Commonwealth of Virginia
Virginia Information Technologies Agency

HOSTING SERVICES SOFTWARE AS A SERVICE

Optional Use

Date:	February 25, 2016
Contract #:	VA-120416-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 Cell: 703-203-7573 Email: jeremy.miller@cyberdatainc.com
Term:	April 16, 2016 – April 15, 2017
Payment:	Net 30 days

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

Jimmy MacKenzie
Phone: 804-416-6247
E-Mail: james.mackenzie@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.

VA-120416-CYDA
CONTRACT CHANGE LOG

Change No.	Description of Change	Effective Date
1	Updates Supplier's contact info	06/21/12
2	Additional pricing was added to the contract.	09/26/12
3	Updates Supplier's contact info	05/09/13
4	Updates Supplier's contact info	11/25/13
5	Mod 1 adds clauses to clarify/define certain terminology used in the contract	09/02/14
6	Extends contract term	04/16/15
7	Updates Supplier's contact info	06/16/15
8	Extends contract term	04/16/16

COMMONWEALTH of VIRGINIA

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

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

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-120416-CYDA, The Virginia Information Technologies Agency has elected to exercise its option to renew the contract for one year, from April 16, 2016 through April 15, 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
11751 Meadowville Lane
Chester, Virginia 23836-6315
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Eric R. Link
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Email: cio@vita.virginia.gov

TDD VOICE -TEL. NO.
711

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-120416-CYDA, The Virginia Information Technologies Agency has elected to exercise its option to renew the contract for one year, from April 16, 2015 through April 15, 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. 1
TO
CONTRACT NUMBER VA-120416-CYDA
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
CYBERDATA TECHNOLOGIES, INC

This MODIFICATION No. 1 is hereby incorporated into and made an integral part of Contract VA-120416-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 E on Contract Page 5.
   "Authorized Users include private institutions of higher education chartered in Virginia and granted tax-exempt status under 501 C (3) of the Internal Revenue Code. A list of the private institutions eligible to use this contract can be found at http://www.cicv.org/our-Colleges/Profiles.aspX

2. Add to the definition of "Description of Licensed Services" in Section 4 on Contract Pages 8-9.
   "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."*

3. Add to definition of "Acceptance" in Section 10 Subsection B on Contract Page 14; "Statement of Work (SOW)" in Section 17 Subsection C on Contract Page 21.
   "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 22 Subsection A on Contract Pages 24-25.
   "In the event of a settlement between Supplier and privative institution of higher education who is an Authorized User of this contract, the settlement shall be satisfactory to such institution."

5. Add to the definition of "Dispute Resolution" in Section 29 Subsection E on Contract Page 28.
   "In the event of any breach by a public body *or a private institution,* Supplier's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section. In no event shall Supplier's remedies include to the right to terminate any license or support services hereunder."

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-120416-CYDA by this Modification No. 1.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

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

NAME OF SUPPLIER	COMMONWEALTH OF VIRGINIA
BY: CyberData Technologies, INC	BY: Doug Crenshaw
NAME: Yiran Guan	NAME: Doug Crenshaw
TITLE: IT Project Coordinator	TITLE: VITA Sourcing Mgr
DATE: July 9, 2014	DATE: 9/2/14

Hosting Services
Software as a Service Contract

between

The Virginia Information Technologies Agency

on behalf of

The Commonwealth of Virginia

and

CyberData Technologies, Inc.

SOFTWARE AS A SERVICE CONTRACT
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HOSTING SERVICES SOFTWARE AS A SERVICE CONTRACT

THIS HOSTING SERVICES SOFTWARE AS A SERVICE 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, Virginia 20170 to be effective as of April 16, 2012 (Effective Date).

1. PURPOSE

This Contract sets forth the terms and conditions under which Supplier agrees to provide the Licensed Services, including access to the Application(s), and any related products and services to the Authorized Users and to any Application Users as required by such Authorized Users.

2. DEFINITIONS

A. Acceptance

Successful performance of the 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

The 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.

D. 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.

E. Authorized Users

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

F. 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.

G. 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.

H. 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. Any information provided by an Application User which type of information is designated by the Authorized User as "Confidential" or "Proprietary" or which information is otherwise reasonably identifiable as the confidential or proprietary information of the Application User providing such information.

I. Content
Any data, including the selection, arrangement and organization of such information or 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.

J. Documentation
The Supplier's user manuals, training materials, guides, product descriptions, technical manuals, product specifications, supporting materials and Updates describing the Application, Licensed Services and Supplier Product provided to Authorized User, in printed and/or electronic form.

K. 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.

L. 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.

M. Party
Supplier, VITA, or any Authorized User.

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

O. Statement of Work (SOW)
Any document in substantially the form of Exhibit D (describing the deliverables, due dates, assignment duration and payment obligations for a specific project, engagement, or assignment for which Supplier shall be providing the 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. Supplier Product
Supplier's proprietary reports, information and data made available to Authorized User and its Application Users as part of the Licensed Services.

R. Update
As applicable, any update, modification or new release of the Application, Documentation or Supplier Product that Supplier makes generally available to its customers at no additional cost. Updates do not include minor patches or fixes.

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

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 may, in its sole discretion, extend this Contract for up to two 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 Supplier has completely rendered the Licensed Services pursuant to such order or SOW.

B. Scalability

VITA or an Authorized User 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 receipt of 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 the remaining portion of the current monthly billing period. For purposes of this provision, a written notice to increase or decrease the scope may include an e-mail or the use of a Supplier-provided provisioning website by an Authorized User's designated administrator.

C. 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. In addition, VITA may immediately terminate this Contract, in whole or in part, or any order issued hereunder, if Supplier becomes a party excluded from Federal Procurement and Non-procurement Programs. VITA shall provide written notice to Supplier of such termination, and Supplier shall provide prompt written notice to VITA if federal debarment proceedings are instituted against Supplier. Supplier shall submit for resolution any contractual dispute or order dispute to VITA, or any dispute regarding an order terminated by an Authorized User to such Authorized User, according to the terms of the Dispute Resolution Section of this Contract.

D. 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 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 Non-procurement Programs, VITA may immediately terminate this Contract, in whole or in part, for breach. VITA shall provide written notice to Supplier of such termination, and Supplier shall provide prompt written notice to VITA if Supplier is charged with violation of 31 USC 1352 or if federal debarment proceedings are instituted against Supplier.

E. 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.

Termination by Supplier will not be considered.

F. Effect of Termination

Upon termination, neither the Commonwealth, nor VITA, nor any Authorized User shall have any future liability except for Licensed Services rendered or Application components delivered by Supplier 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 products or software provided to the affected Authorized User(s), and Supplier shall refund any monies paid by any affected Authorized User for Licensed Services not accepted by such Authorized User pursuant to the Contract, order, SOW, or portion thereof terminated for breach and/or default. All costs of de-installation and return of product or software shall be borne by Supplier.

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. DESCRIPTION OF LICENSED SERVICES

During the term of 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 in such order 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.

Supplier has acquired any and all license rights in the Application(s) necessary and appropriate for Supplier to provide the Licensed Services as listed and described in Exhibit A for all Authorized Users. Supplier hereby grants each ordering Authorized User and its Application Users a non-exclusive, transferable, worldwide license to access and use by any method the Application during the term of the applicable order or SOW issued pursuant to this Contract. The license fee for the rights shall be as set forth in Exhibit B, and shall apply regardless of access mode.

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, and irrespective of whether any such provisions have been proposed prior to or after the issuance of an order 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.

5. 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/or designated Application Users, as specified in the applicable 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 notify VITA in writing at least sixty (60) days prior to of any planned change(s) or Update(s) to the Application; 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 the time of 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.

ix). 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. Suppler shall be required to routinely transfer knowledge regarding the Application and 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.

x). Add any additional, project specific Supplier Standard Application responsibilities;

In addition, and at no additional cost to Authorized Users, Supplier shall provide access to additional Updates, features, and functionalities of the Application 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 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 Application; (ii) develop modifications to the Application as agreed by VITA and Supplier in any exhibit hereto or as agreed in any order issued hereunder; and (iii) otherwise support the Application as provided under this Contract and any exhibits hereto or as agreed in any order issued hereunder.

C. Subcontractors

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 and agrees that it is fully responsible for all acts and omissions of its subcontractors, including their gross negligence or willful misconduct.

If an order or SOW issued pursuant to this Contract is supported in whole or in part with federal funds, Supplier shall not subcontract any Services pursuant to such order or SOW to any subcontractor that is a party excluded from Federal Procurement and Non-procurement Programs. In no event shall Supplier subcontract with 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.

6. 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 Supplier's 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 USERIDs 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 USERIDs at its sole discretion, subject to providing written request to the Supplier, as provided under 3.B. Authorized User shall designate Administrators who will be authorized to add, change access for or delete USERIDs.

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.

7. CONTENT PRIVACY AND SECURITY

Supplier shall provide a secure environment for Content and any hardware and software, including servers, network and data components provided by Supplier as part of its performance under this Contract. Supplier shall provide a secure environment for Content and any hardware and software in accordance with VITA's Security Standards located 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 protect, the Application and Content. Supplier agrees that all Content of Authorized Users is intended solely for the business of the Authorized Users and is considered private data. Therefore, Supplier shall, at a minimum, implement the following procedures designed to protect the privacy and 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 an 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 uninterrupted 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 Authorized User, 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 each Authorized User and VITA 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 the respective Authorized User(s).

xvii). Authorized Users of this 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.

8. PROPRIETARY RIGHTS

A. Supplier's Proprietary Rights

Except as otherwise stated herein, the Licensed Services (including without limitation, the Application and Updates, and Supplier Product, except to the extent that Supplier Product

contains Content) and Documentation are 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.

B. Authorized User Requirements and License 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 software comprising or in any way making up a part of the Application.

iii). Authorized User shall not directly or indirectly copy or reproduce all or any part of the Application, whether electronically, mechanically or otherwise, in any form including, but not limited to, the copying of presentation, style or organization, without prior written permission from Supplier; provided, however, an Authorized User may reproduce and distribute any Application output generated from the relevant Authorized User Content, and an Application User may reproduce and distribute any Application output generated pursuant to the permissions set forth in the applicable Authorized User's order.

iv). Authorized User shall not rent, lease, sublicense, resell for profit, loan, distribute, network or modify the Application or Supplier Product or any component thereof, provided as part of the Licensed Services, except as otherwise authorized by Supplier. However, an Authorized User may reproduce and distribute any Application output (e.g., reports) generated by Authorized User using the Application, and an Application User may reproduce and distribute any reports or output generated by the Application User using the Application and pursuant to the permissions in the applicable Authorized User's order.

v). 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.

vi). 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;

vii). 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 Application or Licensed Services or any written or electronic report, output or result generated in connection with the Licensed Services;

viii). 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.

ix). 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 User's systems or applications paid for by the 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 customizations to Supplier. Upon termination of an order issued hereunder, Supplier agrees to either provide the Content and customizations to the applicable Authorized User, or, at such Authorized User's request, certify in writing that said Content and customizations in all formats, have been destroyed.

9. TRANSITION ASSISTANCE

Upon execution of an order or SOW pursuant to this Contract, Supplier and Authorized User will develop a transition plan ("Transition Plan") detailing each Party's respective tasks for 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 agreed in writing by Authorized User and Supplier, (ii) the Application and Licensed Services to Authorized User or a third party service provider when such transition and migration to occur upon termination or expiration of the Contract or the 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 Supplier's Application. In addition, Supplier will, at Authorized User's option, continue to provide Licensed Services for up to six (6) months after the date of expiration or termination of such order or SOW in order to facilitate Authorized User's transition to a new service provider. Supplier shall also 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 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 an order or SOW issued hereunder 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 all transition 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 an order or applicable SOW. 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 Application 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 Users. Such Authorized User agrees to complete Acceptance testing within ten (10) business 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. 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 five (5) business 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 Application in its entirety and recover amounts previously paid to Supplier 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 licensed 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 its order, in whole or in part, for the Licensed Services to be provided thereunder by Supplier and recover all amounts previously paid to 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 any order or SOW issued pursuant to this Contract. The records will be to the extent and in such detail as will properly reflect all direct and indirect costs associated with such order. 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 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 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)		Example; six (6) hours	
2 (certain processing interrupted or malfunctioning but Application is able to process)		Example; twenty-four (24) hours	

3 (minor intermittent malfunctioning, Application able to process data)		Example; three (3) days	

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

C. Application Evolution

Should Supplier merge or splinter the Application previously provided to any Authorized User, such action on the part of Supplier shall not in any way result in any Authorized User being charged additional license or support fees in order to access the Application, to enable its Application Users to access the Application, or to receive enhancements, releases, upgrades or support for the Application.

13. SERVICE LEVELS AND REMEDIES

A. Availability

Supplier's failure to make the 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 order, 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%	5%
96.99 – 95%	10%
94.99 – 93%	15%
Below 93%	100% and, at Authorized User's sole discretion, termination of such Authorized User's order without further liability

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 or SOW 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 or SOW.

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 the Application and 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.

B. Provisioning

Incremental adds, moves or reductions in the scope of the Licensed Service (e.g., USERIDs), shall be completed within one (1) business hour of a written request (including e-mail or submission to Supplier's provisioning website) from an Authorized User's designated Administrator. In the event that provisioning is not made available within one (1) business hour of the request, a credit for the incremental amount of the revision shall be applied against the next invoice for 1/30th of the corresponding pro-rated amount.

C. Reporting

Once each calendar month during the term of an order or SOW issued pursuant to this 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. Such report, unless otherwise agreed upon by the Parties, shall be 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 either Party, but no less often than once each calendar quarter, 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. Authorized User may independently audit the report at its expense no more than two (2) times annually.

D. Failure to Meet Service Level Commitments

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

E. Escalation Procedures

To be provided by Supplier

14. ESCROW AGREEMENT

To be provided by Supplier

Supplier shall maintain copies of all Application source code and related technical and user Documentation, in English, in an escrow account, and shall maintain with escrow agent the executed agreement attached hereto as Exhibit C-1 (Application Escrow Agreement). 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 C-2. VITA acknowledges that, prior to the Effective Date of this Contract, VITA has received a copy of the executed Application Escrow Agreement naming the Commonwealth of Virginia as a third party beneficiary. VITA has reviewed Application Escrow Agreement to ensure that it does not impose upon the Commonwealth any requirements other than administrative responsibilities necessary for the operation of the Application 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 the Commonwealth pursuant to the Application Escrow Agreement are specifically identified and listed in Attachment A and include the most current version used by all Authorized Users of:

i). the source code for the Application 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 Agent of VITA to create, maintain and/or enhance the Application 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 continue to use the Application.

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 due to:

i. Supplier's breach or default under this Contract,

ii. Supplier's bankruptcy,

iii. 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 for Licensed Services. 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 Application Escrow Agreement being released to the Commonwealth pursuant to the terms of the Application 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 Application 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 Application 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 Application escrow agreement. Subject to the information and materials listed in such Application 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 Application licensed to such Authorized User, along with all related documentation.

15. GENERAL WARRANTY

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

A. Ownership

Supplier has the right to provide the Licensed Services, including access by any Authorized User and its Application Users, without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party.

B. Licensed Services, Application, and Documentation

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

i). The Application is pursuant to a particular Request for Proposal ("RFP"), and therefore such Application shall be fit for the particular purposes specified by VITA in the RFP and in this Contract. Supplier is possessed of superior knowledge with respect to the Application and is aware that all Authorized Users are relying on Supplier's skill and judgment in providing the Licensed Services, including 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 Application and Licensed Services will conform in all material respects to the Requirements set forth in this Contract and any order or SOW issued hereunder. Supplier warrants that the Application Licensed Services will conform to 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. Supplier also warrants 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). The Application provided hereunder is at the current release level unless an Authorized User specifies an older version in its order or SOW;

v). No corrections, work arounds or future Application releases 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;

vi). Supplier warrants that all post-Acceptance Updates, changes, alterations or modifications to the Application, 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.

vii). 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.

C. Malicious Code

Supplier has used its best efforts through quality assurance procedures to ensure that there are no Computer Viruses or undocumented features in the Application accessed by an Authorized User or its Application Users; and the 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 Application.. Notwithstanding any rights granted under this Contract or at law, Supplier hereby waives under any and all circumstances any right it may have or may hereafter have to exercise Electronic Self-Help. Supplier agrees that an Authorized User may pursue all remedies provided under law in the event of a breach or threatened breach of this Section, including injunctive or other equitable relief.

D. 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.

E. 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 Application, 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.

F. Access to Product and Passwords

Supplier warrants that the Application and Licensed Services do not contain disabling code or any program device or other undisclosed feature, including but not limited to, viruses, worms, trojan horses, or other code which is 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. Supplier also warrants that it 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 Application and Licensed Services are compatible with and will operate successfully on the equipment.

G. Open Source

Supplier will notify all Authorized Users if the Application 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.

H. Supplier's Viability

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

I. Supplier's Past Experience

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, the Application, or Supplier.

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

16. TRAINING AND DOCUMENTATION

The Licensed Service fee includes all costs for the training of two (2) Authorized Users trainer per order or SOW at an Authorized User's designated location on the use and operation of the Application, including instruction in any necessary conversion of such Authorized User's Content and data for such use. Pursuant to a mutually agreed upon schedule, Supplier shall provide sufficient personnel 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 to reflect any modifications made by Supplier to the Application. 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 Application 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.

17. FEES, ORDERING AND PAYMENT PROCEDURE

A. Fees and Charges

As consideration for the Licensed Services, including the rights of the Authorized User and its Application Users to access and use the Application(s) and any additional products and services provided hereunder, an Authorized User shall pay Supplier the fee(s) set forth on Exhibit B, which lists any and all fees and charges. The fees and any associated discounts shall be applicable throughout the term of this Contract; provided, however, that in the event the fees or discounts apply for any period less than the entire term, Supplier agrees that it shall not increase the fees more than once during any twelve (12) month period, commencing at the end of year one (1). No

such increase shall exceed the lesser of 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 to VITA for approval in accordance with the above and shall not become effective for sixty (60) days thereafter approval has been given. Such approval shall not be unreasonably upheld. Supplier agrees to offer price reductions to ensure compliance with the Competitive Pricing Section.

B. Application Demonstration

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

C. Statement of Work (SOW)

An SOW shall be required for any Licensed Services ordered by an Authorized User pursuant to this Contract. All Licensed Services shall be provided in accordance with the Requirements and service levels set forth herein or in the applicable SOW and at the rates set forth in Exhibit B herein. An SOW shall be of a fixed price type but may 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).

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

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

D. Ordering

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

Supplier is required to accept any order placed by an Authorized User through the eVA electronic procurement website portal (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:

i). Purchase Order (PO): An official PO form issued by an Authorized User.

ii). Any other order/payment charge or credit card process, such as AMEX, MASTERCARD, or VISA under contract for use by an Authorized User.

This ordering authority is limited to issuing orders for the Licensed Services and products or services related thereto and available under this Contract. Under no circumstances shall any Authorized User have the authority to modify this Contract. An order or SOW from an Authorized User may contain additional terms and conditions; however, to the extent that the terms and conditions of the Authorized User's order or SOW 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 or SOW from an Authorized User if such order is to be funded, in whole or in part, by federal funds and if, at the time the order is placed, Supplier is not eligible to be the recipient of federal funds as may be noted on any of the Lists of Parties Excluded from Federal Procurement and Non-procurement Programs.

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

E. Invoice Procedures

Supplier shall remit each invoice to the "bill-to" address provided with the order or SOW promptly after all Licensed Services have been accepted and in accordance with the milestone payment schedule, if any, in the applicable order or SOW. Payment for Licensed Services shall be monthly in advance unless otherwise stated herein, or in any order or SOW 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. Invoices issued by the Supplier shall identify at a minimum:

i). Dates during which Supplier provided the Licensed Services to the Authorized User

ii). Quantity, charge and extended pricing for each Licensed Service

iii). Applicable order date

iv). This Contract number and the applicable order number

v). Supplier's Federal Employer Identification Number (FEIN).

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

F. Purchase Payment Terms

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

In the event an Authorized User does not receive or have access to the applicable Documentation, payment shall not be due until the required Documentation is provided.

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

18. 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.

19. 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 will 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 SOW issued pursuant to this Contract

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

21. 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.

22. 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 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) breach of any representation, warranty or covenant of Supplier contained herein, (iv) any defect in the Application or the Licensed Services, (v) any actual or alleged infringement or misappropriation of any third party's intellectual property rights by the Application or any of the Licensed Services, or (vi) loss of Content provided to Supplier due to Supplier's failure to back up Content in accordance with the Contract. 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 the Application or that the provision of Licensed 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 e-mail and 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 the Application or any of the 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 their Application Users the right to continue use of such infringing Application or Licensed Services, or any component thereof; or (b) replace or modify such infringing Application or Licensed Services, or any component thereof, with non-infringing products or services satisfactory to VITA. And in addition, Supplier shall provide any Authorized User with a comparable temporary replacement Application or reimburse VITA or any Authorized User for the reasonable costs incurred by VITA or such Authorized User in obtaining an alternative product or service in the event such Authorized User cannot use the affected Application. If Supplier cannot accomplish any of the foregoing within a reasonable time and at commercially reasonable rates, then Supplier shall accept the return of the infringing component of the Application or Licensed Services, along with any other components of any products

rendered unusable by any Authorized User as a result of the infringing component, and refund the price paid to Supplier for such components.

B. Liability

Except 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 content privacy and security obligations, and (vii) Supplier's security compliance obligations, Supplier's liability shall be limited to twice the aggregate value of the Application and Licensed Services provided under this Contract or in the case of an individual authorized user. Supplier's liability shall be limited to twice the aggregate value of the Application and Licensed Services provided under the Application and Licensed Services provided under the applicable order or SOW. 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.

23. 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.

24. INSURANCE

In addition to the insurance coverage required by law as referenced in the Incorporated Contractual Provisions section of this Contract, Supplier shall carry:

Errors and omissions insurance coverage in the amount of $2,000,000 per occurrence.

Cyber Security Liability insurance coverage in the amount of $5,000,000 per occurrence.

25. 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 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.

26. 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 Application and Licensed Services shall be provided and all Content stored by Supplier on servers, storage or nodes physically located in the continental United States.

27. ACCEPTABLE USE POLICY (IF APPLICABLE)

VITA and Authorized User agree to abide by Supplier's Acceptable Use Policy (AUP), as amended by the parties hereby and incorporated as Exhibit G. 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 a 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.

iii. [Other provisions here based on VITA's review of Supplier AUP]

28. 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 or SOW, 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 or SOW. 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 and any Authorized User may suspend all performance under any applicable order or SOW until Supplier assumes this Contract and provides adequate assurance of performance thereof or rejects this Contract pursuant to Section 365 of the Bankruptcy Code or any similar or successor provision, it being agreed by VITA and Supplier that this is an executory contract. Any such suspension of further performance by VITA pending Supplier's assumption or rejection shall not be a breach of this Contract, and shall not affect the rights of VITA or any Authorized User to pursue or enforce any of its rights under this Contract or otherwise.

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

C. Compliance with the Federal Lobbying Act

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

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

D. Governing Law

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

E. Dispute Resolution

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

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

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

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

F. Advertising and Use of Proprietary Marks

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

G. Notices

Any notice required or permitted to be given under this Contract shall be in writing and shall be deemed to have been sufficiently given if delivered in person, or if deposited in the U.S. mails, postage prepaid, for mailing by registered, certified mail, or overnight courier service addressed to:

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 Content Privacy and Security, License, Warranty, Escrow, Confidentiality, and 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 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 Application or any components thereof and Licensed Services rendered or the amounts due Supplier for such services under this Contract. VITA's right to audit shall be limited as follows:

i). Three (3) years from Software delivery or Service performance date;

ii). Performed at Supplier's premises, during normal business hours at mutually agreed upon times; and

iii). Excludes access to Supplier cost information.

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

P. 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.

Q. Entire Contract

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

i). Exhibit A Application and Licensed Services Requirements

ii). Exhibit B Application Options List; Fees, Licensed Service Charges, and Payment Schedule *(To be provided by Supplier)*

iii). Exhibit C-1 Application Escrow Agreement *(If applicable) (To be provided by Supplier)*

iv). Exhibit C-2 Content Escrow Agreement Template *(If applicable) (To be provided by Supplier)*

v). Exhibit D Statement of Work (SOW) Template

vi). Exhibit E End User Licensing Agreement, as amended by License Agreement Addendum *(If applicable) (To be provided by Supplier)*

vii). Exhibit F Certification Regarding Lobbying

viii). Exhibit G Supplier's Acceptable Use Policy *(If applicable) (To be provided by Supplier)*

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

An Authorized User and Supplier may enter into an ordering agreement pursuant to this Contract. To the extent that the terms and conditions of such ordering agreement, or any order or SOW issued hereunder, are inconsistent with the terms and conditions of this Contract, the terms of this Contract shall supersede.

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

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

Supplier

By: _____
(Signature)

Name: Amy Liu
(Print)

Title: CEO

Date: 04/11/2012

VITA

By: _____
(Signature)

Name: Samuel A. Nixon Jr.
(Print)

Title: Chief Information Officer

Date: 4/18/12

Address for Notice:

455 Springpark Place, Suite 300
Herndon, VA 20170

Attention: Jon Lombard

Email: jon.lombard@cyberdatainc.com

Phone: 703.481.0888 x 216

Alternate Contact:

Walter Davis

Email: walter.davis@cyberdatainc.com

Phone: 703.481.0888 x 205

Address for Notice:

VITA
11751 Meadowville Ln
Chester, VA 23836

Attention: Contract Administrator

[Sample]

EXHIBIT A-____

Service Provider's Software as a Service Statement of Managed Services

This Exhibit A - Service Provider's Software as a Service Statement of Work shall be incorporated in and governed by the terms of that certain Master "Software as a Service" Managed Services Agreement by and between **[CUSTOMER NAME]** ("Customer") and **[OTHER PARTY NAME]** ("Service Provider") dated _____, as amended (the "Agreement"). Unless expressly provided for in this Exhibit A, in the event of a conflict between the provisions contained in the Agreement and those contained in this Exhibit A, the provisions contained in the Agreement shall prevail.

Services Description:	
Support Description:	
Training Description:	
Backup Requirements:	
Service Windows:	
Service Levels:	Examples to consider: Application Response Time Backup and Recovery Response Time Production Changes User Identification and Password Changes Support Response Time
Performance Credits for Missed Service Levels:	
Customer Resources:	
Service Provider Resources:	
Responsibilities, Deliverables, and/or Activities:	
Services Fees or Rate:	
Start Date:	
End Date:	
Additional Customer Requirements:	

Executed on the dates set forth below by the undersigned authorized representatives of the parties to be effective as of the Start Date.

CUSTOMER NAME **(“Customer”)**	**[OTHER PARTY NAME]** **(“Service Provider”)**
By: _____	By: _____
Name: **FOR REFERENCE ONLY**	Name: **FOR REFERENCE ONLY**
Title: **FOR REFERENCE ONLY**	Title: **FOR REFERENCE ONLY**
Date:	Date:

DETAILED DESCRIPTION OF PROPOSED SOLUTION(S)

#	General Specification	A	B
1	Does your firm's solution comply with all current COV ITRM Policies and Standards, as applicable, found at: http://www.vita.virginia.gov/library/default.aspx?id=537 If proposed solution does not, please provide details that specify the Standard/Policy and how Supplier's solution does not comply.	Y	
2	Does your firm's 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 If not, please explain.	Y	
3	Does your firm's 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:	Y	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. 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 use the checklist at the following link to manually check for compliance with the template. http://www.vadsa.org/watg/checklist.htm Please see the completed Voluntary Product Accessibility Template (VPAT) attached with our proposal. // Where's the APPENDIX C file? CDIP??

#	General Specification	A	B
	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) If yes, please describe how this functionality is achieved and include a completed Voluntary Product Accessibility Template (VPAT) with your proposal: : (The VPAT template is located in APPENDIX C of the Accessibility Standard (GOV103-00)). If no, does your Solution provide alternate accessibility functionality? Please describe.		

#	Facility Specification	A	B
1	Does your Solution include a highly available data center? If yes, please describe the data center's site infrastructure (power, security, network, cooling and fire systems) where the applications will be hosted. Also, please indicate which Tier Level the data center is rated, (Tier 1, Tier II, Tier III or Tier IV), based on the Uptime Institute's Site Infrastructure Tier Standards. A copy of the Data Center Site Infrastructure Tier Standard Topology document can be found at: http://uptimeinstitute.com/component/docman/doc_download/5-tiers-standard-topology	Tier III	Access to the data center is controlled through multiple levels of mandatory physical security. Security guards on duty 24x7x365 maintain strict procedures including ID check, verification of authorized contact list, Facility Access Log, and etc., for allowing entry into the data center. The CCTV cameras are located throughout the data center for constant monitoring. All guests must be escorted at all times within the data center. The data center provides lockable cabinets with combination locks for additional security. Our Solution follows Operational Best practices such as Redundant Power Sources (N+1 configuration Power Distribution and UPS, and Diesel Generators), Fire Protection, Efficient Air Handling, Liquid Cooling, air-side Economizer-facilitated Cooling, Improved Humidification Systems and Controls, Firewall and Network-Based Intrusion Detection Services (NIDS). Our solution includes alternate routing capabilities provided by fully redundant internal services network with multiple ISP failover.

#	Facility Specification	A	B
2	Is your data center located in the Commonwealth of Virginia? If not, where?	Y	
3	Does your Solution's data center include physical access controls? If yes, please describe.	Y	Access to the data center is controlled through multiple levels of mandatory physical security. Security guards on duty 24x7x365 maintain strict procedures including ID check, verification of authorized contact list, Facility Access Log, and etc., for allowing entry into the data center. The CCTV cameras are located throughout the data center for constant monitoring. All guests must be escorted at all times within the data center. The data center provides lockable cabinets with combination locks for additional security.
4	Does your Solution's data center have access management procedures? If yes, please explain how access is managed and who has access to the data center.	Y	Admission to the data center is granted only by presentation of a valid ID badge. Biometrics palm readers, man traps and card key readers provide additional access control and are located at each entry/exit point in the data center. Only authorized personnel on the contact list for the site has access to the data center. All guests must be escorted at all times within the data center.
5	Does your Solution include security background checks on its employees? If yes, please describe what types of checks and how often they are completed. Supplier will be required to comply with provision 2.1, *Background Investigations*, of the then-current Commonwealth of Virginia security procedures, published by VITA and which may be found at http://www.vita.virginia.gov/uploadedfiles/VITA_Main_Public/unmanaged/library/psgs/COVITRM513-00PersonnelSecurityGuideline02_15_08.pdf before any work can begin.	Y	All data center employees are required to go through MBI (Minimum Background Investigation). Based on the contractual requirement of each individual system, the employees may need to obtain Public Trust, or go through the process for Confidential, Secret, or higher security clearances.
6	Does your Solution include a records retention policy? If yes, please explain.	Y	Based on each individual customer's requirements, the retention period varies. Our general policy is to retain records for three years and/or up to

#	Facility Specification	A	B
			the entire POP (Period of Performance) of the Contract.

#	Performance Specification	A	B
1	Does your Solution include SLA metrics for hosting? If yes, please describe the SLA metrics and how they are measured.	Y	Please see the SLA metrics attached.
2	Does your Solution have remedies when SLAs are not met? If yes, please explain.	Y	Please see remedies listed in the attached SLA.
3	Has your firm missed any hosting SLAs within the last 24 months? If yes, please explain.	N	
4	Does your Solution have any exceptions within the SLAs? If yes, please explain.	N	
5	Does your Solution include backup and restore standards? If yes, please explain	Y	Please see the attached Disaster Recovery Plan.
6	Does your Solution include restoration services? If yes, please describe.	Y	Please see the attached Disaster Recovery Plan.

#	Network Specification	A	B
1	Does your Solution allow for data to leave a controlled data infrastructure? If yes, please explain.	Y	We have standard procedures in place for both physical and network-based data security. Data that requires a security classification will maintain its security classification as it traverses any physical or logical boundary such as an agency, computer-related device, network, or software application system.
2	Does your Solution include bandwidth utilization? If yes, please explain.	Y	Our solution provides the ability to select a minimum guaranteed bandwidth with the added protection of additional bandwidth on demand ("burstable"). Cost is calculated using the 95th percentile method and the bandwidth utilization will be tracked by the 95th percentile methodology.
3	Does your Solution have any network volume limitations? If yes, please explain.	N	
4	Does your Solution include alternate routing capabilities? If yes, please explain.	Y	Our solution includes alternate routing capabilities provided by fully redundant internal services network with multiple ISP failover.

#	Network Specification	A	B
5	Does your Solution provide for bandwidth options on the infrastructure and internet connections? If yes, please explain.	Y	Different bandwidth options on the infrastructure and internet connections and specific bandwidth levels are available for data transfer allocation. Our solution also provides the ability to select a minimum guaranteed bandwidth with the added protection of additional bandwidth on demand ("burstable"). Cost is calculated using the 95th percentile method and the bandwidth utilization will be tracked by the 95th percentile methodology.
6	Does your Solution use multiple internet service providers? If yes, please explain.	N	Our solution uses multiple Internet Service Providers. Our data center provides automatic failover between multiple Internet Service Providers.
7	Does your Solution provide Tier I or Tier II internet provided services? If yes, please explain.	Y	The data center included as part of our solution is America's first Commercial Tier III data center according to the Uptime Institute. It provides Tier III internet-provided services.

#	Hardware Specification	A	B
1	Does your Solution have an operating system life cycle? If yes, please describe.	Y	Our solution chooses Microsoft Windows Server 2008 as operating system. So far, Microsoft has not published an operating system life cycle for Windows Server 2008 yet. Please see the following link for support lifecycle information for Windows Server 2003 operating system: http://support.microsoft.com/lifecycle/?LN=en-us&x=17&y=12&p1=3198
2	Does your Solution allow for the introduction of new technologies? If yes, please describe how they are introduced.	Y	We periodically review the existing architecture of our solution as new technologies come out. Then we submit our recommendations to the government. Based on the discussion and coordination with the government, we document all the considerations of introducing the new technology including the pros and cons, and develop an upgrade specification document and an upgrade plan. We will then start to implement the upgrade step by step, according to the procedures specified in the plan, once a decision from the government is made to adopt the new technology.

#	Hardware Specification	A	B
3	Does your Solution have a standard time frame for the "stand up" of an operating environment? If yes, please explain.	Y	Our general standard time frame for the "stand up" of an operating environment is between three and six months. Based on the customer's requirements and the complexity of the system, the time frame may vary.
4	Does your Solution include a standard hardware lifecycle? If yes, please describe lifecycle?	Y	Generally, our standard hardware lifecycle is about five years. That means, we make recommendations to the government to refresh hardware every five years. This also to large degree depends on the hardware vendors of the existing system. Each of major hardware vendors such as HP, IBM, Sun, DELL, and etc., has their own support lifecycle for their products.
5	Does your Solution have the option of shared vs dedicated hosting? If yes, please explain.	Y	The data center included in our solution offers the option of shared vs dedicated hosting. A shared hosting solution places a website into a server environment where it resides with hundreds or thousands of other websites. Dedicated hosting allows government to lease a physical web server with a choice of OS and installed software. A dedicated server plan offers the most privacy and flexibility in terms of programming and management.
6	Does your Solution have the option of managed and unmanaged dedicated hosting? If yes, please explain.	Y	The data center included in our solution offers the option of managed and unmanaged dedicated hosting. We proposes Colocation, which is the option that the CyberData team manages all the servers for the portal while the data center provides the hosting facility including the power, network connectivity, Firewall, Intrusion Detection System (IDS), and other services.
7	Does your Solution provide definitions for a processor / virtual core / compute unit? If yes, please explain.	Y	A processor is the unit that reads and executes computer program instructions. It can be a single-core processor, or a multi-core processor, which is a single computing component with two or more independent actual processors (called "cores"). Basically a virtual core is the virtual computer splitting of the CPU into cores even though physically it is still just one

#	Hardware Specification	A	B
			core-less CPU. Virtual cores map the CPU to cores in regular processors. More virtual cores mean more parallel processing ability. Compute unit is an abstraction of compute resources. It measures how fast each core is.
8	Does your Solution provide tools to migrate to another provider? If yes, please explain.	Y	Since our solution includes cloud model, migration to another provider is going to be much simpler and easier. For example, if we create new virtual machines in a cloud provider such as Amazon, we can use migration tools such as CloudSwitch to provide the capability to take the virtual machine back to your data center or move it to another cloud provider. The Cloud Isolation Technology, the virtualization layer, feeds the virtual machine exactly what it wants to see. It does not require anything special from the cloud provider, and it is run on behalf of the customer to protect and isolate the customer's environment in the cloud. It lets customers migrate existing applications and provision new ones in the cloud according to the user's specific configuration requirements.
9	Does your Solution provide for additional data storage to be addressed for a given application? If yes, please explain.	Y	Additional data storage can be provided by adding more and/or larger size disks to the servers, and/or the Network-attached storage (NAS) equipment, and/or the Storage area network (SAN) equipment, at the data center. This can also be accomplished through using the cloud storage services provided by providers such as Amazon, Microsft and etc.
10	Does your Solution provide a virtual infrastructure? If yes, please describe the time to deliver a virtual server.	Y	Our solution provides a virtual infrastructure using Virtual private servers (VPS), which bridges the gap between shared web hosting services and dedicated hosting services, giving independence from other customers of the VPS service in software terms but at less cost than a physical dedicated server. As a VPS runs its own copy of its operating system, customers have superuser-level access to that operating system instance, and can install almost any software that runs on the OS. Using industry standard virtulization management software enables our data center to configure and manage virtual-

#	Hardware Specification	A	B
			server offerings and enables us to manage workloads running on those virtual machines. For example, our hosting solution offers the customers virtual machines running on Windows Server 2008 R2 with Hyper-V technology from complex multitenant environments. We have to the ability to deliver dynamic virtual-server offerings quickly in days, sometimes within 24 hours.
11	Does your Solution provide a capability to restore? If yes, please describe restoring a virtual machine to a previous state in time.	Y	Our solution provides the capability to restore a virtual machine—including its guest operating system, application settings, and application data files—to a previous state. By creating checkpoints for a virtual machine, we can restore the virtual machine to its state when a checkpoint was created. A typical use of checkpoints is to create a temporary backup before you apply update to the operating system. The checkpoint enables us to revert the virtual machine to its previous state if the update fails or adversely affects the virtual machine. When we restore a virtual machine to a checkpoint, user files on the virtual machine are restored to their previous state. To avoid loss of user data, if the virtual machine has been in use since the checkpoint was created, we need to make sure to back up the data files before we restore the virtual machine.
12	Does your Solution offer cloud services? If yes, please answer the following questions:	Y	
	A) Do you characterize your offering as Saas, PaaS or IaaS cloud services?	Y	SaaS/PaaS
	B) Do you integrate with other cloud providers whether private, public, hybrid or community cloud environments? If yes, please describe.	Y	Microsoft Azure and Amazon S3
	C) Please describe how your cloud services integrate with other cloud services to provide seamless interoperability for the end user.		Compatible with Microsoft Azure Cloud Hosting and provides two folder provider options for Amazon S3 and Azure File Storage for file storage in the cloud. An open API allows developers to create integrated services for transparent file storage across a variety of storage options, which provides seamless

#	Hardware Specification	A	B
			interoperability for the end user.
	D) Does your cloud model have advantages to the Commonwealth? If yes, please explain.	Y	In terms of Software as a service (SaaS), our solution can be categorized as "on-demand software", which is not only highly scalable, but also is a software delivery model in which software and its associated data are hosted centrally (typically in the (Internet) cloud) and are typically accessed by users using a thin client, normally using a web browser over the Internet. From Platform as a service (PaaS) stand point, our offering facilitates the deployment of applications without the cost and complexity of maintaining hardware and software and provisioning hosting capabilities by the Commonwealth government, providing all of the resources required to support the complete life cycle of building and delivering web applications and services of the portal entirely available from the Internet.
	E) Please describe the advantages and disadvantages of your cloud model?	N/A	The greatest advantage of the cloud model included in our solution is that this may help the Commonwealth government experience if the cloud can eventually prove to be a means to reorganize agencies' IT infrastructure and decrease the spending budgets. The disadvantage would be that the cloud model also brings more complexity to the security aspects of the system (if our solution does interface with other Cloud Services such as Microsoft Azure and Amazon S3; we also have the option not to use those Cloud Services), since the effectiveness and efficiency of traditional protection mechanisms may need to be reconsidered.
	F) Are there any unique issues about which we should be aware? If yes, please explain.	N	

#	Software Specification	A	B
1	Does your Solution provide for various system operating systems? If yes, please describe what operating systems and versions you support on servers?	Y	Our solution provides for various operating systems, such as Microsoft Windows Server 2008/2003, Red Hat Enterprise Linux 6/5/4, Solaris

			10, and other operating systems listed in the Attachment X (Inventory_Spreadsheet_2012-09).
2	Does your Solution offer DBM systems? Please describe what database vendor(s) you support and database releases and versions currently being used.	Y	Our solution offers Microsoft SQL Server 2008 as the main database management system. We also support Microsoft SQL Server 2005/2000, Oracle 11g/10g/9i, Informix, MySQL, and other database releases and versions listed in the Attachment X (Inventory_Spreadsheet_2012-09).
3	Does your Solution offer authentication and authorization controls? If yes, please describe the solutions authentication and authorization features.	Y	Our solution includes a role-based authentication and authorization access control module, which is not only a time-tested proven reusable component, but also highly customizable.

#	Operations Specification	A	B
1	Does your Solution provide operational services? If yes, please explain.	Y	Our solution includes the operational services provided by the data center, ranging from hands-on support, such as equipment racking, media loading, to Online Support Center for opening tickets, scheduling on-site installations, and etc.
2	Does your Solution provide reporting such as problem, incident and capacity reporting? If yes, please describe types of reporting provided.	Y	Problem, incident and capacity reporting can be done through login to the Online Support Center. The reporting can also be submitted to the Helpdesk email address or by calling Helpdesk phone number. A ticket with an assigned severity will be created to track each report until resolution/closure of the issue.
3	Does your Solution follow Operational Best practices? If yes, please explain.	Y	Our Solution follows Operational Best practices such as Redundant Power Sources (N+1 configuration Power Distribution and UPS, and Diesel Generators), Fire Protection, Efficient Air Handling, Liquid Cooling, air-side Economizer-facilitated Cooling, Improved Humidification Systems and Controls, Firewall and Network-Based Intrusion Detection Services (NIDS).
4	Does your Solution utilize an IT service management framework? If yes or no, please explain.	Y	Our solution utilizes IT service management (ITSM or IT services), which is an IT service management framework emphasizing the quality of the services provided and

#	Operations Specification	A	B
			focusing on the relationship with customers. IT service management (ITSM or IT services) is a discipline for managing information technology (IT) systems, philosophically centered on the customer's perspective of IT's contribution to the business. ITSM stands in deliberate contrast to technology-centered approaches to IT management and business interaction.
5	Will VITA be integrated within the IT service management framework utilized by your Solution? If yes, please explain.	Y	Since ITSM (IT Service Management) in the broader sense overlaps with the disciplines of business service management and IT portfolio management, especially in the area of IT planning and financial control, VITA will be closely integrated within the IT service management framework utilized by our Solution. ITSM is process-focused and in this sense has ties and common interests with process improvement movement (e.g., TQM, Six Sigma, business process management, CMMI) frameworks and methodologies. The discipline is not concerned with the details of how to use a particular vendor's product, or necessarily with the technical details of the systems under management. Instead, it focuses upon providing a framework to structure IT-related activities and the interactions of IT technical personnel with business customers and users.

#	Security Specification	A	B
1	Does your Solution 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 pertinent to your operation ?	Y	
2	Does your Solution include security procedures when a breach occurs? If yes, please describe.	Y	We have security procedures in place when a breach occurs, or when identified attacks detected as they occur, or even attack attempts are made, providing rapid analysis to determine the type and source of attack, then responds appropriately based on pre-designated Managed Threat Protection policy. The CyberData team will work with the Data Center team to report on the event via the Online Support Center. These services add an additional layer of protection beyond managed firewall services.
3	Does your Solution include customer access to all security breach reports and corresponding logs? If yes, please explain.	Y	We will provide portal owner access to all security breach reports and corresponding logs, including all the details such as when the breach occurred, how critical it was or it is, cause analysis, remediation plan, and all the steps toward resolution of the issue, or action/response to prevent future attacks.
4	Does your Solution include different types of security audits? If yes, please explain types and how often they are completed.	Y	Our solution includes both internal and external security audits. Both are scheduled on annual or as-needed basis. The security audit can be a manual or systematic measurable technical assessment of the system or application. Manual assessments include interviewing staff, performing security vulnerability scans, reviewing application and operating system access controls, and analyzing physical access to the systems. Automated assessments include system generated audit reports or using software to monitor and report changes to files and settings on a

#	Security Specification	A	B
			system. The security audits generally covers the following aspects: • Data center personnel • Equipment • Policies and Procedures • Physical security / environmental controls • Backup procedures
5	Does your Solution include security auditing and reports? If yes, please explain.	Y	Our solution includes security auditing and reports generated by manual and automated assessments. The data center audit report summarizes all the findings.
6	Does your Solution allow customer access to your firm's security and audit reports? If yes, please explain.	Y	Our solution allows customer access to our company's security and audit reports. We will work closely with the customer to resolve any issue.
7	Does your Solution provide for the separation of data from the web services? Please describe how the web server protects application data.	Y	The web applications/services are deployed on the web server while the application data are stored on the database server which is not sitting on the internet. Therefore they are physically separated on different layers. The data communication between the web server and the backend database server is encrypted so to further protect application data.

CyberData Configuration 03/23/2012

Dedicated Server Configuration	**Price/mo**	
2 CPU *(8 cores)*	$	532.00
16 G RAM (minimum 8GB)	$	13.60
1.6 TB Storage *(useable)*	$	128.00
Price per instance of OS & std SQL	$	95.56
Plus/minus cost of additional GB of RAM	$	5.21
Plus/minus backup of storage (per GB)	$	0.125
1 time set up cost, if any, for environment as is	$	495.00
1 time set up cost for subsequent VM instances, such as below, in the above hardware config.	$	249.00
Total	$	1,518.50

VM Server Configuration	**Price/mo**	
1 CPU *(1 core)*	$	195.00
4 G RAM	$	6.80
500 GB Storage *(useable)*	$	50.00
Price per instance of OS & std SQL	$	85.56
Plus/minus cost of additional GB of RAM	$	5.21
Plus/minus backup of usable storage	$	0.125
1 time set up cost per VM instance	$	50.00
Total	$	392.70

CYBERDATA'S TIER 3 HOSTING SOLUTIONS

ABOUT

CyberData offers Tier 3 and Tier 4 hosting solutions which ensures that Virginia State Agency applications, websites, databases, data and environments are secure and monitored 24/7/365. We enable Agencies to deploy hardware, operating systems and mission-critical applications into an environment that fits their scale, security, and budget needs.
We offer private cloud solutions built specifically for Virginia's COV domain, public clouds for quick deployments and testing, as well as dedicated and virtualized environments.

Whether it is for a testing, hot site, development or production environment, our highly flexible cloud and dedicated server solutions enable complete customization according to their hardware infrastructure configuration, software, and specific applications. CyberData provides a variety of backup and recovery solutions to fit your needs, including: Redundancy, Clustering SAN, & Disaster Recovery Services.

CyberData's highly skilled experts can support your Agency through the decision process, hosting migration, and work with you to trouble shoot any challenges that might arise from the transition. Moreover, CyberData is the only company that won both the hosting and the application O&M VITA eServices contracts which enables us to deliver seamless support and continued communication acrossyour applications and hosted environments. As a result, CyberData provides Hosting, Application & Software and Infrastructure / Platform fully managed services.

TIER 3 PRIVATE CLOUD, DEDICATED & VIRTUALIZED: DATA CENTER FEATURES

Certifications: SSAE 16 / ISAE 3402 (formerly SAS70 Type II)

Security Features:

Biometric hand readers or fingerprint readers (two-factor authentication)
SAS 70 Type II certified
24x7x365 physical security at every entry point
Physical security provided by 3rd party security professionals such as Whelan, Securitas, and Wackenhut
Site surveillance recorded via DVR and kept for 90 days minimum
Perimeter security fencing, concrete bollards, and other set back barriers protecting each facility

Environmental Features:

Branch power circuit monitoring
Computerized environmental controls and monitoring
Minimum of 180 watts per foot or higher density
FM200 Dry pipe fire suppression with VESDA
n+1 cooling, n+1 UPS, automatic transfer switch between critical components, diesel generators, 2n availability
Dual power feeds from diverse power grids

TIER 3 PUBLIC CLOUD: DATA CENTER FEATURES

Certifications: SSAE 16 / ISAE 3402 (formerly SAS70 Type II), Safe Harbor, ISO 27001

Security Features:

Two-factor authentication is required to access all data center facilities.
Electromechanical locks are controlled by biometric authentication
Only authorized data center personnel have access to data halls.
Termination and role-change control procedures are
Closed-circuit video surveillance and Centralized Security Management Systems
Data centers are operational 24x7x365 and are manned around the clock

Operational Features:

Static IP Addresses
Built-in High Availability
Multiple Protocols Support
Connection Logging
Connection Throttling
Session Persistence
Advanced Access Control

PRICING

Tier 3 VM Configuration for Website (Static)	Quantity	$ / Month	VA Agency Uses
Website	1	$0.00	Ideal for Agency static websites, micro-sites, etc. Far better than Tier 1 capabilities.
Pages per Site	Unlimited	$0.00	
OS / RAM / Storage Bundle	1	$95.56	
Additional Backup Storage ($.13 per GB)	0	$0.00	
Total per Month*		**$95.56**	

Tier 3 VM Configuration for Web Application	Quantity	$ / Month	VA Agency Uses
CPU/Core and OS Bundled	1	$245.00	Ideal for basic Agency web applications and web-services, including electronic forms, Scripts, Databases and other small - medium applications. Application Technologies include: ASP, ASP.Net, PHP, ColdFusion, RubyonRails, Jquery, MySQL Database, MySQL Server, SQL, Microsoft Sharepoint, Microsoft Dynamics.
RAM ($1.70 per GB)	4	$13.60	
Usable Storage ($0.10 per GB)	800	$80.00	
Additional Backup Storage ($.13 per GB)	0	$0.00	
Total per Month*		**$338.60**	

Tier 3 Cloud Configuration for Web Application	Quantity	$ / Month	VA Agency Uses
CPU/Core and OS Bundled	1	$335.00	Ideal for test and development environments where quick spinup and spindown of different environments might be required. Also, ideal for rush production deployments.
RAM ($1.70 per GB)	4	$13.60	
Usable Storage ($0.10 per GB)	800	$80.00	
Additional Backup Storage ($.13 per GB)	0	$0.00	
Total per Month*		**$428.60**	

Tier 3 COV Domain Private Cloud	Quantity	$ / Month	VA Agency Uses
CPU/Core, OS & Firewall Bundled	1	$365.00	CyberData's Private Cloud provides COV Domain Agencies with a firewall and servers dedicated to their applications and requirements.
RAM ($1.70 per GB)	4	$13.60	
Usable Storage ($0.10 per GB)	800	$80.00	
Additional Backup Storage ($.13 per GB)	0	$0.00	
Total per Month*		**$458.60**	

Tier 3 Dedicated Server	Quantity	$ / Month	VA Agency Uses
CPU/Core	1	$224.00	Ideal for applications and production environments requiring dedicated servers, including payment processing, mission-critical applications, data & access security sensitve requirements.
OS & SQL	1	$440.00	
RAM ($1.70 per GB)	4	$13.60	
Usable Storage ($0.10 per GB)	800	$80.00	
Additional Backup Storage ($.13 per GB)	0	$0.00	
Total per Month*		**$757.60**	

Options

Domain Name Hosting
FTP Accounts Setup & Access
Fully Managed Support Options
Storage Space
Flexible Billing Options (ie. Quarterly or Annual)
Flexible Backups & Data Retention Options (Tape backup, Hot Sites etc Retained for XX Days)
Web Traffic Analytics & Stats
Shared Switch Services
Dedicated Switches - Single Switch
Dedicated Switches - Redundant Switches w/ Automatic Failover
Shared Firewall Services
Dedicated Firewall - Single Firewall
Dedicated Firewall - Redundant Switches w/ Automatic Failover
Shared Web Load Balancing
Dedicated Web Load Balancing - Single Load Balancers
Dedicated Web Load Balancing - Redundant Load Balancers w/ Active Redundancy
Data & Application Syncronization Services
Dedicated Backup Services
Managed Frame Relay Services

** Does not include setup fee which is based on specific scope of work. All prices subject to change - contact CyberData for quote.*

Notes:
1. CyberData can provide Tier 1 capabilities upon request, however, we do not recommend it for State of Virginia requirements.
2. Tier 2 and Tier 3 Hosting are nearly identical except for Tier 3 provides concurrent maintenance to reduce downtime. Because the cost structures are similar, CyberData provides Tier 3 capabilities.
3. CyberData can provide Tier 4 Hosting upon request. This is ideal for Agencies with high level of security needs and requires multiple, independent and physically separate systems.

EXHIBIT D STATEMENT OF WORK (SOW) TEMPLATE
BETWEEN (NAME OF AUTHORIZED USER) AND (SUPPLIER NAME)

ISSUED UNDER

CONTRACT NUMBER VA-120416-CYDA
BETWEEN
VIRGINIA INFORMATION TECHNOLOGIES AGENCY
AND
CYBERDATA TECHNOLOGIES, INC

Exhibit D, between (Name of Agency/Institution) and (Supplier Name) ("Supplier") is hereby incorporated into and made an integral part of Contract Number VA-120416-CYDA ("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 D 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

			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 GUIDELINESRISK 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:

_____

(Name of Supplier)

By: _____

(Signature)

Name: _____

(Print)

Title: _____

Date: _____

Authorized User:

_____

(Name of Agency/Institution)

By: _____

(Signature)

Name: _____

(Print)

Title: _____

Date: _____

LICENSE AGREEMENT ADDENDUM

The Virginia Information Technologies Agency (hereinafter referred to as "VITA"), pursuant to §2.2-2012 of the Code of Virginia and on behalf of the Commonwealth of Virginia, and _____ ("Supplier"), a business incorporated in _____, F.E.I.N. _____,having its principal place of business at _____, are this day entering into a contract and, for their mutual convenience, the parties are using the standard form contract ("_____") provided by Supplier. This addendum, duly executed by the parties, is attached to and hereby made a part of Supplier's standard form contract and together shall govern the use of any and all ___(name of)____ Software licensed by the Commonwealth under this agreement whether or not specifically referenced in the order document.

Supplier represents and warrants that it is a corporation authorized to do in Virginia the business provided for in this contract. If Supplier is not a U.S.-based entity, Supplier maintains a registered agent and a certification of authority to do business in Virginia.

This contract is executed by VITA on behalf of all public bodies, including VITA, as defined by §2.2-4301 and referenced by §2.2-4304 of the Code of Virginia, and hereinafter referred to as "Authorized Users."

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 granted by Supplier 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, such license shall be held by that public body.

As used herein, the term "contract" shall mean the Supplier's standard form contract and any and all exhibits and attachments thereto. The term(s) "Customer," "You," and/or "you," as used in the contract, shall mean, as applicable, VITA, the Commonwealth, any Authorized User, or any of their officers, directors, agents or employees.

Supplier's standard form contract is, with the exceptions noted herein, acceptable to VITA. Nonetheless, because certain standard clauses that may appear in, or be incorporated by reference into, Supplier's standard form contract 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, notwithstanding any provisions appearing in the attached Supplier's standard form contract, none of the following shall have any effect or be enforceable against VITA, the Commonwealth, any Authorized User, or any of their officers, directors, employees or agents:

1. Requiring the application of the law of any state other than the Commonwealth of Virginia in interpreting or enforcing the contract or requiring or permitting that any dispute under the contract be resolved in any court other than a circuit court of the Commonwealth of Virginia;
2. Requiring any total or partial compensation or payment for lost profit or liquidated damages by VITA, the Commonwealth, any Authorized User, or their officers, directors, employees or agents if the contract is terminated before its ordinary period;
3. Imposing any interest charge(s) contrary to that specified by §2.2-4347 et seq. of the Code of Virginia;
4. Requiring the Commonwealth, VITA, or any Authorized User to maintain any type of insurance either for the benefit of the Commonwealth, VITA, or such Authorized User or for Supplier's benefit;
5. Granting Supplier a security interest in property of the Commonwealth, any Authorized User, or any of their officers, directors, employees or agents;
6. Requiring the Commonwealth, VITA, any Authorized User, or any of their officers, directors, employees or agents to indemnify or to hold harmless Supplier for any act or omission;
7. Limiting or adding to the time period within which claims can be made or actions can be brought (Reference *Code of Virginia* §8.01 et seq.);

8. Limiting selection and approval of counsel and approval of any settlement in any claim arising under the contract and in which the Commonwealth, VITA, any Authorized User, or any of their officers, directors, employees or agents is a named party;
9. Binding the Commonwealth, VITA, any Authorized User, or any of their officers, directors, employees or agents to any arbitration or to the decision of any arbitration board, commission, panel or other entity;
10. Obligating the Commonwealth, VITA, any Authorized User, or any of their officers, directors, employees or agents to pay costs of collection or attorney's fees;
11. Requiring any dispute resolution procedure(s) other than those in accordance with §2.2-4363 et seq. of the Code of Virginia;
12. Permitting Supplier to access any Commonwealth or Authorized User records or data, except pursuant to court order;
13. Permitting Supplier to use any information provided by the Commonwealth or any Authorized User except for Supplier's own internal administrative purposes;
14. Requiring the Commonwealth, VITA, or any Authorized User to limit its rights or waive its remedies at law or in equity, including the right to a trial by jury; and
15. Bestowing any right or incurring any obligation that is beyond the duly granted authority of the undersigned representative of VITA to bestow or incur on behalf of the Commonwealth of Virginia..
16. Establishing a presumption of severe or irreparable harm to Supplier by the actions or inactions of VITA or any Authorized User;
17. Limiting the liability of Supplier for property damage or personal injury;
18. Permitting Supplier to assign, subcontract, delegate or otherwise convey the contract, or any of its rights and obligations thereunder, to any entity without the prior written consent of VITA except as follows: Supplier may assign all or any of its rights and obligations to a third party as a result of a merger or acquisition or sale of all or substantially all of its assets to such third party provided assignee agrees in writing to be bound by the terms and conditions set forth in the contract and provided such third party is a U.S.-based entity or maintains a registered agent and a certification of authority to do business in Virginia, or to an affiliate of Supplier, provided Supplier remains liable for affiliate's compliance with the terms and conditions set forth in this Contract;
19. Not complying with the contractual provisions at the following URL, which are mandatory provisions, required by law or by VITA, that are hereby incorporated by reference: http://www.vita.virginia.gov/uploadedFiles/SCM/StatutorilyMandatedTsandCs.pdf

    The terms and conditions in documents posted to the aforereferenced URL are subject to change pursuant to action by the legislature of the Commonwealth of Virginia or a change in VITA policy. 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 URL periodically;
20. Not complying with the contractual claims provision §2.2-4363 of the Code of Virginia which is also incorporated by reference;
21. Enforcing 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. They are expressly disclaimed. UCITA shall apply to this contract only to the extent required by §59.1-501.15 of the Code of Virginia;
22. Not complying with all applicable federal, state, and local laws, regulations, and ordinances;
23. Requiring that the Commonwealth waive its sovereign immunity or its immunity under the Eleventh Amendment;
24. Requiring that the Commonwealth, which is tax exempt, be responsible for payment of any taxes, duties, or penalties;

25. Requiring or construing that any provision in this contract conveys any rights or interest in Commonwealth or Authorized User data to Supplier;
26. Requiring the use of foreign currency. The currency which shall be used for this contract is United States Dollars. Any claim which may arise hereunder shall be settled in United States Dollars;
27. Obligating the Commonwealth beyond approved and appropriated funding. All payment obligations under this contract are subject to the availability of federal, state, and/or local appropriations for this purpose. In the event of non-appropriation of funds for the items under this contract, VITA may terminate, in whole or in part, this contract or any order, for those goods or services for which funds have not been appropriated. This may extend to the renewal of maintenance services for only some of the licenses granted by Supplier. Written notice will be provided to the Supplier as soon as possible after legislative action is completed. There shall be no time limit for termination due to termination for lack of appropriations;
28. Permitting unilateral modification of the contract by Supplier;
29. Permitting termination by Supplier of the contract or the licenses granted thereunder, or permitting suspension of services by Supplier, except pursuant to an order from a court of competent jurisdiction;
30. Requiring or stating that the terms of the Supplier's standard form contract shall prevail over the terms of this addendum in the event of conflict;
31. Renewing or extending the contract beyond the initial term or automatically continuing the contract period from term to term;
32. Requiring that the contract be "accepted" or endorsed by the home office or by any other officer subsequent to execution by an official of VITA before the contract is considered in effect;
33. Delaying the acceptance of the contract or its effective date beyond the date of execution;
34. Defining "perpetual" license rights to have any meaning other than license rights that exist in perpetuity unless otherwise terminated in accordance with the applicable provisions of the contract;
35. Permitting modification or replacement of the contract pursuant to any new release, update or upgrade of Software or subsequent renewal of maintenance. If Supplier provides to any Authorized User an update or upgrade subject to additional payment, such Authorized User shall have the right to reject such update or upgrade;
36. Requiring purchase of a new release, update, or upgrade of Software or subsequent renewal of maintenance in order for the Commonwealth, VITA, or any Authorized User to receive or maintain the benefits of Supplier's indemnification of the Commonwealth, VITA, or such Authorized User against any claims of infringement on any third-party intellectual property rights;
37. Prohibiting the Commonwealth, VITA, or any Authorized User from transferring or assigning to any entity the contract or any license to Software pursuant to the contract;
38. Granting Supplier or an agent of Supplier the right to audit or examine the books, records, or accounts of VITA or any Authorized User;

The parties further agree as follows:

39. Supplier warrants that it is the owner of the Software or otherwise has the right to grant to all Authorized Users the license to use the Software granted hereunder without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party.
40. Supplier agrees to indemnify, defend and hold harmless the Commonwealth, VITA, any Authorized User, their officers, directors, agents and employees ("Commonwealth's Indemnified Parties") from and against any and all third party claims, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, fines, judgments, settlements, expenses (including attorneys' and accountants' fees and disbursements) and costs (each, a "Claim" and collectively, "Claims"), incurred by, borne by or asserted against any of Commonwealth's Indemnified Parties to the extent such Claims in any way relate to, arise out of or result from: (i) any intentional or willful

conduct or negligence of any employee or subcontractor of Supplier, (ii) any act or omission of any employee or subcontractor of Supplier, (iii) breach of any representation, warranty or covenant of Supplier contained herein, (iv) any defect in the Software, or (v) any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Software. Selection and approval of counsel and approval of any settlement shall be accomplished in accordance with all applicable laws, rules and regulations. For state agencies the applicable laws include §§ 2.2-510 and 2.2-514 of the Code of Virginia. In all cases the selection and approval of counsel and approval of any settlement shall be satisfactory to VITA or the Authorized User against whom the claim has been asserted.

41. Any Authorized User may rely on independent contractors, acting on behalf of such Authorized User, to perform functions requiring the use of and access to the Supplier's Software. Nothing in the Supplier's standard form contract shall limit such third parties' from using or accessing the Software in order to perform such functions. If any invention, work of authorship, or confidential information is developed exclusively by an employee, consultant, contractor, or subcontractor of an Authorized User during the performance of Services by Supplier, Supplier shall have no ownership claim to such invention, work of authorship, or confidential information.
42. Any travel expenses incurred by Supplier in the course of performing the services must be pre-approved by the appropriate Authorized User and shall be reimbursed at the then-current per diem rates published by the Virginia Department of Accounts.
43. An Authorized User may require that Supplier personnel submit to a criminal background check prior to performance of any services under this contract.

This contract, consisting of this VITA addendum and the Supplier's standard form contract, constitute the entire agreement between the parties and may not be waived or modified except by written agreement between the parties.

This contract has been reviewed by staff of VITA. Its substantive terms are appropriate to the needs of VITA.

IN WITNESS WHEREOF, the parties have caused this contract to be duly executed as of the last date set forth below by the undersigned authorized representatives of the parties, intending thereby to be legally bound.

Supplier Name	**VITA**
By: _____ (Signature)	By: _____ (Signature)
Name: _____ (Print)	Name: _____ (Print)
Title: _____	Title: _____
Date: _____	Date: _____

EXHIBIT F: CERTIFICATION REGARDING LOBBYING

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

i). No Federal appropriated funds have been paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee 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: Mike Jing, EVP

Organization: CyberData Technologies

Date: 12-21-2011