



Commonwealth of Virginia  
Virginia Information Technologies Agency

**UNEMPLOYMENT INSURANCE MODERNIZATION IT SOLUTION CONTRACT**

Date: August 20, 2014

Contract #: VA-091218-HCL

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

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Term: December 18, 2009 – December 17, 2014

Payment: Net 30 days

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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>



**MODIFICATION NO. 1  
TO  
CONTRACT NUMBER VA-091218-HCL  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
HCL AMERICA INC.**

This MODIFICATION No. 1 is hereby incorporated into and made an integral part of Contract VA-091218-HCL

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 also include private institutions of higher education chartered in Virginia and granted tax-exempt status under §501(c)(3) of the Internal Revenue Code. A list of the private institutions eligible to use this contract can be found at <http://www.cicv.org/our-Colleges/Profiles.aspx>*
2. Add to the definition of "SOFTWARE LICENSE" in Section 4 on Contract Page 7.  
*"If Authorized User is a state agency, board, commission, or other quasi-political entity of the Commonwealth of Virginia or other body referenced in Title 2.2 of the Code of Virginia, the license shall be held by the Commonwealth. If Authorized User is a locality, municipality, school, school system, college, university, local board, local commission, or local quasi-political entity, the license shall be held by that public body. If Authorized User is a private institution, the license shall be held by that private institution."*
3. Add to the definition of "RIGHTS TO WORK PRODUCT" in Section 5 on Contract Page 9.  
*"If Authorized User is a private institution of higher education chartered in Virginia and granted tax-exempt status under §501(c)(3) of the Internal Revenue Code, any license to pre-existing work shall be held by, and all rights in, title to, and ownership of Work Product shall vest with that institution."*
4. Add to the definition of "Statement of Work (SOW)" in Section 6 Subsection D on Contract Pages 10-11.  
*"If the authorized User is a private institution chartered in Virginia and granted tax-exempt status under §501(c)(3) of the Internal Revenue Code, such private institution may have its own per diem amounts applicable to Supplier's pre-approved travel expenses."*
5. Add to the definition of "LIABILITY AND INDEMNIFICATION" in Section 16 on Contract Pages 23-24.  
*"In the event of 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."*

6. Add to the definition of "Dispute Resolution" in Section 21 Subsection E on Contract Pages 26-27.  
"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-091218-HCL by this Modification No. 1.

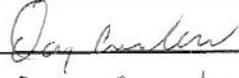
**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.**

**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 HCL America Inc.

COMMONWEALTH OF VIRGINIA

BY: 

BY: 

NAME: Charlie Stevenson

NAME: Jay Crenshaw

TITLE: Senior Director

TITLE: WTA Security mgmt

DATE: August 15, 2014

DATE: 8/18/14

Approved by CCG SPOC

Akaash Gupta



# **Unemployment Insurance Modernization Information Technology Solution Contract**

between

The Virginia Information Technologies Agency

on behalf of

The Commonwealth of Virginia

and

HCL America, Inc.

**UNEMPLOYMENT INSURANCE MODERNIZATION INFORMATION TECHNOLOGY  
SOLUTION CONTRACT  
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## UNEMPLOYMENT INSURANCE MODERNIZATION INFORMATION TECHNOLOGY SOLUTION CONTRACT

THIS UNEMPLOYMENT INSURANCE MODERNIZATION INFORMATION TECHNOLOGY SOLUTION CONTRACT ("Contract") is entered into by and between the Virginia Information Technologies Agency ("VITA") pursuant to §2.2-2012 of the Code of Virginia and on behalf of the Commonwealth of Virginia, and as the initial Authorized User, the Virginia Employment Commission ("VEC") and HCL America, Inc. (Supplier) to be effective as of December 18, 2009 (Effective Date).

### 1. PURPOSE

This Contract sets forth the terms and conditions under which Supplier agrees to provide and implement a modernized UI System, including Software, for the Authorized User and to provide various Services to the Authorized Users; in total, the "Solution". The Solution shall implement the functional and non-functional requirements as defined in Exhibit A, which includes and encompasses the requirements resulting from the requirement finalization process as described in the applicable Statement of Work. The solution will provide a total replacement, using modern IT technology, for the Authorized User's core automated unemployment insurance ("UI") business systems – consisting of, but not limited to, UI Benefit Payments, UI Tax Collection, Employee Wage Reporting, and Adjudication of Appeals. The new UI business system will be an integrated system that is customer-centric, service oriented, modernized web-based, robust, innovative, secure, and intelligent.

### 2. DEFINITIONS

#### A. Acceptance

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

#### B. Agent

Any third party independent agent of any Authorized User.

#### C. Authorized Users

All public bodies, including VITA and the VEC, 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), which could damage, destroy, alter or disrupt any computer program, firmware, or hardware or which could, in any manner, reveal, damage, destroy, alter or disrupt any data or other information accessed through or processed by such software in any manner.

#### E. Confidential Information

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

#### F. Deliverable

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

**G. Documentation**

Those materials detailing the information and instructions needed in order to allow any appropriately trained Authorized User and its Agents to make productive use of the Solution, and to implement and develop self-sufficiency with regard to the Solution as may be specified in a Statement of Work issued hereunder.

**H. Electronic Self-Help**

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

**I. Party**

Supplier, VITA, or any Authorized User.

**J. Receipt**

An Authorized User or its Agent has physically received any deliverable at the correct "ship-to" location.

**K. Requirements**

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

**L. Services**

Any services, including development and maintenance of the Solution, software modifications, installation, support and training provided by Supplier under this Contract. Services include the discovery, creation, or development of Work Product, if any.

**M. Software**

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

**N. Software Publisher**

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

**O. Statement of Work (SOW)**

Any document in substantially the form of Exhibit D to this Contract which, upon signing by both Parties to the agreement, shall be deemed a part of this Contract, and which describes the deliverables, due dates, duration, and payment obligations for a specific project or engagement in which Supplier shall provide a Solution to an Authorized User. Any Statement of Work shall constitute an order.

**P. Supplier**

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

**Q. VITA**

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

**R. Warranty Period**

The one (1) year period following Acceptance of the Solution.

**S. Work Product**

Inventions, combinations, machines, methods, formulae, techniques, processes, improvements, software designs, software customizations, software interfaces, computer programs, strategies, specific computer-related know-how, data and original works of authorship (collectively, the "Work Product") discovered, created, or developed by Supplier, or jointly by Supplier and an

Authorized User(s) in the performance of this Contract or any order issued hereunder. Work Product includes all system executables, regardless of the system infrastructure where they reside, and all components from which the UI System or "Solution" are produced such as source code files, modules, libraries, compiled resources, controls, utilities, security settings and configuration, administrative, deployment, configuration files, build scripts, and command files. For avoidance of doubt, the term "Work Product" shall not mean Software or any pre-existing materials of Supplier or its third party licensors that are required to be included in a Deliverable as set forth in the Statement of Work or order.

### **3. TERM AND TERMINATION**

#### **A. Contract Term**

This Contract is effective and legally binding as of the Effective Date and, unless terminated as provided for in this section, shall continue to be effective and legally binding for a period of five (5) years. Expiration of the term of the Contract shall not affect any perpetual license granted hereunder. Nor shall expiration of this Contract affect any ownership of Work Product by the Commonwealth or any Authorized User pursuant to this Contract. In addition, performance of an order may survive the expiration of the term of this Contract, and all terms and conditions required for the operation of such order shall remain in full force and effect until the Solution and all Services pursuant to such order have met the final acceptance criteria of the applicable Authorized User.

#### **B. Termination for Convenience**

VITA may terminate this Contract, in whole or in part, or an Authorized User may terminate an order, in whole or in part, upon not less than thirty (30) days prior written notice at any time for any reason ("Termination for Convenience"). In addition, VITA may immediately terminate this Contract, in whole or in part, if Supplier becomes a party excluded from Federal Procurement and Nonprocurement Programs. VITA shall provide written notice to Supplier of such termination, and Supplier shall provide prompt written notice to VITA if federal debarment proceedings are instituted against Supplier. Supplier shall submit for resolution any contractual dispute or order dispute or any dispute regarding an order terminated by an Authorized User, according to the terms of the Dispute Resolution Section of this Contract. Upon termination, neither the Commonwealth, nor VITA, nor any Authorized User shall have any future liability except for Services rendered or Solution components delivered by Supplier prior to the termination date. Termination of this Contract or any order for Convenience shall not affect any perpetual license granted pursuant to this Contract, provided all fees for such license have been paid. Nor shall termination of this Contract or any order for Convenience affect any ownership of Work Product by the Commonwealth or any Authorized User pursuant to this Contract.

#### **C. Termination for Breach or Default**

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

If VITA or an Authorized User deems the Supplier to be in breach and/or default, VITA or the Authorized User shall issue, in writing, a "Show Cause Notice" to the Supplier identifying the details of failure/nonperformance and providing Supplier thirty (30) days to cure the failure/nonperformance. If Supplier fails to answer the Show Cause Notice, or does not correct the deficiencies noted, VITA may immediately, upon written notice, terminate this Contract, in whole or in part, or the Authorized User may immediately terminate its order, in whole or in part. Such termination shall be deemed a Termination for Breach or Termination for Default. In addition, if Supplier is found by a court of competent jurisdiction to be in violation of or to have violated 31 USC 1352, VITA may immediately terminate this Contract, in whole or in part, for breach, and VITA shall provide written notice to Supplier of such termination. Supplier shall provide prompt written notice to VITA if Supplier is charged with violation of 31 USC 1352.

In the event of a Termination for Breach or Termination for Default, the affected Authorized User(s) shall not be liable for any cost related to the terminated Contract, order, or portion thereof. Supplier shall accept return of any products or Software provided to the affected Authorized User(s), and Supplier shall refund any monies paid by any Authorized User pursuant to the Contract, order, or portion thereof terminated for breach and/or default, the Solution contemplated under the Contract or order being considered as a whole not as a sum of its parts. All costs of de-installation and return of product or Software shall be borne by Supplier.

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

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

The terms of the Termination for Convenience and Termination for Breach or Default Sections shall not apply to termination for non-appropriation of funds. Any SOW or purchase order placed against this Contract shall survive any termination of this Contract by the VITA for the period necessary to complete the agreed upon work and/or project under such SOW and/or purchase order, and until payment for such agreed upon services has been paid in full.

#### **D. Transition of Services**

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

### **4. 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**

Software licensed by Supplier:

- i). Supplier grants to the Commonwealth and all Authorized Users a fully paid, perpetual, worldwide, nonexclusive, transferable, irrevocable object code license to use, copy, modify, transmit and distribute the Software and Documentation including any subsequent revisions, in accordance with the terms and conditions set forth herein and subject only to the limitations and/or restrictions explicitly set forth in this Contract. It is expressly understood that "perpetual" license rights shall commence upon delivery of the Software to the Authorized User and shall exist in perpetuity unless otherwise terminated in accordance with the applicable provisions of the Contract. The Software is the property of Supplier, and no title or ownership of the Software or any of its parts, including Documentation, shall transfer to the Commonwealth or any Authorized User.
- ii). The Commonwealth and all Authorized Users shall have the right to use, copy, modify, transmit and distribute the Software for their benefit, for government use and purposes, and for the benefit of their Agents, including internal and third-party information processing.

- iii). The Commonwealth and any Authorized User may allow access to the Software by third party vendors who are under contract with an Authorized User to provide services to or on behalf of such Authorized User, or by other entities as required for conducting the business of government. Access includes loading or executing the Software on behalf of such Authorized Users or their Agents.
- iv). The license fee includes 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 development, and may run the Software concurrently at a back-up site, for no additional license fees or costs. Such Authorized User agrees that any copies of the Software or Documentation that it makes under this Contract shall bear all copyright, trademark and other proprietary notices included therein by Supplier. An Authorized User may add its own copyright or other proprietary notice, or copyright or other proprietary notice of the Commonwealth, to any copy of the Software or Documentation, which contains modifications to which the Commonwealth or such Authorized User has ownership rights pursuant to this Contract.
- vii). Except as expressly authorized, an Authorized User shall not distribute the Software to any third party without Supplier's prior written consent.
- viii). Except as provided or allowed by law, no Party shall reverse engineer, decompile, disassemble, or otherwise attempt to derive source code or other trade secrets from any software or other intellectual property of any other Party.

Software licensed by Software Publisher and provided by Supplier:

Supplier shall provide Software as part of its Solution. Such Software is licensed directly from the Software Publisher through the end user licensing agreement (EULA) attached hereto as Exhibit E.

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

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

**B. License Type**

All licenses granted, regardless of the type, include all uses set forth above. License type shall be set forth in Exhibit B and identified on any order issued pursuant to this Contract.

Enterprise Wide License

The Enterprise Wide License authorizes use of the Software on any CPU, on any system, and by any user within the "Enterprise", as such term is defined in the applicable order or SOW, without limitation as to the quantity or location or project.

**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 a Solution, the components of which are licensed under this Contract, or the fact that such other agreement may be affixed to or accompany Software upon delivery (“shrink wrap”), the terms and conditions set forth herein shall supersede and govern licensing and delivery of all products and services hereunder.

## **5. RIGHTS TO WORK PRODUCT**

If Authorized User is a state agency, board, commission, or other quasi-political entity of the Commonwealth of Virginia or other body referenced in Title 2.2 of the Code of Virginia, all rights in, title to, and ownership of Work Product shall vest with the Commonwealth. If Authorized User is a locality, municipality, school, school system, college, university, local board, local commission, or local quasi-political entity, all rights in, title to, and ownership of Work Product shall vest with that public body. Nothing in this Section 5 or any other provision of this Contract or any Statement of Work or order issued under this Contract shall prevent either party from using ideas, concepts, expressions, know-how, skills and experience (in sum, non Work Product) possessed by it prior to, or developed or learned by it in the course of, performance under the Contract or the applicable Statement of Work or order. This shall not limit Supplier’s obligations under Confidentiality or Security Compliance Sections of this Contract.

### **A. Work Product**

The Parties acknowledge that performance of this Contract may result in Work Product. Supplier agrees that it shall promptly and fully disclose to the Commonwealth or the Authorized User any and all Work Product generated, conceived, reduced to practice or learned by Supplier or any of its employees, either solely or jointly with others, during the term or performance of this Contract, which in any way relates to the business of the Commonwealth, VITA or any Authorized User. Supplier further agrees that neither Supplier nor Supplier’s employees, nor any party claiming through Supplier or Supplier’s employees, shall, other than in the performance of this Contract, make use of or disclose to others any proprietary information relating to the Work Product. All Services performed hereunder shall include delivery of all source and object code and all executables and documentation for all Work Product. Supplier agrees that a copy of the most recent source code shall be provided to the Commonwealth or to the Authorized User pursuant to whose order the Work Product was discovered, created, or developed. The Commonwealth grants to Supplier (not Supplier’s subcontractors) an irrevocable, worldwide, perpetual, transferable, unlimited license to copy, distribute, sublicense, modify, and make derivative works of any and all Work Product.

### **B. Ownership**

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

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

with any assignments thereof to the Commonwealth or the Authorized User or entities designated by the Commonwealth or the Authorized User. Supplier's and its employees' obligations to assist the Commonwealth or the Authorized User in obtaining and enforcing such rights shall continue beyond the termination of this Contract , provided that the Commonwealth provide reasonable compensation for the Supplier's efforts to do so.

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

**C. Pre-existing Rights**

If and to the extent that any pre-existing rights are embodied or reflected in the Work Product, Supplier hereby grants to the Commonwealth or the Authorized User the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license for the limited purpose of use in the conduct of its government and/or Agency mission, and those of Authorized Users to (i) use, execute, reproduce, display, perform, distribute copies of and prepare derivative works based upon such pre-existing rights and any derivative works thereof and (ii) authorize others to do any or all of the foregoing. The specific components, modules, or software objects deemed pre-existing by the Parties shall be detailed in the applicable Statement of Work.

**D. Return of Materials**

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

**6. FEES, ORDERING AND PAYMENT PROCEDURE**

**A. Fees and Charges**

As consideration for the Solution and any additional products and Services provided hereunder, an Authorized User shall pay Supplier the fee(s) set forth on Exhibit B, which lists any and all fees and charges. The fees and any associated discounts shall be applicable throughout the term of this Contract.

**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. Solution Demonstration**

At the request of any Authorized User, Supplier shall perform a demonstration of its Solution at such Authorized User's location and at no charge at a mutually agreed upon time and place.

**D. Statement of Work (SOW)**

An SOW shall be required for any Solution ordered by an Authorized User pursuant to this Contract. All Services shall be performed at the times and locations set forth in the applicable SOW and at the rates set forth in Exhibit B herein. An SOW shall be of a fixed price type but may, with the written approval of the Authorized User, contain a cost-reimbursable line item(s) for pre-approved travel expenses.

Any change to an SOW must be described in a written change request. Unless otherwise specified in the applicable SOW, either Party to an SOW may issue a change request that will be subject to written approval of the other Party before it becomes part of this Contract. An SOW from an Authorized User may contain additional terms and conditions; however, to the extent that the terms and conditions of the Authorized User's order are inconsistent with the terms and

conditions of this Contract, the terms of this Contract shall supersede. In no event shall any SOW or any modification thereto require the Supplier to provide any products or services that are beyond the scope of this Contract as such scope is defined in Exhibit A hereto.

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

An SOW may be written as follows:

**1. Fixed Price Type**

A Fixed Price type SOW may include a cost-reimbursable line item(s) for travel; however, any travel expenditure must be approved in advance by the Authorized User and reimbursement of such pre-approved travel expense shall be in accordance with the then-current per diem amounts as published by the Virginia Department of Accounts ([http://www.doa.virginia.gov/Admin\\_Services/CAPP/CAPP\\_Topics/20335\\_1206.pdf](http://www.doa.virginia.gov/Admin_Services/CAPP/CAPP_Topics/20335_1206.pdf), or a successor URL(s)). A Fixed Price type SOW should also include Deliverables and a milestone payment schedule associated with such Deliverables.

**E. Ordering**

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

Supplier is required to accept any order, based on a mutually agreed upon Statement of Work, placed by an Authorized User through the eVA electronic procurement website portal (<http://www.eva.state.va.us>). eVA is the Commonwealth of Virginia's e-procurement system. State agencies, as defined in §2.2-2006 of the Code of Virginia, shall order through eVA. All other Authorized Users are encouraged to order through eVA, but may order through the following means:

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

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

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

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

**F. Supplier Quote and Request for Quote**

Supplier shall, upon request of an Authorized User, provide a quote based on such Authorized User's specific Solution requirements. Such quote should include (a) a detailed description of each product or service proposed as a Solution component, at the Exhibit B line item level, (b) the quantity of each such component, (c) the contract price, and (d) an extended/total price. Any

purchase from Supplier resulting from such quote shall be subject to the terms and conditions specified and outlined in this Contract and any subsequent modifications. The Authorized User may request additional terms and conditions subject to mutual agreement of Supplier. To the extent that any terms and conditions of the Authorized User are inconsistent with the terms and conditions of this Contract, the terms and conditions of this Contract shall supersede.

Should an Authorized User determine that a competitive process is required to ensure it receives the best value Solution, such Authorized User may, at its sole discretion, on a case-by-case basis and upon approval by VITA, use a Request for Quote (RFQ) process to obtain a Solution identical or similar to those provided by Supplier pursuant to this Contract. The RFQ process is typically used when an Authorized User requires a complete solution that may be fulfilled by products and Services herein, but whose complexity or size may result in economies that could not be passed on to the Authorized User within the confines of the established contract catalog discount pricing. When an RFQ is used, the project timing and requirements will be clearly outlined in the RFQ document. In some situations, the Authorized User may not identify the exact specifications required. If that is the case, the RFQ respondents will be given the opportunity to identify and propose their recommended specifications.

The process for obtaining a quote from Supplier, or for obtaining quotes from more than one supplier of IT solutions will be as follows:

- i). Authorized User will notify Supplier or suppliers of its requirement for a Solution and will document such requirement in a written SOW in a form substantially similar to that in Exhibit D. Authorized User will request a fixed price quote in response to such SOW, unless VITA authorizes in writing a time and materials type quote. Authorized User shall include in its RFQ a due date for the submission of quotes in response to such RFQ. Should an Authorized User fail to include such due date, quotes shall be due thirty (30) days after Authorized User's issuance of the RFQ.
- ii). Supplier shall respond to the RFQ by providing a quote, which shall include (a) a detailed description of each product or service proposed as a Solution component, at the Exhibit B line item level, (b) the quantity of each such component, (c) the contract price, (d) any additional percentage discount offered, and (e) an extended price. If requested by the Authorized User, Supplier's quote shall also include a proposal describing the approach Supplier plans to take in developing, implementing, and maintaining a Solution for the Authorized User. Should Supplier be unable to respond to the RFQ due, for example, to resource constraints, Supplier shall notify Authorized User in writing of its inability to perform the work requested by such Authorized User, and provide the reasons for such inability to perform, prior to the due date for the submission of quotes in response to the RFQ.
- iii). Authorized User will evaluate all quotes received and may, at its sole discretion: a) reject all quotes; b) negotiate with one or more suppliers to reach a satisfactory agreement on such items as price discounts, specific deliverables, acceptance and testing criteria, total price, controls, and guidelines; and/or c) place an order with one or more suppliers for the entire solution described in the RFQ or any component(s) of such solution.
- iv). Prior to issuing an order for a solution or any component(s) thereof, Authorized User reserves the right to interview each individual proposed by a supplier to perform work on Authorized User's SOW and has the right of refusal, if it is determined, in such Authorized User's sole judgment, that an individual lacks sufficient knowledge or experience to perform the required tasks.
- v). Following issuance of an order for Supplier's Solution, Supplier shall make available Key Personnel and Project Managers, if any, at the start of the period of performance identified in the associated SOW.
- vi). Supplier shall not commence work until Authorized User has issued a written order to Supplier. Any expenses incurred by Supplier prior to the effective date of the order shall not be billed to or reimbursed by the Authorized User.

Generally, the Authorized User will select the supplier offering the lowest total cost proposal. However, non-price factors may be included in the evaluation criteria for a given RFQ. Any purchase from Supplier that is a result of the RFQ process shall be subject to the terms and conditions specified and outlined in this Contract and any subsequent modifications. Additional terms and conditions may be requested or mandated within the RFQ document. To the extent that any terms and conditions of the Authorized User are inconsistent with the terms and conditions of this Contract, the terms and conditions of this Contract shall supersede.

**G. Invoice Procedures**

Supplier shall remit each invoice to the “bill-to” address provided with the order promptly after all Solution, Solution component(s), or Services have been accepted and in accordance with the milestone payment schedule, if any, in the applicable order. Payment for Solution support Services shall be annually in arrears 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). Solution, product/Solution component, or Service type, or project milestone, and description
- ii). Quantity, charge and extended pricing for each Solution and/or Service item or milestone
- iii). Applicable order date
- iv). This Contract number and the applicable order number
- v). Supplier’s Federal Employer Identification Number (FEIN).

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

**H. Purchase Payment Terms**

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

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

In the event any Deliverable is shipped without the applicable Documentation, payment shall not be due until the required Documentation is provided.

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

**I. 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/procurement/supplierResources.cfm> under "Supplier Reporting". The report shall be submitted via electronic mail to the VITA IFA Coordinator and shall report total sales (defined for purposes of this report as all invoiced payments received by Supplier from all Authorized Users) for this Contract during the preceding month. Supplier shall be responsible for submitting the monthly report of sales even if Supplier has had no sales (i.e., a \$0.00 total sales value) for the reporting period.

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

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

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

**J. 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](mailto:SWaM@vita.virginia.gov).

**7. TRAINING AND DOCUMENTATION**

Training requirements are set forth in Exhibit A and the applicable SOW. The Solution fee includes all costs for the training of Authorized Users at an Authorized User's designated location on the use and operation of the Solution, including instruction in any necessary conversion of such Authorized User's data for such use. Pursuant to a mutually agreed upon schedule, Supplier shall provide personnel sufficiently experienced and qualified to conduct such training. Available optional training, and applicable pricing and discounts, are described in Exhibit B.

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

## **8. DELIVERY AND INSTALLATION**

### **A. Scheduling**

Supplier shall deliver the Solution, including any component parts, and complete performance of Services according to the delivery dates set forth on the appropriate order.

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

### **B. Deployment of Solution**

#### **1. Supplier Deployment of Solution**

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

Supplier agrees that to the extent Supplier or its subcontractors are the cause of failure to deploy the Solution in accordance with the delivery schedule in the applicable order shall constitute a material breach of this Contract resulting in damages to such Authorized User. As an estimate of the damages such Authorized User shall suffer, Supplier agrees to credit such Authorized User an amount equal to one quarter percent (0.25%) of the total Solution fee, for each business day after the scheduled deployment date that the Solution has not been deployed for a period of thirty (30) days following the agreed upon delivery date. If the delay lasts longer than thirty (30) days, such Authorized User may immediately cancel the order and collect damages for each day of that period of late delivery. Such Authorized User reserves any and all other remedies available at law or in equity for delays lasting longer than thirty (30) days or for non-deployment.

#### **2. Authorized User Installation of Software**

If the Solution includes Software which may be installed by an Authorized User and such Authorized User elects to install the Software itself, the Software shall be deemed to be installed when all programs, program libraries and user interfaces are copied to and initialized on the appropriate equipment as executable by having the ordering Authorized User 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. Supplier shall proceed with full deployment of the Solution concurrently with or after Authorized User's installation of the Software, as agreed between the Authorized User and Supplier in the Statement of Work.

### **C. Documentation of Software Configuration**

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

## **9. ACCEPTANCE**

### **A. Software and Deliverable Acceptance Criteria**

Software and Deliverables shall be deemed accepted when the Authorized User determines that such Software and Deliverables successfully operate in accordance with the Requirements. At a minimum, Acceptance Criteria for Software and Deliverables, and for the Solution as a whole, shall ensure that all of the functionality described in the Requirements set forth in Exhibit A and

required by the Authorized User in the applicable Statement of Work has been delivered to the Authorized User. Acceptance of any one Deliverable shall not imply Authorized User's concurrence that the Deliverable will function properly with or within the Solution. Supplier shall be responsible for ensuring that all Deliverables function properly within the Solution. Should a previously Accepted Deliverable require further modification in order to work properly with or within the Solution, Supplier shall be responsible for all costs associated with such modification. Such Authorized User agrees to commence Acceptance testing within five (5) days after receipt of the Software or Deliverable, and the applicable acceptance readiness certification as defined in the SOW. Acceptance testing will be no longer than thirty (30) days, or such other period as may be agreed in writing or Statement of Work between Authorized User and Supplier. Acceptance is deemed to occur if Authorized User fails to deliver to Supplier either a written notice of Acceptance or a list of outstanding defects within sixty (60) days of commencement of Acceptance testing, unless the Parties agree otherwise in writing or Statement of Work. 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. All travel expenses are expressly included in the applicable SOW pricing. The prioritization of defects shall be as set forth in the applicable Statement of Work. The assignment of priorities shall be mutually agreed upon by the Parties subject to the practices identified within the SOW.

**B. Software and Deliverable Cure Period**

Supplier shall correct any reproducible or demonstrable non-conformities identified in writing hereunder and shall thereafter re-submit such previously non-conforming Software or Deliverable for re-testing within thirty (30) days of written notice of non-conformance, or as otherwise agreed between the Authorized User and Supplier in the applicable SOW. During such time, the Parties agree to work together in good faith to resolve such issues. After such time, in the event that Supplier fails to deliver Software or a Deliverable which meets the Requirements, such Authorized User may, in its sole discretion: (i) reject the Software or Deliverable in its entirety and recover amounts previously paid for the applicable Software or Deliverable; (ii) issue a "partial Acceptance" of the Software or Deliverable with an equitable adjustment in the price to account for such deficiency; or (iii) conditionally accept the applicable Software or Deliverable while reserving its right to revoke Acceptance if timely correction is not forthcoming. Failure of the Software or a Deliverable to meet, in all material respects, the corresponding Requirements after the second set of acceptance tests shall constitute a default by Supplier. In the event of such default, the Authorized User may, at its sole discretion, terminate its order, in whole or in part, for the Solution to be provided thereunder by Supplier. Supplier shall accept return of any products or Software provided to such Authorized User, and Supplier shall refund any monies paid by such Authorized User pursuant to the order, or portion thereof terminated, the Solution contemplated under the order being considered as a whole not as a sum of its parts. All costs of de-installation and return of product or Software shall be borne by Supplier. This remedy is in addition to and not in lieu of any other remedies of the Authorized User set forth herein, in the applicable SOW, or available at law or in equity.

**C. Solution Acceptance Criteria**

Solution shall be deemed accepted when the Authorized User determines that such Solution successfully operates in accordance with the Requirements. Such Authorized User agrees to commence Acceptance testing within five (5) days after deployment of the Solution, and receipt of the applicable acceptance readiness certification as defined in the SOW. 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. All travel expenses are expressly included in the applicable SOW pricing.

**D. Solution Cure Period**

Supplier shall correct any non-conformities identified hereunder and shall thereafter re-submit such previously non-conforming Solution or component products or Services for re-testing within fifteen (15) days of written notice of non-conformance to Supplier, or as otherwise agreed between the Authorized User and Supplier. In the event that Supplier fails to deliver a Solution

which meets the Requirements, such Authorized User may, in its sole discretion: (i) reject the Solution in its entirety and recover amounts previously paid hereunder; (ii) issue a "partial Acceptance" of the Solution with an equitable adjustment in the price to account for such deficiency; or (iii) conditionally accept the applicable Solution while reserving its right to revoke Acceptance if timely correction is not forthcoming. Failure of the Solution to meet, in all material respects, the specifications and performance standards after the second set of acceptance tests shall constitute a default by Supplier. In the event of such default, the Authorized User may, at its sole discretion, terminate its order, in whole or in part, for the Solution to be provided thereunder by Supplier. Supplier shall accept return of any products or Software provided to such Authorized User, and Supplier shall refund any monies paid by such Authorized User pursuant to the order, or portion thereof terminated, the Solution contemplated under the order being considered as a whole not as a sum of its parts. All costs of de-installation and return of product or Software shall be borne by Supplier. This remedy is in addition to and not in lieu of any other remedies of the Authorized User set forth herein, in the applicable SOW, or available at law or in equity.

## 10. GENERAL WARRANTY

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

### A. Ownership

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

### B. Solution and Documentation

Supplier warrants the following with respect to the Solution:

- i). The Solution is pursuant to a particular Request for Proposal ("RFP"), and therefore such Solution shall be fit for the particular purposes specified in this Contract and the applicable Statement of Work, and Supplier is possessed of superior knowledge with respect to the Solution and is aware that all Authorized Users are relying on Supplier's skill and judgment in providing the Solution;
- ii). If a Solution is pursuant to a particular quote or Request for Quote (RFQ), such Solution shall be fit for the particular purposes specified by the Authorized User requesting such quote or issuing such RFQ, and Supplier is possessed of superior knowledge with respect to the Solution and is aware that such Authorized User is relying on Supplier's skill and judgment in providing the Solution;
- iii). If the RFP or RFQ specified or Exhibit A or Supplier's quote specifies the hardware equipment an Authorized User shall use to run the Solution, then, during the Warranty Period and any subsequent Maintenance, Supplier warrants the Solution, and any subsequent Solution component Software release, is compatible with and shall perform well with such hardware equipment, assuming such equipment is free from defects, and the failure of the Solution is due to such defects.;
- iv). The Solution provided hereunder includes component Software at the current release level unless an Authorized User specifies an older version in its order;
- v). No corrections, work arounds or future Software or Solution component Software releases provided by Supplier under the warranty provisions or under maintenance shall degrade the Solution, cause any other warranty to be breached, or require an Authorized User to acquire additional hardware equipment or software;
- vi). 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 appropriately trained VITA or Authorized User personnel to understand how to fully use the Solution without reference to any other materials or information.

**C. Limited Warranty**

During the Warranty Period, Supplier warrants that the Solution shall not contain any material errors and shall function properly and in conformity with the Requirements. Supplier shall correct, at no additional cost to any Authorized User, all errors identified during the Warranty Period that result in a failure of the Solution to function as specified in Exhibit A or in the applicable order.

**D. Malicious Code**

Supplier has used reasonable commercial efforts through quality assurance procedures to ensure that there are no Computer Viruses or undocumented features in the Solution at the time of delivery to an Authorized User. Supplier warrants that the Solution does not contain any embedded device or code (e.g., time bomb) that is intended to obstruct or prevent any Authorized User's use of the Solution. Notwithstanding any rights granted under this Contract or at law, Supplier hereby waives under any and all circumstances any right it may have or may hereafter have to exercise Electronic Self-Help. Supplier agrees that an Authorized User may pursue all remedies provided under law in the event of a breach or threatened breach of this Section, including injunctive or other equitable relief.

**E. Open Source**

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

**F. Supplier's Viability**

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

**G. Supplier's Past Experience**

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

**THE OBLIGATIONS OF SUPPLIER UNDER THIS GENERAL WARRANTY SECTION ARE MATERIAL. SUPPLIER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY CONCERNING MERCHANTABILITY, FITNESS FOR ANY OTHER PARTICULAR PURPOSE, INTEGRATION, PERFORMANCE AND ACCURACY, ANY IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE.**

**11. WARRANTY AND MAINTENANCE SERVICES**

At any time during the Warranty or Maintenance Period, as applicable, Supplier shall provide the following warranty or maintenance services (including unlimited telephonic support and all necessary travel and labor) to maintain the Solution in accordance with the Requirements. During the Warranty Period, such services shall be performed without additional charge to any Authorized User. During the Maintenance Period, charges shall be in accordance with this Section and Exhibit B.

**A. Known Defects**

Promptly notify all Authorized Users in writing of any defects or malfunctions in the Solution or Documentation of which it learns from any source other than an Authorized User, correct any such defects or malfunctions or provide a work around until corrected, within five (5) days of Supplier's knowledge of such defect or malfunction and provide all Authorized Users with corrected copies of same, or as otherwise specified in the applicable SOW.

**B. New Releases**

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

**C. Coverage**

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

**D. Service Levels**

Unless otherwise specified in a SOW, respond to problems with the Solution identified by an Authorized User in no more than one (1) hour after notification. Resolve all problems according to the following:

- i). Priority 1 (system down) within six (6) hours;
- ii). Priority 2 (certain processing interrupted or malfunctioning but system able to process) within twenty four (24) hours;
- iii). Priority 3 (minor intermittent malfunctioning, system able to process data) within three (3) days.

The level of priority (e.g., 1, 2, 3), shall be defined by the Authorized User.

**E. Software Evolution**

Should Supplier or Software Publisher merge or splinter the Software previously provided to any Authorized User, such action on the part of Supplier or Software Publisher shall not in any way result in any Authorized User being charged additional license or support fees in order to receive enhancements, releases, upgrade or support for the Software.

If Supplier or Software Publisher reduces or replaces functionality contained in a licensed Software product and provides the same or substantially similar functionality as or within a separate or renamed Software product, then the Commonwealth or the Authorized User shall be entitled to license such Software product at no additional license or maintenance fee, and subject to the terms and conditions herein.

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

**F. Escalation Procedures**

Lynnette Stern – VEC Project Manager  
(703) 346-0055

Brian Bennett – Account Executive  
(916) 798-2540

Vasu Srinivasan – VP Government Solutions  
(408) 328-7697

**G. Remedies**

If Supplier is unable to make the Solution or any component thereof conform, in all material respects, within ten (10) days following notification by an Authorized User, Supplier shall, at such

Authorized User's request, accept return of the tangible Solution components, and (a) during the Warranty Period, return all monies paid by such Authorized User for the returned Solution components and Documentation or (b) during any subsequent Maintenance Period, return all monies paid by such Authorized User for the returned Solution components and Documentation, pro-rated using the straight-line method for an estimated Solution life cycle of five (5) years. Authorized User shall discontinue use of any Solution component, Software or product.

**H. Solution Support Services (Maintenance) and Renewal Options**

Sixty (60) days prior to the expiration of the Warranty Period, Supplier shall notify the Authorized User in writing of such expiration, and the Authorized User, at its sole discretion, may order from Supplier Solution support Services ("Maintenance Services"), including new Software releases, updates and upgrades, for a period of one (1) year ("Maintenance Period") and for an annual fee as identified in Exhibit B. Supplier shall notify the Authorized User sixty (60) days prior to the expiration of the Maintenance Period, and the Authorized User, at its sole discretion, may renew Maintenance Services for an additional one (1) year period. 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 (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 in effect at the time), whichever is less. Supplier warrants that it shall make Support Services available for all the Solution components listed in Exhibit B for a period of at least five (5) years from the expiration of the initial Warranty Period of any Solution provided to an Authorized User pursuant to this Contract. Cancellation of Maintenance Services by an Authorized User shall not affect this Contract or the grant of any license by Supplier.

**12. AUTHORIZED USER SELF-SUFFICIENCY**

During Supplier's performance of an order issued pursuant to this Contract, an Authorized User may require that Supplier provide to Authorized User a detailed plan to develop Authorized User self-sufficiency and to transition operation and management of a Solution to Authorized User or its Agent, which Agent may be VITA or an agent of VITA or a third party provider under contract with Authorized User. At Authorized User's request and pursuant to an order for Supplier's Services issued hereunder, Supplier shall provide all assistance required by Authorized User to develop self-sufficiency in operating and managing such Authorized User's Solution. The Supplier's staffing resources used for such knowledge transfer shall be experienced and qualified in such knowledge transfer roles, and knowledgeable of any aspects of the Solution for which they are training

**13. ESCROW AGREEMENT**

Supplier shall maintain copies of all Software source code and related technical and user Documentation, in English, in an escrow account, and shall maintain with escrow agent the executed agreement attached hereto as Exhibit C (Escrow Agreement). VITA acknowledges that, prior to the Effective Date of this Contract, Supplier delivered to VITA and VITA received a copy of the executed Escrow Agreement naming the Commonwealth of Virginia as a third party beneficiary. VITA has reviewed Escrow Agreement to ensure that such Escrow Agreement does not impose upon the Commonwealth any requirements other than administrative responsibilities necessary for the operation of the Escrow Agreement. If events give rise to a need for the escrow agent to release escrowed materials to the Commonwealth, the Commonwealth's sole responsibility shall be to request the release of such materials from the escrow agent. Supplier agrees to notify VITA in writing not less than thirty (30) calendar days prior to termination or any modification of Escrow Agreement. Supplier warrants that the information and materials to be kept in escrow in a media safe environment for the benefit of the Commonwealth are specifically identified and listed in the Escrow Agreement and include the most current version used by all Authorized Users of:

- i). the source code for the Software,

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

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

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

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

## **14. SUPPLIER PERSONNEL**

### **A. Selection and Management of Supplier Personnel**

Supplier shall take such steps as may be necessary to ensure that all Supplier personnel performing Services under this Contract are competent and knowledgeable of the contractual arrangements and the applicable SOW between Authorized User and Supplier. Supplier shall be solely responsible for the conduct of its employees, agents, and subcontractors, including all acts and omissions of such employees, agents, and subcontractors, and shall ensure that such employees and subcontractors comply with the appropriate Authorized User's site security, information security and personnel conduct rules, as well as applicable federal, state and local laws, including export regulations. Authorized User reserves the right to require the immediate removal from such Authorized User's premises of any employee, subcontractor or agent of Supplier whom such Authorized User believes has failed to comply or whose conduct or behavior is unacceptable or unprofessional or results in a security or safety breach.

### **B. Supplier Personnel Supervision**

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

**C. Key Personnel**

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

**D. Subcontractors**

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

**15. CONFIDENTIALITY**

**A. Treatment and Protection**

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

**B. Exclusions**

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

- i). in the public domain through no fault of the receiving Party or of any other person or entity that is similarly contractually or otherwise obligated;
- ii). obtained independently from a third-party without an obligation of confidentiality to the disclosing Party and without breach of this Contract;
- iii). developed independently by the receiving Party without reference to the Confidential Information of the other Party; or
- iv). required to be disclosed under The Virginia Freedom of Information Act (§§2.2-3700 et seq. of the Code of Virginia) or similar laws or pursuant to a court order.

**C. Return or Destruction**

Upon the termination or expiration of this Contract or upon the earlier request of the disclosing Authorized User, Supplier shall (i) at its own expense, (a) promptly return to the disclosing Authorized User all tangible Confidential Information (and all copies thereof except the records required to be retained 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.

## 16. LIABILITY AND INDEMNIFICATION

Supplier agrees to indemnify, defend and hold harmless the Commonwealth, VITA, any Authorized User, their officers, directors, agents and employees (“Commonwealth’s Indemnified Parties”) from and against any and all third party claims, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, fines, judgments, settlements, expenses (including attorneys’ and accountants’ fees and disbursements) and costs (each, a “Claim” and collectively, “Claims”), incurred by, borne by or asserted against any of Commonwealth’s Indemnified Parties to the extent such Claims in any way relate to, arise out of or result from: (i) any intentional or willful conduct or negligence of any employee, agent, or subcontractor of Supplier, (ii) any act or omission of any employee, agent, or subcontractor of Supplier which causes a material defect in Solution or Services, (iii) breach of any representation, warranty or covenant of Supplier contained herein, (iv) any defect in the Solution or the Services, or (v) any actual or alleged infringement or misappropriation of any third party’s intellectual property rights by any of the Solution or Services. Selection and approval of counsel and approval of any settlement shall be accomplished in accordance with all applicable laws, rules and regulations. For state agencies the applicable laws include §§ 2.2-510 and 2.2-514 of the Code of Virginia. In all cases the selection and approval of counsel and approval of any settlement shall be satisfactory to VITA or the Authorized User against whom the Claim has been asserted.

VITA or Authorized User, as applicable, agree to promptly notify Supplier in writing of the Claim, providing Supplier a copy of all notices received by the VITA or Authorized User with respect to the Claim, cooperating with Supplier in defending or settling the Claim, and allowing Supplier to control the defense and settlement of the Claim. VITA or Authorized User may observe the proceedings concerning the Claim and confer with Supplier at its own expense.

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

In the event of a Claim pursuant to any actual or alleged infringement or misappropriation of any third party’s intellectual property rights by any of the Solution or Services, and in addition to all other obligations of Supplier in this Section, Supplier shall at its expense, either (a) procure for all Authorized Users the right to continue use of such infringing Solution or Services, or any component thereof; or (b) replace or modify such infringing Solution or Services, or any component thereof, with non-infringing products or services satisfactory to VITA. And in addition, Supplier shall provide any Authorized User with a comparable temporary replacement Solution or reimburse VITA or any Authorized User for the reasonable costs incurred by VITA or such Authorized User in obtaining an alternative product in the event such Authorized User cannot use the affected Solution. If Supplier cannot accomplish any of the foregoing within a reasonable time and at commercially reasonable rates, then Supplier shall accept the return of the infringing component of the Solution or Services, along with any other components of any products rendered unusable by any Authorized User as a result of the infringing component, and refund the price paid to Supplier for such components.

Supplier is not responsible for any claimed infringements caused by: (i) modifications made to the Software or Documentation by anyone other than Supplier, its subcontractors or Authorized Users working at Supplier’s direction, or with Supplier’s knowledge; (ii) the combination, operation or use of the Software or Documentation with any items that Supplier did not supply, recommend, or have knowledge of; or (iii) the Authorized User’s failure to use any new or

corrected versions of the Software or Documentation made available by Supplier which would have otherwise avoided the infringement.

**EXCEPT WITH REGARD TO CLAIMS FOR PROPERTY DAMAGE, PERSONAL INJURY OR INFRINGEMENT, AND THE INDEMNIFICATION AND CONFIDENTIALITY OBLIGATIONS, WITH RESPECT TO EACH OF WHICH LIABILITY SHALL NOT BE LIMITED PURSUANT TO THIS SECTION, IN NO EVENT WILL ANY PARTY BE LIABLE TO ANY OTHER PARTY (OR THE INDEMNIFIED PARTIES OF SUCH PARTY) FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING (WITHOUT LIMITATION) LOSS OF PROFIT, INCOME OR SAVINGS, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, EXCEPT WHEN SUCH DAMAGES ARE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE PARTY, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS. FOR ALL OTHER CLAIMS, LIABILITY WILL BE LIMITED TO THE VALUE OF THE APPLICABLE ORDER UNDER THIS CONTRACT.**

#### **17. INSURANCE**

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

Performance Bond

Supplier shall post a performance bond as specified in the applicable SOW.

#### **18. SECURITY COMPLIANCE**

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

Supplier shall indemnify, defend, and hold the Commonwealth, VITA, the Authorized User, their officers, directors, employees and agents harmless from and against any and all fines, penalties (whether criminal or civil), judgments, damages and assessments resulting from third party claims against them, including reasonable expenses suffered by, accrued against, or charged to or recoverable from the Commonwealth, VITA, the Authorized User, their officers, directors, agents or employees, on account of the failure of Supplier to perform its obligations pursuant to this Section. For purposes of clarification a third party shall not be a "Party" as defined in this Contract.

VITA or Authorized User, as applicable, agrees to promptly notify Supplier in writing of the Claim, providing Supplier a copy of all notices received by the VITA or Authorized User with respect to the Claim, cooperating with Supplier in defending or settling the Claim, and allowing Supplier to control the defense and settlement of the Claim. VITA or Authorized User may observe the proceedings concerning the Claim and confer with Supplier at its own expense.

## **19. IMPORT/EXPORT**

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

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

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

Supplier shall not export or re-export any software developed, or otherwise used or obtained by Supplier pursuant to Supplier's performance of this Contract, to any country, person, entity or end user subject to U.S. export restrictions.

## **20. BANKRUPTCY**

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

## **21. GENERAL PROVISIONS**

### **A. Relationship Between VITA and Authorized User and Supplier**

Supplier has no authority to contract for VITA or any Authorized User or in any way to bind, to commit VITA or any Authorized User to any agreement of any kind, or to assume any liabilities of any nature in the name of or on behalf of VITA or any Authorized User. Under no circumstances shall Supplier, or any of its employees, hold itself out as or be considered an agent or an employee of VITA or any Authorized User, and neither VITA nor any Authorized User shall have any duty to provide or maintain any insurance or other employee benefits on behalf of Supplier or its employees. Supplier represents and warrants that it is an independent contractor for purposes of federal, state and local employment taxes and agrees that neither VITA nor any Authorized User is responsible to collect or withhold any federal, state or local employment taxes,

including, but not limited to, income tax withholding and social security contributions, for Supplier. Any and all taxes, interest or penalties, including, but not limited to, any federal, state or local withholding or employment taxes, imposed, assessed or levied as a result of this Contract shall be paid or withheld by Supplier or, if assessed against and paid by VITA or any Authorized User, shall be reimbursed by Supplier upon demand by VITA or such Authorized User.

**B. Incorporated Contractual Provisions**

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

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

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

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

**C. Compliance with the Federal Lobbying Act**

Supplier shall not, in connection with this Contract, engage in any activity prohibited by 31 USC 1352 (entitled "Limitation on use of appropriated funds to influence certain Federal Contracting and financial transactions") or by the regulations issued from time to time thereunder (together, the "Lobbying Act"), and shall promptly perform all obligations mandated by the Lobbying Act in connection with this Contract, including, without limitation, obtaining and delivering to the Commonwealth all necessary certifications and disclosures.

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

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

**D. Governing Law**

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

**E. Dispute Resolution**

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

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

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

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

**F. Advertising and Use of Proprietary Marks**

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

**G. Notices**

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

**H. No Waiver**

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

**I. Third Party Beneficiaries**

There are no intended third party beneficiaries of any provision of the Contract, except as stated herein.

**J. Assignment**

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

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

**K. Captions**

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

**L. Severability**

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

**M. Survival**

The provisions of this Contract regarding Software License, Rights To Work Product, Warranty, Escrow, Confidentiality, and Liability and Indemnification, and the General Provisions shall survive the expiration or termination of this Contract. Any SOW or purchase order placed against this Contract shall survive any termination of this Contract by the VITA for the period necessary to

complete the agreed upon work and/or project under such SOW and/or purchase order, and until payment for such agreed upon services has been paid in full.

**N. Force Majeure**

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

**O. Remedies**

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

**P. Offers of Employment**

During the term of this Contract, should Supplier hire an employee of any Authorized User who has substantially worked on any project covered by this Contract without prior written consent, the Supplier shall be billed for one hundred percent (100%) of the employee's annual salary in effect at the time of termination.

**Q. Right to Audit**

VITA, or any Authorized User that has placed an order or SOW under this Contract, reserves the right to audit those Supplier records that relate to the Solution or any components thereof and Services rendered or the amounts due Supplier for such services under this Contract. These rights to audit shall be limited as follows:

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

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

**R. Entire Contract**

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

- i). Exhibit A Solution Requirements
- ii). Exhibit B Solution Options List; Fees, Service Charges, and Payment Schedule
- iii). Exhibit C Escrow Agreement
- iv). Exhibit D Statement of Work (SOW) Template
- v). Exhibit E End User Licensing Agreement (for reference only)
- vi). Exhibit F Certification Regarding Lobbying
- vii). Exhibit G ARRA

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

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- vi). Exhibit F Certification Regarding Lobbying
- vii). Exhibit G ARRA

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, Exhibits to this Contract, fully executed Statements of Work.

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

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

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

Supplier

By: L. R. Rau

VITA

By: [Signature]

(Signature)

Name: Raghu Raman

(Print)

Title: Lakshmanan  
Secretary & General  
Council

Date: Dec. 17, 2009

(Signature)

Name: GEORGE F. COULTER

(Print)

Title: CEO of the Commonwealth

Date: 1/19/10

Address for Notice:

330 Potrero Avenue  
Sunnyvale,  
CA 94085

Attention: Legal Department

Address for Notice:

CESC  
11751 Meadowville Lane  
Chester, VA 23836

Attention: Contract Administrator

**EXHIBIT B**  
**CONTRACT NUMBER VA-091218-HCL**  
**BETWEEN**  
**VIRGINIA INFORMATION TECHNOLOGIES AGENCY**  
**AND**  
**HCL America, Inc.**

Exhibit B is hereby incorporated into and made an integral part of Contract Number VA-091218-HCL (“Contract”) between the Virginia Information Technologies Agency (“VITA” or “Commonwealth” or “State”) and HCL America, Inc. (“Supplier”). In the event of any discrepancy between this Exhibit B and Contract No. VA-091218-HCL, the provisions of Contract No. VA-091218-HCL shall control.

Following are the rates by year for Maintenance Services

<b>Year</b>	<b>Annual Maintenance fees before IFA</b>	<b>Net Annual Maintenance Fees</b>
1	<b>\$1,293,061</b>	<b>\$1,267,200</b>
2	<b>\$1,331,853</b>	<b>\$1,305,215</b>
3	<b>\$1,371,806</b>	<b>\$1,344,370</b>
4	<b>\$1,412,959</b>	<b>\$1,384,700</b>
5	<b>\$1,455,357</b>	<b>\$1,426,250</b>

- Year 1 - reflects the first year after completion of Warranty
- Rates assume consultants will have office/working space provided at the VEC

Listed below is the pricing (license and maintenance) for all software components purchased through Supplier via this contract:

Component (E.g., Database, Application Tier, Web Tier, Workflow, Identity Mgt, Portal, etc.)	Type (Categories: Server/Infrastructure Hardware, 3rd Party System SW (incl O/S), SW Maintenance, Support tools, Other (Specify))	Description (Supplier, Product name and version)	QTY	Unit Price	Extended Price	Maintenance
Developer Tool	Software	Adobe RoboHelp	4	\$999	\$3,996	20%
Testing Tool	Software	HP QAInspect TD4QC Nmd Usr NP SW E-LTU	3	\$1,272	\$3,816	20%
Testing Tool	Software	HP WebInspect 1 Named User NP SW E-LTU	3	\$4,691	\$14,072	20%
Testing Tool	Software	HP FT Seat Usr SW E-LTU	30	\$4,240	\$127,200	20%
Testing Tool	Software	HP QC Ent Site CC Usr SW E-LTU	25	\$2,120	\$53,000	20%
Testing Tool	Software	HP QC Ent Site 5 CC Usr Pk SW E-LTU	1	\$15,900	\$15,900	20%
Address Validations - Test	Software	PitneyBowes CDQP UAM	1	\$75,000	\$75,000	20%
Address Validations - Prod	Software	PitneyBowes CDQP UAM	1	\$100,000	\$100,000	20%
Correspondence Generation	Software	Thunderhead Now Platform	1	\$341,250	\$341,250	20%
ESB	Software	JBoss Enterprise SOA Platform (4 CPU)	1	\$16,489	\$16,489	20%
J2EE Application Server	Software	JBoss Enterprise Application Platform (32 CPU)	1	\$36,643	\$36,643	20%
RightFax	Software	RightFax	2	\$1,995	\$3,990	20%
iCapture	Software	Core Components - Single server license (Unlimited users)	1	\$18,400	\$18,400	20%
iFormEdit-	Software	Form Definition Editor	1	\$6,680	\$6,680	20%
iFormID-	Software	OCR-Based Form Identification Module (requires separate ICR/OCR drivers)	1	\$2,580	\$2,580	20%
iFormRecog-	Software	Context-Based Form Identification Module	1	\$2,580	\$2,580	20%
iTransBuilder-	Software	Automated Transaction Builder	1	\$2,580	\$2,580	20%
iClassifier-	Software	Image Classifier	2	\$2,982	\$5,963	20%
iPostProc-	Software	Automated Business Rule Processor	3	\$5,300	\$15,900	20%
iOCR-	Software	ICR/OCR Adapter (required for each OCR/ICR engine options)	2	\$5,800	\$11,600	20%
Peladon	Software	ICR/OCR Option: 250 cps OCR/ICR Driver (per server)	2	\$32,400	\$64,800	20%
iScanPlus-	Software	Scan App-- high speed option (over 50 ppm and excludes ISIS drivers)	1	\$6,400	\$6,400	20%
iImport-	Software	Internet Import Adapter (Initial license for XML Import option)	1	\$9,800	\$9,800	20%
iImport-	Software	FAX Import Adapter (Initial license for FAX Import option)	1	\$9,800	\$9,800	20%
iEditor-	Software	Key Data-Entry Application (KFI, KFP, Full-Context Edit, and Exception, Edit)	22	\$780	\$17,160	20%
iExport-XML	Software	Data Capture Export Processor	1	\$6,700	\$6,700	20%
iExport-FileNet	Software	Image Export to FileNet	1	\$9,800	\$9,800	20%
iStatViewer	Software	iStatistics Viewer/Report Generator	1	\$9,800	\$9,800	20%
iStatistics-	Software	iStatistics collection and report modules (excludes SQL database license)	1	\$9,800	\$9,800	20%
JIRA Enterprise Edition ( 25 Users)	Software	Atlassian	1	\$1,200	\$1,200	20%



Exhibit C

VA-091218-HCL

67-0310

### THREE-PARTY ESCROW AGREEMENT

**Depositor:** HCL America Inc.

**Product/Project Name:** iGOVERN – Unemployment Insurance

**Version:** N/A

**Agreement Date:** December 18, 2009

As of December 18, 2009, this Three-Party Escrow Agreement ("Agreement") is effective among Guard-IT Corporation ("Guard-IT"), a Texas corporation; HCL America Inc. ("Depositor"), a California corporation; and the Commonwealth of Virginia ("Beneficiary"), a state government entity, who may subsequently be referred to as "the Parties".

**WHEREAS,** Depositor is the owner of certain proprietary technology, data, documents or other intellectual property ("Deposit Materials") as defined on Exhibit B; and

**WHEREAS,** Depositor and Beneficiary have executed or intend to execute a contract or license agreement regarding the Beneficiary's use or deployment of the Deposit Materials; and

**WHEREAS,** Depositor acknowledges and agrees that iGOVERN – Unemployment Insurance is the same technology product referenced in the license agreement as UI Connect; and

**WHEREAS,** Depositor intends to maintain its confidentiality and security regarding the Deposit Materials, except for specific circumstances ("Release Conditions") defined in Section 3; and

**WHEREAS,** Beneficiary wishes to ensure its accessibility to a copy of the Deposit Materials in the event that a Release Condition occurs; and

**WHEREAS,** The Parties agree to place the Deposit Materials into escrow with Guard-IT to maintain the confidentiality, security and accessibility of the Deposit Materials; and

**WHEREAS,** Depositor and Beneficiary intend for this Agreement to supplement the Contract pursuant to Chapter 11, Section 365(n) of the U.S. Bankruptcy Code; and

**WHEREAS,** the Beneficiary has not yet made an award of the UI Modernization Contract to Depositor; and

**WHEREAS,** in an effort to comply with the Request for Proposal, Depositor is entering into this Agreement with Guard-IT which Agreement is contingent upon Depositor being awarded the UI Modernization Contract by Beneficiary and the final and definitive completion of all protest and/or review periods; and

**WHEREAS**, the UI Modernization Contract requires Depositor to deposit the source code as defined in the UI Modernization Contract in an escrow agreement,

**NOW THEREFORE**, in consideration of these Recitals, the Parties agree as follows:

## **SECTION 1: DEPOSITS**

1.1 **Initial Deposit.** Depositor shall deliver Deposit Materials to Guard-IT within 10 days after Depositor being awarded the UI Modernization Contract by Beneficiary and the final and definitive completion of all protest and/or review periods. Deposit Materials may be shipped to Guard-IT at its address stated on Exhibit A via U.S. mail, commercial express mail or other appropriate means.

1.2 **Labeling.** Prior to delivery, Depositor shall label each item to be deposited, and list the items and descriptions in detail by completing Exhibit B.

1.3 **Receipt and Notification.** Upon receipt of Deposit Materials, Guard-IT shall visually inspect the Deposit Materials and compare them with the descriptions listed on Exhibit B. If the Deposit Materials match the descriptions listed on Exhibit B, Guard-IT will sign and date the Exhibit B and return a copy to Depositor, notifying the Parties of its acceptance of the Deposit Materials. If the Deposit Materials do not match the descriptions listed on Exhibit B, Guard-IT will return the Deposit Materials and Exhibit B to Depositor, notifying the Parties of the discrepancy. Guard-IT shall have no obligation to this Agreement unless and until it receives and accepts the Deposit Materials.

1.4 **Depositor's Representations.** Depositor represents as follows:

- a) Depositor lawfully possesses rights and title to the Deposit Materials; and
- b) with respect to the Deposit Materials, Depositor has the right and authority to grant to Guard-IT the rights as provided in this Agreement; and
- c) the Deposit Materials are not subject to any lien or encumbrance; and
- d) the Deposit Materials placed in escrow shall be maintained and updated in accordance with Section 1.5; and
- e) the Deposit Materials are readable and useable in their deposited form or if encrypted, the decryption tools have been submitted to Guard-IT.

1.5 **Updates.** Depositor shall update the Deposit Materials within 10 days of a new release or as may be prudent or necessary or otherwise directed by the Parties' contract or license agreement. Depositor shall perform and complete all updates in accordance with Sections 1.2 through 1.4. All references to the Deposit Materials shall include the initial deposit and all updates. Deposit Update fees shall be paid by the Depositor at the time of the update.

1.6 **Removal.** Deposit Materials may be removed and/or exchanged only upon written instruction from the Depositor or as otherwise provided in this Agreement.

1.7 Right to Duplicate. Guard-IT may duplicate or reproduce the Deposit Materials as necessary to perform this Agreement. Guard-IT shall transfer all proprietary notices of Depositor in any duplication or reproduction.

1.8 Testing and Verification. At Beneficiary's request and expense, Guard-IT may provide various levels of independent testing or verification of the Deposit Materials, per the Beneficiary's written requirement or instruction. Depositor hereby authorizes such testing or verification. Any bid for testing or verification shall be approved by Beneficiary in writing and paid in advance. Upon completion, reports of the testing or verification will be issued to the Parties.

## **SECTION 2: SECURITY AND CONFIDENTIALITY**

2.1 Security. Guard-IT shall maintain the Deposit Materials in a secured, fire-proof, environmentally controlled and locked vault which is accessible only to its officers, employees or authorized representatives.

2.2 Confidentiality. Guard-IT shall reasonably protect the confidentiality of the Deposit Materials. Guard-IT shall not disclose the content of this Agreement to any third party and shall not disclose, transfer, make available or use the Deposit Materials. Guard-IT shall immediately notify the Parties in writing if it receives a subpoena or court order regarding the disclosure or release of the Deposit Materials. Depositor shall be responsible to challenge any such order. Guard-IT shall not waive its rights to present its position with respect to any such order, nor shall Guard-IT be required to disobey any subpoena or other court order.

2.3 Reports. Guard-IT will issue semi-annual status reports to Depositor and Beneficiary and also notify the Parties in writing of any updates to the Deposit Materials.

## **SECTION 3: RELEASE CONDITIONS**

3.1 Ordered Release. Upon Guard-IT's receipt of written instruction from Depositor, Depositor's receiver or trustee in bankruptcy, or a court of competent jurisdiction, Guard-IT will release a copy of the Deposit Materials to Beneficiary as directed in the written instruction.

3.2 Other Conditions. Guard-IT may also release a copy of the Deposit Materials to Beneficiary if it receives either of the following from Beneficiary:

a) written verification, cosigned by Depositor, that Depositor has ceased business operations or the licensing or maintenance of the Deposit Materials without a successor; or

b) written verification, cosigned by Depositor, that Depositor has materially failed to support the Deposit Materials in breach of the contract or license agreement.

3.3 Release Request. If Beneficiary believes in good faith that a Release Condition has occurred, Beneficiary may provide to Guard-IT written notice of the occurrence and its request for the release of the Deposit Materials by certified mail, return receipt requested. Upon receipt, Guard-IT shall forward a copy of the Release Request to Depositor by

certified mail, return receipt requested. Release Request must include Beneficiary's specific delivery instructions and non-refundable payment of the Deposit Release Fee.

3.4 Contrary Instructions. Depositor shall have ten (10) days from the certified mail postmark date on the copy of the Release Request forwarded to it by Guard-IT to reply with Contrary Instructions, stating that the Release Condition has not occurred or has been resolved. Contrary Instructions shall be delivered to Guard-IT via certified mail, return receipt requested. Guard-IT shall forward a copy of the Contrary Instructions to Beneficiary via fax or first class mail, and notify the Parties that there is a dispute to be resolved pursuant to Section 4. Guard-IT shall retain the Deposit Materials pending a) joint written instructions from Depositor and Beneficiary to release the Deposit Materials; b) alternative dispute resolution pursuant to Section 4; or c) written order from a court of competent jurisdiction.

3.5 Deposit Release. If Guard-IT does not receive Contrary Instructions from Depositor in accordance with Section 3.4, Guard-IT shall release a copy of the Deposit Materials to the Beneficiary per its Release Request. This Agreement will terminate upon the release of the Deposit Materials to Beneficiary.

#### **SECTION 4: INDEMNIFICATION AND DISPUTE RESOLUTION**

4.1 Indemnification. The Parties agree to indemnify and hold Guard-IT harmless against any and all losses, costs, damages, expenses, claims or attorneys' fees suffered or incurred by Guard-IT as a result of or arising from its acts or omissions, other than acts that constitute willful misconduct or gross negligence of Guard-IT, its officers, employees, agents, attorneys or assigns. Guard-IT shall not be responsible for failure to act as a result of causes beyond the reasonable control of Guard-IT.

4.2 Alternative Dispute Resolution. Any dispute relating to or arising from this Agreement shall be resolved by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Unless otherwise agreed by Depositor, arbitration will take place in Austin, Texas, USA. Any court having jurisdiction over the matter may enter judgment on the award of the arbitrator(s). Service of a petition to confirm the arbitration award may be made by first class mail or commercial express mail to the attorney for the Party or, if not represented, to the Party at its last known business address.

4.3 Controlling Law. This Agreement is to be governed and construed in accordance with the laws of the State of Texas, USA, without regard to its conflict of law provisions.

4.4 Notice of Requested Order. If any Party intends to obtain an order from the arbitrator(s) or any court of competent jurisdiction that may direct Guard-IT to take or refrain from taking any action, the requesting Party shall:

- a) give Guard-IT at least five (5) business days' prior notice of the hearing; and
- b) include in any such order that, as a precondition to Guard-IT's action, Guard-IT be paid in full for any amounts due and also be paid for reasonable value of the services to be rendered pursuant to the order; and

4.5 Right to Rely on Instructions. Guard-IT may act upon any written instruction, instrument or signature reasonably believed to be genuine. Guard-IT will assume that any company officer of the Depositor or Beneficiary who gives any written notice, request or instruction has the authority to do so.

## **SECTION 5: FEES AND PAYMENT TERMS**

5.1 Fee Payment. Depositor shall be solely responsible for any and all fees charged by Guard-IT for administering this Agreement.

5.2 Fee Schedule. Guard-IT shall be paid in accordance with its current Fee Schedule (Exhibit D). Fees for annual maintenance and deposit updates shall be fixed for the duration of this Agreement and for subsequent renewals for a maximum of three (3) years, if and only if the Agreement is renewed by the Depositor in accordance with the terms stated in Section 6.1. Guard-IT will provide a written quote to Depositor for any services not listed on Exhibit D. All fees paid to Guard-IT are non-refundable.

5.3 Payment Terms. Payment of one-time Setup Fee and first-year's Annual Maintenance Fee is due in full upon receipt of this signed Agreement. Without payment of these fees, Guard-IT will not take delivery of Deposit Materials. Late fees and interest on past due amounts shall accrue at the rate of one percent per month (12% per annum) from the invoice date.

## **SECTION 6: TERM AND TERMINATION**

6.1 Initial Term and Automatic Renewal. The initial term of this Agreement is one (1) year. This Agreement shall automatically renew annually unless a) Depositor terminates the Agreement in writing with at least 30 days' notice; b) Guard-IT terminates the Agreement for non-payment; or c) Guard-IT resigns its role as escrow agent in accordance with Section 6.3.

6.2 Termination for Non-Payment. If any payment for services is not received in full by Guard-IT within 30 days of the invoice date, Guard-IT may terminate this Agreement at any time thereafter by sending written notice of delinquency to the Parties. Either Party may submit payment to Guard-IT to resolve such delinquency. Guard-IT shall have no obligation under this Agreement as long as the escrow account is delinquent.

6.3 Resignation. Guard-IT may resign and thus terminate this Agreement at any time by giving the Parties at least 30 days' notice of its intended resignation. Upon resignation, Guard-IT shall return, destroy or otherwise dispose of the Deposit Materials per the Depositor's written instruction.

6.4 Surviving Terms. The following shall survive upon termination of this Agreement: a) Depositor's Representations per Section 1.4; b) Guard-IT's obligation of confidentiality with respect to the Deposit Materials; c) Responsible Party's obligation to pay Guard-IT any fees or expenses due; d) the provisions of Section 8; and e) any provisions in this Agreement which specifically state they survive the termination or expiration of this Agreement.

6.5 Return of Deposit Materials. Guard-IT shall return, destroy or otherwise dispose of the Deposit Materials upon termination, per the Depositor's written instruction.

## **SECTION 7: GENERAL PROVISIONS**

7.1 Entire Agreement. This Agreement and its Exhibits embody the entire understanding among the Parties with respect to its subject matter and supersedes all previous oral or written communications, representations or understandings. No modification to this Agreement shall be valid or binding unless signed by the Parties.

7.2 Correspondence. All correspondence, including notices, invoices, payments or other deliveries, shall be delivered to the Parties at their respective addresses designated on Exhibit A. The Parties shall be responsible to notify each other in the event of any change in their designated contact information. The Parties shall have the right to rely on the last known address of the other Parties. Unless otherwise provided in this Agreement, all documents and communications may be delivered by first class mail.

7.3 Other Third Parties. Guard-IT shall have no obligation to any other third party, except the Parties designated in this Agreement. The Parties shall have the right to collectively modify or cancel this Agreement upon their mutual, written consent.

7.4 Severability. In the event any provision of this Agreement is found to be invalid, voidable or unenforceable, the Parties agree that unless it materially affects the entire intent and purpose of this Agreement, such invalidity, voidability or unenforceability shall affect neither the validity of this Agreement nor the remaining provisions herein, and the provision in question shall be deemed to be replaced with a valid and enforceable provision most closely reflecting the intent and purpose of the original provision.

7.5 Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties. Guard-IT shall have no obligation in performing this Agreement to recognize any successor or assign of Depositor unless Guard-IT receives authoritative and conclusive written evidence of the change of Parties.

7.6 Regulations. Depositor is responsible for and warrants compliance with all applicable laws, rules and regulations, including but not limited to customs laws, import, export and re-export laws and government regulations of any country from or to which the Deposit Materials may be delivered in accordance with this Agreement.

## **SECTION 8: ADDITIONAL TERMS**

Additional Terms. Any additional terms negotiated among and agreed upon by the Parties are described in Exhibit C, which may be incorporated into this Agreement or removed or left blank if not used.

**SIGNATURE PAGE FOLLOWS**

These terms agreed upon by all Parties and effective December 18, 2009.

HCL America, Inc. (DEPOSITOR):

L. R. Ra Date: 12/21/2009  
Raghu R. Lakshmanan, General Counsel and Secretary

Commonwealth of Virginia (BENEFICIARY):

M. A. W. Date: 1/20/2010  
Name & Title

Guard-IT Corporation (GUARD-IT):

William J. Ford Date: 12-18-09  
William J. Ford, CEO

**EXHIBIT A: DESIGNATED CONTACTS**  
**GUARD-IT CORPORATION ESCROW AGREEMENT**

**Depositor:** HCL America Inc.  
**Product/Project Name:** iGOVERN – Unemployment Insurance  
**Version:** N/A  
**Agreement Date:** December 18, 2009

Guard-IT Corporation will direct all correspondence, notices and general information requests to Depositor at the address below:

Vasu D. Srinivasan  
HCL America Inc.  
Attn: Vasu D. Srinivasan, VP Government Solutions  
1950 Old Gallows Rd, Ste 555  
Vienna, Virginia 22182  
Phone: (408) 328-7697  
E-Mail: [vsrinivasan@hcl.in](mailto:vsrinivasan@hcl.in)

Guard-IT Corporation will direct all correspondence, notices and general information requests to Beneficiary at the address below:

Commonwealth of Virginia  
Attn: Mike Novak  
11751 Meadowville Ln  
Chester, Virginia 23836  
Phone: (804) 416-6168  
E-Mail: [michael.novak@vita.virginia.gov](mailto:michael.novak@vita.virginia.gov)

All deliveries and correspondence may be forwarded to Guard-IT at the address below:

Guard-IT Corporation  
1250 S Capital of Texas Hwy  
Bldg 3, Ste 400  
Austin, Texas 78746 USA  
Phone: (512) 282-1995  
Fax: (512) 282-1895  
E-Mail: [info@guard-it.com](mailto:info@guard-it.com)

**EXHIBIT B: DESCRIPTION OF DEPOSIT MATERIALS  
GUARD-IT CORPORATION ESCROW AGREEMENT**

**Depositor:** HCL America Inc.  
**Product/Project Name:** iGOVERN – Unemployment Insurance  
**Version:** N/A  
**Agreement Date:** December 18, 2009

<u>Quantity</u>	<u>Media</u>	<u>Label ID or Description</u>
1	CD	"iGOVERN – Unemployment Insurance Escrow"

Operating System: ???  
Hardware Type: ???  
Encryption (if any): ???  
Password (if any): ???  
Other Information: ???

Depositor certifies that Deposit Materials have been accurately described, labeled and delivered to Guard-IT. Guard-IT acknowledges receipt, inspection and acceptance of Deposit Materials.

HCL America Inc. (DEPOSITOR):

L. R. Ra Date: 12/21/2009  
Raghu R. Lakshmanan, General Counsel and Secretary

Commonwealth of Virginia (BENEFICIARY):

Mr. A. N. Date: 1/20/2010  
Name & Title

Guard-IT Corporation (GUARD-IT):

William J. Ford Date: 12-18-09  
William J. Ford, CEO

**EXHIBIT C: ADDITIONAL TERMS  
GUARD-IT CORPORATION ESCROW AGREEMENT**

**Depositor:** HCL America Inc.  
**Product/Project Name:** iGOVERN – Unemployment Insurance  
**Version:** N/A  
**Agreement Date:** December 18, 2009

Pursuant to Guard-IT Corporation Escrow Agreement ("Agreement") dated December 18, 2009, the Parties have agreed to the following Special Terms and Conditions:

*If any or if applicable. Attach additional page(s) if necessary. This Exhibit may be intentionally left blank and unsigned.*

NONE/NO SIGNATURE REQUIRED

HCL America, Inc. (DEPOSITOR):

\_\_\_\_\_ Date: \_\_\_\_\_  
Raghu R. Lakshmanan, General Counsel and Secretary

Commonwealth of Virginia (BENEFICIARY):

\_\_\_\_\_ Date: \_\_\_\_\_  
Name & Title

Guard-IT Corporation (GUARD-IT):

\_\_\_\_\_ Date: \_\_\_\_\_  
William J. Ford, CEO

**EXHIBIT D: FEE SCHEDULE  
GUARD-IT CORPORATION ESCROW AGREEMENT**

<b>Itemized Services</b>	<b>Amount</b>	
One-Time Setup Fee	\$500	
Annual Service Fee (Single Product)	\$1,150/year	
Additional Product Service Fee	\$500 each/year	
Individual Deposit Updates	\$150 each	
Unlimited Deposit Updates	\$350/year/product	
Annual Beneficiary Enrollment	\$175 each/year	
Deposit Release to Beneficiary	\$250	
Level 1 "Fingerprint" Verification	\$1,000/product	
Level 2 "Rebuild" Verification (incl L1)	\$2,500/product	
 <b>Basic Package Options</b>	<b>1<sup>st</sup> Yr</b>	<b>2<sup>nd</sup> Yr -</b>
A) One Product, Initial Deposit, No Updates	\$1,650	\$1,150
B) One Product, Unlimited Updates	\$2,000	\$1,500
 <b>Escrow &amp; Verification Package Options</b>	<b>1<sup>st</sup> Yr</b>	<b>2<sup>nd</sup> Yr -</b>
C) One Product with annual L1 "Fingerprint"	\$2,400	\$1,900 (Save \$250/yr)
D) One Product with annual L2 "Rebuild"	\$3,800	\$3,300 (Save \$350/yr)

NOTE: All amounts listed are for U.S. contract jurisdiction and deposit location. International rates may vary. All fees are payable to "Guard-IT Corporation" in U.S. dollars. Make secure credit card payments online at [www.guard-it.com](http://www.guard-it.com) or e-mail [info@guard-it.com](mailto:info@guard-it.com) for wire transfer instructions, IRS W-9 or other billing/payment information. See escrow agreement for complete payment terms. Send payments to: Guard-IT Corporation, 4407 Bee Caves Road, Ste 611, Austin, Texas 78746 USA, TEL: (512) 282-1995, FAX: (512) 282-1895.

**Description of Optional Verification & Testing of Deposit Materials**

**Level 1 or "Fingerprint"** All files are checked for readability and scanned for viruses. Based on the product's "packing list" (Exhibit B), all files are identified, verified and given a unique MD5-Checksum ID for internal benchmarking or comparison to subsequent deposit updates. Independent, written verification of the inventory is reported to all Parties.

**Level 2 or "Rebuild"** This level takes the source code, tools and associated make files and ensures that the Deposit Materials can be rebuilt or recompiled into an executable program. This includes all Level 1 verification and acceptance procedures.

12182009

**EXHIBIT D**  
**CONTRACT NUMBER VA-091218-HCL**  
**BETWEEN**  
**VIRGINIA INFORMATION TECHNOLOGIES AGENCY**  
**AND**  
**HCL AMERICA, INC.**

Exhibit D is hereby incorporated into and made an integral part of Contract Number VA-091218-HCL (“Contract”) between the Virginia Information Technologies Agency (“VITA” or “Commonwealth” or “State”) and HCL America, Inc. (“Supplier”).

In the event of any discrepancy between this Exhibit D and Contract No. VA-091218-HCL, the provisions of Contract No. VA-091218-HCL shall control.

[Note: Text that is highlighted in blue is variable based on the nature of the project. This Exhibit D is a template for Statements of Work under the Contract. Project specific details should be filled in using the format of this template.]

**STATEMENT OF WORK**

This Statement of Work is issued by Agency name, hereinafter referred to as “Authorized User”. The objective of the project described in this Statement of Work (“SOW”) is for the Supplier to provide the Authorized User with an Unemployment Insurance Solution (“Solution”).

**1. Project Scope and Understanding of the Requirements**

The complete Scope and Requirements are set forth in all documents included in the Contract, which are provided in Exhibit A. In-scope product and services specifically include, but are not limited to, the following:

- (1) Development of a Project Plan and Schedule as defined by VITA’s project Management Standards and guidelines - <http://vita.virginia.gov/oversight/projects/>
- (2) Add other specifics as needed.
- (3) Add other specifics as needed.

**2. Contract Products and Services to Support the Requirements**

**a. Solution Components**

Specify solution components.

**b. Services**

The Supplier shall provide all necessary services needed to successfully develop, implement, and deploy the UI System, to include but not limited to:

- Detail services
- Detail services
- Detail services

**c. Training and Knowledge Transfer**

Document training and knowledge transfer plan.

**d. Support**

Document support plan.

**3. Project Events and Tasks**

The Major UI Development/Implementation events and tasks are described below:

- Detail the events and tasks of the project

**4. Period of Performance**

Detail the period in which the supplier will perform their work.

**5. Place of Performance**

Detail the location in which work will be performed.

**6. Milestones, Deliverables, Payment Schedule, and Holdbacks**

Table 1 identifies milestone events and deliverables, the associated schedule, any associated payments, any retainage amounts, and net payments. All Milestones and Deliverables must satisfy the terms of Acceptance.

Milestone Event	Deliverables	Schedule	Percent Payment	Retainage at 10%	Net Payment
UI System Design and Functionality (includes technical architecture and design finalization and update of the comprehensive Project Plan)		Execution + 4 months	8%		
Development of the UI system:		Execution + 4 years maximum	57%		
System Design					
Project Plan & Schedule					
Procurement installation configuration of hardware and software environments					
Project management / change control / issue management / risk management/QA/ Staffing					
By Iteration:					
Detailed Design					
Construction					
Interfaces					

Milestone Event	Deliverables	Schedule	Percent Payment	Retainage at 10%	Net Payment
Component, Integration, system Testing					
Acceptance Testing					
Training					
Deployment					
Support					
Final UI System Deployment and Acceptance		Execution + 4 years maximum	25%		
System Turnover and Closeout		Execution + 4 years maximum	10%		
<b>TOTAL</b>			<b>100%</b>		

Table 1

The Percent Payment is of the total fixed priced value of this SOW, which includes all labor, materials, travel, training, facilities, and any other costs to deliver the requirements of this SOW.

**7. Acceptance Criteria**

Detail criteria for acceptance beyond that called out in the contract.

**8. Assumptions and Project Roles and Responsibilities**

High-level roles and responsibilities have been defined for this engagement as shown in Table 2.

Responsibility Matrix	Supplier	VEC
Infrastructure – Installation and configuration of the UI System infrastructure as specified by the Supplier and approved by the VEC	X	
Infrastructure – Procurement		X (through VITA unless Supplier price more advantageous)
Requirements Finalization	X	X
System Design	X	
Logical and Physical Data Modeling	X	
Project Management	X (of Supplier's efforts)	X (of Supplier and IV&V)
Change Control Process	X (execution)	X (CCB)
Issue Management	X (lead)	X (support)
Risk Management	X	
Quality Assurance	X	
Detail Design	X	

Responsibility Matrix	Supplier	VEC
Construction	X	
Interfaces	X (lead)	X (support)
Component, Integration, System Testing	X	
Acceptance Testing	X (fixes)	X (conduct)
Training and Knowledge Transfer	X (train the trainer, and IT staff)	X (provide trainees for train the trainer and IT staff)
Data Conversion and Verification	X	
Conversion Support -- Subject Matter Expertise, Manual Cleansing		X
Other Deliverables Work Product	X	X (review & approve)
Deployment, including Final UI System	X	
System Turnover	X	

Table 2

9. Security Requirements

Detail security requirements specific to agency.

10. Risk Management

Detail risk management plan.

11. Reporting

**Weekly Status Update.** The Supplier shall submit the following information as part of their project status report at least 24 hours prior to the scheduled assessment:

- Updated project schedule
- Status of currently planned tasks. Identification of tasks not on schedule along with a resolution plan to bring the task back on schedule
- Updated Issue List
- Updated Risk Register
- Test results
- Problem Tracking Report
- Anticipated tasks to be completed next week
- Task and deliverable status, with percentage complete
- Proposed changes to project schedule or project plan
- Identification of Supplier staff assigned to specific activities
- Planned absence of Supplier staff and their expected return date
- Notification of any anticipated staffing changes

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

**Supplier Performance Assessments.** The Authorized User may develop assessments of the Supplier's performance and disseminate such assessments to other Authorized Users of the

Contract. Prior to dissemination of such assessments, Supplier will have an opportunity to respond to the assessments, and independent verification of the assessment may be utilized in the case of disagreement.

**12. Change Control**

Detail the change control process.

**13. User Acceptance Testing**

Detail criteria for user acceptance testing beyond that called out in the contract.

**14. Data conversion**

Detail the data conversion process.

**15. Changes to Bill of Materials and Acquisition of BOM Items**

The Bill of Materials ("BOM") is subject to Change Control (see Section 12. above). The Supplier will proactively monitor discontinuance and sunset issues related to system technical architecture and environment BOM items, notifying VEC of any such issues in advance of discontinuance or sunset occurring, and recommending remediation alternatives. All costs associated with any such transition to another product or functionally equivalent solution shall be covered by the Supplier. The Supplier is responsible for providing the specifications for all BOM items, verifying that these items meet applicable specifications upon third party Supplier delivery, and successfully configuring and integrating these BOM products into the appropriate environments and the overall System application solution.

**16. Personnel**

**A. Key Personnel**

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

Project Manager (Lynnette Stern)

Lead Data Architect (John Hanna)

Lead System Architect (Rahul Bhardwaj)

Development Lead (Srini Madala)

Tax Domain Lead (Alan Samuels)

Benefits Domain Lead (Jeff Rhodes)

Appeals Domain Lead (Joanne Loughney-Finstad)

Data Capture Lead (Carla Lee)

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

In the event Supplier requests that the Authorized User approve a re-assignment or transfer of the Key Personnel, or if Supplier must replace Key Personnel due to death, illness or termination of employment with the Supplier, the Authorized User shall have the right to review the qualifications of and approve or disapprove the proposed replacement(s) for the Key Personnel. Any such replacement shall have substantially equivalent or better qualifications than the Key Personnel being

replaced, and shall perform the Services in accordance with the warranties set forth in the Contract. Any replacement personnel approved by Authorized User shall thereafter be deemed a Key Personnel for purposes of this SOW and this SOW shall be deemed amended to include such Key Personnel.

#### **B. Project Manager**

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

#### **17. User Training**

Detail user training.

#### **18. Remedies**

Detail remedies.

#### **Performance Bond.**

The Supplier shall post performance bond in an amount equal to twenty-five percent (25%) of the total contract value and provide a copy of the bond to VEC within (10) days of execution of this SOW Agreement. In the event that the Supplier or any subcontractor or any officer, director, employee or agent of the Supplier or any subcontractor or any parent or subsidiary corporation of the Supplier or any subcontractor fails to fully and faithfully perform each material requirement of this SOW Agreement, including without limitation the Supplier's obligation to indemnify the VEC and its obligations to the VEC under Remedies (see Section 18), the performance bond shall be forfeited to VEC. The bond shall be in a form customarily used in the technology industry and shall be written by a surety authorized to do business in Virginia and that is acceptable to VEC, for example the Surety Bond of Travelers Casualty, form # S-5025c.

#### **19. Deliverables**

The Supplier will provide certain deliverables at specified times during the project. These deliverables are presented in [Appendix C](#) of this SOW.

#### **20. Notices**

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

#### **21. Contract Survival**

This SOW hereby incorporates all terms and conditions of the Contract. In the event the Contract is terminated for any reason, all items, including terms, conditions, provisions, in the Contract shall continue to apply to this SOW for the period necessary to complete the agreed upon work, and until payment for such agreed upon services has been paid in full.

#### **22. Point of Contact**

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

Authorized User: Mark Tomczak, 804-371-5374

Supplier: Lynette Stearn, 703-346-0055

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

Supplier

**VEC**

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

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

(Signature)

(Signature)

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

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

(Print)

(Print)

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

### EXHIBIT F: CERTIFICATION REGARDING LOBBYING

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

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

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

Signature:

L. R. R

Printed Name:

Raghu Raman Lakshmanan

Organization:

HCCU America, Inc.

Date:

Dec 17, 2009

**Contract VA-091218-HCL**

**Exhibit "G" – Terms and Conditions**

**for Procurements Funded in Whole or in Part by the**

**American Recovery and Reinvestment Act of 2009**

The following are terms and conditions to be used for VITA and VITA-delegated information technology and telecommunication procurements funded, in whole or in part, by the American Recovery and Reinvestment Act of 2009. Other special terms and conditions may be developed and included when appropriate. For the purposes of this Exhibit, "Contractor" also means "Supplier," as defined in the Contract referenced above.

## **1. General**

This Contract is governed by the provisions of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 (the "Recovery Act") and Federal Regulations and other guidance from the federal government implementing the Recovery Act (collectively, "Recovery Act Requirements"), and the Contractor agrees that it will comply with all Recovery Act Requirements applicable to this contract. In the event of a conflict between the terms of this Contract and the Recovery Act Requirements, the provisions of the Recovery Act Requirements shall be controlling. The Contractor acknowledges that these Terms and Conditions may require changes due to future revisions of the Recovery Act Requirements, and Contractor agrees that it will abide by any such changes upon receipt of written notification from the Commonwealth of such changes. Such changes will become a material part of the Contract without the necessity of either party executing an amendment to this contract. Contractor also agrees that it will provide all information and documentation required by the Commonwealth in order to comply with the Recovery Act Requirements.

## **2. D-U-N-S® number**

All Contractors are required to provide the Commonwealth of Virginia with their unique Dun & Bradstreet Data Universal Numbering System D-U-N-S® number prior to award.

HCL A DUNS no. is 19-729-8524

### 3. Executive compensation

The Contractor and each of its subcontractors shall provide to the Commonwealth the names and total compensation of their five most highly compensated officers if:

(A) the Contractor or subcontractor in its preceding fiscal year received

- (1) 80 percent or more of its annual gross revenues in Federal awards; and
- (2) \$25,000,000 or more in annual gross revenues from Federal awards; and

(B) the public does not have access to information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986 (26 USC § 6104).

"Total compensation" means the cash and noncash dollar value earned by the executives during the Contractor's or subcontractor's past fiscal year of the following:

- (1) Salary and bonus.
- (2) Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (revised 2004)(FAS 123R)Share Based Payments.
- (3) Earnings for services under non-equity incentive plans. Does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- (4) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- (5) Above-market earnings on deferred compensation which are not tax qualified.
- (6) Other compensation. For example, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property if the value for the executive exceeds \$10,000.

The Contractor and its subcontractors shall provide the required information below or write "NA" if not applicable. The Contractor's or subcontractor's fiscal year began on 07/01/2008 and ended on 06/30/2009.

NAMES

TOTAL COMPENSATION

NOT APPLICABLE

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#### 4. Job creation and retention

The Contractor shall provide to the Commonwealth an estimate of the number of new positions created and filled, positions retained, or previously existing unfilled positions that are filled or retained as a result of this Contract. The estimated number shall be expressed as full-time equivalent (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the Contractor. The Contractor shall update the information regarding jobs creation and retention on a quarterly basis, and shall provide each updated report to the Commonwealth no later than ten business days before the end of each calendar quarter.

The Contractor shall provide a brief description of the types of jobs created or jobs retained in the United States and outlying areas. This description may rely on job titles, broader labor categories, or the Contractor's existing practice for describing jobs provided the terms are widely understood and describe the general nature of the work.

#### DESCRIPTION OF THE TYPES OF JOBS CREATED OR RETAINED

HCL acknowledges the above and will comply

#### 5. Auditing

The Contractor shall retain all books, records, and other documents to this contract for five (5) years after final payment. Section 902 of the American Recovery and Reinvestment Act of 2009 provides the U.S. Comptroller General and his representatives with the authority to:

(A) examine any records of the Contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or any subcontract; and

(B) interview any officer or employee of the Contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.

Accordingly, the Comptroller General and his representatives shall have the authority and rights as provided under Section 902 of the Recovery Act with respect to this contract, which is funded with funds made available under the Recovery Act. Section 902 further states that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.

Additionally, Section 1515(a) of the Recovery Act provides authority for any representatives of an appropriate inspector general appointed under Section 3 or 8G of the Inspector General Act of 1978 to examine any records or interview any employee or officers of the Contractor or its subcontractors working on this contract. The Contractor is advised that any representatives of an appropriate Inspector General appointed under Section 3 or 8G of the Inspector General Act of 1978 have the authority to examine any record and interview any employee or officer of the Contractor, its subcontractors or other firms working on this contract. This right of examination shall also include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract. Section 1515(b) further provides that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an Inspector General.

The Commonwealth's contracting officer and other representatives of the Commonwealth shall have, in addition to any other audit or inspection rights in this contract, all the audit and inspection rights contained in this section.

HCL acknowledges the above and will comply.

## **6. Job posting requirements**

Contractor shall use the Virginia Workforce Connection (VWC) for the recruitment of direct jobs created by ARRA through this contract in accordance with the following provisions:

(A) The Contractor shall use VWC to post all direct jobs available. Instruction for posting jobs is located on the VWC website: [www.vawc.vec.virginia.gov](http://www.vawc.vec.virginia.gov). Assistance is available from the Virginia Employment Commission (VEC) by phone on (804)225-3116 or by email at [StimulusJobs@vec.virginia.gov](mailto:StimulusJobs@vec.virginia.gov).

(B) For the purposes of this requirement, "direct jobs" means those jobs funded fifty percent or more by ARRA project funds.

(C) Posting through VWC is not required when Contractor intends to fill the job opening created by ARRA funding with a present employee, a laid-off former employee or a job candidate from a previous recruitment.

(D) This requirement is not intended to prevent Contractor from also seeking needed employees by other means including industry specific employment programs.

(E) This job posting requirement does not fulfill any ARRA reporting responsibility pertaining to jobs created or retained as otherwise required under the terms and conditions of this contract, those contained in ARRA, or other Contractor reporting required by the Federal Government or the Commonwealth of Virginia.

HCL acknowledges the above and will comply

## **7. Subcontractor flow-down requirements**

Contractor agrees that it shall include these supplemental terms and conditions, including this requirement, in any of its subcontracts in connection with projects funded in whole or in part with funds available under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5.

HCL acknowledges the above and will comply

## **8. Additional terms and conditions**

For all contracts for the construction, alteration, maintenance, or repair of a public building or public work funded in whole or in part by the American Recovery and Reinvestment Act of 2009 additional terms and conditions are required.

HCL acknowledges the above and will comply