



Commonwealth of Virginia  
Virginia Information Technologies Agency

**INSTRUCTIONAL IMPROVEMENT SYSTEM**

Date: June 13, 2016

Contract #: VA-150731-IACH

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: PowerSchool Group, LLC  
601 Campbell Avenue  
Roanoke, VA 24016

FIN: 47-4674631

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Term: July 31, 2016 – July 30, 2017

Payment: Net 30 days

For Additional Information, Please Contact:

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

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





## COMMONWEALTH of VIRGINIA

### Virginia Information Technologies Agency

Nelson P. Moe  
Chief Information Officer  
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11751 Meadowville Lane  
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(804) 416-6100

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711

June 13, 2016

Jacob Gibson  
PowerSchool Group LLC  
150 Parkshore Drive  
Folsom California 95630

Mr. Gibson,

Per Section 3.A. ("Term and Termination") of contract VA-150731-IACH, The Virginia Information Technologies Agency has elected to exercise its option to renew the contract for one year, from July 31, 2016 through July 30, 2017. Should you have any questions, please feel free to contact me.

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

## NOVATION AGREEMENT—CONTRACT # VA-150731-IACH

This is an agreement to modify Contract #VA-150731-IACH (the "Contract") between the Commonwealth of Virginia ("Commonwealth") and Interactive Achievement, LLC, a Delaware limited liability company and direct subsidiary of IA Parent, Inc. located at 601 Campbell Avenue, Roanoke, VA 24016 (the "Assignor"). The parties to this agreement are the Commonwealth, the Assignor, and PowerSchool Group LLC, a Delaware limited liability company located at 150 Parkshore Drive, Folsom, CA 95630 (the "Assignee"). This agreement is incorporated into and becomes a part of the Contract.

1. Assignment. Assignor hereby assigns to Assignee, and Assignee hereby accepts and assumes, all of Assignor's rights and obligations under the Contract. Without limiting the foregoing, this assignment includes all ongoing maintenance obligations and any known or unknown claims of any party that now exist or which may later arise in connection with Assignor's past performance or Assignee's future performance of the Contract. The Commonwealth hereby consents to the assignment.

2. Customers other than State Agencies. Notwithstanding the foregoing paragraph, the Commonwealth has no authority to release any existing rights of political subdivisions, other public bodies, or private institutions of higher education chartered in Virginia and granted tax-exempt status under §501(c)(3) of the Internal Revenue Code that are not State agencies; therefore, this agreement does not release Assignor from its existing obligations to such entities, but Assignee agrees to fulfill all of Assignor's responsibilities under the Contract to such entities. A list of the private institutions eligible to use this contract can be found at: <http://www.cicv.org/our-colleges/profile.aspx>.

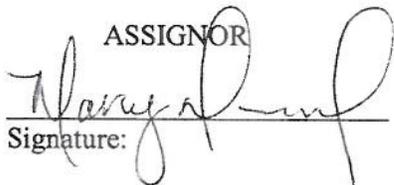
3. Arrangements as between Assignor and Assignee. Any arrangements which Assignor and Assignee may make or which they may have already made in regard to rights as between themselves are separate from this Novation Agreement and shall not affect the Commonwealth's right hereunder to treat the Assignee as holding all rights and obligations of Assignor, or the rights of political subdivisions, other public bodies, or private institutions of higher education chartered in Virginia and granted tax-exempt status under §501(c)(3) of the Internal Revenue Code that are not State agencies to look to Assignee to fulfill Assignor's responsibilities under the Contract (or to look to Assignor directly, as indicated in the foregoing paragraph).

4. Misdirected Communications or Payments. Assignor and Assignee represent and warrant to the Commonwealth and to any political subdivisions, other public bodies or private institutions of higher education chartered in Virginia and granted tax-exempt status under §501(c)(3) of the Internal Revenue Code using the Contract that any communications from the Commonwealth or from political subdivisions, other public bodies or private institutions of higher education chartered in Virginia and granted tax-exempt status under §501(c)(3) of the Internal Revenue Code in connection with the Contract can be made to Assignee at the office address shown herein for Assignee. Assignor and Assignee represent and warrant that they have made or shall make arrangements to insure that any orders, payments or other communications from the Commonwealth, its political subdivisions or other public bodies or private institutions of higher education chartered in Virginia and granted tax-exempt status under §501(c)(3) of the Internal Revenue Code in regard to this Contract are promptly returned to the sender or forwarded to Assignee in the event they are addressed or sent to Assignor. Any such payment or communication which is not promptly returned to the sender shall be deemed to have been made to Assignee.

5. Release of Assignor. Except for the responsibilities of Assignor described in this Novation Agreement, the Commonwealth releases Assignor from any further obligation to the Commonwealth under the Contract, and the Commonwealth agrees that it shall look only to the Assignee for further performance under the Contract or in regard to any Commonwealth claims under the Contract. In accordance with the Contract, this Novation Agreement shall be governed by the laws of Virginia and any litigation with respect thereto shall be brought only in the courts of the Commonwealth of Virginia. All other terms and conditions of the Contract remain in full force.

6. Complete Agreement. This is the complete and final expression of the Assignor's and Assignee's agreement with the Commonwealth and can be modified only in a writing signed by all parties. Assignor agrees, however, that the Commonwealth and Assignee may wish to modify the underlying Contract in the future, and that Assignee's signature shall not be required for any such modification.

The undersigned representatives of each party represent and warrant that they are each duly authorized to sign this agreement on behalf of their principals identified below, and do hereby sign on behalf of same.

ASSIGNOR  


Signature:

    Marcy Daniel    

Name:

    Chief Operating Officer    

Title:

    March 10, 2016    

Date:

ASSIGNEE  
DocuSigned by:  
  
308DA2DB40CE444

Signature:

    Ryan Johnson    

Name:

    Vice President Finance    

Title:

    March 10, 2016    

Date:

COMMONWEALTH OF VIRGINIA



Signature:

    James MacKenzie    

Name:

    strategic Sourcing Specialist    

Title:

    March 10, 2016    

Date:



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

between

The Virginia Information Technologies Agency

on behalf of

The Commonwealth of Virginia

and

Interactive Achievement, 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 Interactive Achievement, LLC ("Supplier"), a limited liability corporation headquartered at 601 Campbell Avenue, Roanoke, VA 24016 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 also 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. 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.

**K. 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.

**L. 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.

**M. 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)

**N. 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.

**O. Maintenance Coverage Period (MCP)**

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

**P. 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.

**Q. 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.

**R. Party**

Supplier, VITA or any Authorized User.

**S. 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)

**T. Receipt**

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

**U. 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.

**V. 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.

**W. 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.

**X. Software Publisher**

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

**Y. 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.

**Z. 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).

**AA. Supplier Product**

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

**BB. 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.

**CC. 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 one (1) year. VITA, in its sole discretion, may extend this Contract for up to four (4) additional one (1) year periods after the expiration of the initial one (1) 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 monthly billing period. For purposes of this provision, a written notice may include an e-mail or the use of a Supplier-provided provisioning website by an Authorized User's designated administrator. [NOTE: This assumes SaaS billed monthly, in arrears, with demand-based license/pricing.

**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/Oou-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 to Authorized User and/or designated Application Users, as specified in the applicable order or SOW, twenty-four (24) hours a day, seven (7) days a week (“Uptime”) less Excusable Downtime. For the purposes of this Contract, “Excusable Downtime” is defined as that period of time when the Licensed Services are not available to Authorized User or its Application Users due to scheduled network, hardware or service maintenance and/or upgrades. Except in cases of emergency, Authorized User shall be provided a two (2) business day advance notification of such maintenance and/or upgrade. In cases of emergency, Supplier will use its best efforts to notify Authorized User of a planned Downtime as soon as practicable. Maintenance or upgrades are not to exceed thirty-six (36) hours in duration in a single month and cannot occur Monday through Friday, between the hours of 6:00 a.m. and 8:00 p.m. Eastern Time.
- v). Excusable Downtime shall not include (i) an electronic hardware failure, (ii) a failure in the Supplier’s Application, (iii) an electric utility failure at Supplier’s facility where the Application is hosted, or (iv) a network failure up to, but not including, the interconnection point of Supplier’s network to the public switched telephone network.
- vi). Supplier guarantees the Application will be available for use at least ninety-nine percent (99%) of the total time during each month, excluding Excusable Downtime.
- vii). If non-Excusable Downtime exceeds the parameters listed above, Supplier will credit to Authorized User the total recurring fees that would otherwise be owed by Authorized User under this Contract during the month of such failure. Such credit will be issued in the month immediately following the failure.
- viii). Supplier shall be required to 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.

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). Upon notification by Authorized User of an Application User's deletion, Supplier shall remove said Application User from its server within one (1) hour of receipt of such notification. If Supplier fails to make such a deletion, Authorized User shall not be held liable for any charges or damages incurred due to use of the unauthorized USERID.

## **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 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 SSAE 16 Type II audit report. Supplier shall also assist VITA in obtaining the current 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 fifteen (15) business 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](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 URL(s). Authorized Users that are not public bodies may have their 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. Coverage**

Monday through Friday from 7:00am to 5:00pm. Supplier shall provide to any Authorized User all reasonably remote assistance requested by such Authorized User in connection with use, problems and operation of the Application.

### **B. Service Levels**

Within one (1) hour after a request from an Authorized User, Supplier will respond to such request for support of Licensed Services regarding the Application and Licensed Services, including Application, Supplier Product and Documentation in accordance with the procedures identified in Exhibit H of the Contract, Table of Service Levels, Response and Resolution Times and Escalation Procedures for Licensed Services. In each case, Authorized User may describe the problem by telephone or electronic mail or via a web site provided by Supplier. Supplier shall use its best efforts/commercially reasonable efforts to meet Response Time and Resolution Time and other obligations under this Contract.

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

### **C. Application Evolution**

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

## **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 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**

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

**C. Reporting**

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

[To be provided by Supplier.]

**15. ESCROW AGREEMENT**

Supplier shall maintain copies of all Application source code and related technical and user Documentation, in English, in an escrow account, and shall maintain with escrow agent the executed agreement attached hereto as Exhibit C-1 (Application Escrow Agreement). Supplier shall maintain, in a separate escrow account for each Authorized User, copies of all Content provided by or to such Authorized User in a format accessible without use of Supplier's Application. An executed agreement for providing for any such Content Escrow Agreement is attached hereto as Exhibit C-2 (Content Escrow Agreement). VITA acknowledges that, prior to the Effective Date of this Contract, Supplier delivered to VITA and VITA received a copy of the executed Application Escrow Agreement naming the Commonwealth of Virginia as a third party beneficiary. VITA has reviewed Application Escrow Agreement to ensure that such Application Escrow Agreement does not impose upon the Commonwealth any requirements other than administrative responsibilities necessary for the operation of the Application Escrow Agreement. If events give rise to a need for the escrow agent to release escrowed materials to the Commonwealth, the Commonwealth's sole responsibility shall be to request the release of such materials from the escrow agent. Supplier agrees to notify VITA in writing not less than thirty (30) calendar days prior to termination or any modification of the Application Escrow Agreement. Any Content Escrow Agreement shall name as a third party

beneficiary the Authorized User whose Content is kept in escrow pursuant to such Content Escrow Agreement.

Supplier warrants that the information and materials to be kept in escrow in a media safe environment for the benefit of the Commonwealth pursuant to the Application Escrow Agreement are specifically identified and listed in Attachment A to the Application Escrow Agreement and include the most current version used by all Authorized Users of:

- i). the source code for the Application software and all future releases,
- ii). identification of the development/support technology stack, including but not limited to, every software tool, driver, script, app, etc. with versions and details needed to develop, test, support all phases of the SDLC for all tiers of the Application Software as used in the Authorized User's solution or operating environment,
- iii). all Documentation related thereto as well as all necessary and available information, proprietary information in English,
- iv). technical Documentation must be in English and shall enable VITA, any Authorized User, or an Agent of VITA or any Authorized User to create, maintain and/or enhance the Application Software without the aid of Supplier or any other person or reference to any other materials, maintenance tools (test programs and program specifications), or proprietary or third party system utilities (compiler and assembler descriptions); descriptions of the system/program generation; and descriptions of any Supplier tools required to enable VITA and all Authorized Users to continue to use the Application Software, and
- v). all Documentation must be provided in unprotected MS Word and other commonly used formats that can be updated.

Supplier warrants that all items, including future versions, deposited in escrow for VITA or an Authorized User shall be verified by the Escrow Agent within 30 days after deposit to validate the completeness, accuracy and functionality of the Supplier's escrow deposits. The verification process to be performed by the Escrow Agent for the original deposit and subsequent deposits shall be detailed in the Escrow Agreement and a detailed report of all tests of such verification shall be submitted in writing to VITA or the Authorized User within 10 business days of completion. To perform such verification, Escrow Agent shall conduct a verification process that includes but is not be limited to:

- i). File List Test - To ensure the deposited items are catalogued and confirm they are readable and virus free, and if encrypted, that the Escrow Agent has the decryption keys on deposit.
- ii). Inventory and Analysis Test – To provide a complete audit and inventory of the deposit including analysis of deposited media to verify the presence of build instructions, to identify all of materials necessary to recreate the original development environment and to confirm the presence of all build instructions, file classification tables, database schema and listings.
- iii). Compile Test – To validate whether the development environment can be recreated from the deposited documentation and files; to identify third-party libraries, to recreate the Supplier's development environment; to compile source files and modules, to recreate executable code and to prepare a complete list of any hardware or software configurations.
- iv). Binary Comparison Test – To test the functionality of the compiled deposit materials by comparing the files built in compile testing to the licensed, executable file running at VITA's or Authorized User's site.
- v). Full Usability Test – To confirm the source code placed in escrow will be fully functional in the event of a release and to perform a relevant series of tests to ensure that replicated software runs properly in the required VITA or Authorized User environment.
- vi). Final Operability Test – To perform a final demonstration of the functioning software.
- vii). Fault Remedy – To collaborate with Supplier on fixing any faults discovered during the testing, to obtain corrected escrow items and to re-perform any verification tests as necessary until all tests are successful, with written detailed reports to VITA or the Authorized User.

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

Supplier warrants that the Escrow Agreements provide or shall provide for, among other items, the release of the list of items on Attachment A of each Escrow Agreement which could occur upon the happening of certain events, including, but not limited to, Supplier's failure to carry out its support and maintenance obligations imposed by this Contract for a period of sixty (60) days, Supplier's breach or default under this Contract, Supplier's bankruptcy and/or Supplier's failure to continue to do business in the ordinary course. Any Content Escrow Agreement shall also provide for the release of the escrowed items in the event the Authorized User's Content is destroyed, lost, or damaged or following the termination or expiration of Authorized User's order or SOW for Licensed Services. Supplier agrees to pay all expenses associated with establishing and maintaining the escrow accounts and the contents mentioned above.

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

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

## **16. 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 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.

**17. 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. [Modify this sentence only if this Contract is mandatory use for any Authorized User] 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. Reproduction Rights for Supplier-Provided Software**

(Optional per project) At an Authorized User's request, Supplier shall provide the Authorized User with a reproducible diskette or CD of Software and Updates. Such Authorized User shall be responsible for making copies and distributing the Software and Updates as required. Within thirty (30) days of the end of each calendar quarter, such Authorized User shall provide to Supplier a report of the net number of additional copies of the Software and/or Updates deployed during the quarter. Supplier shall invoice such Authorized User for the net number of new licenses reported as deployed.

## **D. 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.

#### **E. 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.

#### **F. 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.

#### **G. 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.

#### **H. 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.

#### **I. 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.

### **18. 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.

## **19. 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.

## **20. POLICIES AND PROCEDURES GUIDE**

Within 30 days of the effective date of the Contract, Supplier will provide VITA will 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.

## **21. 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 deliver to Authorized User three (3), or such number as agreed upon between the parties under an order or SOW, complete hard copies or electronic media of Documentation applicable 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 deliver 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.

## **22. 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.

## 23. CONFIDENTIALITY

### A. Treatment and Protection

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

### B. Exclusions

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

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

### C. Return or Destruction

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

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

### D. Confidentiality Statement

All Supplier personnel, contractors, agents, and subcontractors performing Services 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.

### E. 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.

## **24. 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.

## **25. INSURANCE**

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

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

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

## **26. 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.

## **27. 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.

## **28. BANKRUPTCY**

If Supplier becomes insolvent, takes any step leading to its cessation as a going concern, fails to pay its debts as they become due, or ceases business operations continuously for longer than fifteen (15) business days, then VITA may immediately terminate this Contract, and an Authorized User may terminate an order or SOW, on notice to Supplier unless Supplier immediately gives VITA or such Authorized User adequate assurance of the future performance of this Contract or the applicable order or SOW. If bankruptcy proceedings are commenced with respect to Supplier, and if this Contract has not otherwise terminated, then VITA may suspend all further performance of this Contract 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.

## **29. GENERAL PROVISIONS**

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

Supplier has no authority to contract for VITA or any Authorized User or in any way to bind, to commit VITA or any Authorized User to any agreement of any kind, or to assume any liabilities of any nature in the name of or on behalf of VITA or any Authorized User. Under no circumstances shall Supplier, or any of its employees, hold itself out as or be considered an agent or an employee of VITA or any Authorized User, and neither VITA nor any Authorized User shall have any duty to provide or maintain any insurance or other employee benefits on behalf of Supplier or its employees. Supplier represents and warrants that it is an independent contractor for purposes of federal, state and local employment taxes and agrees that neither VITA nor any Authorized User is responsible to collect or withhold any federal, state or local employment taxes, including, but not limited to, income tax withholding and social security contributions, for Supplier. Any and all taxes, interest or penalties, (including, but not limited to, any federal, state or local withholding or employment taxes, 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](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](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 - Escrow Agreement (Provided by Supplier if needed)

Exhibit D - Statement of Work (SOW) Template

Exhibit E – SOW Change Order Template

Exhibit F - Reserved

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.

Interactive Achievement, LLC

VITA

By:   
(Signature)

Name: Jonathan L. Hagmaier  
(Print)

Title: Chief Executive Officer

Date: July 24, 2015

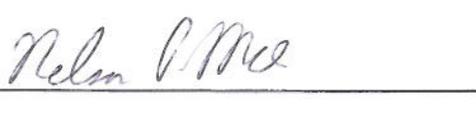
Address for Notice:

Interactive Achievement, LLC

P.O. Box 3122

Roanoke, VA 24015

Attention: Supplier Contact

By:   
(Signature)

Name: Nelson P. Moe  
(Print)

Title: Chief Information Officer

Date: July 30, 2015

Address for Notice:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Attention: Contract Administrator

# Exhibit A

## Appendix E- Requirements

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

	<b>Features &amp; Functions</b>	<b>A</b>	<b>B</b>
<b>1.1</b>	<p>Does your solution comply with all current COV ITRM Policies and Standards, as applicable, found at:  <a href="http://www.vita.virginia.gov/library/default.aspx?id=537">http://www.vita.virginia.gov/library/default.aspx?id=537</a>.</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	onTRAC complies with all current COV ITRM policies and standards, as applicable, according to Interactive Achievement's solution architecture and recommended business processes.
<b>1.2</b>	<p>Do your proposed interfaces to Commonwealth systems comply with or have approved exceptions to all applicable Commonwealth Data Standards as found at:  <a href="http://www.vita.virginia.gov/oversight/default.aspx?id=10344">http://www.vita.virginia.gov/oversight/default.aspx?id=10344</a> ? If not, please explain.</p>	Y	onTRAC complies with all Commonwealth Data Standards, as applicable, according to Interactive Achievement's solution architecture and recommended business processes.
<b>1.3</b>	<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:  <a href="http://www.vita.virginia.gov/uploadedFiles/Library/AccessibilityStandard_GOV103-00_Eff_11-04-05.pdf">http://www.vita.virginia.gov/uploadedFiles/Library/AccessibilityStandard_GOV103-00_Eff_11-04-05.pdf</a></p>	N	Many aspects of onTRAC have been designed to support accessibility standards (e.g. font sizes percentage based, no repetitive navigation links, etc) although onTRAC is not currently in full 508 compliance according to the provided Commonwealth documentation. To date Virginia division's have not required onTRAC to be 508 compliant per our local contracts.
<b>1.4</b>	<p>Does your solution support access for mobile devices?  If yes, please explain.</p>	Y	onTRAC supports access for mobile devices. As a web-hosted solution, onTRAC can be accessed on mobile devices via standard browser (Microsoft Internet Explorer, Mozilla Firefox, Google Chrome, Apple Safari).
<b>1.5</b>	<p>Does your solution offer a customizable, role-based dashboard?  If yes, please explain.</p>	Y	onTRAC offers customizable, role-based dashboards for users. onTRAC is designed to make data easily accessible, timely, and relevant to all levels of users. Only data that is relevant to users (as determined by roles, permissions, and student assignments) is displayed and all irrelevant information is filtered out. This creates a role-based and user-friendly interface that is intuitive for the average user.

<p><b>1.6</b></p>	<p>Does your solution support role-based authentication? If yes, please explain and provide examples for supported systems.</p>	<p>Y</p>	<p>onTRAC's security architecture utilizes role-based access control. onTRAC provides customizable pre-constructed roles for various job functions (teacher, school administrator, division administrator, state administrator) and the ability to add additional roles as needed. Roles are constructed from sets of permissions that allow specific task-level view/edit operations when assigned to user accounts. Through these role assignments, staff members are authenticated to perform approved application functions.</p> <p>onTRAC supports authorization of users through integration with systems like Active Directory and plans to support authentication through integration as well.</p>
<p><b>1.7</b></p>	<p>Does your solution reduce/eliminate the need for redundant entry of information? If yes, please explain.</p>	<p>Y</p>	<p>onTRAC requires that data/information be entered only once. onTRAC eliminates redundant entry of information whether a school division uses onTRAC's Assessment Management System, Longitudinal Data System, or both. Once entered, information is shared across a single platform, eliminating the need to log in or out of multiple systems and remember multiple login names and passwords.</p> <p>Student demographic data from the SIS (name, STI, local ID, DOB, school, current grade, GPA, gender, race, ethnicity, gifted status, 504 status, SWD, LEP, AMO Performance Gap Group, economic status) and other local indicators (grades, attendance and discipline) are entered once and automated for daily updates. State data (SOL, ACT, PSAT, SAT) is entered once and automated for weekly updates. Local assessment data ( Local Benchmark, PALS, Student Growth Assessments, NWEA MAP®, CoGAT, WIDA, GRADE™) is entered once and is either automated for daily updates or updated as needed, depending on the data source.</p>
<p><b>1.8</b></p>	<p>Is your solution's system scalable to allow undegraded performance at periods of peak demand? If yes, please explain including the average response time for a system of similar size/nature. Describe how you measure performance?</p>	<p>Y</p>	<p>onTRAC has been designed and built to scale with undegraded performance at periods of peak demand. We size for peak performance and monitor response times for performance and at 80% of capacity resize bandwidth. Performance is measured by page response time for each report category with an average response time of less than 3 seconds for most transactions and up to 15 seconds for large report query transactions. Measured performance is based on the volume of data being queried / requested for aggregation or disaggregation.</p>

1.9	Does your solution require browser add-ons, plug-ins or other technology necessary to use all aspects of the system successfully? If yes, please explain.	Y	onTRAC requires that users access the solution via a supported browser (latest 3 versions of Microsoft Internet Explorer, Mozilla Firefox, Google Chrome, or Apple Safari) with javascript and cookies enabled.
1.10	Does your solution provide access to state (VDOE) data for state (non school division) users? If yes, please explain.	Y	onTRAC provides off-the-shelf options for state (non school division) users to access state (VDOE) data. State users can access SOL data through onTRAC's State Data eXplorer (SDX). SDX provides state users with interfaces for interpreting SOL data by achievement, growth, pass rate, longitudinal trend, performance, assessment history, comparative analysis, and more. SDX is built utilizing industry leading business intelligence tools that support the quick and easy creation of additional dashboards and reports that state users might desire.
1.11	Does your firm have a feedback process for the purpose of modifying or upgrading the solution? If yes, please provide examples.	Y	<p>Interactive Achievement has consistently upgraded the onTRAC solution over the last 4 years thanks in large part to Virginia divisions and an established feedback process. Since February 2011 IA has held in person meetings every 3-6 months with representatives from each of the 12 divisions awarded Division Longitudinal Data System Grants. These meetings of consortium stakeholders established a feedback process that continues today, well beyond the grant time period.</p> <p>At consortium meetings stakeholders provide IA feedback on existing features, desired features, and overall modifications and upgrades. Many current features and components of onTRAC are the direct result of the feedback process established with the consortium of Division LDS Grant awardees.</p> <p>Additionally, IA provides all users with feedback process options such as a "suggestions" feature that allows users to email IA product managers directly, direct feedback via onTRAC Live (IA's real-time online help desk service), annual user conferences held at multiple locations across the Commonwealth, and regularly scheduled onsite meetings between IA Account Managers and division stakeholders.</p>
1.12	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.	Y	Interactive Achievement's solution is compliant with state and federal regulations, such as, FERPA. These are of utmost importance to our organization and all new state and federal regulations are prioritized and escalated based on current infrastructure.

<b>1.13</b>	Does your firm test updates and/or patches before general release? If yes, please describe your testing environment.	Y	All items are tested prior to release. Code changes and/or updates are committed to our repository and are run through automated unit and integration tests. In addition, all patches are manually tested prior to release. The work flow for code changes follows through development, staging and production. Our testing environment is comprised of integration, development and staging servers.
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	<b>Data &amp; Integration</b>	<b>A</b>	<b>B</b>
<b>2.1</b>	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 are not considered modifications.	Y	<p>onTRAC is a COTS product and its "core" solution features (as defined by VDOE in RFP 2015-03) have been commercially available to Virginia divisions since 2012. Currently 45 Virginia divisions subscribe to the "core" solution features of onTRAC while 115 Virginia divisions subscribe to the "optional" features of onTRAC that have been commercially available since 2007.</p> <p>All components that VDOE lists as "core" solution components are available via onTRAC as a COTS product and can be purchased and used immediately "as is" and without modification.</p>
<b>2.2</b>	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	onTRAC accommodates the ten-digit State Testing Identifier (STI) and the local student identifier. The student STI is used as the primary key for connecting students' local data (local assessment, demographics, attendance, etc.) to state-level data (SOL, etc.).
<b>2.3</b>	Does your solution provide role-based access to student information (including, but not limited to demographics, enrollment and attendance history, discipline history, intervention plans and special program information)? If yes, please explain and name those data or student information included in your reporting.	Y	<p>Student information is protected through role-based access controls and permission specific authorization requirements for data deemed private and/or sensitive in nature. Student information and data included in reporting includes, but is not limited to: student name, STI, local ID, DOB, school, current grade, GPA, gender, race, ethnicity, gifted status, 504 status, SWD, LEP, AMO performance gap group, economic status, enrollment history, attendance history, discipline history, intervention plans, special program enrollment, watch list history, SOL history, and local assessment histories (benchmarks, Student Growth Assessments, NWEA MAP®, CoGAT, WIDA, GRADE™, etc.).</p> <p>onTRAC's security architecture utilizes role-based access control. onTRAC provides customizable pre-constructed roles for various job functions (teacher, school administrator, division administrator, state administrator) and the ability to add additional roles as needed. Roles are constructed from sets of permissions that allow specific task-level view/edit operations when assigned to user accounts. Through these role assignments, staff members are authenticated to perform approved application functions. Access to private and/or sensitive student information and data (e.g. economic status, discipline history) requires express permissions by users authorized to grant such permissions.</p>

2.4	Does your solution provide the capability to export data in a variety of standard formats (ie, comma delimited, .csv, xls, tab delimited, etc.)? If yes, please explain and list the formats.	Y	onTRAC provides the capability to export data in a variety of standard formats. Tabular reports available in the "core" solution (as defined by VDOE in RFP 2015-03) are exportable in csv and xls formats. Various reports in the "optional" feature components of onTRAC can be exported in a variety of standard formats including xml, csv, rich text format, xls, and PDF.
2.5	Does your solution provide a data dictionary identifying all data elements (including, but not limited to source system of record, refresh intervals and other data attributes)? If yes, please explain.	Y	Our solution provides a data dictionary that identifies all data elements. Dictionary includes required data, optional data, data format(s), source system of record, and refresh intervals.
2.6	Is your solution web-based? If yes, please explain how data is stored, accessed and analyzed using web protocols.	Y	Interactive Achievement's solution is web-based. It flows from Web Browser to SSL to Web Services to Data Services to Database (in some cases) and back.
2.7	Can your solution import data from a variety of local assessments (including, but not limited to iReady, SRI, SOLAR, PALS, AP, SAT, ACT, IB, Orleans Hanna, ACCESS for ELLs, WISE, NWEA/MAP, Industry Credential Testing)? If yes, please explain and describe the process of loading local assessment data into your system.	Y	<p>onTRAC supports the import of data from a variety of local assessments. onTRAC includes support for importing NWEA MAP®, CoGAT, WIDA, GRADE™ and PALS data.</p> <p>Divisions may request additional data sources be supported in onTRAC through IA's new data source process. This process includes division(s) providing IA with desired data points from an alternate assessment provider, sample data extracts and/or files from alternative assessment providers, IA creation of a new data source in onTRAC, IA development of a 'reader' for accepting the new source data, co-design of user interface displays (graphical and tabular) between IA and division(s), and division upload of new source data via onTRAC's Data Manager interface. Once added, new data sources are available for use by all divisions.</p> <p>The process for loading local assessment data into our system is streamlined and user-friendly. onTRAC provides a web-based data import interface for loading local assessment data into the system. This interface, the onTRAC Data Manager, provides downloads for process documentation and data file templates, the ability to select files or drag files from users' file locations, and an upload option for the selected files. Detailed reports are provided to users after file submission and processing that outline any submission errors and the causes.</p>

<p><b>2.8</b></p>	<p>Does your solution allow the integration of IEP data? If yes, please explain.</p>	<p>Y</p>	<p>onTRAC allows for integration of certain IEP data like SWD status, intervention program eligibility, intervention program participation and enrollment, and intervention progress monitoring. Integration of additional IEP data (i.e. from an IEP system) could be accomplished through API integration, single sign-on, or other methods. With detailed specifications, requirements and assistance from state and local users, IA can outline options for the integration of additional IEP data with the IIS solution.</p>
<p><b>2.9</b></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>onTRAC does not utilize SIF for data exchange between local divisions. onTRAC utilizes an alternative method for data exchange provided by solutions partner Clever Inc. (see Appendix B for Clever's School District Whitepaper which includes a service overview)</p> <p>The advantages of this method of data exchange include, but are not limited to:</p> <ul style="list-style-type: none"> <li>- Divisions always maintain full ownership and control over student data and may adjust their data transmission settings at any time</li> <li>- FERPA compliant</li> <li>- SOPIPA compliant</li> <li>- Leading security infrastructure (see Appendix C for Clever's Security Whitepaper)</li> <li>- Subject to rigorous, ongoing security audits and external code reviews</li> <li>- Production infrastructure compliance with the following security standards: SSAE 16, SSAE 3402, PCI DSS Level 1, ISO 27001, FedRAMP, FISMA, and FIPS 140-2</li> <li>- Support for data exchange with all SISs currently utilized in Virginia</li> <li>- API token-based authentication (over key-based authentication) represents the authorization that a division has given permission to access its data and only gives IA access to the data for a single division.</li> <li>- Sharing of data authorized by the division only</li> <li>- Data authorized for sharing is standardized and formatted (i.e. normalization of race codes between SISs/divisions)</li> <li>- Alerts for divisions and IA for missing and/or low-quality data (e.g. show data warnings for teachers without an email address)</li> <li>- When divisions share incomplete data records (e.g. a student with no grade level), rather than reject the record, the record is accepted</li> </ul>

2.10	<p>Does your solution accommodate the sharing of data for transfer students across schools and divisions?</p> <p>If yes, describe the process for sharing data across divisions and frequency and timeliness of updates.</p>	Y	<p>onTRAC accommodates the sharing of certain data (e.g. SOL, PALS) for transfer students across schools and divisions by utilizing the STI for each student. The process for sharing SOL data across divisions relies on STI-specific calls to the VDOE SOL web service. Calls are made on an as-needed basis. Although this process allows the sharing of data across divisions, the frequency of requests has caused Virginia divisions to suggest that process be improved. If awarded, IA would like to propose improvements to this process that include online authorization and permission requests between divisions. The result will be timely and automated sharing of data for transfer students across schools and divisions.</p>
2.11	<p>Does your solution provide a mapping between internal data elements and data elements defined by the Common Education Data Standards (CEDS)?</p>	Y	<p>A number of onTRAC data elements can be mapped to applicable Common Education Data Standards.</p>
2.12	<p>Is your solution compliant with Learning Tools Interoperability (LTI) standard?</p>	N	<p>onTRAC is not currently compliant with Learning Tools Interoperability. IA has recently begun research with IMS Global on LTI.</p>
2.13	<p>Does your solution support other standards? If yes, please list all standards supported.</p>	Y	<p>onTRAC supports IMS Global's Question and Test Interoperability (QTI) standards and specifications as well as Academic Benchmark's academic standards for alignment, cross-referencing, concept mapping, and unique industry identifiers.</p>
2.14	<p>Is there a limit on the number or size of student records that your solution can accommodate? If yes, please explain.</p>	N	<p>Reviewing our current infrastructure we do not believe there will be an issue managing that data associated with 1.2 million student records across time.</p>
2.15	<p>Does your solution include a database platform used for recording and housing the data (i.e. Oracle, MS SQL, DB2)? If yes, please specify.</p>	Y	<p>Our solution includes Microsoft SQL Server 2008 R2, some NoSQL solution is used by our optional AMS component for scaling in the Amazon Cloud, and QlikView 11.2</p>
2.16	<p>Does the solution support regional program access to data? If yes, please describe.</p>	Y	<p>onTRAC supports regional program access to data. Specifically, onTRAC's optional AMS component has supported data access for both Region VIII and Region VII (per Region request and individual division permission). Additionally, IA has officially supported the 40+ division member Virginia School-University Partnership (VSUP) regional collaborative with access to various onTRAC components since 2009.</p>

<p><b>2.17</b></p>	<p>Does your solution include a plan for on-boarding Virginia's 132 school districts? If yes, please describe your plan.</p>	<p>Y</p>	<p>IA's onTRAC solution includes a plan for on-boarding Virginia's 132 school divisions. Onboarding divisions to the "core" solution will require division-level system configurations, state data import, division SIS configurations, division user/student record imports, division roster imports, and division-/school-level permission setting. One or all of these onboarding requirements has been completed for 112 Virginia Divisions thereby greatly reducing the work required to onboard Virginia's divisions. The plan to add the additional divisions and the remaining requirements for all divisions will be handled through the implementation process. The outlined implementation process is a joint effort between the assigned IA Account Manager (AM) and the authorized Client Account Managers (CAMs). Together the IA AMs and division CAMs will schedule and execute all requirements set forth for utilizing the "core" solution.</p>
<p><b>2.18</b></p>	<p>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.</p>	<p>Y</p>	<p>IA's marketing plan for encouraging all Virginia school divisions to participate in the state solution is outlined in the onTRAC Virginia Marketing Plan found in Appendix D.</p>
<p><b>2.19</b></p>	<p>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.</p>	<p>Y</p>	<p>onTRAC functions with the most current versions of Mozilla Firefox, Google Chrome, and Version 9 and later of Microsoft Internet Explorer. As a web-hosted solution, all onTRAC features (new and existing) are Quality Assurance tested against the three latest versions of each of the listed browsers (as well as Apple Safari) for compatibility.</p>
<p><b>2.20</b></p>	<p>Is your solution's portal fully functional (i.e. is not in a development or testing state)? If yes, please explain.</p>	<p>Y</p>	<p>onTRAC's "core" solution components (as defined by VDOE in RFP 2015-03) are fully functional and not in a development or testing state. onTRAC provides longitudinal state-level and disaggregated state assessment results, provides longitudinal student-level and disaggregated local assessment results, provides student demographics and other state and local indicators, provides easy to use analytic tools, and is interoperable with local Student Information Systems (SIS).</p> <p>Currently 45 Virginia divisions subscribe to the "core" solution features of onTRAC while 115 Virginia divisions subscribe to the "optional" features of onTRAC that include: Assessment Management and Intervention Tracking.</p>

Analysis & Reports		A	B
3.1	Does your solution provide standard reports? If yes, please explain and provide examples.	Y	Multiple standard reports are available as part of the "core" solution components (as defined by VDOE in RFP 2015-03) of onTRAC. Standard reports include: Individual Student Profiles, (Education Metric-Based) Performance Snapshots, (Education Metric-Based) Quarterly Snapshots, (Education Metric-Based) Comparison Snapshots, SOL Dashboard, SOL Performance, SOL Growth vs. Achievement, SOL Student Assessment History, and SOL Comparisons. Additional reports (requested by Virginia divisions) are currently being designed. These reports will be added to the above list of standard reports and include: Key Performance Indicator Dashboard, Key Performance Indicator Overview, and K-3 Achievement Records.
3.2	Does your solution allow for the creation and sharing of custom reports? If yes, please explain.	Y	onTRAC allows for role-based creation and sharing of custom reports. onTRAC's "Report Builder" feature is a customizable tool that provides a user friendly interface for the quick creation of ad hoc reports. Report Builder is designed to be used by users ranging from advanced to inexperienced. The Report Builder is intuitive and role-based and only shows data that is relevant to the user.  Report Builder allows for creating customized reports based on, but not limited to, the following data: Student Demographics (Name, STI, Local ID, DOB, School, Current Grade, GPA, Gender, Race, Ethnicity, Gifted Status, 504 Status, SWD, LEP, AMO Performance Gap Group, Economic Status), Assessment Type (SOL, Local Benchmark, PALS, Student Growth Assessments, NWEA MAP®, CoGAT, WIDA, GRADE™), Subject, Course Section, Teacher, Grade, Assessment Year, Watchlist, Performance Metric, Course Grades, Attendance, Discipline Records, Intervention Program, etc.

<p><b>3.3</b></p>	<p>Does your solution allow authorized users to create ad hoc reports that can be saved, shared and refreshed? If yes, please explain.</p>	<p>Y</p> <p>onTRAC allows authorized users to create ad hoc reports that can be saved, shared, and refreshed. onTRAC's "Report Builder" feature is a customizable tool that provides a user friendly interface for the quick creation of ad hoc reports. Report Builder is designed to be used by users ranging from advanced to inexperienced. The Report Builder is intuitive and role-based and only shows data that is relevant to the user.</p> <p>Report Builder allows for creating, saving and sharing customized reports based on, but not limited to, the following data: Student Demographics (Name, STI, Local ID, DOB, School, Current Grade, GPA, Gender, Race, Ethnicity, Gifted Status, 504 Status, SWD, LEP, AMO Performance Gap Group, Economic Status), Assessment Type (SOL, Local Benchmark, PALS, Student Growth Assessments, NWEA MAP®, CoGAT, WIDA, GRADE™), Subject, Course Section, Teacher, Grade, Assessment Year, Watchlist, Performance Metric, Course Grades, Attendance, Discipline Records, Intervention Program, etc.</p>
<p><b>3.4</b></p>	<p>Does your solution provide predictive analysis capabilities? If yes, please explain.</p>	<p>Y</p> <p>onTRAC provides predictive analysis capabilities that assist educators in formulating early decisions and intervention strategies. onTRAC allows school and division stakeholders to create educational metrics designed for early warning indication, intervention eligibility, and predictive analysis. Analysis of student data on key performance indicators like attendance, behavior, SOL assessments, local assessments, and classroom grades is made easy for users of all user abilities.</p> <p>Based on defined educational metrics and student data onTRAC identifies students who are "Off Track", "Needing Improvement", "On Track", or "Exemplary". Users may then utilize this predictive analysis information to create watch lists for at risk students and/or enroll the students in targeted intervention programs.</p> <p>Additionally, divisions delivering Interactive Achievement's Student Growth Assessments (SGA) are eligible to receive research-based probabilities of passing associated SOL tests based on SGA scores. These probabilities are based on IA's SGA Linking Study conducted during the Winter of 2014-2015 by Advanced Education Measurement.</p>

<p><b>3.5</b></p>	<p>Does your solution allow for filtering by a various search criteria. If yes, please explain.</p>	<p>y</p>	<p>onTRAC allows for filtering by various search criteria. Criteria include: Student Demographics (Name, STI, Local ID, DOB, School, Current Grade, GPA, Gender, Race, Ethnicity, Gifted Status, 504 Status, SWD, LEP, AMO Performance Gap Group, Economic Status), Assessment Type (SOL, Local Benchmark, PALS, Student Growth Assessments, NWEA MAP®, CoGAT, WIDA, GRADE™), Subject, Course Section, Teacher, Grade, Assessment Year, Watchlist, Performance Metric, Course Grades, Attendance, Discipline Records, etc. Note: Access to certain data and search criteria require advanced permission (e.g. Economic Status, Discipline Records)</p>
<p><b>3.6</b></p>	<p>Does your solution provide longitudinal reporting, analysis and trends? If yes, please explain.</p>	<p>y</p>	<p>onTRAC is a full-featured Longitudinal Data System providing longitudinal reporting, analysis, and trends. All supported data is reported longitudinally to provide insights into student growth and performance.</p> <p>When displayed longitudinally SOL, Student Growth Assessment, other local assessment, attendance, discipline, and grades data assist in the formulation of early decisions and intervention strategies. All longitudinal data in onTRAC is displayed graphically, along with the tables, to provide data visualizations that are easy for users of all levels to interpret and utilize.</p>
<p><b>3.7</b></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>onTRAC includes an Early Warning System designed, in-part, on the collaboration between the VDOE, the American Institutes for Research, the Appalachia Regional Comprehensive Center, and the National High School Center and their work developing the Virginia Early Warning System (VEWS). onTRAC supports multiple early warning indicators outlined in VEWS and allows educators to monitor the progress of students and identify students at risk of failure, dropout, etc.</p> <p>Early warning indicators include student-level data like attendance, GPA, assessment results (state and local), grades, and discipline. onTRAC calculates the indicators that are predictive of educational failure and alerts users to students who are "Off Track", "Needing Improvement", "On Track", or "Exemplary". Users may then utilize this early warning information to create watch lists for at risk students and/or enroll the students in targeted intervention programs.</p>

3.8	Does your solution allow for the school and division to set the early warning criteria and customizable thresholds by user? If yes, please explain.	Y	onTRAC allows authorized users at school and division levels to set early warning criteria and customizable thresholds. Educational metrics for early warning can be created with customized thresholds to identify students meeting early warning criteria across multiple indicators. These indicators include, but are not limited to: SOL Performance, Local Assessment Performance, Attendance, Classroom Grades, Discipline, GPA, Other Local Assessments (e.g. PALS, NWEA MAP®, CoGAT, WIDA, GRADE™), and Student Growth Assessments. Once created, educational metrics can be "activated" and shared across schools or divisions.
3.9	Does your solution provide usage statistics and reports? If yes, please describe.	N	onTRAC does not currently provide usage statistics and reports on demand. That said, authorized users may request usage statistics from IA in the form of a custom report request (Excel report). This is a feature requirement that IA could develop in the future if deemed priority by VDOE and/or participating divisions.
3.10	Does your solution provide for the creation of comparison reports (including but not limited to school-to-school, school-to-division, school-to-state, division-to-state)? If yes, please describe.	Y	onTRAC provides for the creation of comparison reports based on custom educational metrics. Educational metrics consist of key performance indicators that, when selected as reporting criteria within onTRAC's Comparison Snapshot report, allow users to compare data and performance across various levels. Comparison options include, but are not limited to: school-to-school, school-to-division, school-to-state, and division-to-state.  Additionally, student performance on SOL assessments are presented in the Student Profile reports with comparisons to school percentile, school average, division percentile, division average, state Student Growth Percentile (SGP) where applicable.
3.11	Does your solution inform decision-making on instructional next steps? If yes, please explain.	Y	onTRAC provides data that are key for instructional decision-making and intervention strategies. onTRAC is an Instructional Improvement System where educators access real-time, relevant and timely data that includes longitudinal histories, growth, and predictive analysis features in order to make decisions on instructional next steps. Meaningful decisions and informed modifications in instruction improve outcomes for both students and educators.

<p><b>3.12</b></p>	<p>Does your solution allow reports to be downloadable, printable, and available in a print-preview format and exportable where appropriate? If yes, please explain.</p>	<p>Y</p>	<p>onTRAC allows reports to be downloadable, printable, and available in print-preview format and exportable where appropriate. Views of various reports, including Student Profile, Performance Snapshots, Comparison Snapshots, Quarterly Snapshots, and Intervention Progress Monitoring are available to print through a print-preview format.</p> <p>A large number of additional reports are also available to be downloaded, printed, and exported through the "optional" Assessment Management System component of onTRAC.</p>
<p><b>3.13</b></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>The "core" solution components (as defined by VDOE in RFP 2015-03) of onTRAC were designed according to the guiding principal of the Statewide Longitudinal Data Systems (SLDS) initiative: Better decisions require better information. onTRAC was designed to effectively help teachers make informed modifications to instruction and improve the outcomes for student. To best support effective use, onTRAC data is presented visually and intuitively to all levels of users. onTRAC's visual presentation of data include graphical features like color coding, bar graphs, line graphs, pie charts, and scatter plots. All data sources are presented utilizing graphical features in onTRAC including SOL, local assessment, grades, attendance, discipline, NWEA MAP®, CoGAT, WIDA, GRADE™, and SGP.</p>
<p><b>3.14</b></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>onTRAC's Report Builder feature includes the ability for authorized users to save, categorize, and organize report templates. Report Builder allows authorized users to create custom reports based on, but not limited to, the following data: Student Demographics (Name, STI, Local ID, DOB, School, Current Grade, GPA, Gender, Race, Ethnicity, Gifted Status, 504 Status, SWD, LEP, AMO Performance Gap Group, Economic Status), Assessment Type (SOL, Local Benchmark, PALS, Student Growth Assessments, NWEA MAP®, CoGAT, WIDA, GRADE™), Subject, Course Section, Teacher, Grade, Assessment Year, Watchlist, Performance Metric, Course Grades, Attendance, Discipline Records, Intervention Program, etc.</p> <p>These ad hoc reports can then be saved and/or shared with other authorized users for reuse without the need for recreating templates or re-selecting filtering criteria.</p>

<p><b>3.15</b></p>	<p>Does your solution provide a comprehensive student profile? If yes, please explain.</p>	<p>Y</p>	<p>onTRAC provides a comprehensive student profile for each student.</p> <p>This profile includes: Student Image, Demographics (Name, STI, Local ID, DOB, Age, School, Current Grade, GPA, Gender, Race, Ethnicity, Gifted Status, Title I Status, 504 Status, SWD Status, LEP Status, AMO Performance Gap Group Subgroups, Economic Status), Enrollment History, Watchlist Enrollments, Longitudinal SOL Assessment History (includes Test Name, Test Subject, Administration Term, Overall Scale Score, Proficiency Level, Student Growth Percentile, School Percentile and Average, Division Percentile and Average, Reporting Category Scale Score), Longitudinal Local Assessment History, Course Grade History, Attendance History, Discipline History, Other Local Assessment History (e.g. PALS, NWEA MAP®, CoGAT, WIDA, GRADE™), Intervention History.</p> <p>The student profiles reflect real-time, up-to-date, and accurate data that enable Virginia educators to make data-informed decisions that will improve educator and student performance.</p>
<p><b>3.16</b></p>	<p>Does your solution provide access to instructional materials and resources? If yes, please explain.</p>	<p>N</p>	<p>onTRAC does not currently provide direct access to instructional materials and resources within the application. Teachers access external instructional materials and resources based on data and predictive analysis within onTRAC. Integration of instructional material and resource providers (e.g. eMediaVA, netTrekker, Fishtree, etc.) could be accomplished through API integration, single sign-on, or other methods. With detailed specifications, requirements and assistance from state and local users, IA can outline options for the integration of instructional material and resource data with the IIS solution.</p>
<p><b>3.17</b></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 (including, but not limited to: Lexile, standards, skills, etc.)? If yes, please explain.</p>	<p>Y</p>	<p>onTRAC allows authorized users to view a variety of assessment reports that include graphical representations of performance measures. onTRAC assessment reports highlight trends and growth on various performance measures from multiple assessments. Some assessment reports, like NWEA MAP®, include presentations of performance measures like Lexile while other assessment reports, like PALS, include presentations of performance measures like skills.</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	onTRAC allows authorized users to view, analyze and print assessment results for students. This includes SOL assessment results by proficiency levels on the reporting categories and strands. onTRAC was designed to support data-informed decision making. Access to proficiency levels and reporting category level detail are critical to this process.
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	Multiple onTRAC reports utilize educational metrics for determining proficiency/performance levels. onTRAC allows authorized users to create user-defined educational metrics, which allow for user-defined proficiency/performance levels based on test administration.  User-defined proficiency/performance levels can be created with customized thresholds to identify students meeting such proficiency/performance levels as "Fail", "Pass Proficient", or "Pass Advanced", as well as "Off Track", "Needing Improvement", "On Track", or "Exemplary".
3.20	Can your solution be aligned to Virginia state standards? If yes, please explain.	Y	onTRAC was created for Virginia's school divisions and 100% aligned to the Virginia state standards.
3.21	Does your solution capture and report CTE assessment and certifications? If yes, please explain.	N	onTRAC does not currently report CTE assessment and certifications. Support for CTE assessment has not been requested by the Virginia division onTRAC user base to date. With detailed specifications, requirements and assistance from state and local users, IA can outline options for the integration of CTE assessment and certification data with the IIS solution.  Requests for the inclusion of CTE assessment and certification data in onTRAC could be supported through IA's new data source process. This process includes divisions providing IA with desired data points from an alternate assessment provider, sample data extracts and/or files from alternative assessment providers, IA creation of a new data source in onTRAC, IA development of a 'reader' for accepting the new source data, co-design of user interface displays (graphical and tabular) between IA and division, and division upload of new source data via onTRAC's Data Manager interface. Once added, new data sources are available for use by all divisions.

3.22	Does your solution allow a student to be a member of multiple groups or rosters? If yes, please explain.	Y	onTRAC allows students to be members of multiple groups or rosters. Students can be members of course sections (class rosters), watch lists, and intervention programs. For each group type students can be enrolled in more than one.
3.23	Does your solution allow teachers to be enrolled in more than one school? If yes, please explain.	Y	onTRAC allows teachers to be enrolled in more than one school. Teachers who are enrolled in more than one school possess an overall "user" account that is associated with two or more "staff" accounts. This allows teachers enrolled in more than one school to switch between staff accounts (school access) without the need to log out of onTRAC or the need for more than one username and password.
3.24	Does your solution allow students to be enrolled in more than one school? If yes, please explain.	Y	onTRAC allows students to be enrolled in courses in more than one school. There is no limit to the number of courses a single student can be enrolled in and the location of the course is not restricted. For example: A single student may be enrolled in courses at ABC Middle School, XYZ High School, and 123 Alternative School simultaneously.
3.25	Does your solution allow the authorized user, school or division to add their own educational metrics? If yes, please explain.	Y	<p>onTRAC provides market leading design of educational (or key performance) metrics. In addition to pre-made metrics, authorized users at both the school and division levels can add their own educational metrics.</p> <p>Within onTRAC, metrics are defined as a collection of key performance indicators. Available indicators include, but are not limited to, SOL Performance, Local Assessment Performance, Attendance, Classroom Grades, Discipline, GPA, Other Local Assessments (e.g. PALS, NWEA MAP®, CoGAT, WIDA, GRADE™), and Student Growth Assessments.</p> <p>onTRAC was designed to support the objectives of the Virginia Early Warning System (VEWS) and the research of the Appalachia Regional Comprehensive Center and the National High School Center.</p>
3.26	Does your Solution allow an authorized user to define proficiency levels for local assessments by test administration? If yes, please explain.	Y	onTRAC allows authorized users to define proficiency levels for local assessments by test administration. onTRAC performance reports are based upon the defined proficiency levels of each indicator as identified within selected educational metrics. This includes the ability to define proficiency levels (e.g. Exemplary, On Track, Needs Improvement, Off Track) for local assessments by test administration.

<b>3.27</b>	Does your Solution allow an authorized user to define interventions based on criteria? If yes, please explain.	y	<p>onTRAC allows authorized users to define interventions based on criteria. Authorized users may define "Intervention Eligibility" in the areas of Attendance, Behavior, English, Math, Science, and Social Studies. Available criteria include SOL Proficiency, Local Assessment Proficiency, Classroom Grades, Student Growth Assessment Proficiency, Attendance - Tardy, Attendance - Absence, Behavior - Referral, and Behavior - Suspension.</p> <p>Students falling below user-defined thresholds in each category are identified as being eligible for intervention and teachers and educators responsible for those students are alerted. Educators can then place eligible (or non-eligible) students in intervention programs where progress can be monitored.</p>
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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	In person, comprehensive role-based training is provided to onTRAC clients. This includes customized trainings that complement the roles and permissions of the intended audience. In addition to on-site training, IA offers regional training opportunities each summer at a variety of Virginia locations, as well as, a diverse set of online and FAQ-based training resources.
4.2	Does your solution provide recurring comprehensive role-based product training for all local and state users? If yes, please explain.	Y	In addition to initial trainings, follow-up training is available from IA's group of experienced trainers. These subsequent trainings can be customized according to need and audience. All users also have access to scheduled webinars, archived online trainings, and summer conferences for follow-up training.
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	IA provides comprehensive, role-based professional development (PD) services on multiple topics, including the benefits of data use to improve instruction. IA PD services are designed and delivered addressing standards for learning communities, leadership, resources, data, learning designs, implementation, and outcomes. Offerings are effective because they are job embedded, recurrent, collaborative, and technology infused. IA PD modules are designed as individual sessions and can also be combined into IA PowerTRACs. See Appendix E for detailed information on IA's comprehensive, role-based PD services.
4.4	Does your solution allow for the addition of state-developed support content? If yes, please explain.	Y	onTRAC's online Help Resource Library expands and updates to meet the needs of an ever-improving solution. Solution-specific support content includes Video Tutorials, How-To Guides, Recorded Product Trainings, and FAQs. State-developed support content of these types could be easily added to the onTRAC Help and Resource Library as required.
4.5	Does your solution include technical documentation (including data elements, formats, data flows, etc.) for all identified system integration points? If yes, please explain.	Y	onTRAC includes technical documentation for all identified system integration points. This includes documentation regarding required data, optional data, data elements, data format(s), source systems of record, refresh intervals, and data flows. See Appendix F for document example, the onTRAC Data Flow Chart.
4.6	Does the solution provide online support that is context sensitive and searchable? If yes, please explain.	Y	onTRAC provides online support that is context sensitive and searchable. Searching support resources returns relevant materials and direct links to documentation, videos, FAQs, etc. onTRAC's Help site is available 24/7. See Appendix G for onTRAC Help screenshots.
4.7	Does the organization provide on-demand videos of system training? If yes, please explain.	Y	onTRAC's Help site provides on-demand training videos. Shorter, task-based videos and full length training videos are available on demand. See Appendix H for onTRAC training video screenshots.

4.8	<p>Does your solution provide technical support for authorized users?</p> <p>If yes, please describe response time, coverage hours, types of support and staffing levels. In addition, please describe the problem escalation workflow.</p>	Y	<p>onTRAC provides technical support with no-hold time via phone and remote assistance from 8am to 5pm, Monday-Friday. OnTRAC also provides e-mail technical support with a 24 hour follow-up guarantee, during the business week. These technical support channels include topic based routing to establish specialized and efficient attention to each inquiry. All onTRAC Live Representatives are thoroughly trained as expert providers of onTRAC demonstration and guided use. onTRAC Live also serves as a triage team for incoming issues and provides immediate escalation, as needed.</p>
4.9	<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.e. Will an authorized users modest customizations survive software upgrades?)</p> <p>If yes, please explain.</p>	Y	<p>onTRAC allows authorized users to make customizations during implementation. These customizations include, but are not limited to, creation of educational metrics, grading periods, grading scales, intervention programs, intervention eligibility thresholds, and student interventions. IA commits that future onTRAC IIS software upgrades will operate with the customizations made during implementations for supported features and components.</p>
4.10	<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>If yes, please explain.</p>	Y	<p>onTRAC is provided as Software-as-a-Service (SaaS) and IA manages all updates and upgrades. There are no patches for customers to download or install. Because IA manages upgrades, clients access new software releases without loss of data or production capabilities.</p>
4.11	<p>Does your solution include all system product enhancements as part of its annual fees?</p> <p>If yes, please explain and specify annual maintenance fees.</p>	Y	<p>onTRAC is provided as Software-as-a-Service (SaaS) and all system product enhancements are included as part of annual fees. Annual maintenance fees are included in the onTRAC annual license fees.</p>
4.12	<p>Does the solution support updates to its customers to support future federal legislative or regulations as part of its annual software subscription fee?</p> <p>If yes, please explain.</p>	Y	<p>Updating onTRAC to meet federal legislation or regulations as part of annual software subscription fees is supported by IA. A recent example of IA updating onTRAC to meet regulations includes the addition of Performance Gap Group filters for students (Gap Group 1, Gap Group 2, and Gap Group 3) according to the requirements of Virginia's federally approved NCLB accountability waiver. This update was provided as part of the onTRAC annual software subscription fee.</p>
4.13	<p>Does your solution include technical documentation for authorized users?</p> <p>If yes, please explain.</p>	Y	<p>Technical documentation specific to implementation is provided to necessary personnel during the implementation process. All other documentation concerning product use is provided in an easily navigable web based solution via the onTRAC Help site. The site also allows for the download of a PDF which encompasses the entire offering in a printable manual format. See Appendix I for onTRAC technical documentation screenshots.</p>

4.14	<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>	Y	<p>onTRAC Live is a real-time, real person, online support offering available to all users from 8am to 5pm, Monday-Friday. Via the onTRAC Help site, all users can launch an immediate Remote Screen Share(RSS) session and connect directly to an onTRAC Live Representative. onTRAC Live includes chat communication, screen sharing, guidance with drawing and indicator tools, and, with permission, manual representative navigation.</p> <p>Any Virginia users contacting onTRAC Live reach Interactive Achievement's Support team, located at headquarters in Roanoke, VA . Actual staffing levels vary based on real-time client base and time of year. These levels are continually monitored and maintained according to actual and projected call volume to ensure each onTRAC Live experience upholds the same no-hold, immediate response level of service.</p>
4.15	<p>Does your solution require administrative tasks to be performed by the school division necessary to maintain service (i.e. User accounts, load data, correct errors, etc.)? If yes, please explain.</p>	Y	<p>onTRAC requires minimal administrative tasks be performed by division administrators to both establish and maintain services.</p> <p>Administrative tasks associated with implementation and establishment of service may include: SIS automated connection configuration (for student demographic and class roster data), other SIS data automation configuration (for other state and local indicators such as attendance, grades, and discipline), loading of historical 3rd party assessment data (e.g. NWEA MAP®, CoGAT, WIDA, GRADE™, etc.), initial intervention program configuration, initial intervention eligibility configuration, and initial user role and permission configurations.</p> <p>Administrative tasks associated with maintenance of service may include: loading of any new 3rd party assessment data (e.g. NWEA MAP®, CoGAT, WIDA, GRADE™, etc.), desired user role and permission adjustments, and desired intervention program and intervention eligibility adjustments.</p>
4.16	<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>	Y	<p>IA can provide users with tracking and usage information to gauge the usage and adoption patterns of teachers, principals, state, and other role-based users on a per-request basis. This information can be shared via custom Excel reports to authorized account administrators.</p>
4.17	<p>Does your solution include a standard Service Level Agreement (SLA)? If yes, please provide.</p>	Y	<p>Yes, onTRAC includes a standard Service Level Agreement (SLA). See Appendix J.</p>

4.18	Does your solution utilize a standard Internet Service Provider (ISP)? If yes, please describe server farm, including location, if applicable.	Y	Our solution utilizes a standard internet service provider. We are not an ISP and do not provide internet to the district. We do however use a co-location facility (Peak 10 in Charlotte, NC) and we used managed hosting services from Varrow. If additional information is required in regard to co-location we are happy to provide upon request.
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	onTRAC's Help site includes training resources for each authorized user and is accessible anytime from any onTRAC module. This includes FAQs, training and tutorial videos, documentation, as well as, a variety of supplemental training materials. See Appendix G for onTRAC Help screenshot.
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	IA offers several formats for onTRAC training and strives to continue diversifying training offerings. Formats currently available include on-site training, live remote online training, live scheduled training webinars, archived online trainings, and regional summer conferences.
4.21	Does your solution include training materials and programs that are updated to reflect system updates and upgrades? If yes, please explain.	Y	System updates and upgrades are posted for users to reference via the Release Notes portion of the onTRAC Help Site. If an update changes the function or display of the user interface, this is identified prior to release and associated materials are updated. A full audit of all training materials is performed every summer and all materials are certified up to date annually, prior to the start of the school year.
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	Interactive Achievement will identify a dedicated project team, with a single main contact, that will serve as the main point of contact throughout the implementation process and life of the contract. More information on project team individuals can be found in section 6.H.3. VITA and VDOE may be involved and/or consulted in the selection and rotation of assigned key account team members.
4.23	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.	Y	IA can meet with DOE within ten business days subsequent to contract award to review plan, timelines, and deliverables.  IA is committed to meeting the desired go live dates shared by VODE in the PreProposal Supplier Questions 2014_12_17 response. In order to pilot the core solution for DOE users in spring or summer 2015, IA and DOE will need to meet to review and discuss plans, timelines, and deliverables as soon as possible subsequent to contract award.

4.24	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.	Y	Interactive Achievement will provide a detailed onTRAC Implementation Plan within 10 business days subsequent to the initial kick-off meeting. The kick-off meeting will include key organizational stakeholders from the state or division and can be conducted virtual or in-person. This is detailed in our LDS implementation timeline seen in Appendix M. An example of a resulting Implementation Plan at the State level can be seen in Appendix K and Division in Appendix L.
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	The Implementation Plan starts with the identification of Key Decision Makers (KDMs), establishing at the outset, a clear established line of communication, authority and responsibility. This is exemplified on Page 3 of the LDS Implementation plan in Appendix K at for State level and Appendix L at the Division level. In addition, Appendix M provides the onTRAC Implementation matrix with State, Division Administrators, School Leadership and Classroom Educators clearly aligned to Planning, Setup & Getting Started, Maximizing Software, Training and Ongoing Support & Account Management.- showcasing direct responsibilities of all parties.
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	The onTRAC LDS Implementation timeline and overall implementation is driven by client availability, defined needs and requirements, as well as, alignments to their goals. The Implementation Overview in Appendix M provides estimated timelines for each of the high level phases. The state and each district utilizing onTRAC LDS will be assigned an Account Manager to serve as their primary contact to guide from initial implementation through the duration of the contract. This includes conducting periodic account meetings and quarterly milestone meetings for the life of the contract.
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	Interactive Achievement has provided Implementation Plan outlines for the State and District, in Appendix K and L respectively. Each plan starts with the identification of Key Decision Makers (KDMs) which will be the role fulfilled by the DOE implementation team members. In addition, Appendix M provides the onTRAC Implementation matrix with the areas of responsibility assigned to State, District School Leadership and Classroom Teachers.

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	The LDS implementation overview in Appendix M provides details on the content of each training session, the amount of time required to complete each session and content covered. Training and education is available on-site and virtually. In addition, archived training sessions are available on-demand on the Interactive Achievement website. All training is developed by Dr. Sally I'Anson with over 15 years of experience in professional development with K12 adult learners and educators. Further training information is provided in the LDS Implementaion Plans at the State and District level (Appendix K and L).
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	As stated in Appendix M, IA has a Tier I, II and III support level with clearly defined escalation for issue resolution. In that case that an issue may arise which are not, or cannot, be resolved using the normal lines of communication Appendix P provides a clear path of escalation.
4.30	Does your solution's implementation plan include a succession plan to accommodate any personnel changes on the Supplier's side (including personnel associated with all subcontractors)? If yes, please explain.	Y	Our solution does not require the use of any subcontractors. The state and each district utilizing onTRAC LDS will be assigned an Account Manager to serve as their primary contact to guide from initial implementation through the duration of the contract. Through this channel all information in regard to personnel changes will be provided and a full plan will be put in place to ensure the implementation is carried out with fidelity. Account Manager works closely with the other members of the IA Accounts team, providing a painless succession process for Account Managers should the need arise.
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	The onTRAC implementation plan includes validating requirements for utilizing the "core" solution as specified in Section 5. Account Managements role is founded upon consistent validation of function and technical engagement between the school, district and state. This is supported through scheduled implementation meetings between IA Account Manager and Client Account Manager (CAM) to validate all requirements for utilizing core solution.
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	Interactive Achievement looks forward to the opportunity to collaborate with VDOE to create a mutually amicable implementation plan that satisfies the needs of all parties. With 112 Districts currently positively engaged with IA we are confident in our ability to create a successful plan accepted by the VDOE implementation team.
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	IA's point of contact will be available Monday - Friday from 8:00 a.m. to 5:00 p.m. Eastern Time for the duration of the implementation.

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	IA can conduct status meetings with the main point(s) of contact for both DOE and IA during the deliverable phases. Implementation status meetings are a standard part of IA's implementation plan and can be conducted in-person or remotely as appropriate, and as frequently as agreed upon.
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	<b>Access, Security &amp; Hosting</b>	<b>A</b>	<b>B</b>
<b>5.1</b>	Does your solution comply with Virginia's Information Technology Security Policy and Standards? ( <a href="http://www.vita.virginia.gov/library/default.aspx?id=537#securityPSGs">http://www.vita.virginia.gov/library/default.aspx?id=537#securityPSGs</a> )? If yes, please provide documentation.	Y	onTRAC complies with Virginia's Information Technology Security Policy and Standards according to Interactive Achievement's solution architecture, recommended business processes, and interpretation of applicable standards.
<b>5.2</b>	Does your solution comply with the Family Educational Rights and Privacy Act (FERPA)? If yes, please provide documentation.	Y	Interactive Achievement, the onTRAC solution, IA employees, and IA partner agencies all fully comply with the Family Educational Rights and Privacy Act (FERPA) when handing student data.  At IA, protecting student data is top priority. All student education data containing personally identifiable information (PII) is protected according to FERPA regulations and outlined in IA's Software License Agreement (SLA) and associated Non-Disclosure Agreement (NDA). A standard copy of IA's SLA and NDA are included in Appendix J. IA operates at the explicit direction of the schools/divisions and when possible, IA utilizes and shares properly de-identified data as its first option to limit the risk of unauthorized PII disclosure.
<b>5.3</b>	Does your solution meet cloud security requirements by a certifying body such as FedRAMP ( <a href="http://cloud.cio.gov/fedramp">http://cloud.cio.gov/fedramp</a> )? If yes, please provide certification and identify body? If no, are you in the process of or planning to be certified?	Y	onTRAC utilizes both traditional and cloud hosting environments. onTRAC's cloud hosting provider meets cloud security standards and requirements and is certified by FedRAMP. Additionally, production infrastructure hosted at Peak 10 facility in Charlotte, NC also complies with the following security standards: SSAE 16, SSAE 3402, PCI DSS Level 1, ISO 27001, FISMA, and FIPS 140-2.
<b>5.4</b>	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 (SIS)? If yes, please explain.	Y	Our solution provide multiple levels of data verification and validation when retrieving information from SIS systems. Through our partnership with Clever we have access to their robust data validation processes and procedures. We also queue their data and provide our own for information we received from that channel. In addition, our LDS Data Manager has its own queueing and validation (including thresholds) for data coming in through those channels.

<b>5.5</b>	Does your solution have a standard installation time frame? If yes, please describe the installation steps and typical time frame for school divisions to be operational on your service.	Y	IA creates new onTRAC sites (for divisions not currently subscribing to "core" or optional onTRAC components) or adds LDS access (for divisions subscribing to onTRAC AMS only) immediately upon start of the contract/invoicing. This process is completed within 24-48 hours. onTRAC sites first populated with foundational data (such as schools, teachers, students, courses, rosters) and then with student data points (SOLs, benchmarks, grades, attendance, discipline, and other local assessments). Creation of the site and population of foundational data can be completed in 1-2 weeks, dependent on district schedule and participation in the data upload process. All other data points are added as needed according to the district schedule. See Appendix N for a more detailed LDS installation schedule.
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<p><b>5.6</b></p>	<p>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.</p>	<p>Y</p>	<p>IA has successfully converted many Virginia school divisions from another vendor's solution. School divisions that are currently using another vendor's solution to meet the "core" solution requirements of the VDOE would follow a predefined transition plan to onTRAC.</p> <p>First, IA conducts an implementation meeting with all division stakeholders and generates a Customized Implementation Plan (CIP) based on the information gathered during the meeting. Gathered information would include, but not be limited to, Account Administrators and Contact Information, Division SIS, Local Assessment Provider(s), Previous Longitudinal Data System Vendor, Desired System Configurations, System Preferences, Role Assignments, Permissions Configuration, Communication Preferences, Data Access, Data Capacity, Implementation Timelines, Training Schedules, Division Goals, Division Infrastructure, Division Technology, etc.</p> <p>The next stages of the transition plan would be determined by the CIP. An overview of a sample transition plan might resemble the following:</p> <ul style="list-style-type: none"> <li>- Establish automated connection with division SIS for accessing student demographics and other state and local indicators such as attendance, if not already in place. (Note: IA has established SIS connections with 115/132 Virginia school divisions as of January 2015).</li> <li>- Divisions upload local assessment data from any assessment vendor(s) that are not Interactive Achievement through online Data Import tool. (Note: 115/132 divisions utilizing IA's Assessment Management System will not need to upload local assessment history. This step is automated for these divisions.)</li> </ul>
<p><b>5.7</b></p>	<p>Does your company have a marketing plan to expand your proposed solution to school divisions? If yes, please describe.</p>	<p>Y</p>	<p>Interactive Achievement has developed a comprehensive marketing plan to drive onTRAC LDS core solution adoption. Please see complete plan in Appendix D.</p>
<p><b>5.8</b></p>	<p>Does your solution include a product support program for users and administrators? Please describe the hours of coverage and service support center.</p>	<p>Y</p>	<p>onTRAC includes direct access for all users to onTRAC Live. onTRAC Live is a real-time, real person, support offering available to all users via phone and remote assistance from 8am to 5pm, Monday-Friday. onTRAC Live also provides email support with a 24 hour follow-up guarantee.</p>

5.9	<p>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.</p>	Y	<p>Members of IA's leadership and staff are members of: American Association of School Administrators (AASA); Association for Supervision of Curriculum Development (ASCD); Phi Delta Kappa (PDK) International, and Learning Forward.</p>
5.10	<p>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.</p>	N	<p>Interactive Achievement will apply for SIFA membership and develop functionality for SIF utilization if requested.</p>
5.11	<p>Is your solution currently in operation in any schools, divisions/districts, and/or states (also from Virginia, if applicable)? If yes, describe the general scope, timeline, and brief history of each major project.</p>	Y	<p>onTRAC and its "core" solution features (as defined by VDOE in RFP 2015-03) have been commercially available to Virginia divisions since 2012. Currently 45 Virginia divisions subscribe to the "core" solution features of onTRAC along with districts in Ohio and New Jersey. In addition to the "core" solution subscribers, 112 Virginia divisions (and districts in Ohio, New Jersey, South Carolina, Indiana, Louisiana, Kansas, and West Virginia) subscribe to the "optional" assessment features of onTRAC that have been commercially available since 2007.</p>
5.12	<p>Does your solution have a method of protecting against unauthorized access to sensitive data? If yes, please describe.</p>	Y	<p>Access to student demographic, longitudinal, and assessment data is protected through authorization with required user names, passwords and permissions. All of our data, including sensitive matter, is shared over a secure (HTTPS) pipe and is protected with 2048 bit SSL encryption.</p>
5.13	<p>Is your solution Section 508 compliant?  <a href="http://www.vita.virginia.gov/uploadedfiles/vita_main_public/unmanaged/library/contingencyplanningguideline04_18_2007.pdf">http://www.vita.virginia.gov/uploadedfiles/vita_main_public/unmanaged/library/contingencyplanningguideline04_18_2007.pdf</a> If yes, please explain.</p>	N	<p>Many aspects of onTRAC have been designed to support accessibility standards (e.g. font sizes percentage based, no repetitive navigation links, etc) although onTRAC is not currently in full 508 compliance according to the provided Commonwealth documentation. To date Virginia division's have not required onTRAC to be 508 compliant per our local contracts. Interactive Achievement will pursue Section 508 compliance if requested.</p>
5.14	<p>Does your solution include a backup and recovery plan? If yes, is it tested at least annually?</p>	Y	<p>Interactive Achievements performs full SQL backup and a run of all production databases on a nightly basis. Databases are replicated to our Disaster Recovery (DR) site and restored nightly. To ensure viability the recovery plan is tested daily based on a successful restore of all databases. Transaction logs are also stored and shipped hourly to our DR facility.</p>

5.15	Does your solution include an outage plan? If yes, please describe how users are notified of anticipated and unanticipated outages?	Y	<p>For significant scheduled maintenance and anticipated periods of service outages, notices are posted via the News &amp; Updates portion of onTRAC, select social media outlets such as Interactive Achievement and onTRAC Live Twitter, monthly user newsletters, etc. In these cases, district Key Decision Makers are contacted directly via e-mail.</p> <p>In the occurrence of unanticipated service disruptions, Interactive Achievement posts notices and updates to News &amp; Updates, onTRAC Live twitter, and via an alert on the onTRAC Help site where any user may elect for outage e-mail notifications. E-mail notifications and updates are dispersed to all affected district Key Decision Makers automatically.</p>
5.16	Does your solution adhere to the Student Privacy Pledge, located in <a href="http://studentprivacypledge.org/?page_id=45">http://studentprivacypledge.org/?page_id=45</a>	Y	Interactive Achievement officially pledged to safeguard student privacy and became a signatory to the Student Privacy Pledge on November 5, 2014.
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	Each night, full SQL backups are run on all production databases. In addition, databases are replicated to our Disaster Recovery (DR) site and restored nightly. IA's Recovery Plan is tested daily based on a successful restore of all databases. This includes, transaction logs which are backed up and replicated every hour to DR site. Database restore options include the ability to restore a 24 hour old database and apply transaction logs therefore trailing production by 1 hour.
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	<p>Interactive Achievement provides a suitable hosting facility that holds the following certifications:</p> <ul style="list-style-type: none"> <li>- SOC 1-3 Type 2</li> <li>- Certified Level 1 Service Provider under PCI DSS 2.0</li> <li>- HIPAA / HITECH Security Rule</li> <li>- Certified under the U.S. Department of Commerce Safe Harbor Program</li> <li>- Cisco Cloud Provider Certification with a Cisco Powered Cloud Infrastructure-as-a- Service (IaaS) designation</li> </ul> <p>The Disaster Recovery site is housed at IA Headquarters in Roanoke, VA with connectivity provided via Fiber handoff from Cox Communications. Currently our DR location does not hold certifications but if required, will apply.</p>

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	Our solution exceeds the operational metrics requested. We ship transaction logs hourly, do nightly backup/restore processes to ensure recoverability. In addition, our disaster recovery infrastructure runs 24 hours behind production and logs can be applied within 6 hours to bring it within 1 hour of production should there be an issue. Backups are kept electronically onsite and offsite daily for a month and monthly for a year. Monthly and yearly backups are hardened to tape and stored in a secure facility as well.
5.20	Does your solution include data archival policies and any data purge policies? If yes, please describe.	Y	Our data policy is not to purge data unless explicitly asked to do so in writing by a customer. Data is therefore continually imported, collected, and longitudinally presented on our platform for life of the contract.  Interactive Achievement monitors its solution to ensure it scales with undegraded performance at periods of peak demand and data volume. In the event of anticipated performance degradation we review options to scale our solution appropriately.
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 of our servers, storage, and infrastructure are based within the borders of the US.
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	Our solution includes a process for allowing the State to audit the physical environment where our service is hosted. To do so, we require reasonable notice and coordination. In addition a security check will be performed and an IA chaperone will accompany representatives from the State.
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	Interactive Achievement performs background checks through SentryLink on all employees. Checks are performed after initial job offers are made, whereby official employment is contingent upon an acceptable background check. Checks may also be performed a second time on current employees being assigned to certain projects. All checks are performed by IA's Human Resources Director.
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	Non-public data at rest within our infrastructure is secure behind firewalls, servers, and security. non-public in motion is protected by 2048-bit SSL. We do not take responsibility for district computers, laptops, and servers.

5.25	Does your solution include a process for handling and notification of a breach of non-public data? If yes, please describe.	Y	Interactive Achievement has official policies and procedures in place for handling and notification of a breach of non-public data. These processes for handling, and notifying customers, of critical issues (including breach of non-public data) can be found in IA's Critical Issue Management Plan. The IA Critical Issue Management Plan is an internal document and is updated annually. The most recent update to the plan is dated December 2014. The details of this internal documentation can be shared upon specific request.
5.26	Does your solution include a process for the authorization for the various roles associated with data access? If yes, please describe.	Y	onTRAC includes a process for the authorization for the various roles associated with data access. All available permissions and user roles (including those associated with data access) are clearly communicated to division admins during the implementation process via the written Customized Implementation Plan (CIP). Authorized division representatives then establish role authorization processes and configurations according to division policy. Once established, specific division-determined users can be explicitly authorized to "grant" roles to other users. This includes granting roles to users that include data access.
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	VITA defines remote access as "any access to an organizational information system by a user (or process acting on behalf of a user) communicating through an external network (e.g., the Internet) [whereby examples] of remote access methods include dial-up, broadband, and wireless." Per this definition onTRAC allows remote access using industry standard network security processes. Remote access is allowed over a secure (HTTPS) pipe and is protected with 2048 bit SSL encryption.
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	Our solution includes a process for ensuring security of data stored at the vendor's site, as well as, on the server. This process includes a firewall, authentication, and authorization as part of our infrastructure security. Once inside, data is accessible via NTFS and SQL permissions only. Periodic and ongoing vulnerability and penetration testing are not in place at this time.
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	Our offering is a SaaS application and will not require patches, upgrades and changes by the customer.

<p><b>5.30</b></p>	<p>Does your solution include a process for identifying and remediating software defects? If yes, please describe.</p>	<p>Y</p>	<p>Interactive Achievement has several means of identifying software defects. Our Technology Department includes a dedicated Quality Assurance team whose primary objective is to ensure the highest level of software functionality via intense manual and automatic testing and load measures. Interactive Achievement leverages feedback and reports collected via qualifying Beta case studies. All users have direct access to a Suggestions form located on the onTRAC Help Site to report any defects. onTRAC Live also receives reports of defects and submit them internally for review.</p> <p>All defects discovered during Quality Assurance and/or Beta testing are resolved prior to the commitment of the associated update or addition. All software defect reports received thereafter are placed into a Triage prioritization schedule. These reports are continually monitored and addressed in order of user demand and overall severity. Each resolution is then placed back into the Quality Assurance pipeline to ensure full remediation.</p>
<p><b>5.31</b></p>	<p>Does your solution include a major and minor release policy for the solution? If yes, please describe.</p>	<p>Y</p>	<p>Minor releases are scheduled regularly to occur during a set window every Tuesday and Thursday evening. Release Notes concerning the update are posted on the onTRAC Help site weekly. Any major releases that involve significant service disruption and/or substantial user interface alteration are scheduled monthly and/or quarterly and include significant user notification prior to release or service disruption.</p>

5.32	Does your solution include a process for incident management, change management, and release management? If yes, please describe.	Y	<p>Interactive Achievement includes a process for incident management, change management, and release management. Incident management process include steps for incident logging, incident routing, accurate reporting of incident status, visibility into unresolved incident backlog, incident prioritization, and incident resolution.</p> <p>Change management process includes steps for change requests, impact analysis, approval, design, development, implementation, review, and reporting.</p> <p>IA's release management process is managed by our Quality Assurance Department. All items are tested prior to release. Code changes and/or updates are committed to our repository and are run through automated unit and integration tests. In addition, all patches are manually tested prior to release. The work flow for code changes follows through development, staging and production. Our testing environment is comprised of integration, development and staging servers.</p>
5.33	Does your solution include an overall security architecture of the proposed service? If yes, please describe.	Y	<p>Access to our solution requires authentication and authorization through user names, passwords and permissions. All data is shared over a secure (HTTPS) pipe and is protected with 2048 bit SSL encryption. In addition, all infrastructure is hosted at a secure co-location facility requiring 3 step authentication for entry. Any remote access to this infrastructure requires an additional level of authentication and authorization from within our development offices.</p>
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	<p>In the event of termination or expiration the Commonwealth will receive all data in CSV form. If another form is required, it must be stated in writing and agreed upon prior to contract implementation.</p>
5.35	Does your firm allow access to incident data for investigative purposes? If yes, please describe.	Y	<p>Interactive Achievement will allow access for investigative purposes. Access hinges on the requirements of the state and federal government and all requests must be submitted in writing to Interactive Achievement c/o Jacob Gibson. All request will be processed within 10 business days.</p>

<b>5.36</b>	Does your solution allow access to system security and audit logs? If yes, please describe.	Y	Our solution allows access to system security and audit logs. Access hinges on the requirements of the state and federal government and all requests must be submitted in writing to Interactive Achievement c/o Jacob Gibson. All request will be processed within 10 business days.
<b>5.37</b>	Does your solution allow school divisions to retain 100% ownership of all school division data imported into your system? If yes, please explain.	Y	Yes, school divisions retain 100% ownership of all division data imported into onTRAC and may export division data at any time.
<b>5.38</b>	Does your solution include network-layer vulnerability scans regularly as prescribed by industry best practices? If yes, please describe.	Y	Our solution includes network-layer vulnerability scans both daily and weekly on key service infrastructures. This includes a deep penetration analysis (pen test) and audit both internally and externally every summer (completed by a certified third party vendor).
<b>5.39</b>	Does your solution include application-layer vulnerability scans conducted regularly as prescribed by industry best practices? If yes, please describe.	Y	Interactive Achievements performs weekly application-layer vulnerability scans as prescribed by industry best practices. These scans include port scans, web service authentication and verification, data transfer vulnerability and non-authenticated data access.
<b>5.40</b>	Does your solution include local operating system-layer vulnerability scans conducted regularly as prescribed by industry best practices? If yes, please explain.	Y	Our solution includes local operating system-layer vulnerability scans and patch management on a weekly basis. Security and Critical patches are tested and applied monthly.
<b>5.41</b>	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	Co-location facilities (Peak 10) and our management services (Varrow) provide file integrity (host) and network intrusion detection (IDS) with timely notification through services which include Trend Micro / Cisco NGIPSv - Research.
<b>5.42</b>	Does your solution include regular penetration testing, vulnerability management, and intrusion prevention? If yes, please explain.	Y	We do provide scans regularly. Every summer we have a certified third party conduct internal and external penetration testing both inside and outside our network. The results of these test can be available upon request.
<b>5.43</b>	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	All networking devices associated with our Production environment are located in dedicated cabinets, in a secure facility, only accessed by the hosting provider employees (at IAs request) and IA staff.
<b>5.44</b>	Does your solution patch software vulnerabilities routinely or automatically on all servers? If yes, please explain.	Y	Third party patch management and vulnerability scans are conducted weekly. Security and Critical patches tested and applied on a bi-monthly basis.

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	Hardware and operating system and security patches are applied to development, integration, and staging environments before being applied to production. This process typically takes two months, but can be escalated based on need and threat identified. Patches to third party plugins to the development environment go through the same vetting process. SaaS application system and security patches are developed in house and deployed as needed through our development lifecycle. We deploy bug fixes, patches, and new features twice a week.
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	Interactive Achievement completes background checks on all employees through a third party vendor, Sentry Link. The checks are performed after the initial offer is made which is contingent upon an acceptable background check. The check is performed by the Human Resources Director and results are given within 24 hours.
5.47	Does your solution include subcontracting of any functions, such as analytics? If yes, please explain.	Y	<p>The "core" solution components of onTRAC (as defined by VDOE in RFP 2015-03) do not include subcontracting of any functions, such as analytics.</p> <p>That said, advanced statistical modeling and analytics are available to onTRAC users as an "optional" component. For divisions opting for these services, IA partners with SAS® to provide industry leading value-added and growth analytics via the EVAAS® product. Together, IA and SAS were awarded Student Growth Assessment Contracts from the Virginia Department of Education on March 8, 2013. Information about this contract and this optional onTRAC component can be found at <a href="http://www.doe.virginia.gov/school_finance/procurement/student_growth_assessments/index.shtml">http://www.doe.virginia.gov/school_finance/procurement/student_growth_assessments/index.shtml</a>.</p>

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	During implementation, Key Decision Makers are determined for an onTRAC account (state, district, school). Key Decision Makers have the ability to perform and request any needed alterations for their respective accounts. All Key Decision Maker requests must be authenticated either via the reception of a verification e-mail from the address associated with the account on file or via verification of onTRAC login credentials. If the user submitting a request is not a Key Decision Maker, then the granting of the request is based on the permissions currently associated with that user's account. If those pre-existing permissions allow for the completion of the request, the same verification is required prior to executing the request.
5.49	Does your solution allow a requesting school division to have their information removed from your system? If yes, please explain.	Y	School divisions may request their information be removed from onTRAC upon termination of license agreement.
5.50	Does your solution include protection against denial-of-service attack? If yes, please explain.	Y	We have three levels of DDoS awareness and prevention. Level one is our co-location facility in Charlotte, NC (Peak10). They have active and preventative tool sets and techniques in place to monitor and report on all incoming and outgoing traffic. They manage threat detection and manage / block IP ranges associated with DDoS attacks. Level two is our managed services provider (Varrow). They have an additional set of tools and processes for monitoring and reporting DDoS risk and taking actions / making recommendations for action. Level three is managed DNS. Should an IP attack occur, our DNS provider has tools and techniques available to reroute traffic.
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	We have three levels of DDoS awareness and prevention. Level one is our co-location facility in Charlotte, NC (Peak10). They have active and preventative tool sets and techniques in place to monitor and report on all incoming and outgoing traffic. They manage threat detection and manage / block IP ranges associated with DDoS attacks. Level two is our managed services provider (Varrow). They have an additional set of tools and processes for monitoring and reporting DDoS risk and taking actions / making recommendations for action. Level three is managed DNS. Should an IP attack occur, our DNS provider has tools and techniques available to reroute traffic.

5.52	Has your firm's security operations been reviewed or audited by an outside group? If yes, please explain.	Y	Interactive Achievement's security operations goes through annual penetration testing. This is completed by a certified third party who conducts internal and external penetration testing both inside and outside our network. The results of these test can be available upon request.
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	Executive Summary of findings will be available upon request. Details are not available as they provide access to internal security measures and create additional vulnerability.
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	<p>The proposed solution from Interactive Achievement is Software as a Service (SaaS) and is hosted by Interactive Achievement.</p> <p>Interactive Achievement would consider a custom arrangement for CESC hosting if required but it is not our normal practice to host our services at client facilities because our hosting services are utilized by a variety of clients including multiple states and a second hosting facility could be cost prohibitive and a disadvantage for the Commonwealth given the dilution of economies of scale. Pricing for IA's SaaS solution hosted by Interactive Achievement is provided in Appendix C. Pricing for IA's SaaS solution hosted at CESC would require price quoting from CESC and is not available at this time.</p>

**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 <b>Section 2B herein</b>		√
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](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: \_\_\_\_\_

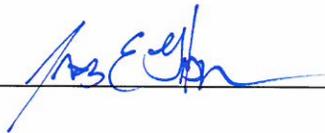
## EXHIBIT G: CERTIFICATION REGARDING LOBBYING

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:

\_\_\_\_ Jacob E. Gibson \_\_\_\_

Organization:

\_\_\_\_ Interactive Achievement \_\_\_\_

Date:

\_\_\_\_ January 26, 2015 \_\_\_\_

## EXHIBIT H

### SERVICE LEVEL AGREEMENT

Service Level. During the term of the Agreement IA will use commercially reasonable efforts to provide the following levels of service to customers:

#### 1. Service Scope

The following services are covered by this agreement;

- Manned telephone support
- Monitored email support
- Remote assistance using onTRAC Live™

#### 2. Customer Requirements

Customer responsibilities and/or requirements in support of this License Agreement include:

- Reasonable availability of customer representative(s) when resolving a service related incident or request

#### 3. Service Provider Requirements

Service provider responsibilities and/or requirements in support of this Agreement include:

- Meeting response times associated with service related incidents.
- Appropriate notification to customer for all scheduled maintenance.

#### 4. Service Assumptions

Assumptions related to in-scope services and/or components include:

- Changes to services will be communicated and documented to both parties.

#### 5. Service Availability

Coverage parameters specific to the service(s) covered in this Agreement are as follows:

- Telephone support – 7:00am to 5:00pm Monday – Friday (no holidays)
- Email support – Monitored 7:00am to 5:00pm Monday – Friday (no holidays)
  - Emails received outside of office hours will be collected, however no action can be guaranteed until the next working day
- Remote assistance using onTRAC Live™ – 7:00am to 5:00pm Monday – Friday (no holidays)

6. Service Requests

In support of services outlined in this Agreement, the Service Provider will respond to the service related incidents and/or requests submitted by the customer within the following time frames:

- Real time for Telephone and Remote Assistance support during service availability hours
- 0-24 hours (business days) for email support

For service outages and interruptions, the Service Provider will provide the following response and resolution times:

<b>Severity (Sample Problem)</b>	<b>Response Time</b>	<b>Resolution Time (Fix/work-around within)</b>	<b>Internal Escalation Procedure</b>
<p><b>CATEGORY 1</b> (Application Down)</p> <p>All Authorized User's end-user bases unable to use onTRAC.</p>	0-4 hours	Twelve (12) hours	Supplier shall provide direct support contact information for SLA-related service issues.
<p><b>CATEGORY 2</b> (Mass Interruption)</p> <p>Certain processing interrupted or malfunctioning causing more than one Authorized User's end-user base to be unable to use onTRAC. Application is able to process for other Authorized Users.</p>	0-8 hours	Twenty-four (24) hours	Supplier shall provide direct support contact information for SLA-related service issues.
<p><b>CATEGORY 3</b> (Minor Interruption)</p> <p>Minor intermittent malfunctioning causing more than one end-user to be unable to use onTRAC. Application is able to process data for other Authorized Users and end-users.</p>	0-12 hours	Forty-Eight (48) hours	Supplier shall provide direct support contact information for SLA-related service issues.