



Commonwealth of Virginia
Virginia Information Technologies Agency

WEB APPLICATIONS OPERATIONS & MAINTENANCE

Date: February 25, 2016

Contract #: VA-120413-CYDA

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

Contractor: CyberData Technologies Inc.
455 Springpark Place
Suite 300
Herndon, VA 20170

FIN: 52-2195131

Contact Person: Jeremy Miller, Project Manager
Office: 703-481-0888 Ext. 243
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Term: April 13, 2016 – April 12, 2017

Payment: Net 30 days

For Additional Contract Information, Please Contact:
Virginia Information Technologies Agency
Supply Chain Management

Mike Novak
Phone: 804-416-6168
E-Mail: mike.novak@vita.virginia.gov
Fax: 804-416-6361

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

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

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



COMMONWEALTH of VIRGINIA

Virginia Information Technologies Agency

Nelson P. Moe
Chief Information Officer
Email: cio@vita.virginia.gov

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

TDD VOICE -TEL. NO.
711

February 25, 2016

Jeremy Miller
Cyberdata Technologies Inc.
455 Springpark Place
Suite 300
Herndon Virginia 20170

Mr. Miller

Per Section 3.A. ("Term and Termination") of contract VA-120413-CYDA, The Virginia Information Technologies Agency has elected to exercise its option to renew the contract for one year, from April 13, 2016 through April 12, 2017. Should you have any questions, please feel free to contact me.

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



COMMONWEALTH of VIRGINIA

Virginia Information Technologies Agency

Eric R. Link
Interim Chief Information Officer
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April 07, 2015

Yiran Guan
Cyberdata Technologies Inc.
455 Springpark Place
Suite 300
Herndon Virginia 20170

Per Section 3.A. ("Term and Termination") of contract VA-120413-CYDA, The Virginia Information Technologies Agency has elected to exercise its option to renew the contract for one year, from April 13, 2015 through April 12, 2016. Should you have any questions, please feel free to contact me.

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

**MODIFICATION NO. 2
TO
CONTRACT NUMBER VA-120413-CYDA
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
CYBERDATA TECHNOLOGIES, INC**

This MODIFICATION No. 2 is hereby incorporated into and made an integral part of Contract VA-120413-CYDA.

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 D on Contract Page 4.
"Authorized Users include private institutions of higher education chartered in Virginia and granted tax-exempt status under 501 C (3) of the Internal Revenue Code. A list of the private institutions eligible to use this contract can be found at <http://www.cicv.org/ow-Colleges/Profiles.aspX>
2. Add to the definition of "Rights to Work Product" in Section 6 on Contract Page 8.
"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."
3. Add to definition of "Statement of Work (SOW)" in Section 11 Subsection B on Contract Page 14; "Reimbursement of Expenses" in Section 11 Subsection I on Contract Page 17; "Software and Deliverable Acceptance Criteria" in Exhibit C Section 5 Subsection A on Exhibit C Page 6; "Solution Acceptance Criteria" in Exhibit C Section 5 Subsection C on Exhibit C Page 7; "Acceptance" in Exhibit D Section 10 Subsection B on Exhibit D Pages 9-10.
"If the Authorized User is a private institution chartered in Virginia and granted tax-exempt status under §501(c)(3) of the Internal Revenue Code, such private institution may have its own per diem amounts applicable to Supplier's pre-approved travel expenses."
4. Add to the definition of "Indemnification" in Section 17 Subsection A on Contract Page 19.
"In the event of a settlement between Supplier and private institution of higher education who is an Authorized User of this contract, the settlement shall be satisfactory to such institution."
5. Add to the definition of "Dispute Resolution" in Section 23 Subsection E on Contract Pages 22-23.
"In the event of any breach by a public body or a private institution, Supplier's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section. In no event shall Supplier's remedies include to the right to terminate any license or support services hereunder."

6. Add to the definition of "Software License" in Exhibit C Section 3 on Exhibit C Pages 3-4.

"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 private institution, the license shall be held by that private institution.*"

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-120413-CYDA by this Modification No. 2.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

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

NAME OF SUPPLIER

BY: CyberData Technologies, INC

NAME: Yiran Guan

TITLE: IT project Coordinator

DATE: July 8, 2014



COMMONWEALTH OF VIRGINIA

BY: Dary Cresshaw

NAME: Dary Cresshaw

TITLE: VitA Services Mgr

DATE: 9/2/14

**MODIFICATION #1
TO
CONTRACT NUMBER VA-120413-CDTI
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
CYBERDATA TECHNOLOGIES, INC**

This MODIFICATION #1 is an agreement between the Commonwealth of Virginia, through the Virginia Information Technologies Agency, hereinafter referred to as "VITA" or "Commonwealth" and CyberData Technologies, Inc., relating to Contract VA-120413-CDTI as amended, hereinafter referred to as the "Contract" or "Agreement". This Modification #1 is hereby incorporated into and made an integral part of the Agreement.

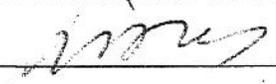
The purpose of Modification #1 is to document the parties' agreement to change the name of the Contract from "VA-120413-CDTI" to "VA-120413-CYDA". After execution of this Modification #1, the Contract shall be referred to by the name "VA-120413-CYDA".

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-120413-CDTI. Contract VA-120413-CDTI cannot be modified, except by a writing signed by a duly authorized representative of both parties.

ALL OTHER TERMS AND CONDITIONS OF CONTRACT VA-120413-CDTI SHALL REMAIN UNCHANGED.

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

CYBERDATA TECHNOLOGIES INC.

BY: 

NAME: Hong (Amy) Liu

TITLE: president

DATE: 6/26/2012

COMMONWEALTH OF VIRGINIA

BY: 

NAME: Michael A. Novak

TITLE: Sourcing Specialist

DATE: July 10, 2012



Information Technology Services Contract

between

The Virginia Information Technologies Agency

on behalf of

The Commonwealth of Virginia

and

CyberData Technologies, Inc.

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INFORMATION TECHNOLOGY SERVICES CONTRACT

THIS INFORMATION TECHNOLOGY SERVICES CONTRACT ("Contract") is entered into by and between the Virginia Information Technologies Agency (VITA) pursuant to §2.2-2012 of the Code of Virginia and on behalf of the Commonwealth of Virginia (hereinafter referred to as "VITA"), and CyberData Technologies, Inc. ("Supplier"), a corporation headquartered at 455 Springpark Place, suite 300, Herndon, VA 20170 to be effective as of April 13, 2012 ("Effective Date").

1. PURPOSE AND SCOPE

This Contract sets forth the terms and conditions under which Supplier shall provide Operations and Maintenance (O&M) and any Solution-related services ("Services") and authorized Licensed Services for hosting of payment processing to the Authorized Users. Any Supplier provided Solution or Solution-related Services or Supplier-hosted Licensed Services and Application(s) that Supplier is obligated to provide in performance of this Contract require compliance with additional terms and conditions which are included in Exhibit C and Exhibit D of this Contract and are hereby incorporated.

2. DEFINITIONS

A. Acceptance

Successful performance of the Services, and if authorized by this Contract of the Solution and of the Licensed Services, at the location designated in the applicable Statement of Work, or completed and successful Acceptance testing in conformance with the Requirements as determined by the Authorized User in the applicable Statement of Work.

B. Agent

Any third party independent agent of any Authorized User.

C. Application

See Exhibit D, Application Service Provider Solution-Additional Terms and Conditions.

D. Authorized Users

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

E. Business Day/Hour

Normal operating hours for the Commonwealth of Virginia: Monday-Friday, 8 a.m.-5 p.m. Eastern Standard/Daylight Time, unless otherwise specified on the applicable Statement of Work, excluding Commonwealth-designated holidays.

F. Computer Virus

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

G. Confidential Information

Any confidential or proprietary information of a Party that is disclosed in any manner, including oral or written, graphic, machine readable or other tangible form, to any other Party in connection with or as a result of discussions related to this Contract or any order or SOW issued hereunder, 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; (iv) for Application and Licensed Services Supplier performance under this Contract, any information or Content provided by VITA or an Application User, which type of information is designated by VITA or the Application User as "Confidential" or "Proprietary" or which information is otherwise reasonably identifiable as the confidential or proprietary information of VITA or the Application User providing such information.

H. 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.

I. Documentation

The Supplier's user manuals, training materials, guides, product descriptions, technical manuals, product specifications, supporting materials and Updates describing the Deliverable, the Solution, including Software, Licensed Services and Supplier Product provided to Authorized User, in printed and/or electronic form, including those materials detailing the information and instructions needed in order to allow any Authorized User and its Agents to make productive use of a Solution or Licensed Services, and to implement and develop self-sufficiency with regard to the Solution as may be specified in a Statement of Work issued hereunder.

J. Electronic Self-Help

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

K. Party

Supplier, VITA, or any Authorized User.

L. Receipt

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

M. Requirements

The functional, performance, operational, compatibility, Acceptance testing criteria and other parameters and characteristics of the Services and Deliverables, and any Solution, Solution Components, and Licensed Services Supplier is authorized to provide such under the Contract, as set forth in Exhibit A and the applicable Statement of Work and such other parameters, characteristics, or performance standards that may be agreed upon in writing by the Parties.

N. Service(s)

Any work performed or service provided, including provision to the Authorized User of any Deliverable, by Supplier under this Contract. Services include the discovery, creation, or development of Work Product, if any. For any authorized Solution-related Services, this includes development and maintenance of the Solution, web application development, software modifications, installation, support, and training. This definition of Services does not include Licensed Services, as defined in Exhibit D.

O. Statement of Work (SOW)

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

P. Supplier

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

Q. Work Product

Inventions, combinations, machines, methods, formulae, techniques, processes, improvements, software designs, 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. Work Product shall not include configuration of software. Work Product includes the development of new software only if Supplier is authorized by the Contract to provide Solution(s), Solution

Components and related Services for web application development in accordance with the additional terms and conditions in Exhibit C.

3. TERM AND TERMINATION

A. Contract Term

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

B. Termination for Convenience

VITA may terminate this Contract, in whole or in part, or any order or SOW issued hereunder, in whole or in part, or an Authorized User may terminate an order or SOW, in whole or in part, upon not less than thirty (30) days prior written notice at any time for any reason.

C. Termination for Breach or Default

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

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

D. Termination for Non-Appropriation of Funds

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

E. Effect of Termination

Upon termination, neither the Commonwealth, nor VITA, nor any Authorized User shall have any future liability except for Deliverables accepted or Services rendered and accepted by the Authorized User or for Licensed Services rendered and accepted by the Authorized User prior to the termination date.

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

F. Transition of Services

Prior to or upon expiration or termination of this Contract and at the request of VITA, Supplier shall provide all assistance as VITA or an Authorized User may reasonably require to transition Services to any other supplier with whom VITA or such Authorized User contracts for provision of services identical or similar to the Services provided by Supplier pursuant to this Contract or, as applicable, with whom VITA or such Authorized User contracts for provision of a Solution. This obligation may extend beyond expiration or termination of the Contract for a period not to exceed six (6) months. In the event of a termination for breach and/or default of Supplier, Supplier shall provide such assistance at no charge or fee to VITA or any Authorized User; otherwise, Supplier shall provide such assistance at the hourly rate or a charge agreed upon by Supplier and VITA or an Authorized User.

G. Contract Kick-Off Meeting

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

H. Contract Closeout

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

4. AUTHORIZED WORK BY SUPPLIER

This Contract is optional use and non-exclusive and all Authorized Users may, at their sole discretion, receive benefits from third party suppliers of the products and services similar to, or in competition with, products and services provided by Supplier.

By operation of this Contract, any SOW resulting in a commitment of any individual employee or contractor of Supplier, whether employed by Supplier or a contractor or subcontractor of Supplier, for

more than one thousand (1,000) hours of work during any six (6) month period or of any such individual employee or contractor for more than eight (8) months in any twelve (12) month period shall be voidable by VITA, in its sole discretion. If an SOW is voided by VITA, such SOW shall no longer be binding on either Party and all obligations with respect to such SOW shall expire.

5. ACCEPTANCE

A. Acceptance

O&M Services shall be deemed accepted when the Authorized User determines that such Service(s) meets the Requirements set forth in the applicable SOW. If applicable, Supplier shall be responsible for ensuring that any individual Deliverable functions properly with any other Deliverable provided pursuant to the SOW. Should a previously Accepted Deliverable require further modification in order to work properly with any other Deliverable, Supplier shall be responsible for all costs associated with such modification.

Authorized User shall commence Acceptance testing within fifteen (15) days, or within such other period as set forth in the applicable SOW, after receipt of the Services. Acceptance testing will be no longer than thirty (30) days, or such longer period as may be agreed in writing between Authorized User and Supplier, for each Deliverable or for the first instance of each O&M Service type set forth in Exhibit B. Supplier agrees to provide to the Authorized User such assistance and advice as the Authorized User may reasonably require, at no additional cost, during such Acceptance testing. Authorized User shall provide to Supplier written notice of Acceptance upon completion of installation and successful Acceptance testing. Should Authorized User fail to provide Supplier written notice of successful or unsuccessful Acceptance testing within five (5) days following the Acceptance testing period, the Services shall be deemed Accepted.

B. Cure Period

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

Exhibit C provides Acceptance and Cure terms and conditions related to any Supplier-provided Solution and Exhibit D for any Supplier-provided Licensed Services and Application. In case of a conflict for Acceptance and Cure, the pertinent Exhibit takes precedence over subsections A and B of this Section.

6. 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, any license to pre-existing work shall be held by, and 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, 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 public body.

A. Work Product

VITA and Supplier each acknowledge that performance of this Contract may result in Work Product. The Parties shall document all Work Product specifications and such specifications shall be made an incorporated exhibit to this Contract. 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 any of Supplier's employees, contractors, agents or subcontractors, 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 Work Product source code, object code, executables, and documentation. Supplier shall at no time deny access to the Work Product, regardless of form, by the Commonwealth or the Authorized User.

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 shall remain the sole and exclusive property of the Commonwealth of Virginia 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 irrevocably 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, and other rights and protection, and in protecting trade secrets, with respect to such 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 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.

C. Pre-existing Rights

If and to the extent that any pre-existing rights are embodied or reflected in the Work Product or Service Deliverables, Supplier hereby grants to the Commonwealth or the Authorized User an irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to (i) use, modify, transmit, 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. It is expressly understood that "perpetual" license rights shall commence upon delivery of the Work Product or Service Deliverables and shall exist in perpetuity unless otherwise terminated in accordance with the applicable provisions of the Contract.

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.

7. 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 any work under this Contract 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 work 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 work 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.

It is understood that Supplier may utilize subcontractors to provide integral components of the Licensed Services and Application; however, except for those so named at time of Contract award, Supplier shall not use new or replacement subcontractors to perform or provide integral components of the Licensed Services or Application during performance of this Contract without advance written notification to and approval by VITA.

Supplier is responsible for the performance of its subcontractors used in providing any portion of the Licensed Services or Application. Additionally, Supplier is responsible for its subcontractors' compliance with the terms and conditions of this Contract.

8. GENERAL WARRANTY

Supplier represents and warrants the following:

A. Ownership

Supplier has the right to provide the Services, Deliverables, Solution(s), Software and Licensed Services, without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party.

B. 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.

C. Supplier's Past Experience

Supplier warrants that the Services have been successfully performed for a non-related third-party without significant problems due to such Services or Supplier. Supplier further 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. Further, Supplier warrants that Supplier has provided the Licensed Services to a non-related third party customer of Supplier without significant problems due to the Licensed Services, or access to any Application, or Supplier.

D. Performance

- i). All Services shall be performed with care, skill and diligence, consistent with or above applicable professional standards currently recognized in its profession, and Supplier shall be responsible for the professional quality, technical accuracy, completeness and coordination of all plans, information, specifications, Deliverables and Services furnished under this Contract;
- ii). Services, Solution(s) and Licensed Services pursuant to the RFP upon which this Contract was awarded and to a Request for Quote (RFQ), and any associated Deliverables shall be fit for the particular purposes specified by VITA in the RFP and in this Contract and, if applicable, by the Authorized User requesting such quote or issuing such RFQ, and Supplier is possessed of superior knowledge with respect to the Services and Deliverables and is aware that all Authorized Users are relying on Supplier's skill and judgment in providing the Services and Deliverables;
- iii). Supplier warrants that the Documentation and all modifications or amendments thereto which Supplier is required to provide under this Contract shall be sufficient in detail and content to allow a user to understand fully the Deliverables and any Solution without reference to any other materials or information.

E. Malicious Code

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

F. Open Source

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

G. Limited Warranty Period and Remedy for Service

During the warranty period of ninety (90) days, or as specified in the applicable SOW, Supplier warrants that the Services and Solution shall meet or exceed 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 Services to meet the Requirements. If Supplier is unable to make the Service/Deliverable conform, in all material respects, to the Requirements within ten (10) days following written notification by an Authorized User, Supplier shall, at such Authorized User's request, accept return of such Deliverable and any other related Deliverable(s) rendered

unusable, and return all monies paid by such Authorized User for the non-conforming Services and Deliverable and such other related Deliverable(s) rendered unusable.

H. Limited Warranty Period and Remedy for Solution

During the warranty period of one year, or as specified in the applicable SOW, Supplier warrants that the Solution shall meet or exceed 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 meet the Requirements.

I. Additional General Warranty Terms for Supplier-Provided Solution(s)

Supplier warrants the following with respect to the Solution:

- i). If the RFP or RFQ specified or if Exhibit A or Supplier's quote specifies the hardware equipment an Authorized User shall use to run the Solution, then Supplier warrants the Solution, and any subsequent Solution component Software release, is compatible with and shall perform well with such hardware equipment;
- ii). The Solution provided hereunder includes component Software at the current release level unless an Authorized User specifies an older version in its order;
- iii). 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;

J. Additional General Warranty Terms for Licensed Services and Application

1. Licensed Services, Application, and Documentation

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

- i). Supplier is possessed of superior knowledge with respect to the Licensed Services and is aware that all Authorized Users and Application Users are relying on Supplier's skill and judgment in providing the Licensed Services, including access to and uses of the Application;;
- ii). Supplier represents and warrants (i) that it shall perform the Licensed Services in conformity to the specifications set forth in Exhibit A in a professional and workmanlike manner and (ii) that the Licensed Services shall not infringe any third party proprietary rights including (without limitation) any trademark, trade name, trade secret, copyright, moral rights, patents or similar intellectual property rights.
- iii). Supplier warrants that the Licensed Services, including access to and use of the Application, will conform in all material respects to the Requirements set forth in this Contract and any order or SOW issued hereunder, and the applicable specifications and Documentation, not including any post-Acceptance modifications or alterations to the Documentation which represent a material diminishment of the functionality of the Application, Licensed Services or Supplier Product; and that such Application and Licensed Services are compatible with and will operate successfully when used on the equipment in accordance with the Documentation and all of the terms and conditions hereof.
- iv). No corrections, work arounds or future modifications to the Supplier Product and Licensed Services provided by Supplier shall degrade the Application, cause any other warranty to be breached, or require an Authorized User to acquire additional hardware equipment or software;
- v). Supplier warrants that all post-Acceptance updates, changes, alterations or modifications to the Supplier Product, Licensed Services and Documentation by Supplier will be compatible with, and will not materially diminish the features or functionality of the Application, Licensed Services and/or Supplier Product when used on the equipment in accordance with the Documentation and all of the terms and conditions hereof.
- 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 a user to understand and utilize fully the Application without reference to any other materials or information.

2. Privacy and Security

Supplier warrants that Supplier and its employees, subcontractors, partners and third party providers have taken all necessary and reasonable measures to ensure that the Application, Licensed Services, Supplier Product, and any related deliverables do not include any degradation, known security vulnerabilities, or breach of privacy or security. Supplier agrees to notify VITA of any occurrence of such as soon as possible after discovery and provide VITA with fixes or upgrades for security vulnerabilities within 90 days of discovery.

3. Operating System and Software Supportability

Supplier warrants that Supplier and its employees, subcontractors, partners and third party providers have taken all necessary and reasonable measures to ensure that the Licensed Services, Supplier Product, and any deliverables do not have dependencies on other operating systems or software that are no longer supported by Supplier, or its Subcontractors, partners and third-party providers.

4. Access to Product and Passwords

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

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

9. TRAINING AND DOCUMENTATION

Any SOW fee includes all costs for the training of one (1) Authorized User trainer per order or SOW at an Authorized User's designated location on the use and operation of the Deliverable, Solution, or Licensed Services, as applicable, 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 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 Deliverable, Solution for Licensed Services 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.

10. SUPPLIER DEMONSTRATIONS

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

11. FEES, ORDERING AND PAYMENT PROCEDURE

A. Fees and Charges

As consideration for Services, Solution and any additional related products and services, as authorized by the Contract and provided hereunder, an Authorized User shall pay Supplier the fee(s) set forth on Exhibit B. As consideration for Licensed Services, including the rights of the Authorized User and its Application Users to access and use the Application(s) and any additional related products and services, as authorized by the Contract and provided hereunder, an Authorized User shall pay Supplier the fee(s) set forth on Exhibit B.

B. Statement of Work (SOW)

An SOW shall be required for any Services, Solution, Solution Components and Licensed Services, ordered by an Authorized User pursuant to this Contract. All work Supplier is authorized to perform pursuant to this Contract shall be performed in accordance with the Requirements and service levels set forth herein or in the applicable SOW and at the times and locations set forth in the applicable SOW and at the rates set forth in Exhibit B herein. Unless VITA issues a written authorization for a time and materials type SOW, any SOW shall be of a fixed price type but may, with the written approval of the Authorized User, contain a cost-reimbursable line item(s) for pre-approved travel expenses which shall be reimbursable by the Authorized User in accordance with the then-current per diem amounts as published by the Virginia Department of Accounts at <http://www.doa.virginia.gov> or a successor URL(s). For time and materials type SOWs, Supplier personnel shall maintain daily time records of hours and tasks performed, which shall be submitted or made available for inspection by the Authorized User upon forty-eight (48) hours advance written notice. In no event shall any SOW, change orders or any modification thereto require the Supplier to perform any work beyond the scope of this Contract as such scope is defined in Exhibit A hereto.

C. Change Orders

Any change to an SOW must be described in a written change request (template provided as Exhibit F), which includes any appropriate adjustments to the 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.

D. Request for Quote and Supplier Quote

Should an Authorized User determine that a competitive process is required to ensure it receives the best value for Services, or a Solution and Licensed Services, 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 Services, or a Solution and Licensed Services 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, services, solution and licensed 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 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.

Supplier shall respond to the RFQ by providing a written quote, including (a) a detailed description of each proposed Service, Deliverable, Solution, Solution Component(s) detail, and Licensed Service, as applicable and as authorized by the Contract and at the Exhibit B line item level, (b) the quantity of each such line item, (d) any additional percentage discount offered, and

(e) an extended price, and (f) total price, and, if requested by the Authorized User, a proposal and documentation of the qualifications of the individual(s) proposed for providing services to the Authorized User. In no event shall Supplier's quote exceed Supplier's Contract pricing. 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. Supplier's repeated failure to provide a quote in response to an RFQ may be grounds for termination of this Contract.

E. Ordering

Supplier is required to accept any order placed by an Authorized User through the eVA electronic procurement website portal (<http://www.eva.virginia.gov/>). 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:

- vii). Purchase Order (PO): An official PO form issued by an Authorized User.
- viii). 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 services and offerings available and authorized 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. Purchase Price and Price Protection

Exhibit B sets forth the fees and the appropriate Commonwealth discounts. Fees shall not increase and discounts shall not decrease for a period of not less than two (2) years from the Effective Date. No such increase shall exceed the lesser of three percent (3%) or the annual increase in the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, All Items, not seasonally adjusted, as published by the Bureau of Labor Statistics of the Department of Labor (<http://www.bls.gov/cpi/home.htm>), for the effective date of the increase compared with the same index one (1) year prior. Any such change in price shall be submitted in writing in accordance with the above and shall not become effective for sixty (60) days thereafter. Supplier agrees to offer price reductions to ensure compliance with the Competitive Pricing Section.

G. Invoice Procedures

For any order for O&M Services with a period of performance not expected to exceed one (1) month, Supplier shall remit each invoice to the "bill-to" address provided with the order promptly after all Deliverables or Services have been accepted and in accordance with the milestone payment schedule, if any, in the applicable order. For a time and materials type SOW with a period of performance expected to exceed one (1) month, Supplier shall submit invoices to the ordering Authorized User monthly in arrears, unless otherwise specified in such SOW. For a fixed price type SOW, Supplier shall invoice in accordance with the milestone payment schedule, if any, in the applicable SOW; if such SOW does not include a milestone payment schedule, Supplier shall invoice after all Deliverables or Services have been accepted by the ordering Authorized User.

For any order for a Solution, 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.

For any order for Licensed Services, Supplier shall remit each invoice to the "bill-to" address provided with the order promptly after all Licensed Services have been accepted and in accordance with the milestone payment schedule, if any, in the applicable order. Payment for Licensed Services shall be monthly in advance unless otherwise stated herein, or in any order referencing this Contract.

No invoice shall include any costs other than those identified in the executed order or SOW, 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 or SOW referencing this Contract. Any cost reimbursable work performed or expenses incurred by Supplier prior to the effective date of the order shall not be billed to or reimbursed by the Authorized User. Invoices issued by the Supplier shall identify at a minimum:

- i). Deliverable or Service type, and/or Solution product/component, if applicable, or project milestone, and description
- ii). Quantity, charge and extended pricing for each Deliverable and/or Service item or milestone, and, as applicable, for each Solution, Solution product/component. For a time and materials type order or SOW, the name(s) of the assigned employee(s), the hourly rate(s), and the number of hours worked must be included.
- iii). If applicable, dates during which Supplier provided Licensed Services to the Authorized User
- iv). If applicable, quantity, charge and extended pricing for each Licensed Service
- v). Applicable order date or SOW date
- vi). This Contract number and the applicable order number
- vii). 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

Supplier is responsible for the accuracy of its billing information. Supplier agrees not to issue invoices hereunder until Services have been performed or until items or milestones have met Acceptance criteria. Charges for Services, Solution, Solution Components, or Licensed Services accepted more than ninety (90) days prior to receipt of a valid invoice may not be paid, except in accordance with any milestone payment schedule. 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 overbilling continues.

In the event any Deliverable is shipped without the applicable Documentation, or for Licensed Services, an Authorized User does not have access to the applicable Documentation, payment shall not be due until the required Documentation is provided.

If there are any disputed items, the appropriate 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 such Authorized User, provide such Authorized User with documentation to support the charge. If such charges remain in dispute, such dispute shall be resolved in accordance with the Dispute Resolution section of this Contract. In the absence of the Supplier's written evidence identifying the merit of the disputed amounts, Authorized User may not pay the disputed amounts and may consider the matter concerning the specific identified amounts closed. All payment terms are net 30 days after Acceptance.

I. Reimbursement of Expenses

If allowable pursuant to an Authorized User's SOW, such Authorized User shall pay, or reimburse Supplier, for all reasonable and actual travel-related expenses for greater than thirty (30) miles from portal to portal incurred by Supplier during the relevant period; provided, however, that such Authorized User shall only be liable to pay for Supplier's travel-related expenses, including transportation, meals, lodging and incidental expenses, that have been authorized by such Authorized User in advance and which will be reimbursable by such Authorized User at the then-current per diem amounts as published by the Virginia Department of Accounts (<http://www.doa.virginia.gov/>, or a successor URL(s)).

All reimbursed expenses will be billed to the Authorized User on a pass-through basis without any markup by Supplier. At Authorized User's request, Supplier shall provide copies of receipts for all travel expenses over US\$30.00.

12. REPORTING AND IFA

Supplier is required to submit to VITA the following monthly reports:

- Report of Sales; and
- Small Business Subcontracting Report

These reports must be submitted using the instructions found at the following URL:

<http://www.vita.virginia.gov/scm/default.aspx?id=97>

Failure to comply with all reporting requirements may result in default of the Contract.

Suppliers are encouraged to review the site periodically for updates on Supplier reporting.

13. STEERING COMMITTEE

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

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

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

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

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

14. COMPETITIVE PRICING

Supplier warrants and agrees that each of the charges, economic or product terms or warranties granted pursuant to this Contract are comparable to or better than the equivalent charge, economic or product term or warranty being offered to any commercial or government customer of Supplier. If Supplier enters into any arrangements with another customer of Supplier to provide Services, Solution, Solution Components, including Software, or Licensed Services, as applicable and

authorized under this Contract, under more favorable prices, as the prices may be indicated on Supplier's current U.S. and International price list or comparable document, then this Contract shall be deemed amended as of the date of such other arrangements to incorporate those more favorable prices, and Supplier shall immediately notify VITA of such change.

15. NO BENEFIT TO SUPPLIER

In performance of this Contract, Supplier, its employees, agents, partners and subcontractors are restricted from including any web content, including advertisements, logos, endorsements or statements, on web pages or portals paid for by public funds that would promote any financial or other benefit or preference to Supplier, its employees, agents, partners and subcontractors. Written request to and approval from VITA must be obtained for any deviation from this restriction.

16. CONFIDENTIALITY

A. Treatment and Protection

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

B. Exclusions

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

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

C. Return or Destruction

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

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

D. Confidentiality Statement

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

17. INDEMNIFICATION AND LIABILITY

A. Indemnification

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

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

In the event of a Claim pursuant to any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Services, Deliverables, or Solutions, or by Licensed Services, and in addition to all other obligations of Supplier in this Section, Supplier shall at its expense, either (a) procure for all Authorized Users, and as applicable, for their Application Users, the right to continue use of such infringing Services, Deliverables, and/or Solutions or any component thereof, or Licensed Services or any component thereof, or (b) replace or modify such infringing Services, Deliverables, and/or Solutions, or any component thereof, or Licensed Services or any component thereof, with non-infringing deliverables, products or services satisfactory to VITA. And in addition, Supplier shall provide any Authorized User with comparable temporary replacement deliverables, services, or solution, or licensed service or reimburse VITA or any Authorized User for the reasonable costs incurred by VITA or such Authorized User in obtaining alternative replacements on their own in the event such Authorized User cannot use the affected Deliverable or Solution or Application via benefit from the affected Services or Solution or Licensed Services. 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 Services, Deliverables and/or Solution or component thereof, or infringing component of the Licensed Services, along with any other Services or Deliverables, components or any products rendered unusable by any Authorized User as a result of the infringing Services, Deliverables, Solution or component thereof, or infringing component of the Licensed Services and refund the price paid to Supplier for such Services, Deliverables and/or Solution or component thereof, or of the infringing component(s) of the Licensed Services.

B. Liability

Except for liability with respect to (i) any intentional or willful misconduct or negligence of any employee, agent, or subcontractor of Supplier, (ii) any act or omission of any employee, agent, or subcontractor of Supplier, (iii) claims for bodily injury, including death, and real and tangible property damage, (iv) Supplier's indemnification obligations, (v) Supplier's confidentiality obligations, (vi) Supplier's privacy and security obligations, and (vii) Supplier's security compliance obligations, Supplier's liability shall be limited to twice the aggregate value of the Services and Deliverables, or the Solution, or the Licensed Services, and other related services and products, provided under this Contract. Supplier agrees that it is fully responsible for all acts and omissions of its employees, agents, and subcontractors, including their gross negligence or willful misconduct.

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

18. INTERACTION WITH COMMONWEALTH WEB PAGES

VITA, the Commonwealth of Virginia and any and all Authorized Users of this Contract shall assume no responsibility or liability for any complications, disruptions, system failures, corruptions, malicious code or software or data compromise in connection with or due to the transmission of information that may be contained on any Commonwealth of Virginia's web pages, or the third-party software, services or licensed services and/or applications that compose their operation, nor for any information accessed, downloaded, transferred, used, or otherwise taken from them, individually or in total.

Further, VITA, the Commonwealth of Virginia and any and all Authorized Users of this Contract shall not be held responsible or liable for any infringements, negligence or other direct or indirect actions of third parties whose software, services or licensed services and applications may directly or indirectly integrate into the Solution being procured from Supplier under this Contract.

19. INSURANCE

In addition to the insurance coverage required by law as specified in the URL identified 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

Cyber security liability insurance coverage in the amount of \$5,000,000 per occurrence

20. SECURITY COMPLIANCE

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

Supplier shall immediately notify VITA and Authorized User, if applicable, of any Breach of Unencrypted and Unredacted Personal Information, as those terms are defined in Virginia Code 18.2-186.6, and other personal identifying information, such as insurance data or date of birth, provided by VITA or Authorized User to Supplier. Supplier shall provide VITA the opportunity to participate in the investigation of the Breach and to exercise control over reporting the unauthorized disclosure, to the extent permitted by law.

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

VITA shall have the right to review Supplier's information security program prior to the commencement of any Licensed Services and from time to time during the term of this Agreement. During the performance of the Licensed Services, on an ongoing basis from time to time, VITA, at its own expense, shall be entitled to perform, or to have performed, an on-site audit of Supplier's information security program. In lieu of an on-site audit, upon request by VITA, Supplier agrees to complete, within forty-five (45 days) of receipt, an audit questionnaire provided by VITA regarding Supplier's information security program. Supplier shall implement any reasonably required safeguards as identified by any program audit.

21. IMPORT/EXPORT

In addition to compliance by Supplier with all export laws and regulations, VITA requires that any data deemed "restricted" or "sensitive" by either federal or state authorities, must only be collected, developed, analyzed, or otherwise used or obtained by persons or entities working within the boundaries of the United States. Unless otherwise specified in an applicable SOW, the Licensed Services shall be provided and all Content stored by Supplier on servers, storage or nodes physically located in the continental United States.

22. BANKRUPTCY

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

23. GENERAL PROVISIONS

A. Relationship Between VITA and Authorized User and Supplier

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

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

B. Incorporated Contractual Provisions

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

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

The then-current contractual provisions at the following URL are required contractual provisions, required by law or by VITA, that apply to all orders placed under this Contract that are partially or wholly funded by the American Recovery and Reinvestment Act of 2009 (ARRA) and are hereby incorporated by reference:

http://www.vita.virginia.gov/uploadedFiles/SCM/ARRA_Ts_Cs_Rev3.pdf

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

C. Compliance with the Federal Lobbying Act

Supplier's signed certification of compliance with 31 USC 1352 (entitled "Limitation on use of appropriated funds to influence certain Federal Contracting and financial transactions") or by the regulations issued from time to time thereunder (together, the "Lobbying Act") is incorporated as Exhibit K 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 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's name 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:

- i). To VITA and to Supplier, if Supplier is incorporated in the Commonwealth of Virginia, to the addresses shown on the signature page.
- ii). To Supplier, if Supplier is incorporated outside the Commonwealth of Virginia, to the Registered Agent registered with the Virginia State Corporation Commission.

Pursuant to Title 13.1 of the Code of Virginia, VITA or Supplier may change its address for notice purposes by giving the other notice of such change in accordance with this Section.

Administrative contract renewals, modifications or non-claim related notices are excluded from the above requirement. Such written and/or executed contract administration actions may be processed by the assigned VITA and Supplier points of contact for this Contract and may be given in person, via U.S. mail, courier service or electronically

H. No Waiver

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

I. Assignment

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

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

J. Captions

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

K. Severability

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

L. Survival

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

M. Force Majeure

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

N. Remedies

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

O. Right to Audit

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

- i). Three (3) years from Software delivery or Service performance date or, as applicable;
- ii). Five (5) years after termination/completion of any Licensed Services provided under the Contract;
- iii). Performed at Supplier's premises, during normal business hours at mutually agreed upon times; and
- iv). Excludes access to Supplier cost information.

The Supplier shall not have the right to audit, or require to have audited, VITA or any Authorized User.

P. Offers of Employment

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

Q. Contract Administration

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

R. Entire Contract

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

- i). Exhibit A Services, Solution and Licensed Services Requirements
- ii). Exhibit B Fees, Service Charges and Payment Schedule
- iii). Exhibit C Additional Solution Terms and Conditions
- iv). Exhibit D Additional Licensed Services Terms and Conditions
- v). Exhibit E Statement of Work (SOW) Template
- vi). Exhibit F Change Order Template
- vii). Exhibit G Escrow Agreement (Solution)
- viii). Exhibit H Reserved
- ix). Exhibit I Content Escrow Agreement (Licensed Services)

- x). Exhibit J End User Licensing Agreement (for reference only)
- xi). Exhibit K Certification Regarding Lobbying

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

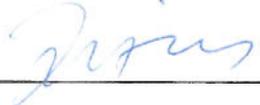
Any modification to an order or SOW that extends the period of performance beyond one (1) year or increases the value of such SOW above US\$100,000 shall, absent the prior written approval of VITA, be voidable by VITA, in its sole discretion. If an SOW is voided by VITA, such SOW shall no longer be binding on either Party and all obligations with respect to such SOW shall expire.

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

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

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

CyberData Technologies, Inc.

By: 
 (Signature)

Name: Amy Liu
 (Print)

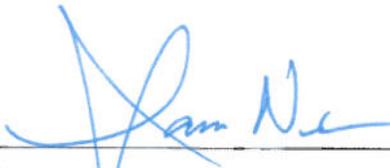
Title: CEO

Date: 4/11/2012

Address for Notice:
455 Springpark Place, Suite 300
Herndon, Virginia 20170

Attention: Jon Lombard
jon.lombard@cyberdatainc.com
703 481-0888 x216
Walter Davis
walter.davis@cyberdatainc.com
703-481-0888 x205

VITA

By: 
 (Signature)

Name: Sam Nixon
 (Print)

Title: CIO

Date: 4/18/12

Address for Notice:

Attention: Contract Administrator

EXHIBIT A REQUIREMENTS
CONTRACT NUMBER VA-120413-CDTI
BETWEEN
VIRGINIA INFORMATION TECHNOLOGIES AGENCY
AND
CYBERDATA TECHNOLOGIES, INC.

Exhibit A is hereby incorporated into and made an integral part of Contract Number VA-120413-CDTI (“Contract”) between the Virginia Information Technologies Agency (“VITA” or “Commonwealth” or “State”) and CyberData Technologies, Inc. (“Supplier”).

In the event of any discrepancy between this Exhibit A and Contract No. VA-120413-CDTI, the provisions of Contract No. VA-120413-CDTI shall control.

A. General

	Requirements	A	B
1	<p>Does your Solution comply with all current COV ITRM Policies and Standards, as applicable, found at: http://www.vita.virginia.gov/library/default.aspx?id=537.</p> <p>If proposed solution does not, please provide details that specify the Standard/Policy and how Supplier's solution does not comply.</p>	Y	
2	<p>Do your proposed interfaces to Commonwealth systems comply with or have approved exceptions to all applicable Commonwealth Data Standards as found at http://www.vita.virginia.gov/oversight/default.aspx?id=10344</p> <p>If not, please explain.</p>	Y	
3	<p>Does your Solution provide effective, interactive control and use with nonvisual means and provide 508 Compliance in accordance with the following standard regarding IT Accessibility and 508 Compliance: http://www.vita.virginia.gov/uploadedFiles/Library/AccessibilityStandard_GOV103-00_Eff_11-04-05.pdf (Refer to www.section508.gov and www.access-board.gov for further information)</p> <p>If yes, please describe how this functionality is achieved and include a completed Voluntary Product Accessibility Template (VPAT) with your proposal: <i>(The VPAT template is located in APPENDIX C of the Accessibility Standard</i></p>	Y	<p>We will follow the Web Accessibility and Training Guide (WATG) (published at http://www.vadsa.org/watg) on achieving Section 508 and WCAG Level A or better accessibility.</p> <p>We understand that in addition to meeting Section 508/WAI Level A accessibility requirements in the Accessibility Standard (ITRM GOV103-00), public websites must adhere to the Web Site Standard’s (ITRM GOV106-00) template. Besides checking for accessibility compliance by running accessibility software on the web sites, we will</p>

	Requirements	A	B
	<p><u>(GOV103-00)</u>.</p> <p>If no, does your solution provide alternate accessibility functionality? Please describe.</p>		<p>use the checklist at the following link to manually check for compliance with the template.</p> <p>http://www.vadsa.org/watg/checklist.htm</p> <p>Please see the completed Voluntary Product Accessibility Template (VPAT) attached with our proposal.</p> <p>// Where's the APPENDIX C file? CDIP??</p>
4	Do you agree that the Commonwealth will own any and all code developed under this contract?	Y	

B. Application Maintenance

	Requirements	A	B
1	Do you offer dba support as part of you Solution? Detail what types (ex. Oracle, MS, Sybase, etc.) and describe how you support them.	Y	The types of DBA support we provide include Oracle, Microsoft SQL Server, Informix, MySQL, and et al. We will assign our Oracle Certified DBA and/or Microsoft Certified DBA to provide the DBA support required by this O&M contract.
2	Does your Solution include a backup/restore technology/process?	Y	
3	Do you, as part of your Solution, have the ability to maintain existing code in the following technologies (refer to Attachment X)?	Y	
4	Do you, as part of your Solution, have a process for code and change management? Please describe, and include any toolsets you use for this as part of your description.	Y	We have standard change and configuration management process for code and change management. Tools we use include Microsoft Source Safe, Team Foundation, and Apache Subversion (SVN).
5	Do you, as part of your Solution, have a testing/release process? Please describe and include what procedures it includes.	Y	Our testing/release process follows the CMMI and ITIL Configuration Management and Release Management standards. The procedures focus on running the following tests through multiple iterations:

	Requirements	A	B
			<ul style="list-style-type: none"> • Unit Test • Integration Test • Performance Test • Stress Test • Regression Test • Security Test • User Acceptance Test • Other System-Specific Test based on requirements
6	As part of your Solution, do you use any 3 rd party tools or services in your testing/release process? If yes, detail them.	Yes	We may use 3 rd party tools or services in our testing/release process, such as HP LoadRunner (an automated performance and testing software), and etc.
7	Does your Solution include an escrow process? If yes, explain your escrow process.	Y	Please see our Escrow Agreement attached.
8	Do you, as part of your Solution, have the ability to manage web servers/app servers, etc.? Explain, to include redundancies, expandability, capacity management, monitoring (reference Attachment X)	Y	We have the ability to manage all kinds of web servers/app servers/db servers, and etc., including supporting the redundancies, expandability, capacity management, monitoring and other requirements, listed in Attachment X.
9	Do you, as part of your Solution, have the ability to provide services for IVR, web and mobile?	Y	
10	Describe your process for managing upgrades?	N/A	<p>First of all, to plan for any system upgrade (hardware/software/network), the CyberData team will develop an Upgrade Specification documentation to spell out all the detailed specs of hardware, software, or network equipment to be involved.</p> <p>Secondly, we will come up with an Upgrade Plan documenting the upgrade procedures step by step, including a detailed project schedule. The Plan also covers the necessary tests after the upgrade, the procedures for</p>

Requirements		A	B
			<p>rollback should critical issues occur, and other post-upgrade maintenance procedures and tasks such as updating documentation and etc.</p> <p>After that, we will submit the Upgrade Specification document along with the Upgrade Plan to the government customer for review. Once the Specs and the Plan are approved by the government, we then start to procure the hardware equipment, software, and/or network devices required for the upgrade according to the Upgrade Specification. In the meantime, we will continue to revise the Upgrade Plan if needed.</p> <p>After the equipment and/or software ordered arrive, we will schedule a maintenance window outside normal business hours, coordinate with the government and put up an announcement banner on the site ahead of time.</p>
1 1	Do you, as part of your Solution, have a process for archiving data?	Y	

C. Payment Processing

Requirements		A	B
1	For your Solution, are you PCI (Payment Card Industry data security standard) compliant?	Y	
2	For your Solution, are there any constraints on your ability to be PCI compliant?	N	
3	For your Solution, are you IAT (International ACH (Automated Clearing House) Transaction) compliant?	Y	
4	For your Solution, are you NACHA (National Automated Clearing House Association) compliant?	Y	
5	Do you, as part of your Solution, have the ability to use batch processing?	Y	
6	Do you, as part of your Solution, have the	Y	

	Requirements	A	B
	ability to use ACH Batch processing?		
7	Do you, as part of your Solution, have any process/offering that can track transactions, including potentially fraudulent activities?	Y	
8	Do you, as part of your Solution, have a typical process/methodology for payment processing? Please describe, and include what you require to complete your process, assumptions, etc.	Y	Our solution includes an eCommerce module which empowers agencies to quickly enable ecommerce on their web site through a typical process for payment processing. The module supports PayPal and Authorize.Net payment options. It includes robust order management and flexible product display and checkout options. Product management, discount management, and dashboard capabilities are also included.
9	Do you, as part of your Solution, support electronic payments? Please detail which types you support (echecks, ACH, credit card, etc.)	Y	Our solution supports electronic payments of all kinds (all types of payment methods that PayPal supports, such as echecks, ACH, credit card, etc.).
10	As part of your Solution, are you SAS-70 compliant?	Future	

D. Security and Authentication Services

	Requirements	A	B
1	Do you provide secure FTP (File Transfer Protocol) as part of your Solution?	Y	
2	Do you, as part of your Solution, provide audit trail capability to your customer that allows us to ensure compliance with security standards?	Y	
3	Describe your ability to manage user accounts and authentication services for public facing web application.	N/A	Our solution includes a role-based authentication and authorization module, which is not only a time-tested proven reusable component, but also highly customizable. It was designed and implemented for the purpose of managing user accounts and to provide authentication services for public facing web application.
4	What methods can you deploy to ensure secure and encrypted data sharing with the Commonwealth data center?	N/A	We will constantly review and audit the information security of the system at all levels. Most commonly the controls being

	Requirements	A	B
			<p>audited can be categorized to technical, physical and administrative. It covers aspects from auditing the physical security of data centers to the logical security of databases.</p> <p>Various tools including firewalls and proxy servers, encryption, logical security and access controls, anti-virus software, and auditing systems such as log management, will be deployed to ensure secure and encrypted data sharing with the Commonwealth data center, and to achieve the system and network security.</p>
5	Can you, as part of your Solution, provide the Commonwealth with security vulnerability testing/scanning and results?	Y	

E. Commonwealth Support Services

	Requirements	A	B
1	Do you, as part of your Solution, have a capacity planning methodology for managing high/low use levels? Please describe.	Y	
2	As part of your Solution, do you have a Service Level Agreement, including optional levels and reporting on metrics? Please include a filled-out Appendix A as part of your proposed solution.	Y	Please see Appendix A in the Contracts Section of our proposal.
3	Do you, as part of your Solution, have a methodology for troubleshooting and coordinating help desk issues amongst VITA and a potential hosting supplier?	Y	
4	Do you, as part of your Solution, provide notification for scheduled downtime due to maintenance?	Y	
5	Will you, as part of your Solution, provide satisfaction surveys to Commonwealth customers related to your performance?	Y	
6	Do you, as part of your Solution, have a process for ticket/trouble/incident tracking?	Y	
7	Do you, as part of your Solution, have an escalation process associated with ticket tracking?	Y	
8	Do you, as part of your Solution, have the ability to scale up/down support services as	Y	

	Requirements	A	B
	needed (help desk, development, etc.)?		

F. Skills / Technology Support

	Requirements	A	B
1	Do you, as part of your Solution, have the ability to provide development, operations and maintenance for the technologies in Attachment X? Please include Attachment X as part of your proposal, with the two supplier columns (Y and Z) filled in. If there are other web development skills you are proficient in, please list.	Y	We have the ability to provide development, operations and maintenance for all the technologies in Attachment X. Please see Attachment X included as part of our proposal with our response Yes filled in for supplier column Y.

G. 3rd Party

	Requirements	A	B
1	As part of your Solution, are you using any 3 rd parties to provide your solution/services? If so, who are they?	Y	PayPal
2	For any 3 rd party suppliers you will be using, list the services they will provide.	N/ A	PayPal Merchant Services

Attachment X

Inventory Item	Agency or Entity	Supplier response to RFP 5.F.1: Yes or No	Supplier comments for RFP 5.F.1
Virginia Department of Health - Health Alert Network (HAN) Training Instruction Modules	VDH	Y	
Office of Consumer Affairs - Complaint Topic Selector	VDACS	Y	
Indigent Defense Commission - Online Searchable Attorney List	IDC	Y	

Office of Telework and Broadband – Savings Tool and Wizard	OTPBA	Y	
Office of Consumer Affairs - Complaint Database Search	VDACS	Y	
Office of Consumer Affairs - Charitable Organization Search	VDACS		
Commonwealth Attorney Services - Attorney Search	CAS	Y	
Virginia Employment Commission - Mass Claim	VEC	Y	
Department of Health Professions - Carillion Notification	DHP	Y	
Virginia Department of Agriculture and Consumer Services - Pesticide Complaint Search	VDACS	Y	
Virginia Department of Agriculture and Consumer Services - Dangerous Dog Registry	VDACS	Y	

Virginia Department of Agriculture and Consumer Services - Weighted Average Report	VDACS	Y	
Virginia Department of Agriculture and Consumer Services – FarmLink	VDACS	Y	
Virginia Department of Agriculture and Consumer Services – Choose the Commonwealth	VDACS		
Virginia State Bar – Member Directory	VSB	Y	
Virginia State Bar - Lawyer Complaint Form	VSB	Y	
Virginia Tourism Corporation - Wilderness Trail Administrative System	VTC	Y	
Criminal Injuries Compensation Foundation Online Payments	CICF	Y	
VA Grown - Mobile	VDACS	Y	

BOS (payment)	DBA	Y	
eva/SWAM Data Exchange Svc	DMBE	Y	
DOE Online Member Educational Directory	DOE	Y	
DGIF - Boat Searchable Database	DGIF	Y	
SOC - Lobbyist Registration	SOC	Y	
VSB - Mandatory Continuing Legal Education (MCLE) Public Search	VSB	Y	
Service of Process	SOC	Y	
Virginia State Bar Annual Conference	VSB	Y	
Generic locality payments application (Franklin County, Stephens City, Town of Culpeper)	VI	Y	
City of Lynchburg custom payments	City of Lynchburg	Y	

City of Hampton parking ticket payments	City of Hampton	Y	
DMV - Batch Crash Data	DMV	Y	
Department of Mines, Minerals and Energy (DMME) Online Payments	DMME	Y	
Supreme Court of Virginia (SCV) "Journey through Justice" Interactive Website	SCV	Y	
Department of Transportation (VDOT) Online Payment for Learning Management Solution	VDOT	Y	
Department of Environmental Quality (DEQ) Online Payments	DEQ	Y	
Virginia Disaster Relief Fund Website and Online Payments	TRS	Y	
Virginia Department of Health (VDH) Online Course	VDH	Y	
Marine Resources Commission - Angler Registry	Marine Resource Commission	Y	
Department of Minority Business Enterprise - Disadvantage Business Enterprise (DBE) Orientation	DMBE	Y	
Virginia State Bar Litigation - Calendar and Secured logins	VSB	Y	

Pass The Past - Mobile	DOE	Y	
DSS - Childcare Provider Scholarship Program App	DSS	Y	
Department of Mines, Minerals and Energy (DMME) Solar Resource Fund	DMME	Y	
Secretary of the Commonwealth: eNotary Payments	SOC	Y	
Department of Game and Inland Fisheries: Android Mobile & Game Checking Application	DGIF	Y	
Virginia Department of Agriculture and Consumer Services: Virginia Grown Enhancements (Recipes)	VDACS	Y	
Department of Human Resource Management: Online Conference Payments	DHRM	Y	
Department of Treasury: Van Pool Payments	TRS	Y	
Department of Education: Search Application	DOE	Y	

<p>Office of Early Childhood Development – Virginia Star Quality Initiative</p>	<p>OECD, DSS</p>	<p>Y</p>	
<p>TimeTravelers Destination Search Virginia Association of Museums Virginia Tourism Corporation Virginia Department of Historic Resources Virginia Department of Education</p>	<p>Primary: VAM</p>	<p>Y</p>	
<p>Office of Consumer Affairs - Legal Plan Seller Registration, Administrative Area and Public Listing</p>	<p>VDACS</p>	<p>Y</p>	
<p>Department of Social Services - \$4Kids</p>	<p>DSS</p>	<p>Y</p>	
<p>Hampton Roads Sanitation District - Secure Web Portal</p>	<p>HRSD</p>	<p>Y</p>	
<p>Department of Minority Business Enterprise - Certified Small, Women and Minority Business Search</p>	<p>DMBE</p>	<p>Y</p>	

Department of Minority Business Enterprise - Ad Hoc Reporting with Cizer	DMBE	Y	
Library of Virginia Research Requests – Public and Administrative Interfaces	LVA	Y	
Department of Health Professions - Licensee Lookup	DHP	Y	
Department of Health Professions - Notification Service	DHP	Y	
Virginia Department of Agriculture and Consumer Services – Virginia Grown	VDACS	Y	
Virginia Dept. of Agriculture and Consumer Services - Virginia Green	VDACS	Y	
Virginia Department of Agriculture and Consumer Services - Animal Record Reporting Admin and Public Areas	VDACS	Y	

Lobbyist in a Box - Free Citizen Tracking	LIAB	Y	
Lobbyist in a box	LIAB	Y	
Department of Education - Healthy Virginians Scorecard, Administrative Area and Public Listing.	DOE	Y	
Department of Education: Master the Math	DOE	Y	
Virginia State Bar - Mandatory Continuing Legal Education (MCLE) Certifications and Look-up	VSB	Y	
Virginia State Bar - Attorney Records Search	VSB	Y	
eForms (bos, notary, enotary)	VI - COTS	Y	

Fire Standard Cigarettes	VDACS	Y	
Virginia Tourism Corporation: Tourism Plan Application Submission (TPAS)	VTC	Y	
DGIF Mobile	DGIF	Y	
Department of Mines, Minerals and Energy: Online Survey	DMME	Y	
DMV - Print on Demand Temporary Tag Service (PODs)	DMV	Y	
DGIF - Point of Sale Hunt & Fish Licenses Application	DGIF	Y	
DGIF - Online Hunt & Fish Licenses Application	DGIF	Y	

DGIF - Boat Registration Renewal	DGIF	Y	
DHRM - Employment Verification and Salary Information	DHRM	Y	
Waste Kitchen Grease	VDACS	Y	
Shopping Cart	VI - COTS	Y	
Virginia Employment Commissions - Form 1099G	VEC	Y	
Combined Virginia Campaign - Charity Filing	CVC		

Secretary of the Commonwealth - Lobbyist search, Principal search, and Disclosure report search	SOC		
Virginia Payment Portal Web Service	VI		
Stafford County custom payments	Stafford County	Y	
City of Hampton custom payments	City of Hampton	Y	
VDOT - Outdoor Advertising	VDOT	Y	
DMV - Batch DLR	DMV	Y	
DMV - Online DLR	DMV	Y	
DMV - Batch MVR	DMV	Y	
DMV - Online MVR	DMV	Y	
Department of Health Professions (DHP) - Database Download	DHP	Y	

Virginia Tourism Corporation - Online Bookings (hotel, auto rental, flights, more)	VTC	Y	
Wise County Circuit Court: Commonwealth Online Court Order System (COCO)	Wise Clerk of Court	Y	
Department of Mines, Minerals and Energy: Content Management System	DMME	Y	
Virginia Department of Agriculture and Consumer Services: Charitable Gaming Application	VDACS	Y	
Department of Social Services: Scholarship Application	DSS	Y	
Wise County Circuit Court: ACH Payments	Wise Clerk of Court	Y	
Department of Planning and Budget Grants Application	DPB	Y	
The Commission on Virginia Alcohol Safety Action Program (VASAP): Website hosting	VASAP	Y	

<p>Virginia Commission for the Arts: Event Registration</p>	<p>VCA</p>	<p>Y</p>	
<p>Virginia Department of Business Assistance: Adobe Forms Hosting for Business One Stop (BOS)</p>	<p>DBA</p>	<p>Y</p>	
<p>Department of Minority Business Enterprise - SWAM Certification - public site</p>	<p>DMBE</p>	<p>Y</p>	
<p>Virginia Employment Commission - Initial Benefits Claims</p>	<p>VEC</p>	<p>Y</p>	
<p>Virginia Employment Commission - UI/Benefits Claim</p>	<p>VEC</p>	<p>Y</p>	
<p>Virginia Department of Agriculture and Consumer Services - Market News Service - Constituent Notification - note there are two instances in place for MNS - one sends emails and faxes, with reports attached. A separate instance sends emails with links to updated MP3 reports.</p>	<p>VDACS</p>	<p>Y</p>	

Virginia State Bar – Members Area and Demographics Updating	VSB	Y	
State Board of Elections - Election Night Reporting With Virginia Election and Registration System	SBE	Y	
Virginia Tourism Corporation – Point of Interest Mapping	VTC	Y	
Indigent Defense Commission - ACeS	IDC	Y	
EE Appliance Rebate	DMME	Y	

EERebate	DMME	Y	
EERenewable	DMME	Y	
Commonwealth Online Court Order System (COCO)		Y	
SCV - Pre and Post Payable Online Payment	SCV	Y	

Virginia Department of Emergency Management - Drupal CMS	VDEM	Y	
Virginia State Bar (VSB) Online Membership Renewals and Payment Registration Service	VSB	Y	
Indigent Defense Commission: Online Case Management System	IDC	Y	
Indigent Defense Commission: OAAM/AD_FS/SP	IDC	Y	
Board of Towing and Recovery Operators: Online Licensing Application	BTRO	Y	
Department of Conservation and Recreation (DCR) – Stormwater Management Website	DCR	Y	
Virginia Department of Agriculture and Consumer Services – Training Tracking	VDACS	Y	
Virginia Museum of Fine Arts - Media room - (<i>Removed from production.</i>)	VMFA	Y	
Virginia State Bar Litigation - Calendar and Secured logins	VSB	Y	
KidSafe Tip Submission	4SafeVA	Y	
Library of Virginia - Find it Virginia	LVA	Y	

Virginia Employment Commission - Job Seeker Application	VEC	Y	
Virginia Department of Agriculture and Consumer Services – Training Tracking	VDACS	Y	

EXHIBIT B FEES
CONTRACT NUMBER VA-120413-CDTI
BETWEEN
VIRGINIA INFORMATION TECHNOLOGIES AGENCY
AND
CYBERDATA TECHNOLOGIES, INC.

Exhibit B is hereby incorporated into and made an integral part of Contract Number VA-120413-CDTI (“Contract”) between the Virginia Information Technologies Agency (“VITA” or “Commonwealth” or “State”) and CyberData Technologies, Inc. (“Supplier”).

In the event of any discrepancy between this Exhibit B and Contract No. VA-120413-CDTI, the provisions of Contract No. VA-120413-CDTI shall control.

Job Title	Description	Rate/ Hour
Program Manager	Has responsibility for more than one project. This position requires a degree plus 15 relevant years of experience.	\$109.62
Technical Project Manager	Provides project management functions including technical leadership, quality assurance and decision oriented recommendations. This position requires a degree plus 10 relevant years of experience.	\$94.43
Administrative Project Manager	covers contracts and situations that require no technical leadership and provides status, progress reporting while providing an administrative connection between onsite contractor staff and a contractor’s home office. This position requires a degree	\$62.72
Task Leader	For the Task Leader two of the six years must have been in a lead role. This position requires a degree plus 2 relevant years of experience	\$91.8
Senior I IT Analyst	To provide NAS systems security engineering under ES and IT systems security in compliance with the NIST standards under CSD and CSS. This labor category covers all security related specialty engineering functions under engineering services and all inform	\$100.39
Senior II IT Analyst	technical support includes graphical artist specialists. Level I (HS + 0 relevant year)	\$68.67
System Security/Information Assurance Analyst	technical support includes graphical artist specialists. Level II (3 relevant years)	\$77.95

Assoc Writer/Editor	The writer may prepare documents as part of Business operations, or as part of D&T. The editor is focused on the same areas as the writer and can be applied in each area. Associate (required degree + 1 relevant year)	\$38.3
Senior I Writer/Editor	The writer may prepare documents as part of Business operations, or as part of D&T. The editor is focused on the same areas as the writer and can be applied in each area.	\$49.22
Technical Support I	technical support includes graphical artist specialists. Level IV 10 relevant years)	\$53.25
Technical Support II	technical support includes graphical artist specialists. Level III 6 relevant years)	\$72.19
Technical Support III	To provide information technology services in facilities planning, operations and support; storage systems analysis, design/test, and administration; server system analysis, design/test and administration; database analysis, design/test, administration;	\$67.98
Senior II Network Engineer	Senior II Network Engineer (required degree + 15 relevant years)	\$83.62
Int I IT Analyst	Senior Certification (required degree + certification + 10 relevant years)	\$83.62
Int II IT Analyst	Senior (required degree + 8 relevant years)	\$67.76
Senior I IT Analyst	Senior (required degree + 8 relevant years)	\$83.62
Senior Cert IT Analyst	Intermediate II (required degree + 5 relevant years)	\$60.25
Senior II IT Analyst	Intermediate (required degree + 3 relevant years)	\$46.61
Int I IT Analyst	Intermediate (required degree + 3 relevant years)	\$42.8
Junior I IT Analyst	Associate (required degree + 1 relevant year)	\$38.76
Senior System Architect	Designs, codes, tests, debugs, and documents system architecture programs.	\$163.28
Senior Enterprise Architect	Designs, codes, tests, debugs, and documents Enterprise architecture programs.	\$135.52
Data Modeler	Applies data modeling techniques, architects database	\$104.79
Database Specialist	Designs databases, implementing database engine, query optimization, storage management, logging, caching, recovery, replication, etc	\$75.26

Senior Data Modeler	Applies data modeling techniques, architects database	\$123.28
Sr. Database Specialist	Designs databases, implementing database engine, query optimization, storage management, logging, caching, recovery, replication, etc	\$93.54
Sr. Software Engineer	Designs, codes, tests, debugs, and documents those programs. Responsible for applications dealing with the overall operating system, such as sophisticated file maintenance routines, large telecommunications networks, computer accounting, and advanced math	\$83.62
Sr. System Engineer	Has as its major functions on of the following Network Operating Systems Windows/Linux/UNIX system administration and support of multiple enterprise level servers and peripheral systems in a 24x7 operational environment.	\$83.62
Documentation Specialist	Prepares and/or maintains systems, programming, and operations documentation, including user manuals. Maintains a current internal documentation library. Competent to work on most phases of documentation.	\$73.26
CM/QA/Tester	configuration management and quality assurance	\$73.26



Exhibit C Solution Additional Terms and Conditions

For
Contract No. VA-120413-CDTI

between

The Virginia Information Technologies Agency
on behalf of
The Commonwealth of Virginia

and

CyberData Technologies, Inc.

**EXHIBIT C
SOLUTION
ADDITIONAL TERMS AND CONDITIONS
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EXHIBIT C
SOLUTION
ADDITIONAL TERMS AND CONDITIONS

These additional terms and conditions for provision of optional Solution(s) are incorporated herewith under Contract No. VA-120413-CDTI between Virginia Information Technologies Agency (VITA) and Supplier.

1. PURPOSE

Any Solution(s) provided by the Supplier are for the purpose of web application development in support of Contract No. VA-120413-CDTI. This Exhibit ("Exhibit") sets forth additional terms and conditions under which Supplier shall provide such Solution(s) and related Services to VITA and Authorized Users.

2. DEFINITIONS

A. Contract, the, this

Contract No. VA-120413-CDTI

B. 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.

C. Software Publisher

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

3. 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

[Option 1—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.

[end Option 1]

[Option 2—Software licensed by Software Publisher] 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 F. [end Option 2]

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 may vary by Software product and shall be set forth in Exhibit B and identified on any order issued pursuant to this Contract.

[option C1 - Designated CPU License]

The license(s) granted under this Section authorizes use of the Software only on the number of CPU(s) listed in the applicable SOW. An Authorized User may transfer the Software to a different machine to the extent that the license price for such new CPU(s) is equivalent to the CPU(s) initially licensed. If the licensed CPU is inoperative because of (i) malfunction, (ii) performance of maintenance, or (iii) modification to the licensed CPU, or (iv) because the Software is being transferred to another CPU, such Authorized User may use the Software on a replacement CPU as long as required by the mentioned conditions.

[option C2 - Concurrent Use License]

The license(s) granted under this Section authorizes use of the Software on any system based on the total number of Concurrent Users. The number of "Concurrent Users" is defined as the maximum number of concurrent Sessions connected at a given point in time. A "Session" is

defined as an active user executing the Software. The Authorized User shall specify an initial number of Concurrent User licenses in its initial order pursuant to this Contract. An Authorized User may increase the number of Concurrent User licenses upon issuing an order for additional Concurrent User licenses. The license fee for additional Concurrent User licenses and payment of the license fee is set forth on Exhibit B.

[option C3 – Site License]

The license(s) granted under this Section authorizes use of the Software on any system located at the "Site" as such term is defined in the applicable order or SOW.

[option C4 – Project Specific License]

The Project Specific License authorizes use of the Software on any CPU; system owned or opted by the Commonwealth or an Authorized User, and by any user, without limitation as to quantity or location for Project _____.

[option C5 – 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.

4. 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 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 percent (1%) of the total Solution fee, for each 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 SOW.

C. Documentation of Software Configuration

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

5. 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 SOW 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 fifteen (15) days, or within such other period as set forth in the applicable SOW, after receipt of the Software or Deliverable. Acceptance testing will be no longer than thirty (30) days, or such longer period as may be agreed in writing between Authorized User and Supplier, for the first instance of each product type set forth in Exhibit B. Supplier agrees to provide to such Authorized User such assistance and advice as such Authorized User may reasonably require, at no additional cost, during such Acceptance testing, other than pre-approved travel expenses for time and materials type SOWs or for fixed price type SOWs in which travel expenses were expressly excluded from the total price of the SOW. Any such travel expenses must be pre-approved by the Authorized User and shall be reimbursable by such Authorized User at the then-current per diem amounts as published by the Virginia Department of Accounts (<http://www.doa.virginia.gov>), or a successor URL(s)). Authorized User shall provide to Supplier written notice of Acceptance upon completion of successful Acceptance testing. Should Authorized User fail to provide Supplier written notice of successful or unsuccessful Acceptance testing within five (5) days following the Acceptance testing period, the Service shall be deemed Accepted.

B. Software and Deliverable Cure Period

Supplier shall correct any non-conformities identified during Acceptance testing and re-submit such non-conforming Software or Deliverable for re-testing within fifteen (15) days of the appropriate Authorized User's written notice of non-conformance, or as otherwise agreed between such Authorized User and Supplier in the applicable SOW. Should Supplier fail to cure the non-conformity or 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 hereunder; (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 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 or SOW, in whole or in part, for the Solution to be provided thereunder by Supplier.

C. Solution Acceptance Criteria

Solution shall be deemed accepted when the Authorized User determines that such Solution successfully operates in accordance with the Requirements. Such Authorized User agrees to commence Acceptance testing within fifteen (15) days after deployment of the Solution. Acceptance testing will be completed within thirty (30) days, or such longer period as may be agreed in writing between Authorized User and Supplier, after deployment of the Solution. Supplier agrees to provide to such Authorized User such assistance and advice as such Authorized User may reasonably require, at no additional cost, during such Acceptance testing, other than pre-approved travel expenses for time and materials type SOWs or for fixed price type SOWs in which travel expenses were expressly excluded from the total price of the SOW. Any such travel expenses must be pre-approved by the Authorized User and shall be reimbursable by such Authorized User at the then-current per diem amounts as published by the Virginia Department of Accounts <http://www.doa.virginia.gov>, or a successor URL(s)). Authorized User shall provide to Supplier written notice of Acceptance upon completion of successful Acceptance testing. Should Authorized User fail to provide Supplier written notice of successful or unsuccessful Acceptance testing within five (5) days following the Acceptance testing period, the Service shall be deemed Accepted.

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. Should Supplier fail 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.

6. WARRANTY AND MAINTENANCE SERVICES

At any time during the Solution 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 fifteen (15) days of Supplier's knowledge of such defect or malfunction and provide all Authorized Users with corrected copies of same.

B. New Releases

Provide to all Authorized Users no later than the first day of general release, copies of the Software and Documentation revised to reflect any enhancements, including all new releases,

upgrades, and access modes, to the Software made by Supplier, including, without limitation, modifications to the Software which can increase the speed, efficiency or base of operation of the Software or add additional capabilities to or otherwise improve the functionality of the Software.

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

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 severity (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

To be defined in the applicable Statement of Work.

G. Remedies

[Include a separate service level table to address response and restore time remedies for all important performance standards.]

If Supplier is unable to make the Solution or any component thereof conform, in all material respects, within thirty (30) 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 seven (7) 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

of ten percent (10%) of the Software license fee paid by any Authorized User for then current installed base. Supplier shall notify the Authorized User sixty (60) days prior to the expiration of the Maintenance Period, and the Authorized User, at its sole discretion, may renew Maintenance Services for 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, as defined in the Fees and Charges section, 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.

7. 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.

8. AUTHORIZED USER SELF-SUFFICIENCY

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

9. ESCROW AGREEMENT

This Section, "Escrow Agreement", shall only apply if mutually agreed upon by both parties, in writing, in the applicable Statement of Work.

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 G (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 Attachment A to the Escrow Agreement and include the most current version used by all Authorized Users of:

- i). the source code for the Software,
- ii). all Documentation related thereto as well as all necessary and available information, proprietary information in English, and

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

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

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

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



Exhibit D

Application Service Provider Additional Terms and Conditions

For

Contract No. VA-120413-CDTI

between

The Virginia Information Technologies Agency

on behalf of

The Commonwealth of Virginia

and

CyberData Technologies, Inc.

**EXHIBIT D
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EXHIBIT D
APPLICATION SERVICE PROVIDER
ADDITIONAL TERMS AND CONDITIONS

These additional terms and conditions for provision of Application Service Provider Solution are incorporated herewith under Contract No. VA-120413-CDTI between Virginia Information Technologies Agency (VITA) and Supplier.

1. PURPOSE

Any Application Service Provider Solutions provided by the Supplier is limited to payment processing as described in Exhibit A in support of Contract No. VA-120413-CDTI. This Exhibit ("Exhibit") sets forth additional terms and conditions under which Supplier shall provide access to and use of such Application via Supplier's hosting service ("Licensed Services") to VITA and Authorized Users.

2. DEFINITIONS

A. Application

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

B. Application Users

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

C. Content

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

D. Contract, the, this

Contract No. VA-120413-CDTI.

E. Licensed Services

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

F. Supplier Product

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

G. Update

As applicable, any update, modification or new release of the Application, Documentation or Supplier Product at no additional cost.

H. Web Site

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

3. DESCRIPTION OF LICENSED SERVICES

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

Authorized User will provide access rights for their Application that Supplier will use for the provision of Licensed Services in each individual SOW or applicable order issued pursuant to the Contract.

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

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

4. SUPPLIER RESPONSIBILITIES

A. Standard Application Responsibilities

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

- i). Supplier shall maintain sufficient hardware capacity to satisfy the technical requirements and the bandwidth and required storage capacity indicated in Exhibit A.
- ii). Supplier shall be responsible for all telecommunication connections from the server hosting the Application to the Internet.
- iii). Supplier may collect user-specific data only as necessary to provide the Licensed Services ordered by an Authorized User. No information regarding any Authorized User or any Application User shall be disclosed, provided, rented or sold to any third party for any reason unless required by law or regulation or by an order of a court of competent jurisdiction. This obligation shall extend beyond the term of the Contract.
- iv). The Application will be made available to Authorized User and designated Application Users, as specified in Exhibit A or any applicable order or SOW, twenty-four (24) hours a day, seven (7) days a week ("Uptime") less Excusable Downtime. For the purposes of this Contract, "Excusable Downtime" is defined as that period of time when the Licensed Services are not available to Authorized User or its Application Users due to scheduled network, hardware or service maintenance and/or upgrades. Except in cases of emergency, Authorized User shall be provided a two (2) business day advance notification of such maintenance and/or upgrade. In cases of emergency, Supplier will use its best efforts to notify Authorized User of a planned Downtime as soon as practicable. Maintenance or upgrades are not to exceed thirty-six (36) hours in duration in a single month and cannot occur Monday through Friday, between the hours of 6:00 a.m. and 8:00 p.m. Eastern Time.
- v). Excusable Downtime shall not include (i) an electronic hardware failure, (ii) a failure in the Supplier's Application, (iii) an electric utility failure at Supplier's facility where the Application is hosted, or (iv) a network failure up to, but not including, the interconnection point of Supplier's network to the public switched telephone network.

- vi). Supplier guarantees the Application will be available for use at least ninety-nine percent (99%) of the total time during each month, excluding Excusable Downtime.
- vii). If non-Excusable Downtime exceeds the parameters listed above, Supplier will credit to Authorized User the total recurring fees that would otherwise be owed by Authorized User under this Contract during the month of such failure. Such credit will be issued in the month immediately following the failure.
- viii). Supplier shall be required to back up Content on a daily basis and shall retain the backed-up Content on a separate and dedicated secure server located in the United States. Only Content supplied by or to an Authorized User may reside on such server. Authorized User reserves the right to request a copy of such back-up Content at any time.
- ix). Supplier shall be required to notify VITA in writing at least sixty (60) days prior to of any planned change(s) to the Licensed Services or Update(s); its functionality; Content storage/ backup/disaster recovery, including physical location; security architecture, features or settings; terminations and/or replacement of any Supplier subcontractor. The planned changes or Updates include any change(s) that would potentially impact the secure and efficient use of the Application, as understood and agreed to between Supplier and VITA at Contract award. The purpose of this notice is to allow sufficient time for Supplier and VITA to discuss any technical/functional considerations and/or changes that would require action by the Commonwealth.
- x). Supplier is responsible for documenting and maintaining any customizations made for operational use of the Application and/or for interoperability use with other systems or applications used by an Authorized User and paid for solely by Authorized User. The associated technical data, code, documentation and other necessary information about such customizations shall be provided by Supplier to Authorized User within ten (10) business days of the customizations' operational use. Supplier shall be required to routinely transfer knowledge regarding the Licensed Services, including Updates and all material changes, to Authorized users in a reasonable manner to ensure proper and efficient use of Application and Licensed Services without degrading performance thereof.

In addition, and at no additional cost to Authorized Users, Supplier shall provide access to additional Updates, features, and functionalities of the Licensed Services as are provided by Supplier to other customers of Supplier who require functionality similar to that of the Application provided to Authorized Users. All such additional features and functionality, where reasonably necessary, shall be accompanied by updated Documentation, whether in hard copy format or distributed electronically via email or the Supplier website. Notwithstanding the provisions of this Section and except as agreed to in writing by VITA and Supplier, nothing in the Contract shall oblige Supplier to undertake any modifications to the Application, and all such modifications are at Supplier's sole discretion whether or not suggested by an Authorized User or another party.

B. Ancillary Responsibilities

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

5. AUTHORIZED USER RESPONSIBILITIES

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

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

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

6. CONTENT PRIVACY AND SECURITY

Supplier shall provide a secure environment for Content and any hardware and software, including servers, network and data components, to be provided by Supplier as part of its performance under this Contract in accordance with Commonwealth of Virginia security policies, standards and guidelines found at: <http://www.vita.virginia.gov/library/default.aspx?id=537#securityPSGs> in order to prevent unauthorized access to and use or modification of, and to otherwise protect, the Application and Content. Supplier shall, at a minimum, implement the following procedures designed to protect the security of Content:

- i). User identification and access controls designed to limit access to Content to Application Users;
- ii). External connections to the World Wide Web which will have appropriate security controls including industry standard intrusion detection and countermeasures that will detect and terminate any unauthorized activity prior to entering the firewall maintained by Supplier;
- iii). Industry standard firewalls regulating all data entering Supplier's internal data network from any external source which will enforce secure connections between internal and external systems and will permit only specific types of data to pass through;
- iv). Industry standard encryption techniques which will be used when Content is transmitted by Supplier on behalf of Authorized User;
- v). Physical security measures, including securing all Content on a secure server, in locked data cabinets within a secure facility located within the United States. Access to facilities housing the Application and Content restricted to only allow access to personnel and agents of Supplier who have a need to know in connection with operation and support of the Application;
- vi). A backup of Content, for an orderly and timely recovery of such data in the event that the Licensed Services may be interrupted. Unless otherwise described in a Statement of Work, Service Provider shall maintain a backup of Content that can be recovered within two (2) hours at any point in time. Additionally, Service Provider shall store a backup of Customer Data in an off-site "hardened" facility, located within the United States no less than daily, maintaining the security of Customer Data, the security requirements of which are further described herein.
- vii). Supplier agrees to maintain all metadata associated with any original Content submitted into the Application by Authorized User for easy retrieval and access within two (2) hours at any point in time;
- viii). Supplier agrees to partition, in aggregate for this Contract, all Content submitted into the Application by an Authorized User in such a manner that it will not be impacted or forfeited due to E-discovery, search and seizure or other actions by third parties obtaining or attempting to obtain records, information or Content for reasons or activities that are not directly related to the business of the Authorized User.
- ix). Supplier agrees to maintain and follow a disaster recovery plan designed to maintain Application User access to the Application and Licensed Services, and to prevent the unintended destruction or loss of Content; and which plan, unless otherwise specified herein, shall provide for daily back-up of Content and archival of such Content at a secure

facility located within the United States. The disaster recovery plan shall provide for and be followed by Supplier such that in no event shall the Application, Licensed Services, Supplier Product and/or Content be unavailable to any Application User for a period in excess of twenty-four (24) hours;

- x). Supplier agrees that during the term of this Contract, Supplier will retain Authorized Users' Content for the full term of the Contract.
- xi). Supplier, and through Supplier, its employees, agents and subcontractors, shall immediately notify VITA, of any degradation, potential breach or breach of Content and Application privacy or security in any systems supporting the Licensed Services. Supplier shall provide VITA the opportunity to participate in the investigation of the reported situation and to exercise control over reporting the unauthorized disclosure, to the extent permitted by law.
- xii). Supplier shall be required to notify Authorized User in writing thirty (30) days prior to its intention to replace or add any third-party that will be provided access to Content whether that access is provided by Supplier or Supplier's subcontractors. Authorized User may reject any additional or new third parties who may be provided access to Content.
- xiii). Supplier shall, at all times, remain compliant with the privacy and security requirements mandated by federal, state and local laws and regulations.
- xiv). Supplier shall ensure performance of a SAS70 Type II audit at least once annually of Supplier's environment. Upon request from VITA (not more than once annually), Supplier shall provide VITA with a copy of Supplier's final SAS70 Type II audit report. Supplier shall also assist VITA in obtaining the current SAS70 Type II audit report from any third-party providing services to Supplier, if said third-party services involve the processing or storage of Authorized Users' Content.
- xv). Supplier's failure to comply with the provisions in items (i) through (xiv) shall constitute a breach of this Contract.
- xvi). Within fifteen (15) business days after the expiration or termination of this Contract, Supplier shall confirm in writing to Authorized User that all Content has been removed from all systems where the Content resided during performance of this Contract in a manner that complies with and/or exceeds the Commonwealth Data Removal standard located at the following .URL:
http://www.vita.virginia.gov/uploadedFiles/Library/PSGs/Data_Removal_Standard.pdf. The written confirmation shall include (i) sufficient detail describing the processes and procedures used in removing the Content, (ii) information about the locations of where it was removed from within the Application and storage and other locations, and (ii) the date the removals were performed. All metadata, in its original form, shall be returned to Authorized User(s).
- xvii). Authorized Users of the Contract agree to notify Supplier of any degradation, potential breach, or breach of the Content and Application privacy or security as soon as possible after discovery. Authorized Users further agree to provide Supplier the opportunity to participate in the investigation of the reported situation.
- xviii). Regular training for Supplier personnel regarding the security and data recovery programs referenced in this Section;
- xix). Regular testing of the systems and procedures outlined in this Section; and
- xx). Audit controls that record and monitor Application and Licensed Services activity continuously.

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

7. PROPRIETARY RIGHTS

A. Supplier's Proprietary Rights

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

B. Authorized User Requirements and Restrictions

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

- i). Authorized User will use commercially reasonable efforts to ensure that Application Users comply with all of the terms and conditions hereof.
- ii). Authorized User shall not reverse engineer, decompile, disassemble, or otherwise attempt to derive source code or other trade secrets from any of the Supplier Product or Licensed Services.
- iii). Authorized User shall not rent, lease, reproduce, sublicense, resell for profit, loan, distribute, network or modify Supplier Product or any component thereof, provided as part of the Licensed Services, except as otherwise authorized by Supplier in the applicable SOW or order.
- iv). Authorized User shall only use the Application and Supplier Product in the normal course of business, in connection with, and as part of, the Licensed Services.
- v). Authorized User shall not attempt to gain unauthorized access to the Application or Licensed Services, other user accounts, computer systems or networks connected to the Licensed Services;
- vi). Authorized User shall not remove, obscure or alter Supplier's proprietary notices, disclaimers, trademarks, or other proprietary rights notices of any kind affixed or contained in the Supplier Product or Licensed Services or any written or electronic report, output or result generated in connection with the Licensed Services;
- vii). Authorized User shall take reasonable care not to, and shall not intentionally or knowingly, use the Application to post, transmit, distribute, store or destroy any information: (i) in violation of any applicable law, statute, ordinance or regulation; (ii) in a manner that shall infringe the intellectual property rights of others; (iii) that is defamatory or trade libelous, or (iv) that contains any Computer Viruses.
- viii). Authorized User shall not use the Application or Licensed Services for any illegal, obscene, offensive or immoral purpose.

C. Authorized User Proprietary Rights

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

8. SCALABILITY

VITA may make a written request to increase or decrease the scope (e.g., number of USERIDs) of Licensed Services (“revised usage”) under a Statement of Work. The revised usage shall be effective not more than one (1) business hour following the request. Pricing for the revised usage of Licensed Services shall be calculated as provided in Exhibit B and shall be prorated on a daily basis for remaining portion of the current monthly billing period. For purposes of this provision, a written notice may include an e-mail or the use of a Supplier-provided provisioning website by VITA’s designated administrator.

9. TRANSITION ASSISTANCE

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

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

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

The obligations set forth in this section and in any Transition Plan developed pursuant to this Contract or any order or SOW issued pursuant to this Contract may extend beyond expiration or termination of the Contract for a period not to exceed six (6) months. In the event of a termination for breach and/or default of Supplier, Supplier shall perform such obligations at no charge or fee to VITA or any Authorized User; otherwise, Supplier shall perform such obligations at the hourly rate or a charge agreed upon by Supplier and VITA or an Authorized User.

10. COMMENCEMENT AND ACCEPTANCE OF LICENSED SERVICES

A. Licensed Services Commencement Date

The Supplier shall begin delivery of Licensed Services on the date requested by the Authorized User and agreed to by the Supplier in the Contract or, as applicable, any order or SOW issued pursuant to the Contract. An Authorized User may delay the Licensed Services commencement date by notifying the Supplier at least ten (10) days before the scheduled Licensed Services commencement date.

B. Acceptance

The Licensed Services shall be deemed accepted when the Authorized User reasonably determines that such Authorized User and its Application Users can successfully access and use all functionalities of the Application which Supplier is required to provide to such Authorized User and its Application Users. Such Authorized User agrees to complete Acceptance testing within thirty (30) days after receiving written notice from Supplier of the ability of such Authorized User and its Application Users to access the Application, or within such other period as set forth in the applicable order or SOW issued hereunder. After such period, unless Authorized User notifies

Supplier to the contrary, the Licensed Services shall be deemed accepted. Supplier agrees to provide to such Authorized User such assistance and advice as such Authorized User may reasonably require, at no additional cost, during such Acceptance testing, other than pre-approved travel expenses incurred which will be reimbursable by such Authorized User at the then current per diem amounts set forth by the Virginia Department of Accounts and published at: <http://www.doa.virginia.gov> or a successor URL(s). Authorized User shall provide to Supplier written notice of Acceptance upon completion of successful Acceptance testing. Should Authorized User fail to provide Supplier written notice of successful or unsuccessful Acceptance testing within five (5) days following the Acceptance testing period, the Service shall be deemed Accepted.

C. Cure Period

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

If the Authorized User and its Application Users are unable to access the required functionalities of the Application after a second set of acceptance tests, Supplier shall be deemed in default of the order. In the event of such default, the Authorized User may, at its sole discretion, terminate the Contract or the applicable order or SOW, in whole or in part, for the Licensed Services to be provided thereunder by Supplier.

11. RECORDS AND AUDIT

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

12. APPLICATION AND LICENSED SERVICES SUPPORT

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

A. Coverage

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

B. Service Levels

Within one (1) hour after a request from an Authorized User, Supplier will respond to such request for support of Licensed Services regarding the Application and Licensed Services, including Application, Supplier Product and Documentation in accordance with the procedures

identified below. In each case, Authorized User may describe the problem by telephone, facsimile or electronic mail or via a web site provided by Supplier. Supplier shall use its best efforts/commercially reasonable efforts to meet Response Time and Resolution Time and other obligations under this Contract.

Severity (Sample Problem)	Response Time	Resolution Time (Fix/work-around within)	Internal Escalation Procedure
1 (Application down)	1 hour	six (6) hours	Per SOW
2 (certain processing interrupted or malfunctioning but Application is able to process)	1 hour	twenty-four (24) hours	Per SOW
3 (minor intermittent malfunctioning, Application able to process data)	1 hour	three (3) days	Per SOW

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

13. SERVICE LEVELS AND REMEDIES

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

Service Level (Monthly)	Service Level Credit (Prorated Fees – Monthly)
Above 99%	0
98.99 – 97%	10%
96.99 – 95%	25%
94.99 – 93%	50%
Below 93%	100% and, at Authorized User’s sole discretion, termination of such Authorized User’s the Application and Licensed Services provided under the Contract, or as applicable, any order or SOW issued thereunder.

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

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

shall refund to Authorized User the amount of the appropriate Service Level Credit due for the period of default.

A. Reporting

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

B. Failure to Meet Service Level Commitments

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

C. Escalation Procedures

To be defined in the applicable Statement of Work.

14. ESCROW AGREEMENT

This Section, "Escrow Agreement", shall only apply if mutually agreed upon by both parties, in writing, in the applicable Statement of Work.

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

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

Supplier warrants that the Escrow Agreements provide or shall provide for, among other items, the release of the list of items on Attachment A of each Escrow Agreement upon the happening of certain events, including, but not limited to, Supplier's failure to carry out its support and maintenance obligations imposed by this Contract for a period of sixty (60) days, Supplier's breach or default under

this Contract, Supplier's bankruptcy, Supplier's failure to continue to do business in the ordinary course. Any Content Escrow Agreement shall also provide for the release of the escrowed items in the event the Authorized User's Content is destroyed, lost, or damaged or following the termination or expiration of Authorized User's order or SOW for Licensed Services, issued pursuant to the Contract. Supplier agrees to pay all expenses associated with establishing and maintaining the escrow accounts and the contents mentioned above.

Subject to the information and materials listed on Attachment A of the Content Escrow Agreement being released to the Commonwealth pursuant to the terms of the Content Escrow Agreement, which is an agreement supplementary hereto.

15. ACCEPTABLE USE POLICY (NOT APPLICABLE)

VITA and Authorized Users agree to abide by Supplier's Acceptable Use Policy (AUP), as amended by the parties hereby and incorporated as Exhibit XXXX. Because certain standard clauses that may appear in, or be incorporated by reference into, Supplier's standard AUP cannot be accepted by VITA, and in consideration of the convenience of using that form, and this form, without the necessity of specifically negotiating a separate contract document, the parties hereto specifically agree that:

- i. In the event of a conflict between this Contract and the AUP, the Contract shall control
- ii. In the event of a material, unilateral revision to the AUP by Supplier that substantially impairs the ability of VITA or any other public body from its lawful use of the Service, VITA shall have the option to:
 - a. request that the revision be rescinded;
 - b. request that the revision be waived as to VITA or other public bodies receiving Services under this Agreement;

If Supplier fails to grant a request by VITA per a. or b. above, within 30 days of receiving the request, then VITA may, at its option, terminate this Contract, in whole or in part, or any order, in whole or in part, without termination liability.

**EXHIBIT E STATEMENT OF WORK (SOW) TEMPLATE
BETWEEN (NAME OF AUTHORIZED USER) AND CYBERDATA TECHNOLOGIES, INC.**

ISSUED UNDER

**CONTRACT NUMBER VA-120413-CDTI
BETWEEN
VIRGINIA INFORMATION TECHNOLOGIES AGENCY
AND
CYBERDATA TECHNOLOGIES, INC.**

Exhibit E-X, between (Name of Agency/Institution) and CyberData Technologies, Inc. ("Supplier") is hereby incorporated into and made an integral part of Contract Number VA-120413-CDTI ("Contract") between the Virginia Information Technologies Agency ("VITA") on behalf of the Commonwealth of Virginia and Supplier.

In the event of any discrepancy between this Exhibit E-X and the Contract, the provisions of the Contract shall control.

*[Note to Template Users: Instructions for using this template to draft a Statement of Work are in gray highlight and **italics**. These instructions should be deleted after the appropriate text has been added to the Statement of Work. Contractual language is **not italicized** and should remain in the document. Text that is highlighted in **blue** is variable based on the nature of the project.]*

STATEMENT OF WORK

This Statement of Work (SOW) is issued by the (Name of Agency/Institution), hereinafter referred to as "Authorized User" under the provisions of the Contract. The objective of the project described in this SOW is for the Supplier to provide the Authorized User with a Solution ("Solution") or Services ("Services") or Software ("Software") or Hardware and Maintenance or Licensed Application Services for Authorized User Project Name. *(Customize the last sentence to state what you are getting from the Supplier, based on the VITA Contract language, and with your project name.)*

1. PERIOD OF PERFORMANCE

The work authorized in this SOW will occur within XX (XX) months of execution of this Statement of Work. This includes delivery, installation, implementation, integration, testing and acceptance all of products and services necessary to implement the Authorized User's Solution, training, and any support, other than on-going maintenance services. The period of performance for maintenance services shall be one (1) year after implementation or end of Warranty Period and may be extended for additional one (1) year periods, pursuant to and unless otherwise specified in the Contract. *(Customize this section to match what you are getting from the Supplier, based on the allowable scope of the VITA Contract and your project's specific needs within that allowable scope.)*

2. PLACE OF PERFORMANCE

(Assign performance locations to major milestones or any other project granularity, depending on your transparency and governance needs, if needed.)

Tasks associated with this project will be performed at the Authorized User's location(s) in City/State, at Supplier's location(s) in City/State, or other locations as required by the effort.

3. PROJECT DEFINITIONS

Provide project unique definitions so that all stakeholders have the same understanding. Ensure these do not conflict with the Contract definition.)

All definitions of the Contract shall apply to and take precedence over this SOW. Authorized User's specific project definitions are listed below:

4. PROJECT SCOPE

(Provide a description of the scope of your project and carve out what is NOT in the scope of your project. Remember that it must fit within the VITA Contract scope.)

A. General Description of the Project Scope**B. Project Boundaries****5. AUTHORIZED USER'S SPECIFIC REQUIREMENTS**

(Provide information about your project's and your agency's specific requirements for this particular project including, but not limited to the following subsections):

A. Authorized User-Specific Requirements**B. Special Considerations for Implementing Technology at Authorized User's Location(s)****C. Other Project Characteristics to Insure Success****6. CURRENT SITUATION**

(Provide enough background information to clearly state the current situation to Supplier so that Supplier cannot come back during performance claiming any unknowns or surprises. Some example subsections are provided below. You may collapse/expand as you feel is necessary to provide adequate information and detail.)

A. Background of Authorized User's Business Situation**B. Current Architecture and Operating System****C. Current Work Flow/Business Flow and Processes****D. Current Legacy Systems****E. Current System Dependencies****F. Current Infrastructure (Limitations, Restrictions)****G. Usage/Audience Information****7. PRODUCTS AND SERVICES TO SUPPORT THE PROJECT REQUIREMENTS (AND/OR SOLUTION)****A. Required Products (or Solution Components)**

(List the products, or if your project is for a Solution, the Solution components, (hardware, software, etc.) provided by Supplier that will be used to support your project requirements. Identify any special configuration requirements, and describe the system infrastructure to be provided by the Authorized User. Provide an overview that reflects how the system will be deployed within the Authorized User's environment. You are urged to refer to the VITA Contract for allowable scope and other guidance in drafting language for this section.)

B. Required Services

(List the services (e.g., requirements development, Solution design, configuration, interface design, data conversion, installation, implementation, testing, training, risk assessment, performance assessment, support and maintenance) that will be provided by Supplier in the performance of your project. You are urged to refer to the VITA Contract for the definition of Services and for the allowable scope in drafting language for this section. You will notice subsections "C" and "D" below offer areas for expanded detail on training, support and maintenance services. You may add other subsections in which you wish to expand the information/details/requirements for other service areas as well. It is likely some of this detail will be a combination of your known needs and the Supplier's proposal. In all cases the provisions should include all negotiated commitments by both parties, even if you reference by incorporation the Supplier's proposal in any subsection.)

C. Training Requirements and/or Authorized User Self-Sufficiency/Knowledge Transfer

(Provide an overview and details of training services to be provided for your project and any special requirements for specific knowledge transfer to support successful implementation of the Solution. If the intent is for the Authorized User to become self-sufficient in operating or maintaining the Solution, determine the type of training necessary, and develop a training plan, for such user self-sufficiency. Describe how the Supplier will complete knowledge transfer in the event this Statement of Work is not completed due to actions of Supplier or the non-appropriation of funds for completion affecting the Authorized User. You may refer to the VITA Contract for guidance on the allowable scope for this.)

D. Support and Maintenance Requirements

(Document the level of support, as available under the Contract, required by your project to operate and maintain the Solution. This may include conversion support, legacy system integration, transition assistance, Solution maintenance (including maintenance level), or other specialized consulting to facilitate delivery or use of the Solution.)

E. Personnel Requirements

(Provide any supplier personnel qualifications, requirements, licenses, certifications or restrictions including project manager, key personnel, subcontractors, etc., but ensure they do not conflict with the VITA Contract terms.)

F. Transition Phase-In/Phase-Out Requirements

(Describe any specific requirements for orientation or phasing in and/or phasing out of the project with the Supplier. Be specific on what the project needs and expected results are, the duration and other pertinent detail, but ensure they do not conflict with the VITA Contract provision(s) regarding Transition of Services or with any other training requirements in the SOW.)

8. TOTAL PROJECT PRICE

The total Fixed Price for this Project shall not exceed \$US XXX.

Supplier's invoices shall show retainage of ten percent (10%). Following completion of Solution implementation, Supplier shall submit a final invoice to the Authorized User, for the final milestone payment amount shown in the table in section 9 below, plus the total amount retained by the Authorized User. If travel expenses are not included in the fixed price of the Solution, such expenses shall be reimbursed in accordance with Commonwealth of Virginia travel policies as published by the Virginia Department of Accounts (<http://www.doa.virginia.gov>). In order to be reimbursed for travel expenses, Supplier must submit an estimate of such expenses to Authorized User for approval prior to incurring such expenses.

(Sections 9 through 11 should be used or deleted depending on the project's complexity, risk and need for governance. For a simple project you may only need the section 10 table, but for a more complex project, or a major IT project, you may need a combination of or all of the tables for check and balance and redundancy.)

9. PROJECT DELIVERABLES

(Provide a list of Supplier's deliverable expectations. The table is to be customized for the Authorized User's project. You may want to categorize deliverables for each phase or major milestone of the project and then categorize other interim deliverables and/or performance and status reports under one of them or under an Administrative or Project Management section.)

The following deliverables are to be provided by Supplier under this SOW. Subsequent sections may include further detail on the content requirements for some deliverables.

No.	Title	Due Date	Format Required (i.e., electronic/hard)	Distribution Recipients	Review Complete	Final Due Date
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			copy/CD/DVD		Due Date	
	Project Plan					
	Design Plan					
	Implementation Plan					
	Data Conversion Plan					
	Risk Assessment Plan					
	Test Plan					
	Training Plan					
	Performance Plan					
	Contingency Plan					
	Disaster Recovery Plan					
	Cutover Plan					
	Change Management Plan					
	Transition Plan					
	Monthly Status Reports					
	Quarterly Performance /SLA Reports					
	Training Manual					
	Final Solution Submission Letter					
	Final Acceptance Letter					

10. MILESTONES, DELIVERABLES, PAYMENT SCHEDULE, AND HOLDBACKS

(This table should include the project’s milestone events, associated deliverables, when due, milestone payments, any retainage amount to be held until final acceptance and the net payment you promise to pay for each completed and accepted milestone event. This table includes sample data only and must be customized for your project needs.)

The following table identifies milestone events and deliverables, the associated schedule, any associated payments, any retainage amounts, and net payments.

Milestone Event	Associated Milestone Deliverable(s)	Schedule	Payment	Retainage	Net Payment
Project kick-off meeting	---	Execution + 5 days	---	---	---
Site survey	Site survey report	Execution + 10 days	---	---	---
Requirements Analysis & Development	Design Plan	Execution+45 days	\$30,000	\$15,000	\$15,000
	Project Plan	Execution+45 days			
	Implementation	Execution + 45			

	Plan	days			
Begin Implementation		Execution + 60 days			
Data Conversion & Mapping		Execution + 90 days	\$10,000	\$3,000	\$7,000
Installation of software	---	Execution + 90 days	\$10,000	\$1,000	\$9,000
Installation of hardware	---	Execution + 90 days	\$10,000	\$1,000	\$9,000
Configuration and testing	---	Execution + 120 days	---	---	---
Training	Training manual	Execution + 130 days	\$10,000	\$1,000	\$9,000
30-Day User Acceptance Testing	---	Execution + 160 days	\$20,000	\$2,000	\$18,000
Implementation complete	Solution	Execution + 160 days	\$10,000	--	\$10,000
Final Acceptance		Execution + 210 days	--	--	\$23,000

11. EVENTS AND TASKS FOR EACH MILESTONE

(If needed, provide a table of detailed project events and tasks to be accomplished to deliver the required milestones and deliverables for the complete Solution. Reference each with the relevant milestone. A Work Breakdown Structure can be used as shown in the table below or at the very least a Project Plan should have this granularity. The Supplier's proposal should be tailored to the level of detail desired by the Authorized User's business owner/project manager for project governance.)

The following table identifies project milestone events and deliverables in a Work Breakdown Structure format.

WBS No.	Milestone	Milestone Event	Milestone Task	Interim Task Deliverables	Duration
1.0	Site survey				
1.1		Conduct interviews			
1.1.1			Schedule interviews	None	20 days after contract start
1.1.2			Complete interviews	Interview Results Report	25 days after contract start
1.2		Receive AU information			

12. ACCEPTANCE CRITERIA

(This section should reflect the mutually agreed upon UAT and Acceptance Criteria specific to this engagement. Please read the VITA contract definitions for the definitions or Requirements and Acceptance. Ensure the language in this section does not conflict with the VITA Contract language.)

Acceptance Criteria for this Solution will be based on a User Acceptance Test (UAT) designed by Supplier and accepted by the Authorized User. The UAT will ensure that all of the requirements and functionality required for the Solution have been successfully delivered. Supplier will provide the Authorized User with a detailed test plan and acceptance check list based on the mutually agreed upon UAT Plan. This UAT Plan check-list is incorporated into this SOW in Exhibit B-X.

Each deliverable created under this Statement of Work will be delivered to the Authorized User with a Deliverable Acceptance Receipt. This receipt will describe the deliverable and provide the Authorized User's Project Manager with space to indicate if the deliverable is accepted, rejected, or conditionally accepted. Conditionally Accepted deliverables will contain a list of deficiencies that need to be corrected in order for the deliverable to be accepted by the Project Manager. The Project Manager will have **ten (10)** days from receipt of the deliverable to provide Supplier with the signed Acceptance Receipt unless an alternative schedule is mutually agreed to between Supplier and the Authorized User in advance.

13. PROJECT ASSUMPTIONS AND PROJECT ROLES AND RESPONSIBILITIES

(This section contains areas to address project assumptions by both the Supplier and the Authorized User and to assign project-specific roles and responsibilities between the parties. Make sure that all assumptions are included to alleviate surprises during the project. Ensure that all primary and secondary (as needed) roles and responsibilities are included. You will tailor the Responsibility Matrix table below to fit your project's needs.)

A. Project Assumptions

The following assumptions are specific to this project:

B. Project Roles and Responsibilities

The following roles and responsibilities have been defined for this project:

(Sample Responsibility Matrix)

Responsibility Matrix	Supplier	Authorized User
Infrastructure – Preparing the system infrastructure that meets the recommended configuration defined in Section 2B herein		√
Server Hardware		√
Server Operating		√
Server Network Connectivity		√
Relational Database Management Software (Installation and Implementation)		√
Server Modules – Installation and Implementation	√	
PC Workstations – Hardware, Operating System, Network Connectivity		√
PC Workstations – Client Software		√
Application Installation on PC Workstations	√	
Wireless Network Access Points	√	
Cabling, Electric and User Network Connectivity from Access Points		√
Wireless Mobile Computing Products – Scanners, printers	√	
Project Planning and Management	√	√
Requirements Analysis	√	√
Application Design and Implementation	√	
Product Installation, Implementation and Testing	√	
Conversion Support	√	
Conversion Support -- Subject Matter Expertise		√
Documentation	√	
Training	√	
Product Maintenance and Support	√	

Problem Tracking	√	√
Troubleshooting – IT Infrastructure		√
Troubleshooting – Solution	√	

14. COMMONWEALTH AND SUPPLIER-FURNISHED MATERIALS, EQUIPMENT, FACILITIES AND PROPERTY

(In this section, provide details of any materials, equipment, facilities and property to be provided by your Agency or the Supplier in performance of this project. If none, so state so that the requirements are clear. If delivery of any of these is critical to the schedule, you may want to identify such delivery with hard due dates tied to “business days after project start” or “days after event/milestone.” Be sure to specify the delivery and point of contact information.)

A. PROVIDED BY THE COMMONWEALTH

B. PROVIDED BY THE SUPPLIER

15. SECURITY REQUIREMENTS

(Provide (or reference as an Attachment) Authorized User’s security requirements.)

For any individual Authorized User location, security procedures may include but not be limited to: background checks, records verification, photographing, and fingerprinting of Supplier’s employees or agents. Supplier may, at any time, be required to execute and complete, for each individual Supplier employee or agent, additional forms which may include non-disclosure agreements to be signed by Supplier’s employees or agents acknowledging that all Authorized User information with which such employees and agents come into contact while at the Authorized User site is confidential and proprietary. Any unauthorized release of proprietary information by the Supplier or an employee or agent of Supplier shall constitute a breach of the Contract.

Supplier shall comply with all requirements in the Security Compliance section of the Contract

16. REQUIRED STANDARDS, CERTIFICATIONS AND SPECIFICATIONS

In addition to any standards and specifications included in the Contract, Supplier shall follow the standards and specifications listed below during performance of this effort.

(List any specific Commonwealth, VITA, Federal, engineering, trade/industry or professional standards, certifications and specifications that Supplier is required to follow or possess in performing this work. The first bullet includes a link to COVA-required standards for all Commonwealth technology projects. The rest are examples only and highlighted to reflect this. If you need an exception of any COVA-required standard, please follow the process located at this link: <http://www.vita.virginia.gov/oversight/default.aspx?id=10344> and select the Data Standards Guidance bulleted link. Your AITR can assist you.

- COV ITRM Policies and Standards: <http://www.vita.virginia.gov/library/default.aspx?id=537>
- IEEE 802®
- HIPAA
- SAS 70 Type II

17. U.S. ENVIRONMENTAL PROTECTION AGENCY’S AND DEPARTMENT OF ENERGY’S ENERGY STAR GUIDELINES RISK MANAGEMENT

(Risk is a function of the probability of an event occurring and the impact of the negative effects if it does occur. Negative effects include schedule delay, increased costs, failure of dependent legacy system interoperability, other project dependencies that don’t align with this project’s schedule, and poor quality of deliverables. Depending on the level of risk of this project, as assessed by your Project

Manager and/or Steering Committee, this section may contain any or all of the following components, at a level of detail commensurate with the level of risk. Remember to add them to the Deliverables table.)

C. Initial Risk Assessment

Authorized User and Supplier shall each provide an initial assessment from their point of view.

D. Risk Management Strategy

(The list below is taken from VITA PMD template discussing what should go into a Risk Management Strategy. Don't forget to consider and plan for any budget contingencies to accommodate potential risks that are identified.)

1. **Risk Identification Process:** The processes for risk identification.
2. **Risk Evaluation and Prioritization:** How risks are evaluated and prioritized.
3. **Risk Mitigation Options:** Describe the risk mitigation options. They must be realistic and available to the project team.
4. **Risk Plan Maintenance:** Describe how the risk plan is maintained during the project lifecycle.
5. **Risk Management Responsibilities:** Identify all project team members with specific risk management responsibilities. (e.g., an individual responsible for updating the plan or an individual assigned as a manager).

E. Risk Management Plan

(Include a description of frequency and form of reviews, project team responsibilities, steering and oversight committee responsibilities and documentation. Be sure to add all deliverables associated with risk strategizing and planning to the list of Deliverables.)

18. DISASTER RECOVERY

Planning for disaster recovery for your project is paramount to ensure continuity of service. The criticalness and complexity of your project, including its workflow into other dependent systems of the Commonwealth or federal systems, will help you determine if you require a simple contingency plan or a full-blow contingency plan that follows the Commonwealth's ITRM Guideline SEC508-00 found at this link:

http://www.vita.virginia.gov/uploadedFiles/Library/ContingencyPlanningGuideline04_18_2007.pdf

It is advisable that you visit the link before making your decision on how you need to address contingency planning and related deliverables in this SOW; as well as, how this will impact your planned budget. A likely deliverable for this section would be a Continuity of Operations Plan. You may choose to include the above link in your final SOW to describe what the Plan will entail. The same link includes the following processes, which you may choose to list in your final requirements for this section, to be performed by your team, the Supplier or both and/or a steering committee if your project warrants such oversight and approval:

- *Development of the IT components of the Continuity of Operations Plan (COOP)*
- *Development and exercise of the IT Disaster Recovery Plan (IT DRP) within the COOP*
- *Development and exercise of the IT System Backup and Restoration Plan*

19. PERFORMANCE BOND

(If your project is sizeable, complex and/or critical, and the VITA Contract does not already provide for a performance bond, you may want the Supplier to provide one. The VITA Contract may include an Errors and Omissions insurance requirement, which would cover the Supplier's liability for any breach of the Contract or this SOW. Be sure to read the Contract for this information. However, if you feel that this project warrants further performance incentive due to the project or the Supplier's viability, you may include the following language in this section.)

The Supplier shall post performance bond in an amount equal to one hundred percent (100%) of the total contract value and provide a copy of the bond to Authorized user 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 Authorized User, the performance bond shall be forfeited to Authorized User. 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 Authorized User.

20. OTHER TECHNICAL/FUNCTIONAL REQUIREMENTS

(Provide any other unique project technical and functional requirements and expectations in sufficient detail in this section. Ensure they do not conflict with existing requirements in the VITA Contract. Several examples are listed.)

A. Service Level Requirements

B. Mean-Time-Between-Failure Requirements

C. Data Access/Retrieval Requirements

D. Additional Warranties

21. REPORTING

(The following are examples of reporting requirements which may be included in your SOW depending on the project's need for governance. In an effort to help VITA monitor Supplier performance, it is strongly recommended that the SOW include "Supplier Performance Assessments". These assessments may be performed at the Project Manager's discretion and are not mandated by VITA.)

A. Weekly/Bi-weekly Status Update.

The weekly/bi-weekly status report, to be submitted by Supplier to the Authorized User, should include: accomplishments to date as compared to the project plan; any changes in tasks, resources or schedule with new target dates, if necessary; all open issues or questions regarding the project; action plan for addressing open issues or questions and potential impacts on the project; risk management reporting.

B. Supplier Performance Self-Assessment.

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

C. Performance Auditing

(If you have included service level requirements in the above section entitled, Other Technical/Functional Requirements, you will want to include a requirement here for your ability to audit the results of the Supplier's fulfillment of all requirements, Likewise, you may want to include your validation audit of the Supplier's performance reporting under this Reporting section. It is important, however, that you read the VITA contract prior to developing this section's content so that conflicts are avoided. Suggested language is provided below, but must be customized for your project.)

Authorized User (or name of IV&V contractor, if there is one), will audit the results of Supplier's service level obligations and performance requirements on a monthly/quarterly basis, within ten (10) days of receipt of Supplier's self-assessments and service report(s). Any discrepancies will be discussed between the Authorized User and Supplier and any necessary invoice/payment adjustments will be made. If agreement cannot be reached, the Authorized User and Supplier will

escalate the matter in accordance with the Escalation provision of the Contract. (If none, you may add your escalation procedure in this section.)

D. Supplier Performance Assessments

(You may want to develop assessments of the Supplier's performance and disseminate such assessments to other Authorized Users of the VITA 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.)

22. CHANGE MANAGEMENT

(Changes to the baseline SOW must be documented for proper project oversight. Depending on your project, you may need to manage and capture changes to configuration, incidents, deliverables, schedule, price or other factors your team designates as critical. Any price changes must be done in compliance with the Code of Virginia, § 2.2-4309. Modification of the contract, found at this link: <http://leg1.state.va.us/cgi-bin/legp504.exe?000+coh+2.2-4309+500825>. Changes to the scope of this SOW must stay within the boundaries of the scope of the VITA Contract.

For complex and/or major projects, it is recommended that you use the VITA PMD processes and templates located at: <http://www.vita.virginia.gov/oversight/projects/default.aspx?id=567>.

Administrative or non-technical/functional changes (deliverables, schedule, point of contact, reporting, etc.) should extrapolate the affected sections of this SOW in a "from/to" format and be placed in a numbered modification letter referencing this SOW and date, with a new effective date. The VITA Contract may include a template for your use or you may obtain one from the VITA Contract's Point of Contact. It is very important that changes do not conflict with, but do comply with, the VITA Contract, which takes precedence. The following language may be included in this section, but additional language is needed to list any technical/functional change management areas specific to this SOW; i.e., configuration, incident, work flow, or any others of a technical/functional nature.)

All changes to this SOW must comply with the Contract. Price changes must comply with the Code of Virginia, § 2.2-4309. Modification of the contract, found at this link: <http://leg1.state.va.us/cgi-bin/legp504.exe?000+coh+2.2-4309+500825>

All changes to this SOW shall be in written form and fully executed between the Authorized User's and the Supplier's authorized representatives. For administrative changes, the parties agree to use the change template, attached to this SOW. For technical/functional change management requirements, listed below, the parties agree to follow the processes and use the templates provided at this link: <http://www.vita.virginia.gov/oversight/projects/default.aspx?id=567>

23. POINT OF CONTACT

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

Authorized User: _____

Supplier: _____

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

Supplier:

Authorized User:

(Name of Supplier)

(Name of Agency/Institution)

By: _____

By: _____

(Signature)

(Signature)

Name: _____
(Print)

Title: _____

Date: _____

Name: _____
(Print)

Title: _____

Date: _____

Template

EXHIBIT F to Contract VA-120413-CDTI

Change Order No. XXX for Statement of Work E-X
Between (NAME OF AGENCY/INSTITUTION) and CyberData Technologies, Inc.

Issued Under
CONTRACT NUMBER VA-120413-CDTI
BETWEEN
VIRGINIA INFORMATION TECHNOLOGIES AGENCY
AND
CYBERDATA TECHNOLOGIES, INC.

This Change Order No. XXX hereby modifies and is made an integral part of Statement of Work E-X (“SOW”), between NAME OF AGENCY/INSTITUTION (“Authorized User”) and CyberData Technologies, Inc., (“Supplier”), which was issued under Contract Number VA-120413-CDTI (“Contract”) between the Virginia Information Technologies Agency (“VITA”) and Supplier, on behalf of the Commonwealth of Virginia and its Authorized Users.

[Note: Instructions for using this template to draft a Change Order are in gray. These instructions should be deleted after the appropriate text has been added to the Change Order. Contractual language is not in gray and should remain in the document. Text that is highlighted in blue is contractual language that is variable based on the nature of the project and in final form should not be highlighted. Agency/Institution should remove the first two lines of the heading, which pertain to this template as an Exhibit to the VITA Contract and remove the Exhibit reference from the header.]

CHANGE ORDER

This is Change Order No. XXX to a SOW issued by Authorized User to Supplier under which Supplier is to provide the Authorized User with a Authorized User Project Name Solution (“Solution”).

The following item(s) is/are hereby modified as follows: *[Note: Include only the sections of the SOW that are being changed. Do not include sections not being modified. Changes should be clearly identified as “From” (copy/paste from current SOW section) and “To” (fully describe the change(s) to the referenced section). Here is an example, using SOW section 1.]*

1. PERIOD OF PERFORMANCE

The following change is made to the Period of Performance:

[The duration of the Period of Performance is increased by four (4) months.]

The following is changed with respect to the Period of Performance:

From: twelve (12) months of execution of this Statement of Work

To: sixteen (16) months of execution of this Statement of Work

This Change Order No. XXX is issued pursuant to and, upon execution, shall become incorporated in the SOW, which is incorporated in the Contract. In the event of conflict, the following order of precedence shall apply:

- i). The Contract

- ii). Statement of Work E-X, as amended by this and previous Change Orders, with the more current Change Orders superseding older Change Orders.

The foregoing is the complete and final expression of the agreement between the parties to modify the SOW and cannot be modified, except by a writing signed by duly authorized representatives of both parties hereto.

ALL OTHER TERMS AND CONDITIONS OF THE REFERENCED SOW REMAIN UNCHANGED.

By signing below, the authorized parties agree to the terms of this Change Order No. XXX, effective (INSERT EFFECTIVE DATE).

Supplier

By: _____

(Signature)

Name: _____

(Print)

Title: _____

Date: _____

Authorized User

By: _____

(Signature)

Name: _____

(Print)

Title: _____

Date: _____

EXHIBIT K: CERTIFICATION REGARDING LOBBYING

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

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

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

Signature: _____



Printed Name: _____

Amy Liu

Organization: _____

CyberData Technologies, Inc.

Date: _____

April 11, 2012