functionality to handle complex web applications, **Worldspace** is the only solution capable of handling AJAX driven code. Deque **Worldspace** provides analysis and repair for 15 out of the 16 Section 508 paragraphs for accessibility practices via a web-based user interface.

Deque **Worldspace** is also the only solution that provides an infrastructure and language for building filters to classify changes and interactive responses when human intervention is needed for web pages. Classifications are the result of clustering web page updates along learned dimensions. Classifications filters are supported by a tight workflow integration making it easy to inspect the documents. For additional information on **Worldspace**, please see **Appendix A – Comparison of Worldspace Features with Other Solutions**.

| Category 2: Products which aid in making users' access to Web sites and Web applications compliant | | | |
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| <p>These are products that help agencies bring their Web sites and Web applications in to compliance with Virginia's <i>Information Technology Accessibility Standard</i> (GOV103-00) or that help agencies create new compliant pages and sites. Such products include (but are not limited to):</p> <ul style="list-style-type: none"> • Products that analyzes Web pages for compliance and provide detailed reports regarding missed requirements. • Products that correct (or suggest corrections to) compliance problems it finds in analyzed pages. • Products that make it easier for developers to bring Web pages into compliance. (e.g. an integrated development environment (IDE) that creates compliant applications or an IDE plug-in) | | | |
| # | Requirement | A (Y/F/N) | B (comments) |
| Commonwealth of Virginia STANDARDS | | | |
| 1. | <p>Is the product written in a language from the application languages identified in Table APP-S-01 of the Commonwealth's Enterprise Technical Architecture Standard (ITRM Standard EA225-00)?</p> <p>List and describe the language(s) used.</p> | Y | Worldspace is built upon a J2EE framework. Java Platform, Enterprise Edition (Java EE or J2EE) is a widely used platform for server-level programming in the Java programming language, which is one of the Strategic development languages listed in Table APP-S-01. |

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| 2. | <p>Does the product run on a platform from the platforms identified in Table PLA-S-01, Table PLA-S-08, or Table PLA-S-09 of the Commonwealth's Enterprise Technical Architecture Standard (ITRM Standard EA225-00)?</p> <p>List and describe the platforms(s) used.</p> | Y | <p>Consistent with the <u>Strategic</u> operating systems listed in Tables PLA-S-08 and PLA-S-09, Worldspace can be deployed on a Windows-, Linux-, or Solaris-based server environment; specifically, any of the following:</p> <ul style="list-style-type: none"> ❖ Windows 2000 SP4, Windows 2003 SP1 Enterprise Edition 32-bit ❖ Red Hat Linux AS 4.0, AS 5.0 and ES 4.0, ES 5.0 on Intel x86 platforms ❖ Solaris 9, Solaris 10 |
| 3. | <p>Does the product run on a DBMS from the Database Management System (DBMS) identified in Table DB-S-01 of the Commonwealth's Enterprise Technical Architecture Standard (ITRM Standard EA225-00)?</p> <p>Identify the DBMS the product utilizes.</p> | Y | <p>Worldspace requires access to a database, which can be Oracle 9i or 10g; MS SQL Server 2000 or 2005; or MySQL 5.0.37, all of which are included as a <u>Strategic</u> DBMS in Table DB-S-01.</p> |
| 4. | <p>Does the DBMS listed above normalize the data?</p> <p>Please describe to what level.</p> | Y | <p>Worldspace tables normalize data to third normal form which means all our tables meet the following two criteria:</p> <ol style="list-style-type: none"> a. The table is in second normal form; and b. Every non-prime attribute of the table is non-transitively dependent on every key of the table. |
| 5. | <p>Can you provide a Voluntary Product Accessibility Template (VPAT), located in the Commonwealth of Virginia IT Accessibility Standard?</p> <p>Please provide a VPAT and provide an explanation to questions with answers other than yes or no and be specific.</p> | Y | <p>Please see Appendix B – Voluntary Product Accessibility Template.</p> |
| 6. | <p>Is the product a Commercial Off the Shelf Software (COTS) solution? (a software package must be ready to implement without additional software design and programming).</p> <p>Please describe.</p> | Y | <p>Worldspace is ready to install and implement 'out of the box.' An Installation document is provided.</p> |
| 7. | <p>Will your company work with designated VITA staff to submit a VITA Architectural Review (VAR)¹ for approval prior to contract signing?</p> | Y | |

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| 8. | <p>Is your product Internet based/server based/thin client? (versus a thick client/installed on individual PCs)</p> <p>Please describe</p> | Y | <p>Worldspace resides on a server, and the user interface is browser-based. Browser support is updated as requested by customers through a change management process. Currently the browsers supported include Internet Explorer 6.0 or 7.0; Firefox 1.5, 2.x or 3.0; or Safari 1.2.</p> |
| OPERATIONAL AND MAINTENANCE | | | |
| 9. | <p>Do you have a system or procedure for product updates and/or releases?</p> <p>Please describe. Include how releases and revisions are tested, distributed and installed.</p> | Y | <p>Deque make available to Licensee each minor and major functional release of the Software that Deque makes generally available without additional charge to its maintenance licensees to replace a prior Software release ("Updates"). These updates are available for download on a protected site under Deque's support website. Updates do not include any releases or future products that Deque licenses separately. A major functional release is indicated by a change in the first digit of a version number, e.g. from 4.0.0 to 5.0.0; a minor functional release is indicated by a change in the second digit, e.g. from 4.0.0 to 4.1.0. Maintenance releases, which are indicated by a change in the third digit of a version number, e.g. from 5.0.1 to 5.0.2, are provided as needed. Installation of updates and releases ensures backward compatibility and any changes to the database schema accommodate existing data structures. The changes are distributed as executables or JAR files with release notes and instructions. See Appendix I for Release Methodology.</p> |

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| 10. | <p>Does your product have support services and options?</p> <p>Please describe.</p> | Y | <p>Workspace Gold Level Support will allow the Commonwealth Agencies to get unlimited telephone support and email support for Workspace related issues. Response is provided by the Deque Support team within 24 hours of a submission via email. Telephone Support is available during normal business hours, 9 a.m. to 5 p.m. Access to the Deque Workspace Knowledgebase and the "Workspace Bugzilla reporting center" is also included in the maintenance cost.</p> |
| 11. | <p>Does your product have formal service escalation and problem resolution procedures?</p> <p>Please describe.</p> | Y | <p>The Workspace support team receives notifications of customer issues and may be contacted via email, telephone, or our support website. The Workspace support team has access to all the resources in providing resolution to a customer problem. They are also accountable for satisfactory and expedited resolutions. If the priority or attention given by the Workspace support team is considered inadequate, the customer should call the Deque Headquarters and specify the message "Workspace Support Escalation". A contact name and number must be specified. To escalate the issue the problem should have been raised for longer than prescribed for that severity level. Please see Appendix J for Severity Definitions and Escalation Timescales</p> |

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| 12. | <p>Do you provide updates regarding outstanding problems, fixes, modifications and improvements to the customer?</p> <p>Please describe.</p> | Y | <p>Via Workspace Silver, Gold or Platinum Level Support, Commonwealth Agencies will get all definition updates, upgrades and patches with the maintenance contract. The status of outstanding problem reports and product modification requests is available through our on-line support – please see http://deque.com/support/bugfeatureterms.php. A notification feature is also available upon subscription.</p> |
| USER AUTHENTICATION | | | |
| 13. | <p>Does your product support Windows authentication and access protocols?</p> <p>Please describe</p> | Y | <p>Workspace supports NTLM / Windows Authentication and access protocols. It also supports form based authentication and LDAP authentication including Active Directory.</p> |
| 14. | <p>Can your product be configured to access pages that require a password?</p> <p>Please describe.</p> | Y | <p>Workspace can be configured to access pages that require a password in one of three ways:</p> <ol style="list-style-type: none"> 1. Web Application Scripting – A server based (browser accessible) “What You See is What You Get” (WSYIWYG) record and replay functionality can be used to provide the name value pairs required to traverse the application. 2. A thick client application for record and replay is an alternative form of providing name value pairs and recording a path through an application 3. If the application simply needs authentication information and no other state and session parameter are required, a simple form can be used to supply the required credentials. |

| TRAINING | | | |
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| 15. | <p>Do you have a user training plan?</p> <p>Please describe.</p> <p>Please submit a user training plan that is optioned for levels of training and a schedule.</p> <p>Include training costs in Section 7, "Pricing."</p> | Y | <p>To train our clients, Deque employs several training methods / venues. This variety of training approaches allows the various users to gain the necessary skills in a method that supports their work load, as well as their preferred learning method. These approaches include:</p> <ul style="list-style-type: none"> ❖ Classroom ❖ Web-Based ❖ Mentoring <p>Please see Appendix C – Training Overview for more detail.</p> |
| PRODUCT FEATURE/CONFIGURATION | | | |
| 16. | <p>Can your product process multiple pages at once? (e.g. a whole site or batch of files).</p> <p>Please describe.</p> | Y | <p>Worldspace can process multiple pages at once or a single file at a time. For multiple pages, a starting URL can be provided along with the crawling depth level. Alternatively, a list of URL's can be provided. Worldspace is a multithreaded industrial strength product. The number of threads spawned can be controlled via a user interface.</p> |
| 17. | <p>Is there a page/file scan limit?</p> <p>Please describe.</p> | Y and N | <p>Page / file scan limits can be set explicitly (not to exceed size or number of files). By default, these values are not set and hence there is no limit provided sufficient processing power and disk space is available on the hardware.</p> |
| 18. | <p>Can your product search an online directory/site for pages to analyze?</p> <p>Please describe.</p> | Y | <p>Worldspace can recursively analyze pages in directories (or be contained to the current directory) or spider a site automatically discovering links in HTML and JavaScript formats.</p> |
| 19. | <p>Can certain files or directories be excluded?</p> <p>Please describe.</p> | Y | <p>Worldspace has an extensive set of Inclusion and Exclusion criteria that can be set for Spidering / Crawling of content. Files and directories can be excluded from spidering by explicitly specifying URI's / files or providing regular expressions. File Types can be selected for inclusion/exclusion as well.</p> |

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| 20. | <p>Can your product be configured to access pages that require a form to be filled out and/or require user input?</p> <p>Please describe.</p> | Y | <p>Worldspace can be configured to access pages that require a form to be filled out. The user can also configure to record the exact path of navigation (i.e., restraining the spidering to only explicitly followed links) or allow spidering of all reachable links. This can be done in one of two ways:</p> <ol style="list-style-type: none"> 1. Worldspace Server Web Application Scripting – A server based (browser accessible) “What You See is What You Get” (WSYIWYG) record and replay functionality can be used to provide the name value pairs required to traverse the application. 2. Web Application Scripting Client - A thick client application for record and replay is an alternative form of providing name value pairs and recording a path through an application. This is useful when security settings prevent the Worldspace server from containing a domain URL within an iframe that varies from the parent domain. |
| 21. | <p>Can your product automate/schedule monitoring or testing of Web sites?</p> <p>Please describe.</p> | Y | <p>Both Spidering and Analysis of websites can be scheduled at predetermined intervals. Worldspace can further be setup to send automatic email notifications once the activity selected (spidering/analysis/conversion etc.) is completed.</p> |

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| 22. | <p>Is your product able to maintain a list of URLs to crawl from session to session?</p> <p>Please describe.</p> | Y | <p>Workspace can be set to perform ad-hoc analysis or allows the user to save all settings by creation of a collection. Workspace maintains the list of URLs to crawl in the database. Workspace can also save the content for record retention associated with the URL if so selected. Finally, Workspace can detect URL's that have changed from session to session and can either produce a comprehensive or differential report (user selectable).</p> |
| 23. | <p>Does your product address both Section 508 and WAI WCAG Level A requirements?</p> <p>Please describe.</p> | Y | <p>Workspace's Section 508 compliance review of Web content is based on Paragraphs (a) to (p) of Section 1194.22 of the EIT Technical Standards, and the functional performance criteria listed under Section 1194.31. Our algorithms conform to and improve upon the Techniques for Web Content Accessibility Guidelines 1.0 (WCAG 1.0). In fact, our improvements are reflected in the techniques for WCAG 2.0. Please see Appendix D - Section 508 §1194.22 and WCAG 1.0 Checks for more information. Workspace is the only solution to date to also support WCAG 2.0 standards (Success Criteria 1 and 2 currently). Workspace can be configured to test against either or both of the standards. Further discrete control over the selection of rules is also provided.</p> |
| 24. | <p>Does your company track changes applied to Section 508 and WAI and provide parallel updating of your product?</p> <p>Please describe.</p> | Y | <p>Deque has been working with the Section 508 Committee and the W3C Web Accessibility Initiative (WAI) since 2000. We had already built in support for the final report recommendations presented in April 2008 to the Access Board. Support for WCAG 2.0 is also in place. See http://www.prweb.com/releases/2009/01/prweb1869184.htm</p> |

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| 25. | <p>Can your product integrate with a browser? (for example, be loaded as a plug-in or product bar)</p> <p>Please describe.</p> | Y | <p>Worldspace supports many plug-ins and can be integrated into browsers. Integration with Firefox and Internet Explorer is in use by many of our customers.</p> |
| 26. | <p>Does your product address problems with source code? (e.g. .Net, ColdFusion, Perl, Java, etc.)</p> <p>Please describe.</p> | Y | <p>Worldspace supports analysis of source code including .Net, ColdFusion, Perl and Java for Security analysis. Analysis support is also provided for Accessibility for source code files as applicable.</p> |
| 27. | <p>Does your product integrate into a development environment? (e.g. Visual Studio, Dream Weaver, etc.)</p> <p>Please describe.</p> | Y | <p>Worldspace integrates into many development and testing environments via a web services interface documented and available to our customers. Worldspace integrates with Visual Studio, Adobe Dreamweaver, SharePoint Designer and Eclipse.</p> |
| 28. | <p>Does your product provide on/off parameters for different styles of execution?</p> <p>Please describe.</p> | Y | <p>Worldspace has been designed to be flexible and provides on/off parameters for static/runtime analysis, AJAX vs. non AJAX driven applications for the purpose of optimal performance.</p> |
| 29. | <p>Does your product test for color blindness and appropriate contrast?</p> <p>Please describe.</p> | Y | <p>Consistent with Paragraphs C & D of Section 1194.22 of the EIT Technical Standards, Worldspace checks that information is not conveyed through color alone and that there is adequate visibility between text and background colors. In addition, our color contrast rules check for both luminosity and brightness contrasts.</p> |
| 30. | <p>Can your product analyze/correct files on a protected LAN or intranet?</p> <p>Please describe.</p> | Y | <p>Worldspace can be configured to work with a single-sign on solution, LDAP directories, or form based authentication for an Intranet or protected LAN. In addition, Proxy bypass and authentication can be configured in Worldspace as well.</p> |

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| 31. | <p>Can your product validate online forms? (e.g. label tags, tab index)</p> <p>Please describe.</p> | Y | <p>Worldspace has comprehensive validation for online forms including tab index, label association, non-focusable instructions, form controls, buttons, and information conveyed by color alone. We are the only solution that can work with non-standard HTML controls as well.</p> |
| 32. | <p>Can your product check for “skip navigation” links?</p> <p>Please describe.</p> | Y | <p>Worldspace can check for “Skip Navigation” links. The number of links to consider as a group is user configurable as is the hidden or link text that is considered acceptable as the label. Users can select to detect headings as alternatives to skip navigation if their standards permit.</p> |
| PRODUCT REPORTING | | | |
| 33. | <p>Can you provide a sample screen-shot and list the items your product addresses?</p> <p>Please describe.</p> | Y | <p>Deque Worldspace can “spider” and analyze a website using user-specified selected options and detect non-compliance against various standards of practice adopted by an organization. Deque organizes these various standards into “practices” such as: Accessibility, Quality, Privacy, and Security. Please see the Scorecard screenshot in Appendix E – Sample Reports and Appendix K for the Sample Practice settings for Section 508.</p> |
| 34. | <p>Can automated alerts or reports be sent?</p> <p>Please describe.</p> | Y | <p>Worldspace can send an email notification when the spidering or analysis tasks are completed. It can also send a link to an individual report to a recipient who can then access it on the Intranet.</p> |
| 35. | <p>Can a report be printed and/or turned into a single file for distribution?</p> <p>Please describe.</p> | Y | <p>Most Worldspace reports have a “print” version. A link to a consolidated report can be sent out to various recipients. This report has links to summary and detailed reports for selected practices. Their formats are designed to suit the needs of developers, supervisors and management. Worldspace also allows export to CSV (single file)</p> |

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| | | | format of all reports. |
| 36. | <p>Does the product find and report broken links and orphan files?</p> <p>Please provide a sample report describe the contents.</p> | Y | <p>Please see the Quality analysis report in Appendix E – Sample Reports. The URL of the broken link, error message encountered and Web pages with the broken links are listed. A similar format is used for orphan links.</p> |
| 37. | <p>Can the product create a summary of the compliance of the batch of files in addition to providing detail on each file?</p> <p>Please describe.</p> | Y | <p>Worldspace summarizes the results for the collection of pages analyzed and lists every instance of the violation at the individual page level. In the sample report, the count of violations is reported against various Section 508 paragraphs for the entire collection of six pages analyzed. The page specific violations follow this summary. (See Accessibility analysis report and the Compliance screenshot in Appendix E – Sample Reports.)</p> |
| 38. | <p>Does the product show the line number of inaccessible code?</p> <p>Please describe.</p> | Y | <p>The line number is displayed against each violation at the individual page level as can be seen in the accessibility analysis report in Appendix E – Sample Reports. The line number is with reference to the page rendered in the browser. From within Worldspace, one can review the browser view as well as the source-code view for every violation.</p> |
| 39. | <p>Does the product analyze each of the accessibility requirements in the files it evaluates and provide an itemized error by error report?</p> <p>Please describe.</p> | Y | <p>As shown in the accessibility analysis report in Appendix E – Sample Reports, every instance of a violation is reported at the page level. The accessibility rule (Section 508 paragraph), a brief description of the violation, a snippet of the source code and the line# are also available. Worldspace checks for all the rules that have been selected in the analysis options. The analysis can be fine tuned by turning on / off detailed setting available for specific paragraphs. (See Worldspace analysis options report in Appendix E – Sample Reports)</p> |

| REMEDIATION | | | |
|-------------------------|--|---|---|
| 40. | Does the product perform automatic remediation of accessibility problems it encounters? Please describe. | Y | Worldspace provides automatic remediation of accessibility problems insofar as possible. For example, missing plug-in links can be auto inserted, skip navigation links can be inserted without user intervention, Flicker rate can be automatically corrected etc. In other cases, remediation wizards are provided that take input from user and then automatically generate the fixes. For example, a wizard takes input on the row and column headers for a complex table and then automatically generates the scope / col or header / id associations as per the remediation settings. |
| 41. | Does the product suggest fixes to encountered problems? Please describe. | Y | Worldspace provides extensive remediation fix guidance in reports for encountered problems. This is provided in a context sensitive fashion. |
| GENERAL FEATURES | | | |
| 42. | Does the product support end users with disabilities? Please describe. | Y | Worldspace is designed to work with screen readers and screen magnifiers. The solution is completely web-based and designed to be accessible and usable. Please see the Worldspace VPAT for details. |
| 43. | Can the product be configured to meet additional agency specific requirements? (for example, the Virginia Web Site Standard) Please describe. | Y | Worldspace supports Custom Standards and allows flexible rule configurations through an easy-to-use user interface. It supports the first truly flexible and pluggable custom rule engine that allows self-serve rule definition in a non-proprietary, fully extensible scripting language and is able to process any custom violation. Worldspace can be configured to show Virginia Web Site Standards as a custom standard at the same level as Section 508 and WCAG standards. The population of this standard can be any rules that VITA chooses. |

| | | | |
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| 44. | <p>Does the product have security features? (for example, checking for OWASP issues)</p> <p>Please describe.</p> | Y | <p>Security features are addressed when the separate Security Practice is licensed. A listing of security checks performed by Worldspace, grouped into vulnerability categories and cross referenced to the Open Web Application Security Project (OWASP) Top Ten, Common Weakness Enumeration (CWE) database, PCI compliance, and Common Vulnerabilities and Exposures referenced by the NIST Information Security Documentation, SP 800-53, is provided in Appendix F – Worldspace Security Checks.</p> |
| 45. | <p>Does the product have additional features that we have not addressed in previous questions?</p> <p>Please describe.</p> | Y | <p>Worldspace is capable of checking Web 2.0 applications and the only solution with ARIA and WCAG 2.0 support. Additional features include browser compatibility testing, spell checks, global find and replace, document management, VPAT docketing system and many more. Please see Appendix A for additional features and a comparison of Worldspace to other solutions prepared by a customer and shared with Deque.</p> |
| 46. | <p>Have you taken steps with the product’s usability features to simplify their use for the largest number of users?</p> <p>Please describe.</p> | Y | <p>Worldspace user interface has been designed to allow users to perform tasks relevant to the role and context. A single task pane allows invocation of functions. Separation of duties keeps the tasks available to a user relevant only to them. Most Recently Used features are automatically surfaced. Users can create shortcuts to tasks they most frequently perform. Reports are designed to suppress noise and facilitate the way a developer works – showing violations a page at a time. Deque has the goal of making the user interface simple enough that help files become superfluous and we are constantly working towards that goal.</p> |

Category 3: Products which aid in making users' access to electronic documents compliant

Under this Category, Deque is proposing **Worldspace PDF Access**. Worldspace PDF Access is a practice in Worldspace that analyzes PDF documents for accessibility violations against the Section 508 and WCAG 1.0 standards and is a feature that is a part of Worldspace Accessibility Practice. It is provided at no additional cost when Worldspace Accessibility Practice is licensed.

Deque also has under development Worldspace MS Office Access, a plug-in for MS Office products (MS Word, MS Excel, MS Powerpoint). Please see Appendix K for a preview of the alpha version. Deque will make this product available to the Commonwealth at a later time.

| Category 3: Products which aid in making users' access to electronic documents compliant | | | |
|---|--|-----------|---|
| <p>These are software products that help agencies make existing and future common electronic documents compliant with Virginia's <i>Information Technology Accessibility Standard</i> (GOV103-00). Common electronic documents include (but are not limited to):</p> <ol style="list-style-type: none"> 1. Portable Document Format (PDF) 2. Word documents 3. PowerPoint presentations 4. Excel spreadsheets 5. Hypertext Markup Language <p>A given product need not cover all document types. Remediation might entail creating an accessible alternative format instead of making the original document compliant. Products include (but are not limited to):</p> <ul style="list-style-type: none"> • Products that test and report on the compliance of existing documents • Products that update existing documents so they become compliant (or creates alternate accessible versions) • Products that enable users to more easily create compliant documents | | | |
| # | Requirement | A (Y/F/N) | B (comments) |
| Commonwealth of Virginia STANDARDS | | | |
| 1. | <p>Is the product written in a language identified in Table APP-S-01 of the Commonwealth's Enterprise Technical Architecture Standard (ITRM Standard EA225-00)?</p> <p>List and describe the language used.</p> | Y | JAVA |
| 2. | <p>Does the product run on a platform identified in Table PLA-S-01, Table PLA-S-08, or Table PLA-S-09 of the Commonwealth's Enterprise Technical Architecture Standard (ITRM Standard EA225-00)?</p> <p>List and describe the platforms(s) used.</p> | Y | Please see response in Category 2 above |
| 3. | <p>Does the product run on a DBMS identified in Table DB-S-01 of the Commonwealth's Enterprise Technical Architecture Standard (ITRM Standard EA225-00)?</p> <p>Identify the DBMS the product utilizes.</p> | Y | Please see response in Category 2 above |
| 4. | <p>Does the DBMS listed above normalize the data?</p> <p>Please describe to what level.</p> | Y | Please see response in Category 2 above |

| | | | |
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| 5. | <p>Can you provide a Voluntary Product Accessibility Template (VPAT), located in the Commonwealth of Virginia IT Accessibility Standard?</p> <p>Please provide a VPAT and provide an explanation to questions with answers other than yes or no and be specific.</p> | Y | Please see response in Category 2 above |
| 6. | <p>Is the product a Commercial Off the Shelf Software (COTS) solution, i.e., a software package that is ready to implement without additional software design and programming?</p> <p>Please describe.</p> | Y | Please see response in Category 2 above |
| 7. | <p>Will your company work with designated VITA staff to submit a VITA Architectural Review (VAR) prior to contract signing?</p> | Y | Please see response in Category 2 above |
| 8. | <p>Is your product Internet based/server based/thin client? (versus a thick client/installed on individual PCs)</p> <p>Please describe.</p> | Y | Please see response in Category 2 above |
| TRAINING | | | |
| 9. | <p>Do you have a user training plan?</p> <p>Please describe.</p> <p>Please submit a user training plan that is optioned for levels of training, and a schedule.</p> <p>Please include training costs in Section 7, "Pricing".</p> | Y | Please see response in Category 2 above |
| OPERATIONAL AND MAINTENANCE | | | |
| 10. | <p>Do you have a system or procedure for product updates and/or releases?</p> <p>Please describe.</p> | Y | Please see response in Category 2 above |
| 11. | <p>Does the product have support services and options?</p> <p>Please describe.</p> | Y | Please see response in Category 2 above |
| 12. | <p>Do you have formal service escalation and problem resolution procedures for this product?</p> <p>Please describe.</p> | Y | Please see response in Category 2 above |
| 13. | <p>Do you provide updates regarding outstanding problems, fixes, modifications and improvements for this product to your customers?</p> <p>Please describe.</p> | Y | Please see response in Category 2 above |

| PRODUCT FEATURES/CONFIGURATION | | | |
|---------------------------------------|--|---|--|
| 14. | Can certain files or directories be excluded? Please describe. | Y | Please see response in Category 2 above |
| 15. | Can the product be configured to access pages that require a password? Please describe. | Y | Please see response in Category 2 above |
| 16. | Can the product be configured to access pages that require a form to be filled out and/or a certain input or user action to reach? Please describe. | Y | Please see response in Category 2 above |
| 17. | Can lists of files and/or settings be saved so they need not be set or generated in subsequent uses of your product? Please describe. | Y | Settings available can be saved. |
| 18. | Can the product process multiple documents at once? Please describe | Y | Please see response in Category 2 above |
| 19. | Can the product create a summary of the compliance of the batch documents in addition to providing detail on each document? Please describe. | Y | Please see response in Category 2 above |
| 20. | Can the product search an online directory/site for documents to analyze? Please describe. | Y | Please see response in Category 2 above |
| 21. | Does your product address the documents logical reading order? Please describe. | N | This is a manual check and not supported currently |
| 22. | Does your product test for color blindness and appropriate contrast? Please describe. | Y | Please see response in Category 2 above |
| 23. | Can your product analyze and/or correct files on a protected LAN or intranet? Please describe. | Y | Please see response in Category 2 above |

| PRODUCT REPORTS | | | |
|-------------------------|--|---|--|
| 24. | Can the product provide a screen shot and list the items addressed? Please describe. | Y | Please see response in Category 2 above |
| 25. | Does the product generate reports for printing and/or turned into a single file distribution? Please describe. | Y | Please see response in Category 2 above |
| REMEDICATION | | | |
| 26. | Does your product perform automatic remediation of accessibility problems it encounters? Please describe. | N | |
| 27. | Does your product suggest fixes to encountered problems? Please describe. | N | |
| GENERAL FEATURES | | | |
| 28. | Does the product support end users with disabilities? Please describe. | Y | All products created by Deque are designed to be accessible and support end users with disabilities. |
| 29. | Does the product support Windows authentication and access protocols? Please describe. | N | |
| 30. | Are there additional features of the product that we have not addressed in the above questions? Please describe. | N | |
| 31. | Have you taken steps with your product's usability features to simplify their use for the largest number of users? Please describe. | Y | Please see response in Category 2 above. |

Exhibit B

SOFTWARE - YEAR ONE, HOSTED 1 YEAR SUBSCRIPTION, SOFTWARE AS A SERVICE (SAAS)

| Software Name | Version | Platform | Hosted? | Limited to use in the following Domain(s) | Number of Pages | License Duration (after the Effective Date) | License Fee | Maintenance (First Year) |
|-----------------------------------|---------|----------|---------|---|--|---|-------------|--------------------------|
| Worldspace Core Server | 3.x | NA | Yes | Any Qualified Virginia Public Body (Agency) | Up to 50,000 per qualified Virginia Public Body (Agency) | October 26 th , 2009 – October 25 th , 2010 | *See Note | NA |
| Worldspace Accessibility Practice | 3.x | NA | Yes | Any Qualified Virginia Public Body (Agency) | Up to 50,000 per qualified Virginia Public Body (Agency) | October 26 th , 2009 – October 25 th , 2010 | *See Note | NA |
| Worldspace Privacy Practice | 3.x | NA | Yes | Single Domain for any Qualified Virginia Public Body (Agency) | Up to 5,000 | October 26 th , 2009 – October 25 th , 2010 | \$3,500 | NA |
| Worldspace Security Practice | 3.x | NA | Yes | Single Domain for any Qualified Virginia Public Body (Agency) | Up to 5,000 | October 26 th , 2009 – October 25 th , 2010 | \$5,000 | NA |
| Worldspace Quality Practice | 3.x | NA | Yes | Single Domain for any Qualified Virginia Public Body | Up to 5,000 | October 26 th , 2009 – October 25 th , 2010 | \$3,500 | NA |

Exhibit B

| Software Name | Version | Platform | Hosted? | Limited to use in the following Domain(s) | Number of Pages | License Duration (after the Effective Date) | License Fee | Maintenance (First Year) |
|------------------------------|---------|----------|---------|---|-----------------|---|-------------|--------------------------|
| | | | | (Agency) | | | | |
| Worldspace Privacy Practice | 3.x | NA | Yes | Single Domain for any Qualified Virginia Public Body (Agency) | Up to 50,000 | October 26 th , 2009 – October 25 th , 2010 | \$20,000 | NA |
| Worldspace Security Practice | 3.x | NA | Yes | Single Domain for any Qualified Virginia Public Body (Agency) | Up to 50,000 | October 26 th , 2009 – October 25 th , 2010 | \$35,000 | NA |
| Worldspace Quality Practice | 3.x | NA | Yes | Single Domain for any Qualified Virginia Public Body (Agency) | Up to 50,000 | October 26 th , 2009 – October 25 th , 2010 | \$20,000 | NA |

- *Note: The free usage of Worldspace Core Server and Accessibility Practice for 1 year is offered to all Public Bodies of the Commonwealth of Virginia.
- VITA will publicly share news of the contract award.
- The Supplier may be granted permission to use Commonwealth of Virginia branding on the "Web Accessibility Portal" pending approval of the VITA Communications Department.

**SOFTWARE - YEAR TWO AND SUBSEQUENT YEARS
HOSTED ANNUAL SUBSCRIPTION (SOFTWARE AS A SERVICE)**

| Software Name | Version | Platform | Hosted? | Limited to use in the following Domain(s) | Number of Pages | License Duration (after the Effective Date) | License Fee | Maintenance (First Year) |
|-----------------------------------|----------------|-----------------|----------------|---|------------------------|--|--------------------|---------------------------------|
| Worldspace Core Server | 3.x | NA | Yes | Single Domain for any Qualified Virginia Public Body (Agency) | Up to 5,000 | Annually (Post October 25, 2010) | \$3,500 | NA |
| Worldspace Accessibility Practice | 3.x | NA | Yes | Single Domain for any Qualified Virginia Public Body (Agency) | Up to 5,000 | Annually (Post October 25, 2010) | \$5,000 | NA |
| Worldspace Privacy Practice | 3.x | NA | Yes | Single Domain for any Qualified Virginia Public Body (Agency) | Up to 5,000 | Annually (Post October 25, 2010) | \$3,500 | NA |
| Worldspace Security Practice | 3.x | NA | Yes | Single Domain for any Qualified Virginia Public Body (Agency) | Up to 5,000 | Annually (Post October 25, 2010) | \$5,000 | NA |
| Worldspace Quality | 3.x | NA | Yes | Single Domain | Up to 5,000 | Annually (Post October 25, 2010) | \$3,500 | NA |

Exhibit B

| Software Name | Version | Platform | Hosted? | Limited to use in the following Domain(s) | Number of Pages | License Duration (after the Effective Date) | License Fee | Maintenance (First Year) |
|-----------------------------------|---------|----------|---------|---|-----------------|---|-------------|--------------------------|
| Practice | | | | for any Qualified Virginia Public Body (Agency) | | 2010) | | |
| Worldspace Core Server | 3.x | NA | Yes | Single Domain for any Qualified Virginia Public Body (Agency) | Up to 50,000 | Annually (Post October 25, 2010) | \$20,000 | NA |
| Worldspace Accessibility Practice | 3.x | NA | Yes | Single Domain for any Qualified Virginia Public Body (Agency) | Up to 50,000 | Annually (Post October 25, 2010) | \$35,000 | NA |
| Worldspace Privacy Practice | 3.x | NA | Yes | Single Domain for any Qualified Virginia Public Body (Agency) | Up to 50,000 | Annually (Post October 25, 2010) | \$20,000 | NA |
| Worldspace Security Practice | 3.x | NA | Yes | Single Domain for any Qualified Virginia Public Body (Agency) | Up to 50,000 | Annually (Post October 25, 2010) | \$35,000 | NA |
| Worldspace | 3.x | NA | Yes | Single | Up to 50,000 | Annually (Post October 25, | \$20,000 | NA |

Exhibit B

| Software Name | Version | Platform | Hosted? | Limited to use in the following Domain(s) | Number of Pages | License Duration (after the Effective Date) | License Fee | Maintenance (First Year) |
|------------------|---------|----------|---------|--|-----------------|---|-------------|--------------------------|
| Quality Practice | | | | Domain for any Qualified Virginia Public Body (Agency) | | 2010) | | |

**SOFTWARE - YEAR TWO AND SUBSEQUENT YEARS
ON PREMISE (INSTALLED ON SITE) PERPETUAL LICENSE**

| Software Name | Version | Platform | Hosted? | Limited to use in the following Domain(s) | Number of Pages | License Duration (after the Effective Date) | License Fee | Maintenance (First Year) |
|-----------------------------------|---------|---------------------|---------|---|-----------------|---|-------------|--------------------------|
| Worldspace Core Server | 3.x | Supported Platforms | No | Single Domain for any Qualified Virginia Public Body (Agency) | Up to 50,000 | Annually (Post October 25, 2010) | \$14,999 | 20% of License Fee |
| Worldspace Accessibility Practice | 3.x | Supported Platforms | Yes | Single Domain for any Qualified Virginia Public Body (Agency) | Up to 50,000 | Annually (Post October 25, 2010) | \$24,999 | 20% of License Fee |
| Worldspace Privacy Practice | 3.x | Supported Platforms | Yes | Single Domain for any Qualified | Up to 50,000 | Annually (Post October 25, 2010) | \$14,999 | 20% of License Fee |

Exhibit B

| Software Name | Version | Platform | Hosted? | Limited to use in the following Domain(s) | Number of Pages | License Duration (after the Effective Date) | License Fee | Maintenance (First Year) |
|------------------------------|---------|---------------------|---------|---|-----------------|---|-------------|--------------------------|
| | | | | Virginia Public Body (Agency) | | | | |
| Worldspace Security Practice | 3.x | Supported Platforms | Yes | Single Domain for any Qualified Virginia Public Body (Agency) | Up to 50,000 | Annually (Post October 25, 2010) | \$24,999 | 20% of License Fee |
| Worldspace Quality Practice | 3.x | Supported Platforms | Yes | Single Domain for any Qualified Virginia Public Body (Agency) | Up to 50,000 | Annually (Post October 25, 2010) | \$14,999 | 20% of License Fee |

A “Domain” is an Internet domain, i.e. all addressable URLs having the same letters and numbers to the left of the period adjacent to the top-level domain and after any period that precedes the period adjacent to the top-level domain. For example, (a) “domainname.com” and “domainname.net” are separate Domains and (b) “domainname.com” and “mail.domainname.com” are parts of the same Domain.

An “Enterprise License” permits Authorized User to use the Software and the Documentation in unlimited Instances throughout Authorized User’s own business enterprise for the management of compliance, security, or other applicable operations of Authorized User itself. Unless specifically stated otherwise in this Order Schedule, Authorized User’s own business enterprise is deemed to constitute only the operations of the named Authorized User by employees, officers, and directors of the named Authorized User and by contractors, agents or consultants solely to the extent necessary to provide services to Authorized User. but not to other public bodies. An Enterprise License remains subject to the export restrictions contained in this Agreement.

An “Instance” of the Software is one session or use of the Software that permits access to substantially all of the functionality of the Software, regardless of whether all of the functionality of the Software is actually used. No pooling or multiplexing (such as permitting multiple sessions through use of a Citrix server or similar system or application) will reduce the number of Instances of the Software. An Instance exists whenever the Software is loaded on a computer (or proxy for a computer as in the case of pooling or multiplexing) and ready for immediate use, regardless of whether the Software is then actually being used. An Instance will continue to exist until it is actually closed and is no longer actively available on a computer or proxy therefore.

The license permits analysis by the Software of the number of unique web pages (electronic content having its own URL) stated above. A page is not “unique” if it contains content identical to another web page in the same Domain or if the page resides on a non-production server when a production version of the page is active and available on a production server.

Any license for which a license duration is stated above (and, in any case, that is not expressly designated above as a perpetual license) is a ‘Subscription License.’ Subscription Licenses may be renewed by the Customer by giving Supplier notice at least 30 days prior to the expiration of the then-current term. Notwithstanding the foregoing, Supplier may terminate a Subscription License with six months’ notice, with licenses fees paid to be refunded on a pro-rata basis, using the terminated portion of a subscription license or on the remaining period of a 5-year depreciation period in the case of a perpetual license.

HOSTING

Where Software is listed above as being hosted, Supplier will, for the term of the Software is not available for a period of two business days within a 30-day period, not due to acts, omissions or conditions beyond the Supplier’s reasonable control. Authorized User will receive a credit for each day of unavailability during that billing month. The credit shall be 1/360th per day of either the annual license subscription fee or the annual maintenance and support fee.

Exhibit C

EXHIBIT C
Maintenance and Support

Supplier will provide the following services for any Software with respect to which maintenance fees are stated in the “Maintenance” column of Exhibit B. The services described in this Attachment are “Maintenance Services.”

STANDARD MAINTENANCE PROGRAM.

Supplier shall provide the Maintenance Services for a term of one year beginning on the original delivery date of the Software or, if a renewal, from the maintenance anniversary date for the applicable Software. Maintenance Service is renewed and invoiced on an annual basis unless terminated as provided herein. Supplier may change the Maintenance Service offered at any time, effective as of the commencement of any renewal period, provided only that Supplier gives to Authorized User notice of changes to fees or service levels for an upcoming maintenance term at least 30 days prior to the maintenance anniversary date. 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. Termination of this Contract or cancellation of Maintenance Services by an Authorized User shall not affect this Contract or the grant of any license.

- (a) **Standard Telephone Support.** During the Telephone Support Business Hours listed below (Monday through Friday, holidays excepted), Supplier shall provide to Authorized User technical assistance by telephone with the installation and use of the Software. Calls received during the business hours listed below will be returned within two hours. Each service request will be evaluated and critical service requests will be escalated as required.

Telephone Support Business Hours:
8:00 AM to 8:00 PM Eastern Time

(All calls after 8 PM will be returned before 9:00 AM the following morning)

If support is required outside our standard support hours, the support session must be scheduled at least two days in advance. Support provided outside normal support hours will be billed Supplier’s then-current standard billing rate.

Supplier holidays are:

New Year’s Day
Memorial Day
Independence Day
Labor Day
Columbus Day
Veterans Day
Thanksgiving Day
The Friday after Thanksgiving Day

Exhibit C

Christmas Day

Two floating holidays to be used at Supplier's option in the days adjacent to Independence Day, Christmas, or New Year's Day

- (b) Software Updates. Supplier shall make available to Authorized User each minor and major functional release of the Software that Supplier makes generally available without additional charge to its maintenance licensees to replace a prior Software release ("Updates"). Updates do not include any releases or future products that Supplier licenses separately. A major functional release is indicated by a change in the first digit of a version number, e.g. from 4.0.0 to 5.0.0; a minor functional release is indicated by a change in the second digit, e.g. from 4.0.0 to 4.1.0. Maintenance releases, which are indicated by a change in the third digit of a version number, e.g. from 5.0.1 to 5.0.2, are provided as needed.
- (c) Bug Fixes. Supplier shall exercise commercially reasonable efforts to correct any reproducible malfunction of the Software reported to Supplier by Authorized User that prevents the Software from performing in accordance with the operating specifications described in the then current Documentation. If a malfunction prevents the material use of the Software and such malfunction is not corrected within two business days, Authorized User will receive a credit for each day of continued unavailability until the malfunction is resolved. The credit for each day shall be 1/360th of either the annual license subscription fee or the annual maintenance and support fee.
- (d) Retirement of Releases. Maintenance Service is provided for the current and one previous release of the Software. Releases that are not the current or one previous release will be retired. Supplier shall not be responsible for maintaining or supporting retired versions of the Software. In all events, however, telephone support services are provided with respect to "how-to" use questions for a retired version of the Software for one year following its retirement (during the maintenance term).
- (e) Supplier may suspend or cancel Maintenance Service if Authorized User fails to pay for such services as required by the Agreement.
- (f) Backups. Authorized User must ensure critical data has been backed up prior to Supplier's personnel providing Maintenance Services.
- (g) Exclusions. Supplier shall have no obligation to support: (i) Software source code is modified without Supplier's written consent, or (ii) use of the Software other than as provided in the Documentation, or (iii) use of the Software other than in accordance with the terms of this Agreement.

If Authorized User permits maintenance to lapse, Supplier may, prior to resuming maintenance services, require that Authorized User have its installation of the Software re-certified by Supplier at Authorized User's expense and pay to Supplier a reinstatement fee of 110% of the maintenance fee that would have been paid during the period maintenance coverage was not in force..

EXHIBIT F

RFP-2009-04

CERTIFICATION REGARDING LOBBYING

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

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

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

Signature: _____



Printed Name: _____

Preety Kumar

Organization: _____

Deque Systems, Inc.

Date: _____

February 9, 2009
