

ATTACHMENT A - SPECIAL TERMS AND CONDITIONS FOR INFORMATION TECHNOLOGY

- A. **ACCEPTANCE:** The University shall commence Acceptance testing within five (5) days of installation, or within such other period as agreed upon in writing. Acceptance testing will be no longer than thirty (30) days, or such longer period as may be agreed in writing between the University and Contractor, for each Deliverable. Contractor agrees to provide to the University such assistance and advice as the University may reasonably require, at no additional cost, during such Acceptance testing. The University shall provide to Contractor written notice of Acceptance upon completion of installation and successful Acceptance testing. Should the University fail to provide Contractor written notice of successful or unsuccessful Acceptance testing within ten (10) days following the Acceptance testing period, the Service shall be deemed Accepted.
- B. **CURE PERIOD:** Contractor shall correct any non-conformities identified during Acceptance testing and re-submit such non-conforming Service for re-testing within seven (7) days of written notice of non-conformance, or as otherwise agreed between the University and Contractor. Should Contractor fail to cure the non-conformity or deliver a Service which meets the Requirements, the University may, in its sole discretion: (i) reject the Service in its entirety, and any Service rendered unusable due to the non-conforming Service, and recover amounts previously paid hereunder for all such Services; (ii) issue a "partial Acceptance" of the Service with an equitable adjustment in the price to account for such deficiency, or (iii) conditionally accept the applicable Service while reserving its right to revoke Acceptance if timely correction is not forthcoming. Failure of a Service to meet, in all material respects, the Requirements after the second set of acceptance tests may constitute a default by Contractor. In the event of such default, the University may, at its sole discretion, terminate its Contractor.
- C. **EXCESSIVE DOWNTIME:** Equipment or software furnished under the contract shall be capable of continuous operation. Should the equipment or software become inoperable for a period of more than 24 hours, the contractor agrees to pro-rate maintenance charges to account for each full day of inoperability. The period of inoperability shall commence upon initial notification. In the event the equipment or software remains inoperable for more than two (2) consecutive calendar days, the contractor shall promptly replace the equipment or software at no charge upon request of the procuring agency. Such replacement shall be with new, unused product(s) of comparable quality, and must be installed and operational within 3 days following the request for replacement.
- D. **LATEST SOFTWARE VERSION:** Any software product(s) provided under the contract shall be the latest version available to the general public as of the date of contract.
- E. **MAINTENANCE:** Upon expiration of the specified warranty period and at the University's option, the contractor shall provide up to five additional one-year periods of on-site maintenance (including labor, parts, and travel) at the prices set forth in the pricing schedule. Maintenance shall not include external electrical work, providing supplies, and adding or removing accessories not provided for in the contract. Maintenance shall also not include repairs or damage resulting from: acts of God, transportation between state locations, negligence by state personnel, or other causes not related to ordinary use in the production environment in which installed. Each successive year of maintenance may be ordered by the University in writing at least 30 days prior to expiration of the existing maintenance period.
- F. **RENEWAL OF MAINTENANCE:** Maintenance of the hardware or software specified in the resultant contract may be renewed by the mutual written agreement of both parties for an additional five one-year period(s), under the terms and conditions of the original contract except as noted herein. Price changes may be negotiated at time of renewal; however, in no case shall the maintenance costs for a succeeding one-year period

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exceed the annual consumer price index-urban (CPI-U) for the most recently available 12-month trailing period. The CPI-U must be provided with request for price increase.

- G. **OWNERSHIP OF INTELLECTUAL PROPERTY:** All copyright and patent rights to all papers, reports, forms, materials, creations, or inventions created or developed in the performance of this contract shall become the sole property of the University. On request, the contractor shall promptly provide an acknowledgment or assignment in a tangible form satisfactory to the University to evidence the University's sole ownership of specifically identified intellectual property created or developed in the performance of the contract.
- H. **PRODUCT SUBSTITUTION:** During the term of any contract resulting from this solicitation, the contractor is not authorized to substitute any item for that product and/or software identified in the solicitation without the prior written consent of the contracting officer whose name appears on the front of this solicitation, or their designee.
- I. **QUALIFIED REPAIR PERSONNEL:** All warranty or maintenance services shall be performed on the items specified in this solicitation as well as any associated hardware or software shall be performed by qualified technicians properly authorized by the manufacturer to perform such services. The University reserves the right to require proof of certification prior to award and at any time during the term of the contract.
- J. **SERVICE PERIOD (EXTENDED):** Due to the criticality of the applications for which the equipment and/or software is purchased, the contractor shall provide 24 hours a day, 7 days a week, maintenance support, including state holidays. On-site response time shall be within 2 hours following initial notification. All necessary repairs or corrections shall be completed within 4 hours of the initial notification.
- K. **SERVICE PERIOD (ROUTINE):** Contractor shall provide 24 hour toll-free phone support with a 4 hour return call response time. On-site maintenance services shall carry an 8 hour response time following initial notification and be available during the normal working hours of 8 A.M. to 5 P.M. Monday through Friday, excluding state holidays. All necessary repairs or corrections shall be completed within 24 hours of the initial notification.
- L. **SERVICE REPORTS:** Upon completion of any maintenance call, the contractor shall provide the agency with a signed service report that includes, at a minimum: a general statement as to the problem, action taken, any materials or parts furnished or used, and the number of hours required to complete the repairs.
- M. **SOFTWARE UPGRADES:** The University shall be entitled to any and all upgraded versions of the software covered in the contract that becomes available from the contractor. The maximum charge for upgrade shall not exceed the total difference between the cost of the University's current version and the price the contractor sells or licenses the upgraded software under similar circumstances.
- N. **SOURCE CODE:** In the event the contractor ceases to maintain experienced staff and the resources needed to provide required software maintenance, the University shall be entitled to have, use, and duplicate for its own use, a copy of the source code and associated documentation for the software products covered by the contract. Until such time as a complete copy of such material is provided, the University shall have exclusive right to possess all physical embodiments of such contractor owned materials. The rights of the University in this respect shall survive for a period of twenty (20) years after the expiration or termination of the contract. All lease and royalty fees necessary to support this right are included in the initial license fee as contained in the pricing schedule.

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- O. **TERM OF SOFTWARE LICENSE:** Unless otherwise stated in the solicitation, the software license(s) identified in the pricing schedule shall be purchased on a perpetual basis and shall continue in perpetuity. However the University reserves the right to terminate the license at any time, although the mere expiration or termination of this contract shall not be construed as an intent to terminate the license. All acquired license(s) shall be for use at any computing facilities, on any equipment, by any number of users, and for any purposes for which it is procured. The University further reserves the right to transfer all rights under the license to another state agency to which some or all of its functions are transferred.
- P. **THIRD PARTY ACQUISITION OF SOFTWARE:** The contractor shall notify the procuring agency in writing should the intellectual property, associated business, or all of its assets be acquired by a third party. The contractor further agrees that the contract's terms and conditions, including any and all license rights and related services, shall not be affected by the acquisition. Prior to completion of the acquisition, the contractor shall obtain, for the University's benefit and deliver thereto, the assignee's agreement to fully honor the terms of the contract.
- Q. **TITLE TO SOFTWARE:** By submitting a bid or proposal, the bidder or contractor represents and warrants that it is the sole owner of the software or, if not the owner, that it has received all legally required authorizations from the owner to license the software, has the full power to grant the rights required by this solicitation, and that neither the software nor its use in accordance with the contract will violate or infringe upon any patent, copyright, trade secret, or any other property rights of another person or organization.
- R. **WARRANTY AGAINST SHUTDOWN DEVICES:** The contractor warrants that the equipment and software provided under the contract shall not contain any lock, counter, CPU reference, virus, worm, or other device capable of halting operations or erasing or altering data or programs. Contractor further warrants that neither it, nor its agents, employees, or subcontractors shall insert any shutdown device following delivery of the equipment and software.
- S. **WARRANTY OF SOFTWARE:** The contractor warrants the operation of all software products for a period of 12 months from the date of acceptance. During the warranty period, the contractor shall provide 24___ hour toll free phone support and all patches, fixes, revisions, updates, upgrades, and minor releases to both the software and its supporting documentation. In addition, the contractor shall provide a 2 hour return call response time and complete all necessary patches/fixes within 8 hours of initial notification.
- T. **OWNERSHIP:** Contractor has the right to provide the Services, including Deliverables, without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party.
- U. **CONTRACTOR'S VIABILITY:** Contractor warrants that it has the financial capacity to perform and continue to perform its obligations under any contract hereunder; that Contractor has no constructive or actual knowledge of an actual or potential legal proceeding being brought against Contractor that could materially adversely affect performance of any Contract awarded hereunder; and that entering into any Contract hereunder is not prohibited by any contract, or order by any court of competent jurisdiction.
- V. **CONTRACTOR'S PAST EXPERIENCE:** Contractor warrants that the Services have been successfully performed for a non-related third-party without significant problems due to the Services or Contractor.

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W. **PERFORMANCE:**

All Services shall be performed with care, skill and diligence, consistent with or above applicable professional standards currently recognized in its profession, and Contractor shall be responsible for the professional quality, technical accuracy, completeness and coordination of all plans, information, specifications, Deliverables and Services furnish under this Contract.

The documentation which Contractor shall provide under any Contract hereunder shall be sufficient in detail and content to all the University to understand and fully utilize the Deliverables without reference to any other materials or information.

X. **MALICIOUS CODE:**

Contractor shall use its best efforts through quality assurance procedures to ensure that there are no computer viruses or undocumented features in any of the media or means used to deliver the Services. Contractor has used the best available means to scan any media on which Deliverables are provided to the University.

Y. **CONFIDENTIALITY:** Ownership of all data, materials and documentation originated and prepared for the University pursuant to this Contract shall belong exclusively to the University and be subject to public inspection in accordance with the Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by a Contractor shall not be subject to public disclosure under the Freedom of Information Act; however, the Contractor must invoke the protections of Section 2.2-4342(F) of the Code of Virginia, in writing either before or at the time the data or other material is submitted. The written notice must specifically identify the data or materials to be protected and state the reasons why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. The classification of an entire document, line item prices and/or total prices as proprietary or trade secrets is not acceptable and will result in rejection. The University is not bound by Contractor's classification of data or other materials as trade secrets or proprietary information.

Z. **CONFIDENTIALITY/DATA DESTRUCTION:** The Contractor assures that information and data obtained as to personal facts and circumstances related to students will be collected and held confidential, during and following the term of this Agreement, and will not be divulged without the University's written consent. Any information to be disclosed, except to the University, must be in summary, statistical, or other form which does not identify particular individuals. Contractor understands that any student data shared with Contractor must not be utilized for anything other than support, must not be shared with a third party and must be destroyed upon termination of Agreement or upon written request of the University.

AA. **SENSITIVE DATA:** Contracts/agreements that require a third party vendor to collect credit and/or debit card information from individuals must require the third party vendor to demonstrate proof of current compliance with all federal and state Payment Card Industry (PCI) Data Security Standards (DSS). Additionally, contracts/agreements that will result in the collection, storage, transmission, or exchange of sensitive data must include (1) a data interoperability agreement

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signed by both parties that sets the minimum security levels for securing the data and (2) an annual, independent audit report verifying compliance with security guidelines set by the vendor.

Definition of Sensitive Data:

Sensitive University Data: Data that the University is obligated to protect, whether by law, contract, or policy. Examples include:

- a. Personal information including social security number, driver's license number, ancestry, or religion;
- b. Student records, which are protected by FERPA;
- c. Personally identifiable financial information (these records, which are protected by the Gramm-Leach- Bliley Act, generally will also be either personnel or student records);
- d. Personal information collected from a donor, alumnus, or other individual;
- e. Proprietary vendor information;
- f. Health records, which are protected by the Virginia Health Records Privacy Act; and
- g. Attorney-client communications.

Sensitive data does not include information in the William & Mary directory or data that is made public by the University.

- BB. **LIMITED WARRANTY PERIOD AND REMEDY:** During the warranty period of one year, Contractor warrants that the services shall meet or exceed the Requirements. Contractor shall correct, at no additional cost to University, all errors identified during the warranty period that result in a failure of the Services to meet the Requirements. If Contractor is unable to make the Service/Deliverable conform, in all material respects, to the Requirements within ten (10) days following written notification of the University, Contractor shall, accept return of such Deliverable and other other related Deliverable(s) rendered unusable, and return all monies paid by the University for the non-conforming Services and Deliverable and such other related Deliverable(s) rendered unusable.

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

- CC. **NONVISUAL ACCESS TO TECHNOLOGY:** The Selected Firm will meet the requirements set forth in section 508 Standards for Electronic Information Technology of the Rehabilitation Act of 1973 and Web Content Accessibility Guideline from the World Wide Web Consortium. Additionally, in accordance with § 2.2-3502 of the Code of Virginia, the following minimum non-visual access requirements will apply to all information technology Agreements.

All information technology (the "Technology") which is purchased or upgraded by the University will comply with the following non-visual access standards from the date of purchase or upgrade until the expiration of the Agreement:

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- (i) effective, interactive control and use of the Technology will be readily achievable by nonvisual means;
- (ii) Technology equipped for nonvisual access will be compatible with information technology used by other individuals with whom any blind or visually impaired user of the technology interacts;
- (iii) Nonvisual Access Technology will be integrated into any networks used to share communications among employees, program participants or the public; and
- (iv) Technology for nonvisual access will have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

The University may stipulate additional specifications in any procurement.

Compliance with the foregoing non-visual access standards will not be required if the AVP Supply Chain Services, The University of William & Mary determines that 1) the Technology is not available and 2) non-visual equivalence is not available.

Installation of hardware, software or peripheral devices used for non-visual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information will permit the installation and effective use of non-visual access software and peripheral devices.