



Commonwealth of Virginia
Virginia Information Technologies Agency

INSTRUCTIONAL IMPROVEMENT SYSTEM

Date: October 1, 2015

Contract #: VA-150731-ESCL

Authorized User: Authorized User (AU): All public bodies, including VITA, as defined by §2.2-4301 and referenced by §2.2-4304 of the *Code of Virginia*. Authorized Users also include private institutions of higher education chartered in Virginia and granted tax-exempt status under §501(c)(3) of the Internal Revenue Code. A list of the private institutions eligible to use this contract can be found at: <http://www.cicv.org/Our-Colleges/Profiles.aspx>.

Contractor: eScholar, LLC
222 Bloomingdale Road
Suite 107
White Plains, NY 10605

FIN: 13-4100917

Contact Person: Elissa Seto
Office: (877) 328-2969
Mobile: (914) 989-2990
Email: sales@escholar.com

Term: July 31, 2015 – July 30, 2017

Payment: Net 30 days

For Additional Information, Please Contact:

Technical Information:
Supply Chain Management
Virginia Information Technologies Agency
James 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>



Information Technology Software-as-a-Service (SaaS) Contract

between

The Virginia Information Technologies Agency

on behalf of

The Commonwealth of Virginia

and

eScholar LLC

**INFORMATION TECHNOLOGY SOFTWARE-AS-A-SERVICE (SAAS) CONTRACT
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INFORMATION TECHNOLOGY SOFTWARE-AS-A-SERVICE (SAAS) CONTRACT

THIS INFORMATION TECHNOLOGY Software-as-a-Service (SaaS) 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 eScholar LLC ("Supplier"), a limited liability corporation headquartered at 222 Bloomingdale Road, Suite 107, White Plains, NY 10605 to be effective as of July 31, 2015 ("Effective Date").

1. PURPOSE AND SCOPE

This Contract sets forth the terms and conditions under which Supplier shall provide a unified state-level data platform that will serve as the hub for a statewide Instructional Improvement Architecture by linking to division-level student information systems; specifically for school divisions that opt into the solution. The solution shall provide data that is timely, relevant and reliable and includes historical, growth, and predictive analysis features.

This Contract is part of a multi-vendor award for the Services that are referenced in this Contract. Authorized Users may elect to purchase such Services from any of the named Suppliers who are awarded contracts as a result of the underlying procurement. Authorized Users may or may not at their own discretion utilize this Contract for the purchase of such Services and Supplier agrees and understands that there is no commitment either implied or inferred on behalf of any Authorized User to utilize Supplier's Contract for the purchase of such Services.

2. DEFINITIONS

A. Acceptance

Successful delivery and performance by the Supplier of its contractual commitments at the location(s) designated in the applicable Statement of Work or order, including completed and successful Acceptance testing in conformance with the Requirements as determined by the Authorized User in the applicable Statement of Work or order.

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 Licensed Services hosted and supported by Supplier under the Contract, as described in Exhibit A or as described in any SOW or order issued under the contract, including any Updates, enhancements, and replacements to the Application.

D. Application Users

Application Users shall include, as specified in the applicable Statement of Work or 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. In the event that the Authorized User is a private institution of higher education, Application Users may include students of such private institution.

E. Authorized Users

Except for telecommunications contracts, means all public bodies, including VITA, as defined by §2.2-4301 and referenced by §2.2-4304 of the Code of Virginia. Authorized Users shall include private institutions of higher education that are listed at <http://www.cicv.org/Our-Colleges/Profiles.aspx>.

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 order or 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, and which at the time of disclosure either (i) is marked as being "Confidential" or "Proprietary", (ii) is otherwise reasonably identifiable as the confidential or proprietary information of the disclosing Party, or (iii) under the circumstances of disclosure should reasonably be considered as confidential or proprietary information of the disclosing Party or (iv) is identifiable or should be reasonably considered as protected health information; (v) any personally identifiable information, including information about VITA's employees, contractors, and customers, that is protected by statute or other applicable law.

I. Content

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

J. Coverage

8am-7pm Eastern Monday through Friday, excluding Federal holidays ("Coverage"), Supplier shall provide to any Authorized User all reasonably necessary telephone or written consultation requested by such Authorized User in connection with use, problems and operation of the Application as described in Exhibit H, Service Level Agreement.

K. Deliverable

The tangible embodiment of the work performed or Services, Maintenance Services, Licensed Services, Solution, Component, Software, plans, reports, data, Product, Supplier Product and Updates provided by the Supplier in fulfilling its obligations under the Contract or as identified in the applicable Statement of Work or order, including the development or creation of Work Product, if Work Product is authorized under the Contract.

L. Documentation

Those materials (including user manuals, training materials, guides, product descriptions, technical manuals, product specifications, supporting materials and Updates) detailing the information and instructions needed in order to allow any Authorized User and its Agents or Application Users to make productive use of the Application, Software, Solution, Component, Product, Service, Licensed Services or Deliverable, and to implement and develop self-sufficiency with regard to the Application, Software, Solution, Component, Product, Service, Licensed Services or Deliverable, provided by Supplier in fulfilling its obligations under the Contract or as may be specified in any Statement of Work or order issued hereunder.

M. Electronic Self-Help

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

N. Health Record

"Health record" means any written, printed or electronically recorded material maintained by a health care entity in the course of providing health services to an individual concerning the individual and the services provided. "Health record" also includes the substance of any communication made by an individual to a health care entity in confidence during or in connection with the provision of health services or information otherwise acquired by the health care entity about an individual in confidence and in connection with the provision of health services to the individual. (§ 32.1-127.1:03, Code of Virginia)

O. 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 or as described in any Statement of Work or order issued hereunder.

P. Maintenance Coverage Period (MCP)

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

Q. Maintenance Level

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

R. Maintenance Services (or "Maintenance" or "Software Maintenance")

If authorized by the Contract, means those services, preventive and remedial, provided or performed by Supplier under the Contract or for an Authorized User in order to ensure continued operation of the Software or Product, including Software Updates. Maintenance Services shall include support services. Software Maintenance Services may include the development of Work Product, if so authorized in the Contract.

S. Party

Supplier, VITA or any Authorized User.

T. Protected Health Information

Protected health information means individually identifiable health information that is (i) transmitted in electronic media, (ii) maintained in electronic media, or (iii) transmitted or maintained in any other form or medium. Protected health information excludes individually identifiable health information in (a) education records covered by the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g); (b) records of any student who is 18 years of age or older, or is attending a postsecondary school, that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and that are made, maintained, or used only in connection with the provision of treatment to the student and are not available to anyone other than persons providing such treatment, except that such records may be personally reviewed by a physician or other appropriate professional of the student's choice; and (c) employment records held, in its role as employer, by a health plan, health care clearinghouse, or health care provider that transmits health information in electronic form. (§ 37.2-1032, Code of Virginia)

U. Receipt

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

V. Requirements

The functional, performance, operational, compatibility, Acceptance testing criteria and other parameters and characteristics of the Product, Software, Solution, Component, Service(s), Application and Licensed Services and Deliverables, as authorized by the Contract and/or as set forth in Exhibit A and/or the applicable Statement of Work or order and such other parameters, characteristics, or performance standards that may be agreed upon in writing by the Parties.

W. Services

Any work performed or service provided by Supplier in fulfilling its obligations under the Contract or, as applicable, any Statement of Work or order issued under the Contract, including design, and development of software and modifications, software updates, solution, products, implementation, installation, maintenance, support, testing, training, or other provision to the Authorized User of any Deliverable described in the applicable Statement of Work or order, as authorized by the Contract scope. As permitted by the scope of the Contract, may include the discovery, creation, or development of Work Product, if any. If Work Product is authorized, refer

to definition for Work Product. For details about the work and services to be provided by Supplier under this Contract, see Exhibit(s) A & B. This definition does not include Licensed Services.

X. Software

If Software is authorized under the Contract, means the programs and code provided by Supplier under the Contract or any order or SOW issued hereunder as a component(s) of any Deliverable or Component of any Solution, and any subsequent modification of such programs and code, excluding Work Product. For COTS (boxed) software, means the programs and code, and any subsequent releases, provided by Supplier under this Contract as set forth in Exhibit A or as described on Supplier's US and International price lists in effect at time of Authorized User's placement of order or Statement of Work. For Software Maintenance contracts Software also includes the programs and code provided by Supplier under the Contract or any order or SOW issued hereunder in the form of Software Updates.

Y. Software Publisher

If Software is authorized under the Contract, means the licensor of the Software, other than Supplier, provided by Supplier under this Contract.

Z. 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 that Supplier commits to provide to an Authorized User), which, upon signing by both Parties, shall be deemed a part of the Contract.

AA. 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).

BB. Supplier Product

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

CC. Update

As applicable, any update, modification or new release of the Software, System Software, Application, Documentation or Supplier Product that Supplier makes generally available to its customers at no additional cost. Software Updates include patches, fixes, upgrades, enhancements, improvements, or access mode, including without limitation additional capabilities to or otherwise improve the functionality, increase the speed, efficiency, or base operation of the Software.

DD. Web Site

The Internet site operated by Supplier to provide access to the Application, with the Uniform Resource Locator (URL) specified in the applicable Statement of Work or order (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 two (2) years. VITA, in its sole discretion, may extend this Contract for up to three (3) additional one (1) year periods after the expiration of the initial two (2) year period. VITA will issue a written notification to the Supplier stating the extension period thirty (30) days prior to the expiration of any current term. In addition, performance of an order or SOW issued during the term of this Contract may survive the expiration of the term of this Contract, in which case all contractual terms and conditions required for the operation of such order or SOW shall remain in full force and effect until all of Supplier's obligations pursuant to such order or SOW have met the final Acceptance criteria of the applicable Authorized User.

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 an order or Statement of

Work. The revised usage shall be effective not more than one (1) business hour following the request. Pricing for the revised usage of Licensed Services shall be calculated as provided in Exhibit B and shall be prorated on a daily basis for remaining portion of the current yearly billing period. For purposes of this provision, a written notice may include an e-mail or the use of a Supplier-provided provisioning website by 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.

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

E. Termination for Non-Appropriation of Funds

All payment obligations from public bodies under this Contract are subject to the availability of legislative appropriations at the federal, state, or local level, for this purpose. In the event of non-appropriation of funds, irrespective of the source of funds, for the items under this Contract, VITA may terminate this Contract, in whole or in part, or any order or SOW, in whole or in part, or an Authorized User may terminate an 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.

F. Effect of Termination

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

In the event of a Termination for Breach or Termination for Default, Supplier shall accept return of any Deliverable that was not accepted by the Authorized User(s), and Supplier shall refund any monies paid by any Authorized User for such Deliverable, and all costs of de-installation and return of Deliverables shall be borne by Supplier.

G. Termination by Supplier

Termination by Supplier will not be considered.

H. Transition of Services

Prior to or upon expiration or termination of this Contract and at the request of VITA, Supplier shall provide all assistance as VITA or an Authorized User may reasonably require to transition the Supplier's contractual obligations, or any portion thereof, as requested by VITA or the Authorized User, to any other supplier with whom VITA or such Authorized User contracts for provision of same. This obligation may extend beyond expiration or termination of the Contract for

a period not to exceed six (6) months. In the event of a termination for breach and/or default of Supplier, Supplier shall provide such assistance at no charge or fee to VITA or any Authorized User; otherwise, Supplier shall provide such assistance at the hourly rate or a charge agreed upon by Supplier and VITA or an Authorized User.

I. 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 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.

J. 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, other required Small Business (SWaM) Procurement Plan compliance/variance and non-SWaM spend documentation as described in the Reporting section of this Contract, 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 the Commonwealth's 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. NEW TECHNOLOGY

A. Access to New Technology

Supplier will bring to VITA's attention any new products or services within the scope of the Contract that it believes will be of interest to VITA and will work to develop proposals for the provision of any such products or services as VITA requests.

B. New Service Offerings Not Available from Supplier

If new or replacement product or service offerings become available to VITA under the scope of the Contract, and cannot be competitively provided by the Supplier, VITA may purchase such new or replacement products or services from a third party, and Supplier will reasonably assist VITA to migrate to such products or services, if VITA elects to use such new or replacement product or service offerings.

If VITA elects to acquire new products or services as described in the above paragraph and such services replace existing Supplier-provided services, discount tiers and any commitments (as applicable per the Contract) will be reduced to reflect reductions in purchases of the replaced products or services.

5. 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 or SOW 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. If Authorized User is a private institution of higher education which is listed at <http://www.cicv.org/Our-Colleges/Profiles.aspx>, the license shall be held by that institution.

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 or SOW 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 in this Contract and any amendments or modifications thereto shall supersede and govern licensing and use of all products and services hereunder.

6. 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, as defined in Section 14 A below, to Authorized User and/or designated Application Users, as specified in the applicable order or SOW, during the Coverage period, as defined in Section 13a below, ("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, commercially reasonable 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 during the Coverage period.
- 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 Coverage 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 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. Supplier 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.

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 to by Supplier and Authorized User in any order or SOW issued hereunder; and (iii) otherwise support the Application as provided under this Contract and any exhibits hereto or as agreed in any order or SOW 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.

Any action by Supplier's subcontractors to add any additional, supplemental or acceptable use terms and conditions to this Contract, or any order or SOW issued hereunder, shall be considered null and void and will have no effect on this Contract, nor on any Authorized User or any Application User."

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

7. 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. Authorized User shall designate Administrators who will be authorized to add, change access for or delete USERIDs.
- iii). An authorized representative of an Authorized User will manage Application User login accounts including the addition or deletion or change in user role according to documentation provided by Supplier. If, an Authorized User follows the Supplier's documentation to delete a user (Application User) and, subsequent to that, a deletion of that Application User does not occur within (1) hour, Authorized User shall not be held liable for any charges or damages incurred due to use of the unauthorized USERID.

8. 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 an order or 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 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 any and all Authorized Users, 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 all Authorized Users 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 SOC or SSAE 16 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 SOC or SSAE 16 Type II audit report. Supplier shall also assist VITA in obtaining the current SOC or SSAE 16 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 one hundred and twenty (120) days after the expiration or termination of this Contract, Supplier shall confirm in writing to Authorized Users 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.

9. 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 or SOW;
- 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 or SOW;
- 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 or SOW 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.

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

The obligations set forth in this section and in any Transition Plan developed pursuant to 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 such obligations at no charge or fee to VITA or any Authorized User; otherwise, Supplier shall perform such obligations at the hourly rate or a charge agreed upon by Supplier and VITA or an Authorized User.

11. 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 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 thirty (30) days after receiving written notice from Supplier of the ability of such Authorized User and its Application Users to access the Application, or within such other period as set forth in the applicable order or SOW. 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 URLs. Authorized Users who are not public bodies may have its own per diem amounts applicable to Supplier's pre-approved travel expenses. 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) business days following the Acceptance testing period, the Service shall be deemed Accepted.

C. Cure Period

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

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

12. 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 in support of its charges invoiced to Authorized User. The records will be to the extent and in such detail as will properly reflect all direct and indirect costs associated with such order or SOW. In addition, Supplier shall maintain accurate records of the Licensed Services, including but not limited to, the "Uptime" and "Downtime" as set forth in the Supplier Responsibilities Section. Authorized User shall have the right, at any reasonable time during regular business hours after giving reasonable advance notice, to inspect and audit the records applicable to its order(s) or SOW(s). Supplier shall preserve such records for three (3) years after termination/completion of the Licensed Services agreed to under this Contract or any order or SOW issued hereunder.

13. APPLICATION AND LICENSED SERVICES SUPPORT

At any time during the term of any order or SOW 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. Service Levels

Service Levels are described in Exhibit H Service Level Agreement.

B. 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.

14. 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 Coverage period time in any given month during the term of such Authorized User's order or SOW, excluding scheduled maintenance or excusable downtime, shall be deemed a service level default ("Service Level Default") and Authorized User may obtain the non-exclusive remedies set forth in Exhibit H of the Contract, Table of Service Levels and Remedies for Licensed Services. 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.

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 or SOW, 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.

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 in accordance with Section 7iii above. In the event the Authorized User follows the Supplier's documented procedures for provisioning and 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 or such Authorized User's order or SOW that may be reasonably requested by either Supplier or Authorized User. Authorized User may independently audit the report at its expense no more than two (2) times annually.

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. 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

Escalation procedures are as described in Exhibit H Service Level Agreement.

15. GENERAL WARRANTY

Supplier warrants and represents to VITA that Supplier will fulfill its contractual obligations and meet all needed requirements as described in Exhibit A as follows:

A. Ownership

Supplier has the right to perform and provide all contractual obligations and provide all needed services and products 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. 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.

D. 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.

E. Documentation and Deliverables

Supplier warrants the following as applicable to the Contract:

- i. The Documentation which Supplier is required to provide under this Contract shall be sufficient in detail and content to allow a user/programmer to understand and fully utilize, as applicable, the Software, System Software, Services, Maintenance Services, Product, Application, Licensed Services, Updates and Deliverables without reference to any other materials or information.

ii. The Software, System Software, Services, Maintenance Services, Product, Application, Licensed Services, Updates and Deliverables provided or delivered hereunder are at the current release level unless an Authorized User specifies an older version in its order or SOW.

iii. No Update or engineering change or revision made to any Software, System Software, Services, Maintenance Services, Product, Application, Licensed Services, Updates and Deliverables provided by Supplier hereunder shall degrade the performance of any Software, System Software, Services, Maintenance Services, Product, Application, Licensed Services, and Deliverables to a level below that defined in the Requirements or the Product manufacturer's or Software Publisher's published specifications, as applicable, or cause any other warranty to be breached, or require an Authorized User to acquire additional hardware equipment or software.

F. Malicious Code

Supplier has used its best, commercially reasonable efforts through quality assurance procedures to ensure that there are no Computer Viruses or undocumented features in any Solution, Solution Component, Deliverables, Product, Software, System Software, Update, Application and/or Licensed Service, as obligated and provided by Supplier under the order or SOW, at the time of delivery to the Authorized User. Supplier warrants that the Solution, Solution Components, Deliverables, Product, Software, System Software, Update, Application and/or Licensed Services, as obligated and provided by Supplier under the order or SOW does not contain any embedded device or code (e.g., time bomb) that is intended to obstruct or prevent any Authorized User's use of the Solution, Solution Components, Deliverables, Product, Software, System Software, Application and/or Licensed Service.

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.

G. 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.

H. Open Source

Supplier will notify all Authorized Users if the Solution, Solution Components, Deliverables, Product, Software, Updates, Application and/or Licensed Services, as obligated and provided by Supplier, 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.

I. 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.

J. Supplier's Past Experience

Supplier warrants that it has met similar contractual obligations and fulfilled the Requirements as set forth in Exhibit A and in this Contract, in similar or greater complexity, to other customers without significant problems due to Supplier's performance and without causing a contractual breach or default claim by any customer.

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. FEES, ORDERING AND PAYMENT PROCEDURE

A. Fees and Charges

As consideration for the Supplier's performance obligations and any additional products and services provided hereunder to an Authorized User in accordance with the scope of this Contract and the Requirements, as authorized by Exhibit A, and per the Authorized User's order or SOW, 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 and to the Authorized User if such change impacts any SOW or order and in accordance with the above and shall not become effective for sixty (60) days thereafter. Supplier agrees to offer price reductions to ensure compliance with the Competitive Pricing Section.

B. 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 or 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 or SOWs for the contractual offerings and Requirements available under the scope of 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 or SOW is to be funded, in whole or in part, by federal funds and if, at the time the order or SOW is placed, Supplier is not eligible to be the recipient of federal funds as may be noted on any of the Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs.

ALL CONTRACTUAL OBLIGATIONS UNDER THIS CONTRACT IN CONNECTION WITH AN ORDER OR SOW 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.

C. Reimbursement of Expenses

If allowable pursuant to an Authorized User's Statement of Work, such Authorized User shall pay, or reimburse Supplier, for all reasonable and actual travel-related expenses for greater than thirty (30) miles from portal to portal incurred by Supplier during the relevant period; provided, however, that such Authorized User shall only be liable to pay for Supplier's travel-related expenses, including transportation, meals, lodging and incidental expenses, that have been authorized by such Authorized User in advance in the Statement of Work and which will be reimbursable by such Authorized User at the then-current per diem amounts as published by the Virginia Department of Accounts (<http://www.doa.virginia.gov/>, or a successor URL(s)). Authorized Users who are not public bodies may have their own per diem amounts applicable to Supplier's pre-approved travel expenses.

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

D. Demonstration and/or Evaluation

If the Supplier's contractual obligations include the provision of a Solution, an Application and Licensed Services, or Software-as-a-Service, at the request of any Authorized User, Supplier shall perform a demonstration of its Solution, or its Application and Licensed Services or Software-as-a Service at such Authorized User's location and at no charge.

If the Supplier's contractual obligations include the provision of Software, the Supplier shall make available to any Authorized User the Software for evaluation purposes at no charge. The evaluation period will be determined by the complexity of testing but will be a period not less than thirty (30) days. Each new project is entitled to an evaluation copy regardless of whether an Authorized User has previously purchased the Software.

E. Statement of Work

An SOW, in the format provided in Exhibit D, shall be required for any orders placed by an Authorized User pursuant to this Contract. Supplier shall perform any and all contractual obligations at the times and locations set forth in the applicable SOW and at the rates set forth in Exhibit B herein. Unless VITA issues a written authorization for a time and materials type SOW, any SOW shall be of a fixed price type but may, with the written approval of VITA, contain a cost-reimbursable line item(s) for pre-approved travel expenses. In furtherance of compliance, invoicing, and auditing requirements, for time and materials type SOWs, Supplier personnel shall maintain daily time records of hours and tasks performed, which shall be submitted or made available for inspection by the Authorized User upon forty-eight (48) hours advance written notice.

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

F. Supplier Quote and Request for Quote

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

Supplier shall respond to the RFQ by providing a quote, which shall include (a) a detailed description of each product or service proposed, including such product and services

components, at the Exhibit B line item level, (b) the quantity of each such component, (c) the contract price, (d) any additional percentage discount offered, and (e) an extended price. If requested by the Authorized User, Supplier's quote shall also include a proposal describing the approach Supplier plans to take in developing, implementing, and maintaining its offering for the Authorized User. Should Supplier be unable to respond to the RFQ due, for example, to resource constraints, Supplier shall notify Authorized User in writing of its inability to perform the work requested by such Authorized User, and provide the reasons for such inability to perform, prior to the due date for the submission of quotes in response to the RFQ. [If only one contract is to be awarded add:] Supplier's failure to respond to an RFQ may be deemed a default of this Contract.

G. Invoice Procedures

Supplier shall remit each invoice to the "bill-to" address provided with the order promptly after all Supplier's performance obligations have been accepted and in accordance with the milestone payment schedule, if any, in the applicable order or SOW. Payment for any support services, as authorized in the Contract and the Authorized User's applicable order or SOW, shall be annually in arrears 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/periods that invoice covers, including any service or subscription periods, as applicable.
- ii. Line item description of the Deliverable(s), Product(s), Software, Hardware, Services, Solution and Solution Components, Maintenance Services, and/or Licensed Services, as applicable to this Contract, including components thereof or service type, and, if applicable, the project milestone.
- iii. Quantity, charge and extended pricing for each line item
- iv. Applicable order and/or SOW date
- v. This Contract number and the applicable order number and/or SOW number
- vi. Supplier's Federal Employer Identification Number (FEIN)

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

H. Purchase Payment Terms

Supplier is responsible for the accuracy of its billing information. Supplier agrees not to issue invoices hereunder until all Supplier's performance obligations have been accepted and in accordance with the milestone payment schedule, if any, in the applicable order or SOW, or until after services have been rendered. Charges for Deliverables, components or services accepted more than ninety (90) days prior to receipt of a valid invoice may not be paid. Should Supplier repeatedly over bill Authorized User, Authorized User may assess a one percent (1%) charge for the amount over-billed for each month that such over-billing continues.

17. REPORTING

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

- i. Report of Sales; and
- ii. Small Business Procurement and Subcontracting Report

These reports must be submitted using the instructions and further detailed requirements and templates found at the following URL: <http://www.vita.virginia.gov/scm/default.aspx?id=97>

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

In conjunction with the requirements in the Invoice Procedures section of this Contract, Supplier shall provide to VITA within 30 days of the date of expiration of the contract an accompanying statement certifying that Supplier has fully complied with the Contract's Small Business (SWaM) Procurement Plan, and if Supplier has not fully complied, provide a written explanation of any variances between

such Plan and the actual participation. The Supplier's compliance confirmation and/or written explanation of variance shall be maintained by VITA, in the contract file.

Failure by Supplier to comply with its contractually obligated Small Business (SWaM) Procurement Plan may prohibit or delay any renewals of the Contract. Also, Supplier's failure to comply with its Small Business (SWaM) Procurement Plan or to explain any variance between the proposed Plan and actual SWaM subcontracting spend may result in the withholding of any final payment due Supplier.

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

18. STATUS MEETINGS

The Account Team will be prepared to conduct monthly stewardship meetings with VITA to provide a broad review of all services, projects and ongoing operations. Supplier should also be prepared to conduct semi-annual meetings/presentations to discuss new products and services and their potential benefit to VITA.

19. POLICIES AND PROCEDURES GUIDE

Within 30 days of the effective date of the Contract, Supplier will provide VITA with a policy and procedures guide that describes how the Supplier and VITA will work together and how performance, including Deliverables and Services, are to be delivered. The guide will provide process diagram details, working activities, interface points with VITA and Supplier deliverables. Updated versions of the guide will be provided by Supplier to VITA and all Authorized Users every 6 months during the term and any extensions of the Contract.

20. TRAINING AND DOCUMENTATION

A. Training

In addition to any online tutorial training Supplier may make available, Supplier's fee, unless expressly excluded, includes all costs for any and all training as agreed upon for the training of one (1) Authorized User trainer per order or SOW on the use and operation of the Deliverable provided to Authorized User, to allow full benefit of the applicable Deliverable to Authorized User, including instruction in any necessary conversion, manipulation or movement of such Authorized User's data. Supplier shall provide personnel sufficiently experienced and qualified to conduct such training at a time and location mutually agreeable to Supplier and Authorized User. Available additional and optional training, and applicable pricing and discounts, are described in Exhibit B.

B. Documentation

Supplier shall provide access to Supplier's support portal to Authorized User three (3), or such number as agreed upon between the parties under an order or SOW, to Supplier's Deliverable provided to Authorized User, as requested by such Authorized User. Should Supplier revise or replace the Documentation, or should Documentation be modified to reflect Updates, Supplier shall provide access to Supplier's support portal to the Authorized User such updated or replacement Documentation, in the same quantity and media format as originally requested by such Authorized User, or as agreed upon between the parties. Any Authorized User shall have the right, as part of any license grant, to make as many additional copies of the Documentation, in whole or in part, for its own use as required. This Documentation shall include, but not be limited to, overview descriptions of all major functions, detailed step-by-step installation and operating procedures for each screen and activity, and technical reference manuals. Such Documentation shall be revised to reflect any modifications, fixes or updates made by Supplier. Any Authorized User shall have the right, as part of the license granted by Supplier, 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 licensed application or software 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.

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

22. 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).

A. 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.

B. 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.

C. Confidentiality Statement

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

D. Health Insurance Portability and Accountability Act

Supplier agrees to comply with all applicable provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and, as applicable to the performance of this Contract or to any SOW or order issued hereunder. Supplier shall:

- i. Not use or further disclose protected health information (PHI) other than as permitted or required by the terms of this Contract or any SOW or order issued hereunder or as required by law;
- ii. Use appropriate safeguards to prevent use or disclosure of PHI other than as permitted by this Contract or any SOW or order issued hereunder;

- iii. Report to VITA or Authorized User, as applicable, any use or disclosure of PHI not provided for by this Contract or the applicable SOW or order;
- iv. Mitigate, to the extent practicable, any harmful effect that is known to the Supplier of a use or disclosure of PHI by the Supplier or its employees, agents or subcontractors in violation of the requirements of this Contract or the applicable SOW or order;
- v. Impose the same requirements and restrictions contained in this provision on its employees, subcontractors and agents performing on this Contract or a SOW or order issued hereunder;
- vi. Provide access to PHI contained in its records to VITA or the requesting Authorized User, in the time and manner designated by VITA or the requesting Authorized User, or at the request of VITA or an Authorized User, to an individual in order to meet HIPAA access;
- vii. Make available PHI in its records to VITA or an Authorized User for amendment and incorporate any amendments to PHI in its records at VITA's or an Authorized User's request; (end of HIPAA additional language)

All Supplier documents now or later comprising the Contract may be released in their entirety under the Virginia Freedom of Information Act, and Supplier agrees that any confidentiality or similar stamps or legends that are attached to any future documents or information may be ignored to the extent they claim confidentiality beyond that permitted herein.

23. INDEMNIFICATION AND LIABILITY

A. Indemnification

Supplier agrees to indemnify, defend and hold harmless the Commonwealth, VITA, any Authorized User, their officers, directors, agents and employees (collectively, "Commonwealth's Indemnified Parties") from and against any and all losses, damages, claims, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, assessments, fines, penalties (whether criminal or civil), judgments, settlements, expenses (including attorneys' and accountants' fees and disbursements) and costs (each, a "Claim" and collectively, "Claims"), incurred by, borne by or asserted against any of Commonwealth's Indemnified Parties to the extent such Claims in any way relate to, arise out of or result from: (i) any intentional or willful conduct or negligence of any employee, agent, or subcontractor of Supplier, (ii) any act or omission of any employee, agent, or subcontractor of Supplier, (iii) breach of any representation, warranty or covenant of Supplier contained herein, (iv) any defect in the Supplier-provided products or services, or (v) any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Supplier-provided products or services. Selection and approval of counsel and approval of any settlement shall be accomplished in accordance with all applicable laws, rules and regulations. For state agencies the applicable laws include §§ 2.2-510 and 2.2-514 of the Code of Virginia. In all cases involving the Commonwealth or state agencies, the selection and approval of counsel and approval of any settlement shall be satisfactory to the Commonwealth. In the event of a settlement between Supplier and a private institution of higher education who is an Authorized User of this contract, such settlement shall be satisfactory to that institution.

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

In the event of a Claim pursuant to any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Supplier-provided Deliverables, Products, Software, Services, Solution, including Solution Components, Application and Licensed Services,

as applicable, or Supplier's performance, and in addition to all other obligations of Supplier in this Section, Supplier shall at its expense, either (a) procure for all Authorized Users the right to continue use of such infringing Deliverables, Products, Software, Services, Solution, including Solution Components, Application and Licensed Services, as applicable, or any component thereof; or (b) replace or modify such infringing Deliverables, Products, Software, Services, Solution, including Solution Components, Application and Licensed Services, as applicable, or any component thereof, with non-infringing Deliverables, Products, Software, Services, Solution or Solution Component(s), Application and Licensed Services, as applicable, satisfactory to VITA. And in addition, Supplier shall provide any Authorized User with a comparable temporary replacement products and/or services 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 Deliverable, Product, Software, Services, Solution or Solution Component(s), Application and Licensed Services, as applicable, or any component thereof. 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 Deliverables, Products, Software, Services, Solution, Solution Component, Application and Licensed Services, as applicable, or any component thereof, along with any other components 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 security compliance obligations, and (vii) Supplier's data privacy and security obligations as specified under this Contract, Supplier's liability shall be limited to twice the aggregate value of the delivered and accepted Deliverables, Products, Software, Services, Solution, including Solution Components, Application and Licensed Services, as applicable, provided by Supplier to all Authorized Users under this Contract. Supplier agrees that it is fully responsible for all acts and omissions of its employees, agents, and subcontractors, including their gross negligence or willful misconduct. The limitation shall apply on a per-incident basis, it being understood that multiple losses stemming from the same root cause constitute a single incident.

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.

C. 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 \$2,000,000 per occurrence.

D. 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.

E. 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.

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

G. 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, and any penalties related to health care or employee benefits laws) that are imposed, assessed or levied as a result of this Contract or Services performed pursuant to 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:

https://www.vita.virginia.gov/uploadedfiles/VITA_Main_Public/scm/StatutorilyMandatedTsandCs.pdf.

The contractual claims provision §2.2-4363 of the Code of Virginia and the required eVA provisions at https://www.vita.virginia.gov/uploadedfiles/VITA_Main_Public/scm/eVATsandCs.pdf are also incorporated by reference.

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

C. Compliance with the Federal Lobbying Act

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

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 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 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

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

M. Force Majeure

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

N. Remedies

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

O. Right to Audit

VITA reserves the right to audit those Supplier records that relate to the Contract or any SOWs or orders issued there under. VITA's right to audit shall be limited as follows:

- i. Three (3) years from end date of the Contract;
- 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. Offers of Employment

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

Q. Contract Administration

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

R. Entire Contract

The following Exhibits, including all subparts thereof, are attached to this Contract and are made a part of this Contract for all purposes: (Customize for project and QA references throughout document.)

- Exhibit A - Requirements
- Exhibit B – Fees & Service Charges
- Exhibit C - Reserved
- Exhibit D - Statement of Work (SOW) Template
- Exhibit E – SOW Change Order Template
- Exhibit F - Additional Content (Data) Escrow Terms
- Exhibit G - Certification Regarding Lobbying
- Exhibit H- Service Level Agreement

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

An Authorized User and Supplier may enter into an ordering agreement pursuant to this Contract. To the extent that such ordering agreement, or any order or SOW issued hereunder, include any

terms and conditions inconsistent with the terms and conditions of this Contract, such terms and conditions shall be of no force and effect.

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

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

eScholar LLC

VITA

By: _____

(Signature)

Name: _____

(Print)

Title: _____

Date: _____

Address for Notice:

Attention: Supplier Contact

By: _____

(Signature)

Name: _____

(Print)

Title: _____

Date: _____

Address for Notice:

Attention: Contract Administrator

Exhibit A

Requirements

Exhibit A- Requirements

	Description
1	Features & Function
2	Data & Integration
3	Analysis & Reports
4	Training, Support & Implementation
5	Access, Security & Hosting

	Features & Functions	A	B
1.1	<p>Does your solution comply with all current COV ITRM Policies and Standards, as applicable, found at: http://www.vita.virginia.gov/library/default.aspx?id=537.</p> <p>If proposed solution does not, please provide details that specify the Standard/Policy and how Supplier's solution does not comply.</p>	Y	eScholar myTrack complies with all current COV ITRM Policies and Standards as applicable.
1.2	<p>Do your proposed interfaces to Commonwealth systems comply with or have approved exceptions to all applicable Commonwealth Data Standards as found at: http://www.vita.virginia.gov/oversight/default.aspx?id=10344 ? If not, please explain.</p>	Y	eScholar myTrack interfaces comply with all applicable Commonwealth Data Standards.
1.3	<p>Does your solution/application/product 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? Standard found at: http://www.vita.virginia.gov/uploadedFiles/Library/AccessibilityStandard_GOV103-00_Eff_11-04-05.pdf</p>	Y	eScholar myTrack provides 508 compliance which includes effective, interactive controls and use of nonvisual means to accomplish tasks.
1.4	<p>Does your solution support access for mobile devices? If yes, please explain.</p>	Y	eScholar myTrack supports access for mobile devices. eScholar myTrack renders on mobile browsers. Since mobile browsers do not support some functionality, there are some features that are limited or unavailable on a mobile device. This includes hover functionality, such as alternate text for images, tooltips and hover messages.

<p>1.5</p>	<p>Does your solution offer a customizable, role-based dashboard? If yes, please explain.</p>	<p>Y</p>	<p>eScholar myTrack offers a customizable, role-based dashboard. It enables users to customize their views/ dashboards by applying filters, changing views, and sorting. For example, on the Assessment dashboard, users can filter by assessment, school, or class, and can change views to assessments by score, domain/ strand, student responses, or item details.</p> <p>System Administrators can enable or disable dashboards and features for certain roles when needed. When a feature or dashboard is disabled for a role, all users assigned to that role will no longer have access to the feature or dashboard.</p>
<p>1.6</p>	<p>Does your solution support role-based authentication? If yes, please explain and provide examples for supported systems.</p>	<p>Y</p>	<p>eScholar myTrack supports role-based authentication. All users of the system are provisioned by an authorized administrator and are assigned to a role using the User Manager component. Permissions and privileges to data and features are controlled by the role assignment.</p> <p>To authenticate users, eScholar is proposing Local Authentication which is where eScholar myTrack handles authentication. All users will be controlled and managed by the school divisions to ensure local control over access to the Solution. When a user attempts to log into myTrack, the user credentials are verified and authenticated and the role permissions are applied to the user's session in the application.</p>
<p>1.7</p>	<p>Does your solution reduce/eliminate the need for redundant entry of information? If yes, please explain.</p>	<p>Y</p>	<p>eScholar myTrack reduces and/or eliminates the need for redundant entry of information. Information may be entered once in one of any number of source systems, then integrated into eScholar myTrack for analysis and display in the dashboard. For example, rosters and assessment scores can be recorded in the preferred source system such as a Student Information System and integrated into eScholar myTrack automatically after initial setup. It will then be available to authorized users without any interaction or redundant entry on their end. Educators can benefit from this process because they do not have to enter in rosters, course grades, assessment scores or other data that is sourced from another system.</p>

1.8	<p>Is your solution's system scalable to allow undegraded performance at periods of peak demand?</p> <p>If yes, please explain including the average response time for a system of similar size/nature. Describe how you measure performance?</p>	Y	<p>eScholar myTrack is scalable to meet the demands of the users, including during periods of peak demand.</p> <p>eScholar utilizes Soasta for performance benchmarking and testing which enables us to accurately measure performance for various loads. We analyze data on concurrent actions and concurrent users to determine the best architecture needs for a deployment. Based upon our performance testing, the average response time for a load of 1000 concurrent users is 1.13 seconds, with a max of 3.1 seconds.</p> <p>In addition to the performance testing in a pre-production environment, eScholar monitors the production environment performance statistics and determines if adjustments need to be made to accommodate load.</p>
1.9	<p>Does your solution require browser add-ons, plug-ins or other technology necessary to use all aspects of the system successfully?</p> <p>If yes, please explain.</p>	N	<p>eScholar myTrack does not require browser add-ons or plug-ins, but will require Adobe Reader and a spreadsheet application in order to view certain output. For example, some reports are generated in PDF and/or CSV, so a viewer is required to view the content of the files. Adobe Reader</p>
1.10	<p>Does your solution provide access to state (VDOE) data for state (non school division) users?</p> <p>If yes, please explain.</p>	Y	<p>eScholar myTrack provides access to aggregate data for state users when the local schools and divisions authorize state access to the data.</p>

<p>1.11</p>	<p>Does your firm have a feedback process for the purpose of modifying or upgrading the solution? If yes, please provide examples.</p>	<p>Y</p>	<p>eScholar offers a feedback process for the purpose of modifying or upgrading the solution, including requests for enhancements to existing functionality, adding new functionality, improving documentation or help content, and other improvements.</p> <p>Feedback can be submitted through the Customer Support Portal and is logged in our support system. The eScholar Product Manager is responsible for working with the requestor to understand and prioritize the request. All requests are assigned to the product roadmap to be included in a future patch or upgrade.</p> <p>For example, when a customer requested the ability to view item responses for assessments in myTrack, the myTrack Design Team, under the supervision of the Product Manager clarified and gathered requirements and added a new Student Responses feature which enables users to view individual student responses per item for an assessment.</p>
<p>1.12</p>	<p>Does your solution include updates, as needed, to remain compliant to state and federal regulations? If yes, please explain the request process, the timeline and process.</p>	<p>Y</p>	<p>eScholar works with our customers to stay informed of relevant changes to state and federal regulations and to interpret those changes. Updates driven by those changes are reflected in each general release. The request / feedback process is the same as that outlined above (1.11).</p>

1.13	Does your firm test updates and/or patches before general release? If yes, please describe your testing environment.	y	Prior to each release, eScholar performs a comprehensive cycle of quality assurance, which includes unit, functional, security, performance, usability, accessibility, and regression testing. This includes a review of the help content and all functionality in the application. eScholar has a dedicated Quality Assurance team that focuses on ensuring defects in the general release are minimized. eScholar maintains development and quality assurance (Pre-production) environments which enable the Quality Assurance team to thoroughly test the application prior to deployment in Production.
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	Data & Integration	A	B
2.1	Is your solution a Commercial Off-The-Shelf (COTS) product? Please explain. COTS software can be defined as, general in nature which can be purchased and used immediately "as is", without modification, in the same form in which it was sold in the commercial marketplace. Standard options <u>are not considered modifications</u>	Y	eScholar myTrack is a COTS product and can be used "as is" without code modifications. eScholar myTrack can be configured in certain ways to suit the user's needs.
2.2	Does your solution have the capability to accommodate the ten-digit State Testing Identifier (STI) and the local student identifier? If yes, please explain.	Y	eScholar myTrack has the capability to accommodate the ten-digit State Testing Identifier (STI) and the local student identifier for each student. eScholar myTrack can associate each student with both a state student ID and a local student ID. For reporting purposes, the STI will be used to link historical records.
2.3	Does your solution provide role-based access to student information (<i>including, but not limited to demographics, enrollment and attendance history, discipline history, intervention plans and special program information</i>)? If yes, please explain and name those data or student information included in your reporting.	Y	eScholar myTrack provides role-based access to data and information that are key in making decisions to improve education. This data includes, but is not limited to: demographics, enrollment, attendance, special programs, discipline, program enrollment, assessment scores, item analysis, and more. Please see the Detailed Description of the Proposed Solution and Appendix 9 for a full description of the data that is available in the solution.
2.4	Does your solution provide the capability to export data in a variety of standard formats (<i>ie, comma delimited, .csv, xls, tab delimited, etc.</i>)? If yes, please explain and list the formats.	Y	eScholar myTrack provides the capability to export data in a variety of standard formats. Data can be exported in the form of CSV and PDF files.
2.5	Does your solution provide a data dictionary identifying all data elements (<i>including, but not limited to source system of record, refresh intervals and other data attributes</i>)? If yes, please explain.	Y	eScholar myTrack provides the ability to identify all data elements, their source systems and more. eScholar also works with divisions during implementation and does a full mapping to ensure a successful project.

<p>2.6</p>	<p>Is your solution web-based? If yes, please explain how data is stored, accessed and analyzed using web protocols.</p>	<p>Y</p>	<p>eScholar myTrack is web-based and can be accessed by authorized users using any supported web browser (Internet Explorer, Firefox, Safari, or Chrome). The solution is secured via HTTPS to ensure data is encrypted during transmission.</p> <p>All users must be provisioned in the solution to ensure authorized access. All users must log into the solution using a valid username and password. Once the user is authenticated, they can access only the data and features they are authorized to access.</p> <p>The solution does not require special software or add-ons, except for viewing error reports or downloads in spreadsheet software or PDF.</p> <p>Data will be integrated via a data loading and quality process to ensure the data is validated prior to availability in the dashboard. The cleansed data will be stored in a data mart for optimized reporting and analysis.</p>
<p>2.7</p>	<p>Can your solution import data from a variety of local assessments (<i>including, but not limited to iReady, SRI, SOLAR, PALS, AP, SAT, ACT, IB, Orleans Hanna, ACCESS for ELLs, WISE, NWEA/MAP, Industry Credential Testing</i>)? If yes, please explain and describe the process of loading local assessment data into your system.</p>	<p>Y</p>	<p>eScholar myTrack can import data from virtually any assessment, including local assessments, into a single set of tables that stores all assessment data from any test, vendor, and system, and across time. eScholar can import all of the assessments listed. Furthermore many assessment vendors already provide assessment results in the eScholar Data Integration Template™ format. Additional local assessment results can be imported using the eScholar Data Integration Templates and associated documentation. Some assessments can be imported using the eScholar Assessment Lite Template, a single simple template to import assessment results. Once the data is imported into eScholar myTrack, the assessment data is available to authorized users via the</p>
<p>2.8</p>	<p>Does your solution allow the integration of IEP data? If yes, please explain.</p>	<p>Y</p>	<p>eScholar myTrack can allow integration of certain elements of IEP data. Information about student programs are included in student profiles, so for example, users can see if a student has an IEP or limited English proficiency. The future Goals feature of myTrack also allows users to set measurable goals with clear milestones, strategies, and check-ins.</p>

<p>2.9</p>	<p>Does your solution utilize Schools Interoperability Framework (SIF)? If yes, specify version and components, as applicable. If no, describe the method for data exchange to be used and the advantages of this method.</p>	<p>N</p>	<p>Although eScholar will not support SIF for this project, a standard and proven method is available for data integration. Data is submitted to eScholar myTrack via delimited files based on the NCES/CEDS data element definitions in formats defined by the eScholar Data Integration Templates™. The eScholar template formats are supported by nearly all major SIS vendors and have been used successfully by eScholar customers over many years to integrate hundreds of millions of student records.</p> <p>Among the many advantages of the eScholar Data Integration Templates are backward compatibility, proven success, support, and risk mitigation over the life of the project. Each release of eScholar myTrack is designed to be backward compatible. This means that after each upgrade, existing processes and formats for data submission continue to work uninterrupted, as do existing reports, dashboards, and other processes that use the data. eScholar myTrack, and the eScholar template formats, have been tested and field-proven over the course of more than 15 years, and are used by thousands of local and state education agencies across the nation to integrate data that is otherwise locked in silos.</p> <p>Over time, the source systems used at school divisions to supply data to the system may change. In these cases, the only thing that has to be</p>
<p>2.10</p>	<p>Does your solution accommodate the sharing of data for transfer students across schools and divisions? If yes, describe the process for sharing data</p>	<p>Y</p>	<p>eScholar myTrack accommodates the sharing of data for transfer students across schools and divisions. Data are associated with a student by linking to the student record through the student's unique identifier. As the student moves across schools and divisions, his/her</p>
<p>2.11</p>	<p>Does your solution provide a mapping between internal data elements and data elements defined by the Common Education Data Standards (CEDS)?</p>	<p>Y</p>	<p>eScholar myTrack is mapped to Common Education Data Standards (CEDS).</p>
<p>2.12</p>	<p>Is your solution compliant with Learning Tools Interoperability (LTI) standard?</p>	<p>N</p>	<p>Although eScholar myTrack is not currently compliant with the LTI standard, eScholar has LTI in the solution roadmap.</p>
<p>2.13</p>	<p>Does your solution support other standards? If yes, please list all standards supported.</p>	<p>Y</p>	<p>eScholar myTrack supports other standards. In addition to CEDS, eScholar myTrack supports Ed-FI and PESC data standards.</p>

2.14	Is there a limit on the number or size of student records that your solution can accommodate? If yes, please explain.	N	eScholar myTrack is designed to integrate and store longitudinal data that includes many years of historical data. Many of eScholar's customers store 10 years or more of historical data.
2.15	Does your solution include a database platform used for recording and housing the data (<i>i.e. Oracle, MS SQL, DB2</i>)? If yes, please specify.	Y	eScholar myTrack includes a database platform. PostgreSQL will be used for recording and housing the instructional improvement data and Microsoft SQL Server for storage in the star-schema data warehouse.
2.16	Does the solution support regional program access to data? If yes, please describe.	Y	eScholar myTrack supports regional program access to data when authorized by the associated programs. All users must be authorized and provisioned by the appropriate Division in order to access data.
2.17	Does your solution include a plan for on-boarding Virginia's 132 school districts? If yes, please describe your plan.	Y	eScholar myTrack includes a comprehensive plan for on-boarding Virginia's 132 school districts. There are four phases of engagement that eScholar plans to have with the school divisions: Learn, Opt-in, Adopt, and Advocate. During these phases, eScholar will ensure that divisions are aware of the new IIS features and benefits. Please see Appendix 8 for a full explanation of the engagement stages. eScholar will also develop a customized training program that can be used to on-board any number of school divisions. In addition, our training program features training for the school divisions about how to submit data to eScholar myTrack and how to use it to improve instruction.

2.18	Does your solution include a marketing plan for encouraging all Virginia school districts to participate in the state solution? If yes, please include your marketing plan.	Y	eScholar will execute a marketing plan to encourage all Virginia school divisions to participate in the state solution. This plan builds up on our experience in New York State where we successfully marketed eScholar myTrack to school districts and regional information centers across the state. As part of the marketing plan, eScholar will partner with the VDOE in crafting the key messages for the different audiences. eScholar will then create content that engages, educates, and compels school divisions to opt into the VDOE IIS. This content will be delivered through multiple channels, including on-the-ground engagement with divisions. The marketing plan overview and high-level timeline are found in Appendix 9.
2.19	Does your solution's portal function with the most current versions of Mozilla Firefox, Google Chrome, and Version 9 and later of Microsoft Internet Explorer. If yes, please give details.	Y	The eScholar's portal function supports each of the browsers listed. The users can access the application as long as a supported web browser is used and an internet connection is available. eScholar myTrack includes support of Internet Explorer version 9 and above, Firefox version 25, Safari version 6 and above, plus Google Chrome version 36.
2.20	Is your solution's portal fully functional (<i>i.e. is not in a development or testing state</i>)? If yes, please explain.	Y	eScholar myTrack is in production. It is being used in schools today and has been since 2012.

	Analysis & Reports	A	B
3.1	Does your solution provide standard reports? If yes, please explain and provide examples.	Y	eScholar myTrack provides numerous standard reports for different user roles, including attendance, early warning, and assessments. For example, a classroom educator will have access to assessment reports that visualize data by class, groups, and students. The data shown includes scores, performance levels overall, performance by domain or strand, early warning status, students' individual response, and item details.
3.2	Does your solution allow for the creation and sharing of custom reports? If yes, please explain.	Y	eScholar myTrack offers the ability to create and share custom group reports. When a group report is shared, the report only includes the students that the user is authorized to access to protect student privacy.
3.3	Does your solution allow authorized users to create ad hoc reports that can be saved, shared and refreshed? If yes, please explain.	Y	eScholar myTrack allows authorized users to create ad hoc reports that can be saved, shared and refreshed, as an optional component. eScholar myTrack also includes many reports and dashboards that are designed to meet the needs of the majority of the users to reduce the need for ad hoc reports. For example, all of the dashboard reports enable authorized users to filter, sort, and add/remove columns which are refreshed each time the user access the report. The user can also print or download the data for additional analysis. Typically only "power users" require the more advanced ad hoc reports. These power users can access the optional component using the Reports feature.

<p>3.4</p>	<p>Does your solution provide predictive analysis capabilities? If yes, please explain.</p>	<p>Y</p>	<p>eScholar myTrack provides predictive analytic capabilities both as a core and optional component. As a core component, eScholar myTrack provides an Early Warning Indicator (EWI) that shows every student's risk level of dropping out. The EWI is presented as high, medium, or low risk and can be configured by an authorized administrator using the Success Monitor feature. Success Monitor enables authorized administrators to determine the weights and thresholds to calculate the EWI score.</p> <p>The EWI is displayed throughout the solution where student details are available. The Home Page also lists the students who are most at risk to</p>
<p>3.5</p>	<p>Does your solution allow for filtering by a various search criteria. If yes, please explain.</p>	<p>Y</p>	<p>eScholar myTrack allows for filtering on various search criteria. Each dashboard report provides filtering capability based on the data available in the report. For example, in the assessments dashboard users can view their assessment data by class and have the option of viewing the data in four different ways: score, domain/strand, student response, and item</p>
<p>3.6</p>	<p>Does your solution provide longitudinal reporting, analysis and trends? If yes, please explain.</p>	<p>Y</p>	<p>eScholar myTrack provides longitudinal reporting, analysis, and trends in multiple ways, including a Student Profile. The Student Profile provides both current activity and longitudinal information of assessments, attendance, enrollment, and course history to ensure educators have a complete view of the student. The Student Profile also provides a view of existing Groups and Notes for the student, allows authorized users to add Notes for the student and to add the student to a Group, and to view trends across time. Additionally, the Student Profile includes a Student Status panel which provides indicator flags across years for attendance, early warning, and other attributes for the student to support analysis and trends.</p> <p>Other dashboards and reports throughout the application also provide longitudinal reporting capability, including the Assessments and Attendance reports. Please see the Detailed Description of the Proposed Solution and Appendix 9 for screenshots of these longitudinal views.</p>

<p>3.7</p>	<p>Does your solution provide early warning indicators of a student's risk of educational failure? If yes, please explain.</p>	<p>Y</p>	<p>eScholar myTrack provides early warning indicators of a student's risk of educational failure. This Early Warning Indicator (EWI) capability is both research-based and configurable.</p> <p>The eScholar team has done extensive research on early warning best practices and has incorporated this information into this feature. The EWI is available to authorized users throughout the dashboard. The EWI includes a color-coded high, medium or low risk flag, a pre-built High Risk Early Warning Group, a Student Overview panel which lists the most at risk students. The information, besides being found in the dashboard, is viewable in other areas throughout the application.</p>
<p>3.8</p>	<p>Does your solution allow for the school and division to set the early warning criteria and customizable thresholds by user? If yes, please explain.</p>	<p>Y</p>	<p>eScholar myTrack allows schools and divisions to set the early warning criteria and customizable thresholds. Using the Success Monitor feature, Authorized Administrators have the capability to configure the Early Warning Indicator (EWI). There are five indicators that comprise the Early Warning Score: attendance, academic performance, graduation, discipline and "other". The authorized user can define what EWI thresholds define the low, medium, and high risk level of a student. The user can also adjust the different indicator weights based on three grade level groupings of students: elementary, middle, and high school. The Success Monitor also allows the user to adjust the thresholds and weights for sub-indicator within each indicator category. For example, within attendance, sub-indicators are: absences in the past 30 days, absences year to date, consecutive absences, absences in the first 30 days of school, and days tardy.</p> <p>Additionally individual users can create groups of students based on the Early Warning Indicator for the student. This enables the users to monitor specific students based on the EWI and other factors.</p> <p>Please refer to the Detailed Description of the Proposed Solution examples on how to configure the early warning system via the Success Monitor.</p>

3.9	Does your solution provide usage statistics and reports? If yes, please describe.	Y	eScholar myTrack's usage statistics and reports are available using Google Analytics, which can show popular pathways through the Solution, most visited pages, click through rates, and more.
3.10	Does your solution provide for the creation of comparison reports (<i>including but not limited to school-to-school, school-to-division, school-to-state, division-to-state</i>)?	Y	eScholar myTrack provides various comparison capabilities, including class to school, division, and state. The Detailed Description of the Proposed Solution and Appendix 9 include screenshots of how users can compare their Students Performance by Question (SPBQ) to the school
3.11	Does your solution inform decision-making on instructional next steps? If yes, please explain.	Y	<p>eScholar myTrack informs the decision-making process for instructional next steps. As an example, the Assessments dashboard informs the educators about the items where students struggled and which standards those items align to so that the educator can apply improvement strategies targeted to those standards.</p> <p>eScholar is currently in the development phases of goal setting functionality which will enable educators to set academic and behavioral goals for students. With the goal setting capability, users can take the next step and set specific and measurable goals for students, select recommended and available strategies to help the student, track progress, and adjust goals based on progress. Resources and suggested next steps will be available to the educator to support this process.</p>

3.12	Does your solution allow reports to be downloadable, printable, and available in a print-preview format and exportable where appropriate? If yes, please explain.	Y	<p>eScholar myTrack allows reports to be downloaded, printed, and exported where appropriate. The vast majority of reports within eScholar myTrack are available for download as CSV files and can be printed with a print preview. eScholar myTrack provides easy and consistent access to the download and print features by providing a print and download icon on the pages where it is available to the user.</p> <p>eScholar myTrack provides easy and convenient access to the download and print features by providing a print and download icon on the pages where it is available. Please refer to the Detailed Description of the Proposed Solution for these examples.</p>
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<p>3.13</p>	<p>Does your solution provide graphical features (including, but not limited to color coding, bar graphs, pie charts, tables, etc.)? If yes, please explain.</p>	<p>Y</p>	<p>eScholar myTrack provides graphical features that were designed with usability and user experience in mind. eScholar myTrack incorporates user experience best practices to not only visualize the data, but also make it easy for a user to navigate the solution.</p> <p>Graphical features include bar charts, spark lines, donut charts, dumbbell charts, data grids, function icons, and more, using specific colors and hues to support various outputs. The Solution also incorporates visualization best practices to engage users who are also color blind, so graphics are both shape and color-coded as well.</p> <p>Examples of graphical features can be seen in the screenshots in the Detailed Description of the Solution and Appendix 9.</p>
<p>3.14</p>	<p>Does the solution include the ability for authorized users to save, categorize, and organize report templates available to them? If yes, please explain.</p>	<p>Y</p>	<p>eScholar myTrack allows authorized users to save, categorize, and organize the repertoire of templates available to them. Users have access to dozens of reports that are automatically saved and updated as the data in eScholar myTrack is updated. eScholar myTrack also categorizes the reports.</p> <p>Additionally, users can create custom groups of students and view several reports on these students, including early warning status, attendance, assessment, and discipline. These reports appear as dashboards in the Solution. As part of the optional features with eScholar myTrack, users can save, categorize, and organize report templates in the ad hoc reporting feature.</p>

<p>3.15</p>	<p>Does your solution provide a comprehensive student profile? If yes, please explain.</p>	<p>Y</p>	<p>eScholar myTrack includes a comprehensive Student Profile feature which includes an overview, attendance, assessment, course history, and enrollment data. The Student Profile offers the ability to view existing Notes and Groups and longitudinal data for the student and to perform actions such as adding or editing Notes or Groups. The Student Profile also includes charts, data grids, filtering, and indicator flags such as the Early Warning Indicator. Grouping this information together ensures the educator can view a comprehensive profile on the student. A sample Student Profile is found in the Detailed Description of the Proposed Solution.</p>
<p>3.16</p>	<p>Does your solution provide access to instructional materials and resources? If yes, please explain.</p>	<p>Y</p>	<p>As an optional resource, eScholar is offering the Renaissance Learning STAR Assessments, which include access to instructional materials and resources. After teachers administer a STAR assessment, they can use the Record Book, an online feature in STAR, to access instructional materials aligned to their students' performance on the STAR assessment. Please refer to Figure 21 in the Detailed Description of the Proposed Solution for an example of this option.</p>
<p>3.17</p>	<p>Does your solution provide a method for an authorized user to view a variety of assessments reports including trend and growth in report and graphical representation on all performance measures (<i>including, but not limited to: Lexile, standards, skills, etc.</i>)? If yes, please explain.</p>	<p>Y</p>	<p>eScholar myTrack allows authorized users to view assessment reports in many ways. In the Assessment Dashboard, authorized users first see a high-level summary of their students' assessment data, showing what percentage of their students met proficiency on that assessment. They then have the option to drill into a specific assessment, and view the data on a class-by-class level. This view shows the proficiency breakdown by level and also compares the students' overall results to the school's average and the division's average. Users can then select which class they want to view the assessment for, in which they can see the data by score, domain/strand, student response, and item details. These views include data on standard alignment and skills tested. These assessment reports are visualized numerically and graphically. When viewing the assessment data in a report sorted by individual student, the students' early warning indicator flag is also visible. Please see the Detailed Description of the Proposed Solution and Appendix 9 for screenshots of these graphical representations.</p>

3.18	Does your solution provide a method for authorized users to view, analyze and print assessment results by proficiency levels on the reporting categories and strands? If yes, please explain.	Y	eScholar myTrack provides methods for authorized users to view, analyze, and print assessment results by proficiency levels, score, domain/strand, student response, and item details. These reports can also be filtered and sorted to meet the needs of the user. Please see the Detailed Description of the Proposed Solution and Appendix 9 for examples of assessment results by proficiency levels.
3.19	Does your solution allow an authorized user to create user-defined proficiency/performance levels based on test administration? If yes, please explain.	Y	eScholar myTrack allows authorized users to create user-defined proficiency/ performance levels based on test administration. Authorized users can define multiple performance levels and cut scores for each test administered. These user defined proficiency levels are then automatically linked to student results as this data is submitted to the system and loaded.
3.20	Can your solution be aligned to Virginia state standards? If yes, please explain.	Y	eScholar myTrack can be aligned to Virginia state standards. The Assessment reports provide the ability to visualize the alignment to Virginia state standards and other standards as supplied in the data. When the Goals feature becomes available in eScholar myTrack, it will also utilize Virginia state standards so that academic goals are aligned to specific Virginia state standards.
3.21	Does your solution capture and report CTE assessment and certifications? If yes, please explain.	Y	eScholar myTrack will capture and report CTE assessment and certification data. CTE assessment data can be displayed in eScholar myTrack's assessment dashboards. A student's participation in CTE programs can also appear in the Student Profile or be reported using the ad hoc analysis option.
3.22	Does your solution allow a student to be a member of multiple groups or rosters? If yes, please explain.	Y	eScholar myTrack allows a student to be a member of multiple groups and rosters. Authorized users can create their own groups in eScholar myTrack based on user-defined criteria. Each student can be assigned to multiple groups using the Groups feature. Students can also be assigned to multiple rosters ensuring that all authorized users can access the student information.

3.23	Does your solution allow teachers to be enrolled in more than one school? If yes, please explain.	Y	eScholar myTrack allows teachers to be enrolled in more than one school or district simultaneously. When users are enrolled in more than one school or district, the user can access the data within the location(s) that they are authorized to view. For example, if a music teacher is enrolled in Clearview Elementary and McNair Elementary in Herndon, he would be able to view the music students in his roster for those locations. The teacher would not be able to view all students within those locations unless authorized to do so.
3.24	Does your solution allow students to be enrolled in more than one school? If yes, please explain.	Y	eScholar myTrack allows students to be enrolled in more than one school at a time. For example, if an 8th grade student is enrolled in the middle school, but is also taking an advanced algebra course at the high school, that student information will be on each roster. Information about the student taking classes in multiple schools will also appear in that student's profile.
3.25	Does your solution allow the authorized user, school or division to add their own educational metrics? If yes, please explain.	Y	eScholar myTrack allows authorized users to add their own educational metrics. Authorized users can be both division and school-level users. Users can create custom Groups of students, analyzing groups of students that may meet certain criteria. For example, one teacher may want to analyze students who are generally proficient in math, but have historically struggled in a specific domain of skills. This allows them to determine how to personalize instruction to help those students improve on those skills.
3.26	Does your Solution allow an authorized user to define proficiency levels for local assessments by test administration? If yes, please explain.	Y	Please refer to our answer to 3.19.
3.27	Does your Solution allow an authorized user to define interventions based on criteria? If yes, please explain.	N	eScholar myTrack does not currently allow an authorized user to define interventions based on criteria. However, the Goals feature in the Solution will be released by 2016. Goals allow authorized users to set specific, measurable, data-informed goals for groups and individual students. Users can also assign specific strategies to help the student reach their goal, and specific measurements to measure progress towards their goal. Please see the Detailed Description of the Proposed Solution and Appendix 9 for sample screenshots of this future feature.

	Training, Support & Implementation	A	B
4.1	Does your solution include initial default comprehensive role-based solution training for all local and state users? If yes, please explain.	Y	eScholar will provide initial comprehensive role-based solution training for all local and state users through a hybrid delivery of onsite training, webinar meetings and online learning. Training will address all the skills required to manage the eScholar myTrack and use the data to improve instructions at the state and division levels.
4.2	Does your solution provide recurring comprehensive role-based product training for all local and state users? If yes, please explain.	Y	eScholar will provide recurring comprehensive role-based solution training for all local and state users. After the initial launch, interactive training will be available 24-7 through eScholar U®, our online learning management system. Online courses will be customized per role and required skill set. In addition, our team will provide state and division users with onsite and webinar follow-up training and support.
4.3	Does your solution provide comprehensive role-based professional development training on the benefits of data use to improve instruction? If yes, please explain.	Y	eScholar will provide comprehensive role-based professional development on the benefits of data use to improve instruction. eScholar will provide professional development on the use of eScholar myTrack to leverage data to improve instruction. Participants will be able to locate target information, interpret and analyze data, and apply predictive analysis in order to make data-based decisions to foster the growth of student success. Participants will be able to set goals and configure success metrics within eScholar myTrack. Our team has developed similar curriculum for both the Texas Education Agency and the Pennsylvania Department of Education as well as many school districts.
4.4	Does your solution allow for the addition of state-developed support content? If yes, please explain.	Y	eScholar will allow for addition of state-developed support content. eScholar will review the content and post it after it is approved by the appropriate team members.

4.5	Does your solution include technical documentation (<i>including data elements, formats, data flows, etc.</i>) for all identified system integration points? If yes, please explain.	Y	eScholar myTrack includes the technical documentation as described in the Detailed Description of the Proposed Solution. A table of example documentation is available in Appendix 9. The technical documentation is accessed through our eScholar Support Portal. Page-sensitive help content is available directly in the application.
4.6	Does the solution provide online support that is context sensitive and searchable? If yes, please explain.	Y	eScholar myTrack provides online support that is context sensitive and searchable. An index is provided to all materials found in the online support. The user can find the information she wants through this index or by using the search function.
4.7	Does the organization provide on-demand videos of system training? If yes, please explain.	Y	eScholar will provide on-demand videos of systems training. eScholar will develop a series of interactive software simulations that will guide end users through management and usage of eScholar myTrack. These narrated system training videos will be posted to eScholar U® and available to end users online, 24-7.

<p>4.8</p>	<p>Does your solution provide technical support for authorized users? If yes, please describe response time, coverage hours, types of support and staffing levels. In addition, please describe the problem escalation workflow.</p>	<p>Y</p>	<p>eScholar myTrack includes a product support program for users and administrators. Users and administrators will be able to call, chat with or email the product support center between the hours of 8:00 a.m. - 6:00 p.m. on weekdays (except Federal holidays). The support center is staffed with highly skilled, trained and experienced support staff. Within the support center, Level 1 support staff are able to quickly and easily escalate issues to Level 2 and Level 3 engineers where required.</p> <p>eScholar will provide appropriate staffing levels that are adequate to support the proposed solution. The staffing level is based on our prior experience supporting authorized users at divisional and state agencies. Staffing levels will be raised appropriately as additional divisions select the optional solution.</p> <p>Please see the Contracts document of this proposal, which includes the Service Level Agreement for the answers to response time by type of incident, types of support and problem escalation steps.</p>
<p>4.9</p>	<p>Does your firm commit that future IIS software upgrades will operate with the modest customizations made during the implementation of the division's IIS system? (<i>i.e. Will an authorized users modest customizations survive software upgrades?</i>) If yes, please explain.</p>	<p>Y</p>	<p>eScholar commits that future software upgrades will operate even when modifications to configurations have been made. When features are enhanced or added to eScholar myTrack, we ensure that prior modifications are not impacted. For example, if a school division changes security, feature, system settings or Early Warning Indicator configurations during implementation, those changes will be maintained during and after the upgrade.</p>
<p>4.10</p>	<p>Does your solution provide the capability to easily upgrade to new software releases without the loss of data or production capabilities which includes user-defined fields?</p>	<p>Y</p>	<p>The eScholar Support Team will complete all upgrade activities and will ensure there are no losses in data or production capabilities, including user-defined fields. The eScholar Support Team follows a standard upgrade process which ensures all steps are completed while minimizing impact on the users.</p>
<p>4.11</p>	<p>Does your solution include all system product enhancements as part of its annual fees? If yes, please explain and specify annual maintenance fees.</p>	<p>Y</p>	<p>All eScholar myTrack system product enhancements are including in the Annual Subscription Fee for the Core Solution</p>

<p>4.12</p>	<p>Does the solution support updates to its customers to support future federal legislative or regulations as part of its annual software subscription fee? If yes, please explain.</p>	<p>Y</p>	<p>eScholar works with our customers to stay informed of relevant changes to state and federal regulations and to interpret those changes. Updates driven by those changes are reflected in each general release of myTrack as part of the Annual Subscription Fee for the Core Solution.</p>
<p>4.13</p>	<p>Does your solution include technical documentation for authorized users? If yes, please explain.</p>	<p>Y</p>	<p>eScholar myTrack includes technical documentation for authorized users. These users can access comprehensive technical documentation for eScholar myTrack through the eScholar Support Portal.</p>

<p>4.14</p>	<p>Does your solution include authorized user support in the form of live operator service and live, online chat support within the application that is located in the United States? If yes, please describe coverage hours, types of support and staffing levels.</p>	<p>Y</p>	<p>eScholar myTrack offers convenient support via phone, email, and chat for authorized users. Our U.S. – based, Level 1 support staff is available to provide live customer service support weekdays from 8am until 6pm EST (except Federal holidays). Our partnership with Engaging Solutions allows eScholar support to dynamically scale staffing levels upward and downward. Due to this flexible scheduling, fluctuations in call volumes are not a concern. Our highly skilled, trained, and experienced staff provide excellent telephone manners, world-class customer service, and the ability to triage calls from a wide range of callers. They are available to resolve user’s issues and if necessary, quickly troubleshoot, pre-qualify, and escalate issues to Level 2 and Level 3 engineers.</p>
<p>4.15</p>	<p>Does your solution require administrative tasks to be performed by the school division necessary to maintain service (<i>i.e. User accounts, load data, correct errors, etc.</i>)? If yes, please explain.</p>	<p>Y</p>	<p>eScholar myTrack requires administrative tasks to be performed by the school division. This includes administrative tasks such as user account provisioning, system configuration, error correction, and security configuration. This enables each school division to maintain local autonomy for how the system is configured, which features are available, and how the Early Warning Indicator is configured.</p> <p>Additionally, if data submitted to the system contains errors, division personnel responsible for the data may need to review the error report and correct the error in the source system. Then the corrected data can be resubmitted.</p> <p>The administrative components require little training and are well documented to ensure the maintenance can occur with minimal impact to school division staff.</p>
<p>4.16</p>	<p>Does your solution include tracking/usage information to gauge the usage and adoption patterns of teacher, principal, state, and other role-based users? If yes, please explain.</p>	<p>Y</p>	<p>eScholar myTrack has multiple ways to track usage information to gauge the use and adoption patterns among users. eScholar integrates with Google Analytics for each school division to track usage information including the pages accessed and actions performed. In addition a User Login Report is available to Authorized Administrators. These tools can be utilized to determine adoption, identify professional development opportunities, and other important statistics.</p>

4.17	Does your solution include a standard Service Level Agreement (SLA)? If yes, please provide.	Y	eScholar's standard Service Level Agreement is included in our proposal in the Contracts document.
4.18	Does your solution utilize a standard Internet Service Provider (ISP)? If yes, please describe server farm, including location, if applicable.	Y	eScholar myTrack runs on the Amazon Web Services (AWS) GovCloud (US) System. The AWS GovCloud (US) System has a FedRAMP Agency Authority to Operate (ATO) effective May 13, 2013 (GovCloud System). Amazon's security policies dictate that it does not disclose the location of its hosting facilities except to say that they are in the United States. AWS has added a layer of permissions to the AWS GovCloud (US) Region that restricts access to those on an approved list of US Persons
4.19	Does your solution include training resources for each authorized user (including, but not limited to training and user manuals, FAQs, web tutorials, etc.)? If yes, please describe.	Y	eScholar myTrack includes training resources for authorized users. Authorized end users of eScholar myTrack will have access to both the eScholar Support Portal and eScholar U@. The eScholar Support Portal provides authorized end users with access to comprehensive product documentation, including user manuals, best practices, FAQs, new features and release notes. eScholar U@ will provide access to online training materials and web tutorials to authorized users.
4.20	Does your solution include training that is available in several formats in order to maximize usage (including, but not limited to, onsite, remote, web-training, on-demand)? If yes, please describe.	Y	eScholar myTrack includes training in several formats. eScholar uses a hybrid approach to training. Our team will deliver training via traditional onsite training, webex training and on-demand training available through our online learning management system, eScholar U@. Our team will develop training content a variety of formats to maximize usage.
4.21	Does your solution include training materials and programs that are updated to reflect system updates and upgrades? If yes, please explain.	Y	eScholar updates training materials and programs in tandem with system updates and upgrades for the defined time period in the contract.
4.22	Does your solution include an individual or a set of individuals who will be the main point(s) of contact throughout the entire implementation process? If yes, please describe and include resumes of each individual including any certifications held.	Y	eScholar will be including a set of individuals who will be the main points of contact through the entire implementation process. The implementation team will be led by a project manager, Figen Bilir, PMP. The eScholar Project Manager is authorized to make decision related to schedule, budget, staffing, scope, and similar project critical issues. During the implementation, the project manager will be assisted by an account manager, Janet Dougherty, PMP. Ms. Dougherty will be assigned to the project for the duration of our relationship with VITA.

<p>4.23</p>	<p>Can your firm meet with DOE within ten (10) business days subsequent to contract award to review the initiative's plan, timelines and deliverables? If yes, please describe in detail.</p>	<p>Y</p>	<p>The eScholar project team will be available to meet with the DOE within this timeframe. We typically distribute a draft project management plan in advance of the meeting. During this meeting we expect to review and discuss the initiative's plan in more detail as well as confirm timelines and deliverables.</p> <p>The information gathered during this meeting will provide the input needed to build out the detailed solution implementation plan discussed in section 4.24.</p>
<p>4.24</p>	<p>Can your firm propose and provide a detailed solution implementation plan within ten (10) business days subsequent to the initial meeting? If yes, please provide example.</p>	<p>Y</p>	<p>eScholar will propose and provide a detailed solution implementation plan within ten (10) business days subsequent to the initial meeting.</p> <p>This solution implementation plan will be part of the project management plan. The project management plan defines in detail the following 14 elements:</p> <ul style="list-style-type: none"> Change Management (01) Scope Management (02) Requirements Management (03) Scope Baseline (04) Schedule Management (05) Schedule Baseline (06) Cost Baseline (07) Quality Management (08) Human Resource Management (09) Communications Management (10) Risk Management (11) Procurement Management (12) Stakeholder Management (13) Configuration Management (14) <p>See the Appendix 3 for more details.</p>

4.25	Does your solution's implementation plan include clear established lines of communication, authority, and responsibility with regard to management of the initiative? If yes, please explain.	Y	Our implementation plan includes a communications plan which address the "who, what, when, and how" of communications. It describes who has authority to make each category of decision and describes a process for escalating issues for resolution. Refer to Appendix 3 for additional detail.
4.26	Does your implementation plan include a date-independent timetable of all work to be performed, including a status update schedule and milestone reporting standard? If yes, please provide example.	Y	eScholar myTrack's implementation plan includes a date-dependent timetable of all work to be performed. Please refer to the sections 'Core Solution Implementation Time Tables (Sample)' and 'Pilot Division Implementation Time Tables (Sample)' of Appendix 4 Sample Implementation Schedule. Additionally, refer to Appendix 3 Sample Implementation Plan for examples of milestone reporting and status update schedules.
4.27	Does your solution's implementation plan detail the areas of responsibility and authority for supplier and DOE implementation team members? If yes, please provide example.	Y	eScholar myTrack's sample implementation plan details area of responsibility and authority for both eScholar and the DOE implementation team members. Refer to Appendix 3 for a sample implementation plan with additional information.
4.28	Does your solution's implementation plan include a training plan that provides details on the content of each training session, a date independent timetable, and information regarding the person(s) providing training? If yes, please provide example.	Y	eScholar provides a comprehensive training plan for each client and each implementation that addresses details on the content of each training session, a date independent timetable, and information regarding the person(s) providing training. An example has been provided in Appendix 5.

4.29	Does your solution's implementation plan include an escalation path to be used to address any issues that arise which are not, or cannot, be resolved using the normal lines of communication? If yes, please provide example.	Y	<p>The eScholar myTrack implementation plan includes an escalation path for any issues. The Communications Management Plan of the Project Management Plan defines the normal lines of communication and escalation.</p> <p>Should issues arise that cannot or are not resolved using the normal lines of communication, they will be escalated to Shawn Bay, Founder and CEO of eScholar who functions as the project's Executive Sponsor.</p> <p>Refer to Appendix 3 Sample Implementation Plan for additional detail.</p>
4.30	Does your solution's implementation plan include a succession plan to accommodate any personnel changes on the Supplier's side (<i>including personnel associated with all subcontractors</i>)? If yes, please explain.	Y	<p>The eScholar myTrack implementation plan includes a plan to accommodate any personnel changes. During the Project Initiation & Discovery phase the Project Management Plan will be developed. Part of the plan development is the definition of project risks. In case the project management team, which consists of VDOE and eScholar, identifies that potential personnel changes are a project risk, remedies will be developed and documented in the Risk Register.</p> <p>The team will be able to use the section 'Human Resources Management Plan' of the Appendix 3 Sample Implementation Plan which defines each Project Team members role and responsibilities to assist in the evaluation of any staff change risk.</p>
4.31	Does your solution's implementation plan include a testing plan for validating all requirements as specified in Section 5 of this RFP? If yes, please explain.	Y	<p>eScholar myTrack's implementation plan includes a testing plan to validate all requirements. eScholar will create a comprehensive testing plan for this project that outlines key activities and milestones for each of the testing phases, identifies the mechanism for tracking and reporting, clarifies acceptance criteria, identifies test data requirements, and sets a testing schedule. eScholar will use existing test cases, with adaptations as necessary, for this project.</p>
4.32	Can your firm revise the proposed implementation plan as necessary until a final version is accepted by the VDOE implementation team? If yes, please explain.	Y	<p>eScholar's standard practice is to provide a draft implementation plan to the VDOE implementation team for their review and input. VDOE implementation team suggestions are reviewed and incorporated in to plan, as appropriate. The final draft is given to the VDOE implementation team for review and approval. When the VDOE implementation team's approval on the plan is received, the plan is considered final.</p>

4.33	Can your firm's point(s) of contact be available Monday - Friday from 8:00 a.m. to 5:00 p.m. Eastern Time for the duration of the implementation? If yes, please explain.	Y	<p>eScholar's standard office hours are Monday - Friday from 8:00 a.m. to 5:00 p.m. Eastern Time. During these standard office hours, all project implementation staff are available by phone, email or text. In the event that the point of contact is on leave, they will arrange for another person who is familiar with the project to be available. The point of contact will be available for the duration of the implementation period and, in the case of the Account Manager, during the post-implementation period as well.</p> <p>For customer support hours during the project implementation and post go-live, see our response to question 4.14.</p>
4.34	Can your firm conduct status meetings with the main point(s) of contact for both DOE and the supplier during the deliverable phases? If yes, please explain.	Y	<p>eScholar's standard practice is to conduct regular status meeting between the main point of contact for both DOE and eScholar. The frequency and the format of the communications is defined in the section titled "Communications Management Plan" of the Project Management Plan. Refer to Appendix 3 for additional details.</p>

	Access, Security & Hosting	A	B
5.1	Does your solution comply with Virginia's Information Technology Security Policy and Standards? (http://www.vita.virginia.gov/library/default.aspx?id=537#securityPSGs)? If yes, please provide documentation.	Y	eScholar's detailed response is found in this workbook in the tab titled "Question 5.1 Response.
5.2	Does your solution comply with the Family Educational Rights and Privacy Act (<i>FERPA</i>)? If yes, please provide documentation.	Y	eScholar myTrack fully complies with FERPA and is committed to the security and privacy of student data. eScholar conducts training of all of its staff on FERPA and the handling of sensitive information. eScholar was also one of the first companies to sign the Student Privacy Pledge. (Please refer to our response in 5.37 for additional information.)
5.3	Does your solution meet cloud security requirements by a certifying body such as FedRAMP (http://cloud.cio.gov/fedramp)? If yes, please provide certification and identify body? If no, are you in the process of or planning to be certified?	Y	eScholar myTrack meets cloud security requirements by FedRAMP. eScholar myTrack runs on the Amazon Web Services (AWS) GovCloud (US) System which has a FedRAMP Agency Authority to Operate (ATO) effective May 13, 2013.
5.4	Does your solution include performance of any data verification or validation in the process of retrieving information from the high school's student information system (<i>SIS</i>)? If yes, please explain.	Y	eScholar myTrack includes the performance of data verification and validation. Our solution includes the most robust and configurable data quality capability in the education software industry. Our data quality processes are used by Texas, Pennsylvania, New York, North Carolina, Mississippi and a number of other states to provide the data required for state and federal accountability reporting. Data submitted to the system is automatically validated based on data type - dates are valid dates, numbers have no alpha characters, etc. Referential integrity is also
5.5	Does your solution have a standard installation time frame? If yes, please describe the installation steps and typical time frame for <u>school divisions</u> to be operational on your service.	Y	Our solution has a standard installation time frame and applicable installation steps for school divisions can be reviewed in the section 'Division Implementation Time Tables (Sample)' of the Appendix 4 for additional details.

5.6	Has your firm successfully converted a school division/district from another vendor's solution? If yes, please describe the plan whereby your firm would transition or convert school divisions that are currently using another vendor's solution to your firm's proposed solution.		eScholar has successfully converted divisions/schools from another vendor's solution before. We are able to use the standard implementation plan and timeline to transitions these divisions from an existing solution to eScholar myTrack.
5.7	Does your company have a marketing plan to expand your proposed solution to school divisions? If yes, please describe.	Y	eScholar has a marketing plan to expand eScholar myTrack to the school divisions. This plan builds up on our experience in New York State where we successfully marketed eScholar myTrack to school districts and regional information centers across the state. As part of the marketing plan, eScholar will partner with the VDOE in crafting the key messages for the different audiences. eScholar will then create content that engages, educates, and compels school divisions to opt into the VDOE IIS. This content will be delivered through multiple channels, including on-the-ground engagement with divisions. A sample marketing plan is found in Appendix 8.
5.8	Does your solution include a product support program for users and administrators? Please describe the hours of coverage and service support center.	Y	eScholar myTrack includes a product support program for users and administrators. Users and Administrators will be able to call, chat with or email the support center between the hours of 8am - 6pm Eastern time M-F except Federal holidays. The support center is staffed with highly skilled, trained and experienced support staff. Within the support center, Level 1 support staff are able to quickly and easily escalate issues to Level 2 and Level 3 engineers where required.
5.9	Is your firm a member of any national organization that promotes school and student performance improvement? If yes, please identify the organizations and current involvement or active participation on any work groups.	Y	eScholar is a member of the National Council on Personalized Education. eScholar took a leadership role in the formation of this organization. eScholar also regularly attends and presents at the National Center for Education Statistics annual conference.
5.10	Is your firm a member of the Schools Interoperability Framework Association (SIFA)? If yes, describe your firm's current active participation on any work groups.	N	eScholar is not currently a member. Our CEO and Founder, Shawn Bay, previously served on the Board of Directors of this organization for approximately ten years.

<p>5.11</p>	<p>Is your solution currently in operation in any schools, divisions/districts, and/or states (<i>also from Virginia, if applicable</i>)? If yes, describe the general scope, timeline, and brief history of each major project.</p>	<p>N</p>	
<p>5.12</p>	<p>Does your solution have a method of protecting against unauthorized access to sensitive data? If yes, please describe.</p>	<p>Y</p>	<p>eScholar myTrack has methods in place to protect against unauthorized access to sensitive data. eScholar controls access to sensitive information by limiting access to the system only to authorized users. Access errors messages are displayed if someone tries to deep link or access data/ features they are not authorized to view.</p> <p>All users must be provisioned with a valid school division email address and strong password. The Solution includes password rules to ensure users create complex and secure passwords. All users are assigned to a role by an Authorized Administrator. The data and features available to an individual are limited to what is relevant for that user.</p> <p>eScholar encrypts data in transit with HTTPS and encrypts the names of individuals whose records are in eScholar myTrack.</p> <p>Authorized Administrators also have the capability to disable specific features for certain roles when necessary to provide an added layer of security.</p> <p>Furthermore, eScholar performs ongoing security and vulnerability scans on the Solution to ensure there are no vulnerabilities in the system.</p>
<p>5.13</p>	<p>Is your solution Section 508 compliant? http://www.vita.virginia.gov/uploadedfiles/vita_main_public/unmanaged/library/contingencyplanningguideline04_18_2007.pdf If yes, please explain.</p>	<p>Y</p>	<p>eScholar myTrack is 508 compliant, which includes effective, interactive controls and use of nonvisual means to accomplish tasks.</p>

5.14	Does your solution include a backup and recovery plan? If yes, is it tested at least annually?	y	The plan is tested annually and the results of the tests are documented. As appropriate the plan is adjusted to reflect changing circumstances.
5.15	Does your solution include an outage plan? If yes, please describe how users are notified of anticipated and unanticipated outages?	Y	When an anticipated or unanticipated outage occurs, the eScholar Account Manager is responsible for notifying the customer. The Backup, Disaster Recovery and Security Plan that is prepared for this project will identify who at VDOE and VITA and the school divisions will be advised of an outage. The plan will also contain contact information for these individuals.
5.16	Does your solution adhere to the Student Privacy Pledge, located in http://studentprivacypledge.org/?page_id=45	y	eScholar has always taken our responsibility for student (and staff) privacy very seriously and continues to be very involved in this area. As a reflection of this commitment, eScholar was one of the first to sign the Student Privacy Pledge and also provides protections that go beyond the pledge.
5.17	Does your solution include weekly backups with incremental daily backups and provide for a 48-hour recovery from the loss of a data center including the loss of only 2 hours of data. If yes, please describe the disaster recovery plan.	y	Full weekly backups are taken of the relevant data and systems. Incremental backups are taken every two (2) hours to mitigate any potential loss of data in a recovery situation.
5.18	Does your solution include a suitable hosting environment? If yes, please describe including primary site location(s) and disaster recovery location(s), internet connectivity, power management and site security and describe the relationship between the primary site(s) and recovery site(s) and any industry certifications that these facilities have achieved (e.g. Tier III/IV, SAS70, SOC1, SOC2, etc).	y	eScholar myTrack runs on the Amazon Web Services (AWS) GovCloud (US) System which has a FedRAMP Agency Authority to Operate effective May 13, 2013. Historical data will be stored in AWS S3 buckets. The primary hosting site will be Amazon GovCloud West and the disaster recovery site will be at Amazon GovCloud East. AWS provides tools for fast disaster recovery of critical IT systems with a tapeless, offsite, multi-copy storage solution based in secured facilities designed for 99.99999999% durability so that data is secured and available when needed. AWS meets each of the certifications listed along with FedRAMP.

5.19	Does your solution include a suitable architectural approach, infrastructure and operating environments to meet the stated recovery point and time objectives? If yes, please describe and explain if the proposed solution exceeds those metrics.	Y	eScholar employs a suitable architectural approach to meet stated objectives. The solution is configured with multiple points for scaling and failover in the result of a need in either of those areas. We typically oversize environments to allow for some growth while maintaining response time.
5.20	Does your solution include data archival policies and any data purge policies? If yes, please describe.	Y	eScholar's standard policy is to archive data using Amazon S3 which is a component of Amazon Web Services. Should it be necessary, eScholar will allow a school district to request that it's data be deleted at any time during the course of the contract and eScholar will delete the data from the system within 24 business hours of notification. Removing it from the backup systems may take up to 90 - 120 days due to the nature of those systems. eScholar will delete all data in its control within 48 hours of the termination of the contract or otherwise act in accordance with the State of Virginia's instructions. Should the State of Virginia desire an alternative data archival policy or data purge policy, we welcome the opportunity to discuss the State's requirements.
5.21	Can your firm ensure that all data processed, stored and maintained in the LMS service shall NOT leave the borders of the United States (including all online storage as well as data backups and archived data)? If yes, please describe.	Y	All data processed, stored and maintained will not leave the borders of the United States. eScholar myTrack runs on the Amazon Web Services (AWS) GovCloud (US) System which has a FedRAMP Agency Authority to Operate (ATO) effective May 13, 2013 with historical data stored on AWS Glacier. FedRAMP compliance (Authorization To Operate or ATO) requires that all data be processed, stored and maintained in the United States. Furthermore all eScholar staff are based in the United States.

5.22	Does your solution include a process that allows the State to audit the physical environment where a service is hosted per your proposal? If yes, please explain.	Y	eScholar myTrack runs on the Amazon Web Services (AWS) GovCloud (US) System which has a FedRAMP Agency Authority to Operate (ATO) effective May 13, 2013. The audit of AWS was performed by a FedRAMP-accredited 3PAO, Veris Group, LLC. The Commonwealth of Virginia can request the assessment and associated ATOs from the FedRAMP repository and/or can request a Site & System Security Plan directly from Amazon Web Services to ensure the physical environment meets the expectations of the Commonwealth.
5.23	Does your solution include a process for employee background checks? If yes, please describe and include who performs them, for which employees, and when the checks are performed.	Y	eScholar has a process whereby all newly hired staff must successfully complete a background check prior to the start of their employment. eScholar contracts with Pinkerton for these services. eScholar's labor attorney is provided the results of the background check and advises our Human Resources Department with the results. eScholar also requires all staff members to sign an agreement that they must handle and use customer data in compliance with FERPA and according to customer policies. Every year all eScholar staff members are required to review FERPA updates and the eScholar privacy policies and are then assessed on their knowledge of FERPA and compliance with eScholar policies.
5.24	Does your solution include a process for securing non-public data at rest and non-public data in motion? If yes, please describe.	Y	eScholar myTrack includes a process for securing non-public data at rest and in motion. eScholar myTrack is implemented with secure access and data in motion using HTTPS protocol. eScholar encrypts people's names for data at rest.

5.25	Does your solution include a process for handling and notification of a breach of non-public data? If yes, please describe.	Y	eScholar has a process for handling and notification of a breach of non-public data (Data Breach). eScholar's protocol includes, but is not limited to, the following components: 1. Notification to customer point of contact (POC) within one hour of eScholar's knowledge of Data Breach. Notification will include as much information as eScholar has including: A. how the Data Breach occurred (if known) b. what data has been breached C. when the breach occurred D. whether the data breach has been stopped E. eScholar's plan for mitigation of the breach F. the steps eScholar has taken up to the point of notification to mitigate the breach G. name and contact information for eScholar's executive-in-charge of notification and mitigation of the Data Breach. Subsequent to the initial notification eScholar will provide updates every two hours or as otherwise agreed upon with the customer POC until the Data Breach is resolved. Updates will include the same components as the initial notification.
5.26	Does your solution include a process for the authorization for the various roles associated with data access? If yes, please describe.	Y	Please refer to our answer to Item 5.12
5.27	Does your solution include a policy for only allowing remote access using industry standard network security processes. If yes, please describe the methods used for remote access.	Y	Access to eScholar myTrack is restricted to secure FTP, in the case of data submission, and secure HTTPS for data access.
5.28	Does your solution include a process for ensuring security of data stored at the vendor's site as well as any server security policies? If yes, please describe and indicate whether the service has periodic and ongoing vulnerability and penetration testing.	Y	eScholar myTrack runs on the Amazon Web Services (AWS) GovCloud (US) System which has a FedRAMP Agency Authority to Operate (ATO) effective May 13, 2013 (GovCloud System). The GovCloud System includes security controls and certifications such as HIPAA, SOC 1/SSAE 16/ISAE 3402 (formerly SAS70), SOC 2, SOC 3, PCI DSS Level 1, ISO 27001, FedRAMP, DIACAP and FISMA, ITAR, FIPS 140-2 compliant end points, CSA, MPAA. AWS has added a layer of permissions to the AWS GovCloud (US) Region that restricts access to those on an approved list of US Persons

5.29	Does your solution include a process for customer control on applying patches, upgrades, and changes to the SaaS application? If yes, please describe.	Y	eScholar myTrack provides customer control of the upgrades by offering them the ability to disable new features when upgrades occur. All Divisions will receive a notification of the pending upgrade at least two weeks in advance of the upgrade, unless there is an emergency patch. Documentation and training materials will be available to the Divisions prior to the upgrade so that they can become familiar with the changes ahead of time. Additionally, new features are typically disabled by default to allow the Divisions to enable the features when they are ready to use it.
5.30	Does your solution include a process for identifying and remediating software defects? If yes, please describe.	Y	eScholar myTrack includes a process for identifying and remediating software defects prior to and after a release. eScholar thoroughly tests the solution before deploying releases to the customer. (Our testing process is addressed in 1.13.) We also monitor error logs and help desk reports for problem trends and the specifics of each issue, including the source of the problem, re-production steps, severity, and resolution. This process helps us to identify issues encountered by our customers and to quickly devise solutions to address them.
5.31	Does your solution include a major and minor release policy for the solution? If yes, please describe.	Y	Refer our to answer in 5.29.
5.32	Does your solution include a process for incident management, change management, and release management? If yes, please describe.	Y	eScholar myTrack includes a process for incident management, change management, and release management. eScholar follows standard project management practices for addressing these issues. The processes for each of the issues will be defined within the project management plan. Also refer to our answers to questions 5.30, 5.29

<p>5.33</p>	<p>Does your solution include an overall security architecture of the proposed service? If yes, please describe.</p>	<p>eScholar myTrack includes an overall security architecture which is based upon security industry best practices. The eScholar security architecture is a “defense in depth” approach that covers multiple layers including the user, application, infrastructure (platform and network) and physical security.</p> <p>During design of features and architecture, eScholar follows industry standard practices and eScholar policies. We evaluate risk and vulnerability possibilities during design and then test for vulnerabilities and risks throughout the development cycle using NTOjectives NTOSpider.</p> <p>For the application layer, eScholar applies identity management, data encryption, database security, input validation, and accountability with auditing, and other related controls.</p> <p>Y For the user level, user provisioning, user authentication, feature authorization, and data authorization layers are utilized to ensure security. As part of the user provisioning process, each user must have a unique username and a strong password, and is also assigned to a role. Users only have access to features and data authorized for that role.</p> <p>For the infrastructure layer, eScholar utilizes firewalls, restricted access to servers, SSL and TLS protocols, limited port availability, server certificates, and anti-virus protection, among other controls. Additionally, AWS provides additional built-in security controls, as demonstrated by their FedRAMP ATO effective May 13, 2013. eScholar and Amazon also employ physical controls including restricted access to buildings and server rooms, guarded entrances and key code access to offices so only authorized personnel can access</p>
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5.34	Does your solution include a process for how the Commonwealth will get its data back in a form that can be used in the event of contract termination or expiration or if the Commonwealth desires a different service? If yes, please describe.	Y	eScholar myTrack has a process for the Commonwealth to get its data back in a form that can be used when the contract ends - regardless of the cause of the contract termination. eScholar generally provides data to the client in the eScholar Data Integration Template format. We provide it by school district or division as far back as we have data, organized by school year. eScholar also provides state level data in eScholar Data Integration Template format by school year where applicable. For small data sets, such as for an individual district, we strive to supply the data within five business days. For large data sets, we target 10 to 15 days for providing the entire data set.
5.35	Does your firm allow access to incident data for investigative purposes? If yes, please describe.	Y	The eScholar Support Team can provide incident data when requested by authorized Division personnel. Additionally, dedicated Division staff will have access to an incident management system and can access incident data as needed.
5.36	Does your solution allow access to system security and audit logs? If yes, please describe.	Y	Access to system security and audit logs is only available to eScholar staff. As appropriate and depending on the conditions, eScholar can provide this information to the Commonwealth.
5.37	Does your solution allow school divisions to retain 100% ownership of all school division data imported into your system? If yes, please explain.	Y	eScholar myTrack allows school divisions to retain 100% ownership of all school division data imported into the Solution. School division ownership includes any data entered or loaded into the Solutions as well as data about customer environments and system log/ error files. Further, eScholar has signed the Student Privacy Pledge (http://studentprivacypledge.org/?page_id=22) and has published its Security & Privacy policy directly on its website (http://www.escholar.com/company/security-privacy-2/). Please note that all eScholar staff members receive training in the proper handling of school division data including training on FERPA regulations. All eScholar staff members must pass an annual assessment that measures their understanding of FERPA and eScholar's policies and procedures concerning its handling of school division data.

5.38	Does your solution include network-layer vulnerability scans regularly as prescribed by industry best practices? If yes, please describe.	Y	Amazon Web Services performs network-layer vulnerability scans regularly and eScholar runs additional scans with NESSUS.
5.39	Does your solution include application-layer vulnerability scans conducted regularly as prescribed by industry best practices? If yes, please describe.	Y	eScholar uses NTOBJECTIVES NTOSPIDER to run this type of scan and executes a scan weekly.
5.40	Does your solution include local operating system-layer vulnerability scans conducted regularly as prescribed by industry best practices? If yes, please explain.	Y	eScholar uses NESSUS to run local operating system vulnerability scans based on industry best practices.
5.41	Does your solution include file integrity (host) and network intrusion detection (IDS) tools that are implemented to help facilitate timely detection, investigation by root cause analysis and response to incidents? If yes, please explain.	Y	eScholar myTrack is hosted at Amazon Web Services (AWS) GovCloud. AWS is responsible for file integrity and network intrusion detection activities. As the leader in this type of service AWS sets the standard for addressing these issues.
5.42	Does your solution include regular penetration testing, vulnerability management, and intrusion prevention? If yes, please explain.	Y	eScholar, in concert with AWS, perform regular penetration testing vulnerability management, and intrusion prevention. eScholar uses the methods described in response to 5.39 and 5.40. The methods used by AWS are confidential in accordance with its security policies.
5.43	Does your solution include network devices that are located in secure facilities and under controlled circumstances (e.g. ID cards, entry logs)? If yes, please explain.	Y	<p>AWS will be hosting eScholar myTrack and, as part of its services, provides comprehensive security. Part of their security protocol is to not release information about their security practices or the locations of their data centers.</p> <p>AWS utilizes a wide variety of automated monitoring systems to provide a high level of service performance and availability. AWS monitoring tools are designed to detect unusual or unauthorized activities and conditions at ingress and egress communication points. These tools monitor server and network usage, port scanning activities, application usage, and unauthorized intrusion attempts. The tools have the ability to set custom performance metrics thresholds for unusual activity.</p>

5.44	Does your solution patch software vulnerabilities routinely or automatically on all servers? If yes, please explain.	Y	eScholar routinely patches software vulnerabilities on its servers as part of its Service Level Agreement.
5.45	Does your solution include a standard time frame regarding how quickly patches are applied from the time of supplier release? If yes, please explain.	Y	eScholar routinely applies server software patches on a monthly basis. If a critical issue is identified, the patch is put in place as soon as possible.
5.46	Does your solution include background checks on your firm's personnel with physical and/or administrative access to network devices, servers, applications and customer data? If yes, please describe? If yes, please explain.	Y	All eScholar staff members are subject to background checks prior to employment. eScholar contracts with Pinkerton these services. eScholar's outside labor attorney is provided the results of the background check and advises eScholar on the results. eScholar also requires all staff members to sign an agreement notifying them that they must handle and use customer data in compliance with FERPA and according to customer policies.
5.47	Does your solution include subcontracting of any functions, such as analytics? If yes, please explain.	Y	eScholar is subcontracting the services of Engaging Solutions and Renaissance Learning. Engaging Solutions will be providing help desk services. eScholar is offering Renaissance Learning STAR assessments as an optional component.
5.48	Does your solution include processes for authenticating callers and resetting access controls, as well as establishing and deleting accounts? If yes, please explain.	Y	<p>The User Manager component of eScholar myTrack can also be used to establish and inactivate accounts and re-assign user roles as needed. The User Manager component can be accessed by Division staff and/ or eScholar Support. The User Manager component of myTrack also allows System Administrators to initiate password reset requests. All password reset requests require user verification via email using a secured link.</p> <p>Additionally, eScholar myTrack provides a reset password process that enables users to request a password reset using a secure process without interaction with eScholar Support.</p>

5.49	Does your solution allow a requesting school division to have their information removed from your system? If yes, please explain.	Y	eScholar myTrack allows requesting school divisions to have their information removed from the system. The school division requesting the removal of data would provide eScholar with a written request on Division letterhead signed by the Superintendent.
5.50	Does your solution include protection against denial-of-service attack? If yes, please explain.	Y	<p>eScholar myTrack includes protection against denial-of-service attacks through AWS. AWS defends against denial-of-service attacks as part of the services they provide as part of their hosting service.</p> <p>AWS security monitoring tools help identify several types of denial of service (DoS) attacks, including distributed, flooding, and software/logic attacks. When DoS attacks are identified, the AWS incident response process is initiated. In addition to the DoS prevention tools, redundant telecommunication providers at each region as well as additional capacity protect against the possibility of DoS attacks.</p>
5.51	Does your solution include technical measures and techniques for detection and timely response to network-based attacks such as distributed denial-of -service (DDoS) attacks? If yes, please explain.	Y	<p>eScholar will include technical measures and techniques to detect and respond to network-based attacks. eScholar will monitor performance logs as part of efforts to identify distributed denial-of-service attacks. We will communicate our findings to VITA, VDOE and the Divisions in accordance with the Communications Plan that is part of the Disaster Recovery Plan for this project. Further, AWS, our hosting provider, uses a variety of techniques to monitor for possible DDOS attacks and applies proprietary DDOS mitigation techniques to combat these attacks. Together, the eScholar and Amazon Teams offers VDOE two layers of protection against distributed denial-of-service attacks and denial-of-service attacks.</p>
5.52	Has your firm's security operations been reviewed or audited by an outside group? If yes, please explain.	Y	<p>eScholar's security operations were reviewed and evaluated by the Pennsylvania Department of Education and New York State Technology Enterprise Corporation (NYSTEC). NYSTEC is as an advisor to New York State, New York City, and local government agencies, as well as private institutions.</p>

5.53	Does your solution include the release of the results of internal and external audits made available to authorized users? If yes, please explain.	Y	eScholar provides the results of both internal and external audits to authorized representatives of its clients upon request. eScholar will also publicize when it has undertaken or undergone an audit and when the results are available.
5.54	Can your firm provide Software as a Service (SaaS) at the vendor's facility and/or at the Commonwealth Enterprise Solutions Center (CESC)? If yes, please provide pricing for each in the attached pricing sheet labeled Appendix C.	Y	eScholar myTrack runs on the Amazon Web Services (AWS) GovCloud (US) System which has a FedRAMP Agency Authority to Operate (ATO) effective May 13, 2013 (GovCloud System). The GovCloud System includes security controls and certifications such as HIPAA, SOC 1/SSAE 16/ISAE 3402 (formerly SAS70), SOC 2, SOC 3, PCI DSS Level 1, ISO 27001, FedRAMP, DIACAP and FISMA, ITAR, FIPS 140-2 compliant end points, CSA, MPAA. AWS has added a layer of permissions to the AWS GovCloud (US) Region that restricts access to those on an approved list of US Persons

Exhibit D
Statement of Work
Template

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

ISSUED UNDER

**CONTRACT NUMBER
BETWEEN
VIRGINIA INFORMATION TECHNOLOGIES AGENCY
AND**

Exhibit D, between (Name of Agency/Institution) and (“Supplier”) is hereby incorporated into and made an integral part of Contract Number (“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 copy/CD/DVD)	Distribution Recipients	Review Complete Due Date	Final 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 Plan	Execution + 45 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 **D-X**.

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

13. PROJECT ASSUMPTIONS AND PROJECT ROLES AND RESPONSIBILITIES

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

A. Project Assumptions

The following assumptions are specific to this project:

B. Project Roles and Responsibilities

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

(Sample Responsibility Matrix)

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

Product Installation, Implementation and Testing	√	
Conversion Support	√	
Conversion Support -- Subject Matter Expertise		√
Documentation	√	
Training	√	
Product Maintenance and Support	√	
Problem Tracking	√	√
Troubleshooting – IT Infrastructure		√
Troubleshooting – Solution	√	

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

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

A. PROVIDED BY THE COMMONWEALTH

B. PROVIDED BY THE SUPPLIER

15. SECURITY REQUIREMENTS

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

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

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

16. REQUIRED STANDARDS, CERTIFICATIONS AND SPECIFICATIONS

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

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

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

- SAS 70 Type II

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

(Risk is a function of the probability of an event occurring and the impact of the negative effects if it does occur. Negative effects include schedule delay, increased costs, failure of dependent legacy system interoperability, other project dependencies that don't align with this project's schedule, and poor quality of deliverables. Depending on the level of risk of this project, as assessed by your Project Manager and/or Steering Committee, this section may contain any or all of the following components, at a level of detail commensurate with the level of risk. Remember to add them to the Deliverables table.)

C. Initial Risk Assessment

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

D. Risk Management Strategy

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

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

E. Risk Management Plan

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

18. DISASTER RECOVERY

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

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

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

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

- *Development and exercise of the IT System Backup and Restoration Plan*

19. PERFORMANCE BOND

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

The Supplier shall post performance bond in an amount equal to one hundred percent (100%) of the total contract value and provide a copy of the bond to Authorized user within (10) days of execution of this SOW Agreement. In the event that the Supplier or any subcontractor or any officer, director, employee or agent of the Supplier or any subcontractor or any parent or subsidiary corporation of the Supplier or any subcontractor fails to fully and faithfully perform each material requirement of this SOW Agreement, including without limitation the Supplier's obligation to indemnify the Authorized User, the performance bond shall be forfeited to Authorized User. The bond shall be in a form customarily used in the technology industry and shall be written by a surety authorized to do business in Virginia and that is acceptable to Authorized User.

20. OTHER TECHNICAL/FUNCTIONAL REQUIREMENTS

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

A. Service Level Requirements

B. Mean-Time-Between-Failure Requirements

C. Data Access/Retrieval Requirements

D. Additional Warranties

21. REPORTING

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

A. Weekly/Bi-weekly Status Update.

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

B. Supplier Performance Self-Assessment.

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

C. Performance Auditing

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

Authorized User (or name of IV&V contractor, if there is one), will audit the results of Supplier's service level obligations and performance requirements on a monthly/quarterly basis, within ten (10) days of receipt of Supplier's self-assessments and service report(s). Any discrepancies will be discussed between the Authorized User and Supplier and any necessary invoice/payment adjustments will be made. If agreement cannot be reached, the Authorized User and Supplier will escalate the matter in accordance with the Escalation provision of the Contract. *(If none, you may add your escalation procedure in this section.)*

D. Supplier Performance Assessments

(You may want to develop assessments of the Supplier's performance and disseminate such assessments to other Authorized Users of the VITA Contract. Prior to dissemination of such assessments, Supplier will have an opportunity to respond to the assessments, and independent verification of the assessment may be utilized in the case of disagreement.)

22. CHANGE MANAGEMENT

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

For complex and/or major projects, it is recommended that you use the VITA PMD processes and templates located at: <http://www.vita.virginia.gov/oversight/projects/default.aspx?id=567>. Administrative or non-technical/functional changes (deliverables, schedule, point of contact, reporting, etc.) should extrapolate the affected sections of this SOW in a "from/to" format and be placed in a numbered modification letter referencing this SOW and date, with a new effective date. The VITA Contract may include a template for your use or you may obtain one from the VITA Contract's Point of Contact. It is very important that changes do not conflict with, but do comply with, the VITA Contract, which takes precedence. The following language may be included in this section, but additional language is needed to list any technical/functional change management areas specific to this SOW; i.e., configuration, incident, work flow, or any others of a technical/functional nature.)

All changes to this SOW must comply with the Contract. Price changes must comply with the Code of Virginia, § 2.2-4309.

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

23. POINT OF CONTACT

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

Authorized User: _____

Supplier: _____

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

Supplier:

Authorized User:

(Name of Agency/Institution)

By: _____

By: _____

(Signature)

(Signature)

Name: _____

Name: _____

(Print)

(Print)

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit E

Statement of Work

Change Order Template

EXHIBIT E to Contract

**Change Order No. XXX for Statement of Work D-X
Between (NAME OF AGENCY/INSTITUTION) and**

**Issued Under
CONTRACT NUMBER
BETWEEN
VIRGINIA INFORMATION TECHNOLOGIES AGENCY
AND**

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

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

CHANGE ORDER

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

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

1. PERIOD OF PERFORMANCE

The following change is made to the Period of Performance:

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

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

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

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

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

- i). The Contract, including Exhibit C
- ii). Statement of Work D-X, as amended by this and previous Change Orders, with the more current Change Orders superseding older Change Orders.

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

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

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

Name of Agency/Institution

By: _____

(Signature)

Name: _____

(Print)

Title: _____

Date: _____

By: _____

(Signature)

Name: _____

(Print)

Title: _____

Date: _____

Exhibit F

Content (Data) Escrow Terms

A. District Retrieval of its Data in the Event Supplier Declares Bankruptcy

In the unlikely event that eScholar declares bankruptcy, it, like the vast majority of firms which declare bankruptcy, would seek to reorganize under the oversight of the bankruptcy court and make all commercially reasonable efforts to continue to operate, even if only for a limited period of time, during which it would make all commercially reasonable efforts to inform its customers of the situation as early as possible and engage with customers to return their data to them and subsequent to that, would delete it from the servers at eScholar's hosting provider as per the terms of this Contract.

B. District Retrieval of its Data in the Event Supplier Ceases to Operate

In the even more unlikely event that eScholar ceases to operate, districts will be able to retrieve their data through a data escrow agreement (eScholar Data Escrow Agreement). eScholar will set up the Data Escrow Agreement with its outside legal counsel within 90 days after this Contract is executed between eScholar and VITA. Should eScholar's outside legal counsel determine that eScholar has ceased to exist, that event would initiate, the following actions described in the eScholar Data Escrow Agreement:

1. eScholar Outside Legal Counsel, assisted by eScholar's former management, to inform eScholar customers that the company has ceased to operate
2. eScholar Outside Legal Counsel to appoint a qualified data steward who will be authorized to act on eScholar's behalf with its hosting provider and interact with eScholar customers and, upon request, to provide them with their data and to remove the data from the hosting provider's servers.
3. eScholar Outside Legal Counsel will pay eScholar's hosting provider sufficient funds to ensure that the hosting provider doesn't delete district data for up to 30 days after eScholar ceases to operate in order to enable the appointed data steward to interact with the eScholar customers and retrieve their data for them.
4. eScholar Outside Legal Counsel will direct the data steward to oversee the deletion of all district data at the end of the 30 day period.

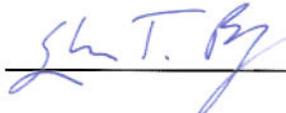
EXHIBIT G: CERTIFICATION REGARDING LOBBYING

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:

Shawn T. Bay

Organization:

eScholar LLC

Date:

1/26/15

Exhibit H

Service Level Agreement

Exhibit H: Service Level Agreement

Introduction

The eScholar Service Level Agreement details the parameters of the Support Plan eScholar offers and what Authorized Users or Licensees (these terms are used interchangeably throughout this document) should expect in terms of product and support services. This document does not supersede current, contractual processes and procedures with eScholar's existing Authorized Users unless explicitly stated herein.

The eScholar support services parameters included herein remain valid unless superseded by mutual agreement between eScholar and the Authorized User.

Definitions

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 (eScholar) Product.

General Product Enhancements

Refers to any product enhancements included in a standard release of eScholar's products. Standard eScholar product releases may consist of Major Releases, Point Releases, and Patch Releases. General Product Enhancements do not include custom work or eScholar Professional Services work.

Major Release

Refers to product releases that feature new capabilities and improvements in performance, scalability, and quality. eScholar usually provides one Major Release per calendar year and performs full regression testing on all Major Releases. Typically, eScholar's Major Releases require a full product upgrade. eScholar may require that eScholar conduct this upgrade directly.

Named Support Contact

A specified number of named Authorized User personnel are considered Named Support Contacts as agreed in writing between eScholar and Authorized User. A Named Support Contact that has completed the training courses required by eScholar pertaining to eScholar products and Authorized User's specific implementation. This person should be very familiar with the project. This person can collaborate with eScholar Support to identify, troubleshoot, and resolve Support Incidents.

Operation

A problem directly related to eScholar software as defined in the applicable product documentation. "Operation" does not include the interoperability of eScholar products with any third-party products.

Point Release

Point Releases contain incremental changes to Major Releases. eScholar provides these releases, as available, to all eScholar supported Authorized Users. Point Releases primarily address product issues that Authorized Users have reported or that eScholar has discovered. As with Major Releases, eScholar conducts a full cycle of regression testing for all Point Releases. Typically, Point Releases do not require a full system upgrade and Authorized Users may apply them directly. There are occasions, however, when eScholar personnel may request to apply the Point Releases directly. Point Releases contain an accumulation of all changes and Patch Releases made since the last Major or Point Release.

Patch Release

Patch Releases contain resolutions for specific Software bugs that affect a single Authorized User. eScholar may provide a Patch Release in the event of a specific high-priority issue. eScholar typically provides Patch Releases only to Authorized Users that have reported the error. Patch Releases generally do not contain enhancements. If the issues addressed in a Patch Release are not specifically affecting your implementation, we recommend waiting until the next Point Release or Major Release of the product.

P1 (Critical)

The defect causes the system to crash, or causes irretrievable data loss, or major portions of the system are unusable and there is no reasonable workaround within the application. The reasonableness of the workaround in the application should take into account the intended end user of the system and seriousness of the consequences caused by the bug. This requires immediate resolution. eScholar will develop, test and implement a patch for critical bugs as soon as technically feasible.

P2 (High)

The defect causes some portion of the system to not work as intended or as planned, resulting in some noticeable deficiency or difficulty, but still allowing system use. The end user can use the application, but functional restrictions exist, and operations are impacted. Workarounds should be provided and a plan created for next available patch release.

P3 (Low)

The defect is superficial or a minor imperfection bug that does not impede system functionality in any way, but should be fixed in the next major release.

P4 (Optional)

The defect has no impact on performance or usability and does not impede functionality in any way, but should be reviewed for a future release.

Priority

The response level assigned to the Support Incident. Priority is determined based on Severity and several other factors outlined in this document.

Reproducible

eScholar can re-create the problem on its own systems.

Response Time

Indicates the time elapsed between the time the eScholar Support Desk receives the Support Ticket and has communicated receipt, issue number, and severity to the Authorized User.

Severity

A dimension eScholar uses to classify the seriousness of a Support Incident. eScholar determines Severity on a scale of 1-4 (See P1, P2, P3 and P4 above).

Software Bug

An error in product code that results in the product not functioning as specified or documented by eScholar.

Software Bug Correction

A revision to product code that corrects any errors caused by a software bug.

Support Incident

A single, Reproducible issue displaying specific symptoms relating to one specific feature, function, action, or facet of the product, or one aspect of its operation or performance where: 1) eScholar agrees the problem is directly related to the Operation of eScholar product and 2) a resolution can be reached using reasonable efforts. A single Support Incident may involve multiple phone calls, emails, and off-line research.

Support Ticket

Refers to the electronic record of an Authorized User's request for support. The eScholar Support Ticket tracking system assigns a unique incident number to each request. Authorized Users may use that number to inquire about the status of the Support Ticket and, if they have appropriate permissions, track the progress of the Support Ticket on the eScholar Support Portal.

Workaround

A resolution that does not involve a Software Bug correction, but provides the means for an Authorized User to circumvent the behavior of a reported incident.

Accessing eScholar Support

eScholar Support Desk Hours

The eScholar Support Desk operates from 8:00AM to 7:00PM Eastern Time, Monday through Friday except for federal holidays. Authorized Users may use the eScholar Support Desk as a single point of

contact for all support inquiries regarding eScholar products. The eScholar Support Desk provides first and second level diagnostic support including analysis of the issue, problem solving, and resolution to Named Support Contacts.

Technical Support Options

Authorized User's Named Support Contacts have access to the following options:

eScholar Support Portal - <https://support.escholar.com>. This portal is a general knowledgebase that contains eScholar product documentation including user and administration manuals as well as product FAQs. The portal includes access to eScholar's library of videocasts that cover a variety of aspects of eScholar products. The portal also provides self-service features that allow eScholar Authorized Users to log and track incident requests and for certain products, new feature requests, 24 hours a day, 365 days a year except when the system is unavailable for maintenance. The eScholar Support Portal can only be accessed by eScholar Authorized Users with valid User IDs and passwords.

Email - support@escholar.com. Email is the best way to contact the eScholar Support Desk. Every email is assigned a ticket number.

Telephone - Toll free (877) 328-2969, Option 3 or (914) 989-2916

Reporting Support Incidents

Support Incident

A Support Incident is defined as a single, Reproducible issue displaying specific symptoms relating to one specific feature, function, action, or facet of the product, or one aspect of its operation or performance where: 1) eScholar agrees the problem is directly related to the Operation of eScholar product and 2) a resolution can be reached using reasonable efforts. A single Support Incident may involve multiple phone calls, emails, and off-line research.

Each Support Incident is a problem that eScholar cannot divide into separate, subordinate issues. If a problem can be broken down into subordinate issues, eScholar will consider each a separate incident.

eScholar may expand the definition of a Support Incident to include accompanying occurrences or events that arise because of, or are dependent on a reported issues. eScholar has sole discretion to define the limits of technical support provided during a specific incident.

What is not a Support Incident?

- A problem with custom coding or consulting deliverables
- Custom reporting or post-implementation report creation
- Requests for custom ETL development
- A problem directly caused by a Software Bug
- A problem caused by an Authorized User's unsupported alteration of an eScholar product

Support Incident Resolution

Once the eScholar Support Desk accepts an incident, eScholar will define resolution of the Support Incident as accomplishing any one of the following:

- eScholar provides a reasonable solution to the incident.
- eScholar provides a reasonable Workaround to the incident.
- eScholar determines the incident is related an action that does not follow a published guideline or specification.
- eScholar determines the incident is an enhancement request.
- eScholar determines the issue is a Software Bug

In these cases, eScholar will not count the reported issue as an incident

eScholar is responsible for determining what characterizes a single Support Incident and communicating this to Authorized Users. eScholar will make reasonable efforts to resolve the issue but cannot guarantee that every issue will be resolved to the Authorized User's satisfaction.

Support Ticket Creation

Upon receiving the support call or email, the eScholar Support Desk will log an incident and provide an incident number to the Authorized User. This number signifies that the issue has been received, logged and will be assigned to the appropriate work group.

Authorized Users may also opt to log their own Support Tickets via the eScholar Support Portal. Once the Authorized User logs the Support Incident, they will receive a confirmation email and will be able to track the status of the Support Ticket via the eScholar Support Portal.

Support Ticket Prioritization

eScholar will prioritize Support Tickets based on:

- The Severity of the issue
- The urgency of the issue
- The availability of the resources required to resolve the issue
- The effort involved in resolution
- The Support Plan purchased

eScholar will work with the Authorized User to determine the appropriate Severity and priority.

Support Ticket Severity and Response Times

The table below describes the Severity eScholar will associate with each Support Ticket. The table also lists the standard Response Time for each level of Severity.

Table 1: Severity Description and Response Times

Severity	Description	Response Time
P1	<p>system crash, irretrievable data loss, major system portions unusable and no reasonable workaround within application</p> <p>Requires immediate resolution. eScholar will develop, test and implement a patch for critical bugs as soon as technically feasible</p>	4 hours
P2	<p>some portions of the system not working as intended/planned, resulting in noticeable deficiency or difficulty while allowing system use</p> <p>application is usable with functional restrictions and impacted operations</p> <p>workarounds should be provided and plan for next available patch release is created</p>	12 hours
P3	<p>superficial defect and minor imperfection bug does not impede system functionality</p> <p>should be fixed in the next major release</p>	Within 48 hours
P4	<p>no impact on performance or usability and does not impede functionality</p> <p>should be reviewed for a future release</p>	Within 48 hours

Authorized User Notification

For all Severity levels, eScholar will update the Authorized User on the Support Ticket status as agreed upon at the time eScholar contacts the Authorized User with the initial response. eScholar will always attempt to resolve the Incident on the first contact but, at times, additional contact may be necessary.

Remedies

For those incidents described herein that are within eScholar's control (subject to both eScholar's and Authorized User's reasonable agreement as to whether an incident is within eScholar's control), and unless mutually agreed upon, the Authorized User may levy the following remedies upon eScholar on a monthly basis calculated from the Core Solution Pricing Annual Subscription Fee or the School Division Pricing Annual Subscription Fee as applicable:

Failure to provide resolution within a reasonable time period, the time period to be mutually agreed upon using Severity, Support Incident Resolution and Support Ticket Prioritization as guidelines shall result in a 0.1% credit per incident.

Failure to provide resolution for any incident within thirty days shall result in a 0.3% credit per incident on a quarterly basis until such issue is resolved to satisfaction.

If eScholar fails to meet this guarantee, eScholar shall provide a credit to the Authorized User at the applicable credit percentage set forth above, limited to those incidents within eScholar's total control (subject to both eScholar's and Authorized User's reasonable agreement as to whether an incident is within eScholar's total control). Credit percentages are limited to 20% credit across all credits applied to Annual Subscription Fees.

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 eScholar for the Application and Licensed Services and no further invoices shall issue as a result, eScholar shall refund to Authorized User the amount of the appropriate Service Level Credit due for the period of default.

For clarity, this section does not apply to any feature request, feature enhancement, or subjective disagreement with the performance or function of the system. This section is strictly limited to the objective performance obligations of this Agreement, its attachments and schedules, and any attached, or executed SOW.

Authorized User Escalation

The eScholar Support Desk is the single point of contact for all support issues. Please contact the eScholar Support Desk to escalate a Support Ticket. Additionally, Authorized Users may contact their Account Manager for any questions about support procedures, escalation, or any other business needs.

Authorized User Responsibilities

Before contacting the eScholar Support Desk, the Authorized User should attempt the following:

- Review system administrator guides, user guides, and other documentation available on the eScholar Support Portal.
- Capture any screenshots of error messages.
- Assemble log, parameter, and data files associated with the incident.
- eScholar will bill services outside of this Service Level Agreement at an hourly rate of \$150.00/hr upon Authorized User approval.
- For incidents received after 7pm EST, the above Response Times will commence at 8am the following business day.

Additional Support-Related Policies

Planned System Outages (for eScholar Hosted Authorized Users)

eScholar schedules regular maintenance windows. The windows are as follows:

Table 2: Maintenance Window Schedules

Day of the Month	Eastern Time	Environment(s)
First Wednesday	7pm - 11pm	myTrack
Second Saturday	8am - 5pm	Dev, Demo and Test
Last Saturday	8am - 5pm	Production

The maintenance window on the second Saturday of the month will be dedicated to all Dev, Demo and Test environments. The maintenance window on the last Saturday of the month will be dedicated to all Production environments.

eScholar will notify Authorized Users one week prior to the scheduled maintenance window if eScholar plans to use that window for system changes. eScholar will report:

- Time of day application(s) will be unavailable
- Estimated length of outage
- Applications affected
- Nature of outage
- Unplanned System Outages

In the course of resolving Support Incidents and Software Bugs, it may become necessary to temporarily bring eScholar Services offline, or to block users' access to eScholar Products. The Account Management team will work closely with the Authorized User to schedule these outages to minimize any interruption of service.

Business Continuity Plan

eScholar maintains a Business Continuity Plan to ensure the continuity of its critical business functions.

Enhanced Service Level Agreements

eScholar can offer enhanced service level agreements to both self hosted and eScholar hosted clients. Please contact your eScholar Account Manager for more information

How does eScholar handle confidential Authorized User data in customer environments?

In accordance with and without compromising all Confidentiality and Security terms of the Contract, Authorized Users may periodically grant eScholar personnel access to their site-hosted environments. This access usually involves communication of confidential Authorized User environment data such as VPN Access information, system IDs and passwords, IP addresses, etc. When working with this information, eScholar personnel will follow the following guidelines:

- eScholar will not transmit confidential Authorized User environment data via email or other non-secure means
- eScholar personnel will not share system IDs or passwords unless granted written permission from an Authorized User representative
- eScholar personnel will follow a “clean desk policy” with regard to all confidential Authorized User environment data.
- Sign a Non-Disclosure Agreement, attached herein, as required by the Authorized User.

NON-DISCLOSURE AGREEMENT

This **AGREEMENT** is made effective as of the _____ day of _____, _____, by and between the Virginia Information Technologies Agency (VITA) on behalf of the Commonwealth of Virginia (the "Commonwealth") and the individual agent, employee or subcontractor of its supplier, _____ ("Supplier").

WHEREAS, the Commonwealth is the owner of confidential and proprietary information and other information ("Confidential Information"). "Confidential Information" for purposes of this agreement shall include all data, materials, products, technology, computer programs, specifications, manuals, business plans, software, marketing plans, financial information, statistical information, trade secrets, technical or test data, scientific data, graphic communication, "know-how", drawings, electronic and other information disclosed or submitted, orally, in writing, or by any other media which is in possession of the Commonwealth or developed by the Commonwealth.

WHEREAS, the Commonwealth has entered into an agreement with Supplier for _____ ("the Project."), reference VITA Contract Number _____. The Project will require and encompass the compilation and exchange of confidential and proprietary information among Commonwealth employees and the Supplier's employees, agents or subcontractors whom the Supplier has assigned to the Project.

WHEREAS, all parties to this Agreement consider the compilation of exchange of such confidential and proprietary information to be necessary and desirable for the purpose of the Project and/or other related activities; and

WHEREAS, the Supplier is utilizing employees, agents and/or subcontractors ("Supplier's employee") on the Project to fulfill Supplier's contractual responsibilities and the Commonwealth is desirous of having each of Supplier's employees individually bound to protect the Confidential Information.

WHEREAS, this Agreement is being entered into by and between the parties in order to protect the confidentiality and non-disclosure of Confidential Information by the individual employee, agent or subcontractor signed hereunder of the Supplier who have been assigned by the Supplier to the Project.

NOW, THEREFORE, the parties agree as follows:

- I. DISCLOSURE OF CONFIDENTIAL INFORMATION:** The Supplier's employee, agrees that the Confidential Information is to be considered confidential and proprietary to the Commonwealth and the Supplier's employee shall hold same in confidence, shall not use the Confidential Information other than for the purposes of the Project, and shall disclose it only to the Project's other employees, agents, subcontractors with a specific need to know. The Supplier's employee shall not disclose, publish or otherwise reveal any of the Confidential Information received from the Commonwealth or the Project to any other party whatsoever except with the specific prior written authorization.

- II. DUPLICATION/RETURN OF CONFIDENTIAL INFORMATION:** Confidential Information furnished in tangible form shall not be duplicated by the Supplier's employee except for purposes of this Agreement. Upon the request of the Commonwealth or _____ or his designee, the Supplier's employee shall return all Confidential Information received in written or tangible form, including copies, or reproductions or other media containing such Confidential Information, within five (5) days of such request.
- III. MOVEMENT/REMOVAL OF CONFIDENTIAL INFORMATION:** The Supplier's employee shall not, without specific prior written authorization of the _____ or his designee or the designated Project Manager, relocate or remove any Confidential Information from the project office.
- IV. PROTECTION/STORAGE OF CONFIDENTIAL INFORMATION:** Supplier's employee agrees that Confidential Information accessed by or in his/her possession shall be protected and stored using the same measures used to protect his or her employer's proprietary or confidential information, unless the project office has other directive or contractual protection/storage requirements.
- V. TERM:** The obligations of the Supplier's employee under this Confidentiality Agreement shall be effective from the date of this Agreement or the date the Supplier's employee is assigned to the Project, whichever is earlier, until two (2) years from the date first entered herein below.
- VI. EXCEPTIONS:** Any obligation of the Supplier's employee as set forth above shall not apply to any Confidential Information, knowledge, data, and/or know-how which:
- a) Can be demonstrated to have been known to the Supplier's employee prior to the execution of this Agreement and was not acquired, directly or indirectly, from the Commonwealth or from a third party under a continuing obligation of confidentiality.
 - b) Publicly known without the wrongful act or breach of this Agreement by the Supplier's employee.
 - c) Rightfully received by the Supplier's employee from a third party on a non-confidential basis;
 - d) Subsequently and independently developed by others who had no knowledge of the Confidential Information;
 - e) Approved for release by written authorization of the _____ or of his designee;
 - f) Required to be disclosed by law or judicial action;
 - g) Was in the public domain or becomes part of the public domain through no fault of the Supplier's employee.
- VII. NO LICENSE:** Nothing contained herein shall be construed as granting or conferring any rights by license or otherwise in any Confidential Information.
- VIII. GOVERNING LAW AND EQUITABLE RELIEF:** This Agreement shall be governed and construed in accordance with the laws of the United State and the Commonwealth of Virginia and Supplier's employee consents to the exclusive

jurisdiction of Richmond, Virginia for any dispute arising out of this Agreement. Supplier's employee agrees and understands that in the event of any breach or threatened breach of this Agreement, the Commonwealth may obtain, in addition to any other legal remedies which may be available, such equitable relief as may be necessary to protect the Commonwealth against any such breach or threatened breach.

- IX. BREACH OF AGREEMENT MAY RESULT IN DISMISSAL OR PERSONNEL ACTION:** Any Supplier's employee who is assigned to the Project and is a party to this Agreement will be immediately dismissed from the Project in the event of any breach or threatened breach of this Agreement by such Supplier's employee.
- X. FINAL AGREEMENT:** This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Agreement may be modified only by a further writing that is duly executed by both parties.
- XI. SEVERABILITY:** If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement including all of the remaining terms will remain in full force and effect as if such invalid or unenforceable term had never been included.
- XII. PUBLICITY:** The Supplier's employee agrees not to discuss its participation in this undertaking or the existence or terms of the Agreement.
- XIII. NOTICES:** Any notice required by this Agreement or given in connection with it or required by law, shall be in writing and shall be given to the appropriate party by personal delivery or by certified mail or electronic mail.

If to the Commonwealth: _____

If to the Supplier's employee: _____

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the latter date below:

Commonwealth of Virginia

Date: _____

By: _____

Printed Name

Title

SUPPLIER'S EMPLOYEE

Date: _____

By: _____

Printed Name

Name of Employer for this Project