



GENERAL SERVICES ADMINISTRATION (GSA)  
 COOPERATIVE PURCHASING  
 CONTRACT # DOC-22-032/ 47QSWA19D004G  
 RIDER AGREEMENT

COMMONWEALTH OF VIRGINIA  
 VIRGINIA DEPARTMENT OF CORRECTIONS  
 6900 ATMORE DRIVE  
 RICHMOND, VA 23225

**CONTRACT RIDER AGREEMENT**

Date:	February 1, 2022
Contract Number:	<b>DOC-22-032 / GSA 47QSWA19D004G</b>
Issued By:	Virginia Department of Corrections Procurement and Risk Management 6900 Atmore Drive Richmond, VA 23225
Contractor:	Shadowtrack Technologies, Inc. 1001 Ochsner Blvd Suite 425A Covington, LA 70433-8152 Mailing Address: Post Office Box 1686 Covington, LA 70434-1686
Commodity:	Electronic Monitoring

This Contract Rider Agreement is entered into by the aforementioned parties subsequent to the General Services Administration (GSA) cooperative procurement specific to GSA Contract # 47QSWA19D004G and associated Federal Supply Service/Price Schedule as defined in Attachment B. The term of this agreement is from February 1, 2022 through February 29, 2024.

**I. Description of Agreement:**

- Whereas the Virginia Department of Corrections desires to procure the products and services detailed on GSA Contract # 47QSWA19D004G effective on the date this agreement is fully executed by both parties with services commencing on February 1, 2022. The Price Schedule will remain fixed and will not be increased during the duration of this agreement unless mutually agreed upon by both parties. Additional services that become available by the Contractor will be added via a Contract Modification to this Contract Rider Agreement if the DOC desires to utilize future services that are not define on the attached Pricing Schedule, Attachment B.

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2. In addition to GSA Contract # 47QSWA19D004G's Terms and Conditions, the following Terms and Conditions shall be added as part of this Contract Rider Agreement:

## II. GENERAL TERMS AND CONDITIONS

- A. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia, without regard to its choice of law provisions, and any litigation with respect thereto shall be brought in the circuit courts of the Commonwealth. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (Code of Virginia, § 2.2-4366). ADR procedures are described in Chapter 9 of the Vendors Manual. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.
  
- B. **ANTI-DISCRIMINATION:** By submitting their (bids/proposals), (bidders/offerors) certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the Virginia Public Procurement Act (VPPA). If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender sexual orientation, gender identity, or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (Code of Virginia, § 2.2-4343.1E).

In every contract over \$10,000 the provisions in 1. and 2. below apply:

1. During the performance of this contract, the contractor agrees as follows:
  - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

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- b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
  - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
  - d. If the contractor employs more than five employees, the contractor shall (i) provide annual training on the contractor's sexual harassment policy to all supervisors and employees providing services in the Commonwealth, except such supervisors or employees that are required to complete sexual harassment training provided by the Department of Human Resource Management, and (ii) post the contractor's sexual harassment policy in (a) a conspicuous public place in each building located in the Commonwealth that the contractor owns or leases for business purposes and (b) the contractor's employee handbook.
  - e. The requirements of these provisions 1. and 2. are a material part of the contract. If the Contractor violates one of these provisions, the Commonwealth may terminate the affected part of this contract for breach, or at its option, the whole contract. Violation of one of these provisions may also result in debarment from State contracting regardless of whether the specific contract is terminated.
  - f. In accordance with Executive Order 61 (2017), a prohibition on discrimination by the contractor, in its employment practices, subcontracting practices, and delivery of goods or services, on the basis of race, sex, color, national origin, religion, sexual orientation, gender identity, age, political affiliation, disability, or veteran status, is hereby incorporated in this contract.
2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

C. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** Applicable for all contracts over \$10,000:

By entering into a written contract with the Commonwealth of Virginia, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

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- D. **DEBARMENT STATUS:** By participating in this procurement, the vendor certifies that they are not currently debarred by the Commonwealth of Virginia from submitting a response for the type of goods and/or services covered by this solicitation. Vendor further certifies that they are not debarred from filling any order or accepting any resulting order, or that they are an agent of any person or entity that is currently debarred by the Commonwealth of Virginia.

If a vendor is created or used for the purpose of circumventing a debarment decision against another vendor, the non-debarred vendor will be debarred for the same time period as the debarred vendor.

- E. **ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.

- F. **PAYMENT:**

1. To Prime Contractor:

- a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- e. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that

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final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be resolved in accordance with *Code of Virginia*, § 2.2-4363 and -4364. Upon determining that invoiced charges are not reasonable, the Commonwealth shall notify the contractor of defects or improprieties in invoices within fifteen (15) days as required in *Code of Virginia*, § 2.2-4351. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia*, § 2.2-4363).

2. To Subcontractors:

a. Within seven (7) days of the contractor's receipt of payment from the Commonwealth, a contractor awarded a contract under this solicitation is hereby obligated:

(1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or

(2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.

b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

3. Each prime contractor who wins an award in which provision of a SWaM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWaM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.

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4. The Commonwealth of Virginia encourages contractors and subcontractors to accept electronic and credit card payments.
- G. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.
- H. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways:
1. The parties may agree in writing to modify the terms, conditions, or scope of the contract. Any additional goods or services to be provided shall be of a sort that is ancillary to the contract goods or services, or within the same broad product or service categories as were included in the contract award. Any increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
  2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt, unless the contractor intends to claim an adjustment to compensation, schedule, or other contractual impact that would be caused by complying with such notice, in which case the contractor shall, in writing, promptly notify the Purchasing Agency of the adjustment to be sought, and before proceeding to comply with the notice, shall await the Purchasing Agency's written decision affirming, modifying, or revoking the prior written notice. If the Purchasing Agency decides to issue a notice that requires an adjustment to compensation, the contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:
    - a. By mutual agreement between the parties in writing; or
    - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or
    - c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and

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savings realized. The Purchasing Agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia Vendors Manual. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.

- I. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.
- J. **TAXES:** Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

If sales or deliveries against the contract are not exempt, the contractor shall be responsible for the payment of such taxes unless the tax law specifically imposes the tax upon the buying entity and prohibits the contractor from offering a tax-included price.

K. **eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION, CONTRACTS, AND ORDERS:**

Internet electronic procurement solution, web site portal [www.eVA.virginia.gov](http://www.eVA.virginia.gov), streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution by completing the free eVA Vendor Registration. All bidders or offerors must register in eVA and pay the Vendor Transaction Fees specified below; failure to register will result in the bid/proposal being rejected.

Vendor transaction fees are determined by the date the original purchase order is issued and the current fees are as follows:

1. For orders issued July 1, 2014, and after, the Vendor Transaction Fee is:

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- a. DSBSD-certified Small Businesses: 1%, capped at \$500 per order.
  - b. Businesses that are not DSBSD-certified Small Businesses: 1%, capped at \$1,500 per order.
2. Refer to Special Term and Condition “eVA Orders and Contracts” to identify the number of purchase orders that will be issued as a result of this solicitation/contract with the eVA transaction fee specified above assessed for each order.

For orders issued prior to July 1, 2014, the vendor transaction fees can be found at [www.eVA.virginia.gov](http://www.eVA.virginia.gov).

The specified vendor transaction fee will be invoiced, by the Commonwealth of Virginia Department of General Services, typically within 60 days of the order issue date. Any adjustments (increases/decreases) will be handled through purchase order changes.

- L. AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:** A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with a public body pursuant to the *Virginia Public Procurement Act* shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.
- M. CIVILITY IN STATE WORKPLACES:** The contractor shall take all reasonable steps to ensure that no individual, while performing work on behalf of the contractor or any subcontractor in connection with this agreement (each, a “Contract Worker”), shall engage in 1) harassment (including sexual harassment), bullying, cyber-bullying, or threatening or violent conduct, or 2) discriminatory behavior on the basis of race, sex, color, national origin, religious belief, sexual orientation, gender identity or expression, age, political affiliation, veteran status, or disability.

The contractor shall provide each Contract Worker with a copy of this Section and will require Contract Workers to participate in agency training on civility in the State workplace if contractor’s (and any subcontractor’s) regular mandatory training programs do not already encompass equivalent or greater expectations. Upon request, the contractor shall provide documentation that each Contract Worker has received such training.

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For purposes of this Section, "State workplace" includes any location, permanent or temporary, where a Commonwealth employee performs any work-related duty or is representing his or her agency, as well as surrounding perimeters, parking lots, outside meeting locations, and means of travel to and from these locations. Communications are deemed to occur in a State workplace if the Contract Worker reasonably should know that the phone number, email, or other method of communication is associated with a State workplace or is associated with a person who is a State employee.

The Commonwealth of Virginia may require, at its sole discretion, the removal and replacement of any Contract Worker who the Commonwealth reasonably believes to have violated this Section. This Section creates obligations solely on the part of the contractor.

Employees or other third parties may benefit incidentally from this Section and from training materials or other communications distributed on this topic, but the Parties to this agreement intend this Section to be enforceable solely by the Commonwealth and not by employees or other third parties.

### III. SPECIAL TERMS AND CONDITIONS

- A. **AUDIT:** The contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.
- B. **CANCELLATION OF CONTRACT:** The purchasing agency reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the contractor. In the event the initial contract period is for more than 12 months, the resulting contract may also be terminated by the contractor, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.
- C. **eVA ORDERS AND CONTRACTS:** The solicitation/contract will result in one purchase order annually with the applicable eVA transaction fee assessed for each order.

Vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution and agree to comply with the following: If this solicitation is for a term contract, failure to provide an electronic catalog (price list) or index page catalog for items awarded will be just cause for the Commonwealth to reject your bid/offer or terminate this contract for default. The format of this electronic catalog shall conform to the eVA Catalog Interchange Format (CIF) Specification that can be accessed and

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downloaded from [www.eVA.virginia.gov](http://www.eVA.virginia.gov). Contractors should email Catalog or Index Page information to [eVA-catalog-manager@dgs.virginia.gov](mailto:eVA-catalog-manager@dgs.virginia.gov).

- D. RENEWAL OF CONTRACT:** This contract may be renewed by the Commonwealth upon written agreement of both parties for (4) four / (1) one year periods), under the terms of the current contract, and at a reasonable time (approximately 90 days) prior to the expiration.
- E. CERTIFICATION OF INTERNAL CONTROLS:** The contractor shall have clearly delineated processes and procedures for the internal control of sensitive data and processes, which are any data and processes of which the compromising of confidentiality, integrity, and/or availability could have a material adverse effect on Commonwealth of Virginia interests, the conduct of agency programs, or to the privacy of which individuals are entitled, when such sensitive data or processes are related to the goods and/or services provided pursuant to this agreement.

The contractor shall provide evidence of compliant and ongoing internal control of sensitive data and processes through a standard methodology, such as but without limitation the American Institute of Certified Public Accountant (AICPA) Service Organization Control (SOC) Reports. The evidence of compliance shall be contained in a report describing the effectiveness of the contractor's internal controls. The most recent version of the report shall be provided to the purchasing office upon request. Trade secrets or proprietary information contained within the report shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the contractor must invoke the protection of Code of Virginia, § 2.2-4342F, in writing, prior to or upon submission of the report, and must identify the data or other materials to be protected and state the reasons why protection is necessary.

If deficiencies in the contractor's internal control processes and procedures are described in the most recent version of the report, the contractor shall automatically submit the report to the purchasing office within a timely manner and shall describe the corrective actions to be put into place by the contractor to remedy the deficiencies. Failure to report and/or repair deficiencies in a timely manner shall be cause for the Commonwealth to make a determination of breach of contract.

The contractor's obligations for certification of internal controls shall survive and continue after completion of this agreement unless the contractor certifies the destruction of the sensitive data at the end of the contract term.

- F. SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of the purchasing agency. In the event that the contractor desires to subcontract some part of the work specified herein, the contractor shall furnish the purchasing agency the names, qualifications and experience of their proposed subcontractors. The contractor shall, however,

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remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the contract.

**G. CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION:** The contractor assures that information and data obtained as to personal facts and circumstances related to patients or clients will be collected and held confidential, during and following the term of this agreement, and unless disclosure is required pursuant to court order, subpoena or other regulatory authority, will not be divulged without the individual's and the agency's written consent and only in accordance with federal law or the Code of Virginia. Contractors who utilize, access, or store personally identifiable information as part of the performance of a contract are required to safeguard this information and immediately notify the agency of any breach or suspected breach in the security of such information. Contractors shall allow the agency to both participate in the investigation of incidents and exercise control over decisions regarding external reporting. Contractors and their employees working on this project may be required to sign a confidentiality statement.

**H. CONTINUITY OF SERVICES:**

1. The Contractor recognizes that the services under this contract are vital to the Agency and must be continued without interruption and that, upon contract expiration, a successor, either the Agency or another contractor, may continue them. The Contractor agrees:
  - (i) To exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor;
  - (ii) To make all Agency owned facilities, equipment, and data available to any successor at an appropriate time prior to the expiration of the contract to facilitate transition to successor; and
  - (iii) That the Agency Contracting Officer shall have final authority to resolve disputes related to the transition of the contract from the Contractor to its successor.
2. The Contractor shall, upon written notice from the Contract Officer, furnish phase-in/phase-out services for up to ninety (90) days after this contract expires and shall negotiate in good faith a plan with the successor to execute the phase-in/phase-out services. This plan shall be subject to the Contract Officer's approval.
3. The Contractor shall be reimbursed for all reasonable, pre-approved phase-in/phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract. All phase-in/phase-out work fees must be approved by the Contract Officer in writing prior to commencement of said work.

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- I. FEDERALLY IMPOSED TARIFFS:** In the event that the President of the United States, the United States Congress, Customs and Border Protection, or any other federal entity authorized by law, imposes an import duty or tariff (a “tariff”), on an imported good that results in an increase in contractor’s costs to a level that renders performance under the Agreement impracticable, the Commonwealth may agree to an increase to the purchase price for the affected good. No increase in purchase price may exceed 25% of the additional tariff imposed on the goods imported or purchased by the contractor that are provided to the Commonwealth under this Agreement.

Prior to the Commonwealth agreeing to a price increase pursuant to this Section, the contractor must provide to the Commonwealth, the following documentation, all of which must be satisfactory to the Commonwealth:

- evidence demonstrating: (i) the unit price paid by contractor as of the date of award for the good or raw material used to furnish the goods to the Commonwealth under this Agreement, (ii) the applicability of the tariff to the specific good or raw material, and (iii) contractor’s payment of the increased import duty or tariff (either directly or through an increase to the cost paid for the good or raw material). The evidence submitted shall be sufficient in detail and content to allow the Commonwealth to verify that the tariff is the cause of the price change.
- a certification signed by contractor that it has made all reasonable efforts to obtain the good or the raw materials comprising the good procured by the Commonwealth at a lower cost from a different source located outside of the country against which the tariff has been imposed.
- a certification signed by contractor that the documentation, statements, and any other evidence it submits in support of its request for a price increase under this Section are true and correct, and that the contractor would otherwise be unable to perform under this Agreement without such price increase.
- as requested by the Commonwealth, written instructions authorizing the Commonwealth to request additional documentation from individuals or entities that provide the good or the raw materials to verify the information submitted by contractor.

If the Commonwealth agrees to a price increase pursuant to this Section, the parties further agree to add the following terms to this Agreement:

- During the Term and for five (5) years after the termination of this Agreement, contractor shall retain, and the Commonwealth and its authorized representatives shall have the right to audit, examine, and make copies of, all of contractor’s books, accounts, and other records

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related to this Agreement and contractor's costs for providing goods to the Commonwealth, including, but not limited to those kept by the contractor's agents, assigns, successors, and subcontractors.

- Notwithstanding anything to the contrary in this Agreement, the Commonwealth shall have the right to terminate this Agreement for the Commonwealth's convenience upon 15 days' written notice to contractor.

In the event the import duty or tariff is repealed or reduced prior to termination of this Agreement, the increase in the Commonwealth's contract price shall be reduced by the same amount and adjusted accordingly.

- Any material misrepresentation of fact by contractor relating in any way to the Commonwealth's payment of additional sums due to tariffs shall be fraud against the taxpayer's of the Commonwealth and subject contractor to treble damages pursuant to the Virginia Fraud Against Taxpayers Act.

- J. STATE CORPORATION COMMISSION IDENTIFICATION NUMBER:** Pursuant to Code of Virginia, §2.2-4311.2 subsection B, a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 is required to include in its bid or proposal the identification number issued to it by the State Corporation Commission (SCC). Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law is required to include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized. Indicate the above information on the SCC Form provided. Contractor agrees that the process by which compliance with Titles 13.1 and 50 is checked during the solicitation stage (including without limitation the SCC Form provided) is streamlined and not definitive, and the Commonwealth's use and acceptance of such form, or its acceptance of Contractor's statement describing why the bidder or offeror was not legally required to be authorized to transact business in the Commonwealth, shall not be conclusive of the issue and shall not be relied upon by the Contractor as demonstrating compliance.
- K. E-VERIFY PROGRAM:** EFFECTIVE 12/1/13. Pursuant to *Code of Virginia*, §2.2-4308.2., any employer with more than an average of 50 employees for the previous 12 months entering into a contract in excess of \$50,000 with any agency of the Commonwealth to perform work or provide services pursuant to such contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to such public contract. Any such employer who fails to comply with these provisions shall be debarred from contracting with any agency of the Commonwealth for a period up to one year. Such debarment shall cease upon the employer's registration and participation in the E-Verify program. If requested, the employer shall present

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a copy of their Maintain Company page from E-Verify to prove that they are enrolled in E-Verify.

- L. CONFIDENTIAL INFORMATION:** The Contractor acknowledges that in the performance of this contract, confidential and proprietary offender information will be made available to the Contractor. The Contractor agrees to maintain the confidentiality of the offender information. The Contractor will not disclose any offender information to any third party without prior written authorization from the DOC. These obligations will apply to verbal information as well as specific portions of information that are disclosed in writing or other tangible form.
- M. FRATERNIZATION PROHIBITION:** The Contractor's staff assigned to provide services to the Department of Corrections shall not interact with offenders in an unprofessional manner. Examples of unprofessional behavior include, but are not limited to, non-work-related visits between the offender and Contractor staff and engaging in romantic or sexual relationships with offenders.
- N. HIRING PRACTICES:**
- a. HIRING PRACTICES:** In the event a Contractor proposes to employ ex-offenders, the DOC may determine that it is not in the best interest to allow some ex-offenders to provide service. Some of the factors that the DOC may consider are: where the ex-offender served time, the nature of the crime and the length of time since sentence obligation was completed.
- b. HIRING PRACTICES:** All employees utilized for any contract resulting from this solicitation in "a direct consumer care position" must be in compliance with Code of Virginia 37.2-416. Furthermore, the Contractor must have the written consent of the Purchasing Agency's Contract Administrator before any employee, subcontractor, volunteer or other person with a conviction (including an Alford plea for a criminal offense for which the penalty of twelve months or more of incarceration could have been imposed) or a founded violation against his/her licensure or credential may provide or continue to provide services under any contract resulting from this solicitation.

The Purchasing Agency's Contract Administrator may, at his/her discretion, issue or withhold written consent based on but not limited to:

- Nature of the offense, status or violation in relation to the duties of the position and Purchasing Agency policies and procedures.
- Nature of any imposed penalty or sanction and final outcome.
- Length of time since the offense or violation.
- Evidence of the completion of the penalty or sanctions.

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- Nature of the likely interaction between the person and offenders or the DOC organizational unit.
- Access to Purchasing Agency and offender records.

- O. PRISON RAPE ELIMINATION ACT (PREA):** Contractors and Contractors' staff, who are providing services to the Virginia Department of Corrections, and who have any level of interaction or potential for interaction with inmates shall review the Prison Rape Elimination Act (PREA) <https://www.vadoc.virginia.gov/general-public/procurement/> . Contractors and Contractors' staff must receive training (at the Agency location where services are to be performed) on their responsibilities, under PREA including the Agency's sexual abuse and sexual harassment prevention, detection and response policies and procedures (including reporting). Contractors and Contractors' staff agree to abide by the Agency's zero-tolerance policy regarding fraternization, sexual abuse and sexual harassment and the obligation to report incidents.
- P. FORCE MAJERUE:** Shadowtrack will not be liable for delays in processing or other nonperformance caused by such events as fires, telecommunications failures, utility failures, power failures, equipment failures, riots, war, terrorist attack, nonperformance of our vendors or suppliers, acts of God, or other causes over which Shadowtrack has no reasonable control.
- Q. TESTING AND INSPECTION:** The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications. Tests will occur in the Commonwealth's test environment where practicable, for a mutually agreed upon period not to exceed ninety days unless a new period of testing is mutually agreed upon by the Commonwealth. The Commonwealth shall not be billed by the Vendor for such testing and inspections.
- R. SEXUAL HARASSMENT TRAINING:** Pursuant to requirements of § 2.2-4201(3) for any Contract over \$10,000, Supplier agrees that it shall (i) provide annual training on the Supplier's sexual harassment policy to all supervisors and employees providing services in the Commonwealth of Virginia, except such supervisors or employees that are required to complete sexual harassment training provided by the Virginia Department of Human Resource Management, and (ii) post the contractor's sexual harassment policy in (a) a conspicuous public place in each building located in the Commonwealth of Virginia that the Supplier owns or leases for business purposes and (b) the Supplier's employee handbook. Additionally, Supplier shall include these provisions in every subcontract or purchase order of over \$10,000, so that such provisions shall be binding upon each subcontractor or vendor. Page 5 of 7 StatutorilyMandatedTsandCs.docx 10.

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**S. SECTION 508 COMPLIANCE**

All information technology which, pursuant to this Contract, is purchased or upgraded by or for the use of any Commonwealth agency or institution or political subdivision of the Commonwealth (the "Technology") shall comply with Section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended. If requested, the Supplier must provide a detailed explanation of how compliance with Section 508 of the Rehabilitation Act is achieved and a validation of concept demonstration. The requirements of this Paragraph along with the Non-Visual Access to Technology Clause shall be construed to achieve full compliance with the Information Technology Access Act, §§ 2.2-3500 through 2.2-3504 of the Code of Virginia.

**T. NON-VISUAL ACCESS**

All information technology which, pursuant to this Contract, is purchased or upgraded by or for the use of any State agency or institution or political subdivision of the Commonwealth (the "Technology") shall comply with the following nonvisual access standards from the date of purchase or upgrade until the expiration of this Contract:

- (i) Effective, interactive control and use of the Technology shall be readily achievable by nonvisual means;
- (ii) The Technology equipped for nonvisual access shall 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 shall be integrated into any networks used to share communications among employees, program participants or the public; and
- (iv) The technology for nonvisual access shall 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.

Compliance with the foregoing nonvisual access standards shall not be required if the head of the using agency, institution or political subdivision determines that (i) the Technology is not available with nonvisual access because the essential elements of the Technology are visual and (ii) nonvisual equivalence is not available.

Installation of hardware, software, or peripheral devices used for nonvisual 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

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of information shall permit the installation and effective use of nonvisual access software and peripheral devices.

If requested, the Supplier must provide a detailed explanation of how compliance with the foregoing nonvisual access standards is achieved and a validation of concept demonstration.

The requirements of this Paragraph shall be construed to achieve full compliance with the Information Technology Access Act, §§ 2.2-3500 through 2.2-3504 of the Code of Virginia.

#### **U. AUTHORIZED TO TRANSACT BUSINESS**

A Supplier organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law.

A Supplier shall not allow its existence as a partnership or corporation to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50 of the Code of Virginia, to be revoked or cancelled at any time during the term of the Contract. The Commonwealth may void this Contract, in whole or in part, if the Supplier fails to remain in compliance with the provisions of this provision.

#### **V. DATA PRIVACY**

In accordance with § 2.2-2009 of the Code of Virginia, during the performance of this contract, Supplier is required at all times to comply with all applicable federal and state laws and regulations pertaining to information security and privacy

#### **W. NON-VISUAL ACCESS TO TECHNOLOGY:**

1. All information technology which, pursuant to this agreement, is purchased or upgraded by or for the use of any State agency or institution or political subdivision of the Commonwealth (the "Technology") shall comply with the following nonvisual access standards from the date of purchase or upgrade until the expiration of this agreement:

- (i) effective, interactive control and use of the Technology shall be readily achievable by nonvisual means;

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- (ii) the Technology equipped for nonvisual access shall 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 shall be integrated into any networks used to share communications among employees, program participants or the public; and
- (iv) the Technology for nonvisual access shall 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.

Compliance with the foregoing nonvisual access standards shall not be required if the head of the using agency, institution or political subdivision determines that (i) the Technology is not available with nonvisual access because the essential elements of the Technology are visual and (ii) nonvisual equivalence is not available.

Installation of hardware, software or peripheral devices used for nonvisual 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 shall permit the installation and effective use of nonvisual access software and peripheral devices.

If requested, the Contractor must provide a detailed explanation of how compliance with the foregoing nonvisual access standards is achieved and a validation of concept demonstration.

The requirements of this Paragraph shall be construed to achieve full compliance with the Information Technology Access Act, §§ 2.2-3500 through 2.2-3504 of the *Code of Virginia*.

- X. INDEMNIFICATION:** Contractor agrees to indemnify the Commonwealth of Virginia, its officers, agents, and employees for any loss, liability, cost, or reasonable settlement cost incurred as a result of any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the contractor/any services of any kind or nature furnished by the contractor, provided that such liability is not attributable to the sole negligence of the using agency or to failure of the using agency to use the materials, goods, or equipment in the manner already and permanently described by the contractor on the materials, goods or equipment delivered.

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**Y. OWNERSHIP**

Supplier has the right to perform and provide all contractual obligations and provide all needed services or products without violating or infringing any law, rule, regulation, copyright, patent, trade secret, or other proprietary right of any third party.

**IV. CONTENT PRIVACY AND SECURITY – (ECOS CONTRACTS)**

**A. Overall Compliance:**

The vendor/supplier and its affiliates shall be responsible to review and comply with all Commonwealth of Virginia security policies, standards and guidelines. Entities accessing VADOC Systems, developing solutions or providing services collecting and maintaining information on behalf of VADOC must comply with all current and future applicable federal, state and local laws and regulations relating to confidentiality, integrity and availability for information security.

Policies, Standards and Guidelines in scope include but are not limited to the following:

- SEC 501 Information Security Standard;
- SEC 502 IT Security Audit Standard;
- SEC 514 Removal of Commonwealth Data from Surplus Computer Hard Drives and Electronic Media Standard;
- SEC 519 Information Technology Security Policy and
- SEC 525-Hosted Environment Information Security Standard.

Additional ITRM Policies, Standards & Guidelines to be followed are found at <https://www.vita.virginia.gov/it-governance/itrm-policies-standards/> or a successor URL(s), as are pertinent to contractor's operation.

Vendor/supplier exchanging or receiving data from VADOC shall be responsible for, and not limited to, ensuring compliance with the same policies, standards, and guidelines. As VADOC exchanges data and services with a number of external entities, VADOC reserves the right to add additional security procedures as necessary to ensure safeguard of sensitive data and resources shared from external entities.

Vendor/supplier shall provide a secure environment for content and any hardware and software, including servers, network, and data components provided by vendor/supplier as part of its performance under this contract. Vendor/supplier shall provide a secure environment for content and any hardware and software in accordance with Commonwealth's security

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standards located at: <https://www.vita.virginia.gov/it-governance/itrm-policies-standards/> in order to prevent unauthorized access to and use or modification of, and to protect, the application and content. Vendor/supplier agrees that all content of VADOC is intended solely for the business of VADOC and is considered private data. Therefore, vendor/supplier shall, at a minimum, implement the following procedures designed to protect the privacy and security of content, and meet ongoing required compliance:

**B. Access Management and Controls**

1. User identification and access controls will be designed to limit access to content to application users in accordance with the principles of least privilege.
2. Vendor/supplier shall notify VADOC in writing 30 days before its intention to replace or add any third party that will have access to the data exchange/solution whether that access is provided by vendor/supplier or vendor/supplier's subcontractors. VADOC may reject any additional or new third-parties who may be provided access to the solution
3. Service must support multi-factor authentication for access to any administrative portal and/or any remote administrative interface. All employees, agents, and subcontractors' staff supporting the solution shall be US citizens or H1B visa holders and physically located in the continental United States.
4. Vendor/supplier shall support physical security measures, including securing all content on a secure server, in locked data cabinets within a secure facility located within the continental United States.
5. Vendor/supplier shall ensure that access to facilities housing content or supporting applications are restricted to only allow access to vendor/supplier's personnel and agents who have a need to know in connection with operation and support of the application and/or licensed services.
6. Vendor/supplier shall ensure that notification is sent to VADOC 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 vendor/supplier or vendor/supplier's subcontractors. The VADOC may reject any additional or new third parties who may be provided access to content.
7. Vendor/supplier shall ensure that the production/live application and/or licensed services operating systems, middleware, applications, and interfaces will be scanned for vulnerabilities every 30 days and scanning reports be provided to VADOC as required by Commonwealth security standards.

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**C. Audit Logging:**

1. Vendor/supplier shall ensure that the *application and databases* and licensed services are capable of auditing the following events (with timestamps): successful and unsuccessful account logon events, account management events, object access, policy change, privilege functions, process tracking, and system events.
2. Vendor/supplier shall ensure that the application and/or licensed services are capable of auditing the following events, for web applications: all administrator activity, authentication checks, authorization checks, data deletions, data access, data changes, and permission changes.
3. Vendor/supplier shall ensure that the application and/or licensed services employs automated mechanisms to centrally review, analyze and correlate audit and log records from multiple components of the application and/or licensed services to support organizational processes for investigation, alerting and response to suspicious activities.
4. Vendor/supplier shall ensure that the application and/or licensed services support exporting of log files to the Commonwealth for review and analysis.
5. Vendor/supplier shall ensure that the application and/or licensed services are capable of maintaining all audit records in accordance with Commonwealth record retention policies found at the following URL:  
<http://www.lva.virginia.gov/agencies/records/>.

**D. Exporting, Continuity of Operations, and Disaster Recovery:**

1. Vendor/supplier agrees to provide a secure method of exporting content when requested.
2. Vendor/supplier shall ensure that the content exported from the vendor/supplier's application or infrastructure is in an industry standard format that provides for interoperability and portability.
3. Vendor/supplier agrees to maintain all metadata associated with any original content submitted into the application and/or licensed services by VADOC for easy retrieval and access, using secure industry standard protocols, within a predefined period as specified in the Contract. All metadata associated with any original content submitted into the application(s) by VADOC for easy retrieval and access within 2 hours at any point in time
4. Vendor/supplier shall ensure that the application and/or licensed services provides and maintains a backup of content that can be recovered in an orderly and timely manner within a predefined frequency consistent with recovery time and recovery

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point objectives, as specified in the contract. All data center storage and replication shall be limited to the continental United States. All datacenters must meet the requirements of a Tier III data center as defined by the Uptime Institute.

5. Vendor/supplier shall ensure that the application and/or licensed services can store a backup of content, at least daily, in an off-site “hardened” facility, approved by VADOC, located within the continental United States, while also maintaining the security of the content.
6. Implement a contingency plan designed to maintain the access to the application and/or licensed services and to prevent the unintended destruction or loss of content. This plan should provide a predefined frequency, consistent with recovery time and recovery point objectives, as specified in the contract, for disaster recovery and archival purposes of content at a secure facility located within the continental United States, and approved by VADOC.
7. Vendor/supplier shall partition, in aggregate for this contract, all content submitted into the application and/or licensed services by VADOC 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 VADOC.
8. Vendor/supplier ensures that all content is removed or destroyed in accordance with and/or exceeding the requirements of the Commonwealth Data Removal standard located at the following URL: <https://www.vita.virginia.gov/it-governance/itrm-policies-standards/>.

**E. Required Reporting:**

1. Vendor/supplier shall provide monthly summary reports of Intrusion Detection System (IDS) and Intrusion Prevention System (IPS) events to: [enterpriseservices@vita.virginia.gov](mailto:enterpriseservices@vita.virginia.gov)
2. Vendor/supplier shall report the exact geographic location of all Commonwealth data at all times if that content is not stored in a Commonwealth facility. Vendor/supplier shall provide a report to confirm the exact geographic location of any content (required to be located in the continental United States) every 30 days.
3. Vendor/supplier shall cooperate with the Commonwealth to allow monthly vulnerability scans against all public facing production/live interfaces with access to Commonwealth data.
4. Vendor/supplier shall ensure that all content is stored, processed, and maintained within the continental United States at all times.

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5. Vendor/suppliers shall provide key monthly audit logs and analysis reports for the agency to monitor/analyze suspicious events.
6. Vendor/supplier shall ensure performance of an AICPA SOC-2 (Type 2) audit at least once annually of the application's environment. Upon request from VADOC, the vendor/supplier shall provide a non-redacted copy of current AICPA SOC-2 (Type 2) audit. Vendor/supplier shall assist VADOC in obtaining the current AICPA SOC-2 (Type 2) audit report from any third-party providing services to Vendor/supplier, if said third-party services involve the processing or storage of any content. The Trust Service Principles that should be covered in the SOC -2 Type 2 are: Security, Availability, Processing Integrity, Privacy, and Confidentiality. The report(s) is subject to review by VADOC and additional information may be required from the vendor/supplier, i.e. a corrective action plan with milestones to track remediation.

**F. Security Training and Awareness:**

Vendor/supplier shall ensure that all personnel with physical or logical access to content will receive industry standard annual security awareness training and all other training as required by content owner, current and future Commonwealth security standards (including the VITA Security Awareness Training Standard, Sec 527), regulation, or law.

**G. Risk Assessments**

1. The agency will conduct periodic Risk Assessments, and the vendor/suppliers should expect to provide the following documentation, at a minimum:
  - List of all software and hardware components and service offerings (SaaS, etc.) intended for use in the solution and version or release level;
  - Solution Boundary Diagram(s) and changes therein;
  - Data Flow Diagram(s) and changes therein;
  - Proposed Network Settings and Firewall Rules (Access Control Lists) and changes therein;
  - Technical design documentation that addresses any other relevant security controls and changes therein;
  - Syllabus for the vendor/suppliers Employee Security Training and Awareness program (compliant with the Commonwealth of Virginia Information Security Standard 527) and
  - List of all subcontractors that will be utilized for the solution and their responsibilities.

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2. Dependent on the outcome of the Risk Assessment, additional security procedures may include but not be limited to background checks, records verification, photographing, and fingerprinting of contractor's employees or agents. Contractor may, at any time, be required to execute and complete, for each individual Vendor/supplier employee or agent, additional forms, which may include non-disclosure agreements to be signed by vendor/supplier's employees or agents acknowledging that the Commonwealth information with which such employees and agents come into contact with is confidential and proprietary.

**H. Assurance, Assessments and Compliance:**

1. Vendor/supplier shall, at all times, remain compliant with the privacy and security requirements mandated by federal, state and local laws and regulations and applicable agency IT security policies, standards, and guidelines. Vendor/supplier also agrees that any agent of the vendor/supplier (to include subcontractors) utilized for the purposes of delivery of the solution shall maintain an equal level of compliance.
2. VADOC will perform a security assessment within 90 days after contract award to determine control gaps between the solution and the Hosted Environment Information Security Standard (SEC525). If the vendor/supplier has an external SOC II audit within the last 12 months, which can be supplied to VADOC in lieu of a security assessment.
3. Should vendor/supplier fail to perform in compliance with any provision of this Section, VADOC may provide Vendor/supplier with a written notice to cure. Vendor/supplier shall have fifteen (15) days to cure its noncompliance, or with agreement from VADOC and VITA, in its governance role, may request a reasonable extension for time to cure providing VADOC, and a copy to VITA at: enterpriseservices@vita.virginia.gov, with a written plan of action to cure. If Supplier fails to cure, VADOC may deem vendor/supplier in breach and/or default of the contract and may immediately terminate the contract, in whole or in part. Upon such termination, neither the Commonwealth, nor VADOC, nor VITA shall have any future liability except VADOC will be responsible for deliverables accepted by VADOC and licensed services rendered to VADOC by vendor/supplier. In the event of such termination, vendor/supplier shall accept return of any deliverable that was not accepted by VADOC, and vendor/supplier shall refund any monies paid by VADOC for such deliverable and for any unused, remaining term paid for in advance by VADOC for the licensed services up to the date of such termination. Vendor/supplier agrees that VADOC may pursue all remedies provided under law in the event of a breach or threatened breach of this Section, including re-procurement or transition costs or injunctive or other equitable relief.

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4. Vendor/supplier shall, at all times, remain compliant with the privacy and security requirements mandated by federal, state, and local laws and regulations.
5. Vendor/supplier shall review the incorporated provisions above periodically throughout the term of the contract, for revisions and make such modifications to the provided Solution as are necessary to maintain compliance. If a change is made to the policies, standards and guidelines, a new effective date will be noted on the document cover page. Any costs associated with modifications to maintain privacy and security compliance shall be borne by vendor/supplier.

**I. Incident Management, Monitoring and Response**

1. Vendor/supplier shall fully cooperate with Commonwealth incident response resources and all required law enforcement personnel for assistance in the handling and reporting of security incidents.
2. Vendor/supplier shall maintain an incident response program that implements incident handling for security incidents that includes preparation, detection and analysis, containment, eradication, and recovery processes. Vendor/supplier, (and through vendor/supplier, its employees, agents and subcontractors), shall immediately notify the VADOC Information Security Officer and VADOC Chief Information Officer of any degradation, potential or actual breach of privacy or security of the content and application(s) in any systems supporting the solution. Vendor/supplier shall provide VADOC 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.
3. VADOC agrees to notify vendor/supplier of any degradation, potential or actual breach of privacy or security of the content and application(s) in any systems supporting the solution as soon as possible after discovery. VADOC further agrees to provide vendor/supplier the opportunity to participate in the investigation of the reported situation.
4. Any unauthorized release of proprietary, confidential, or personal information by the vendor/supplier or any employee, or agent or subcontractor of vendor/supplier shall constitute a breach of its obligations under this section and of the contract. Vendor/supplier shall immediately notify the VADOC Information Security Officer and VADOC Chief Information Officer of any breach of unencrypted and un-redacted personal information, as those terms are defined in Virginia Code §18.2-186.6, and other personal identifying information, such as inmate personal data, victim data, or date of birth, provided to the vendor/supplier. Vendor/supplier shall provide the Commonwealth, including VADOC and VITA, the opportunity

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to participate in the investigation of the breach and to exercise control over reporting the unauthorized disclosure, to the extent permitted by law.

5. Incident response must have the capability to support automated mechanisms for supporting incident handling processes.
6. Vendor/supplier shall provide the capability to document incidents and investigations in the Commonwealth's incident handling system.
7. Vendor/supplier shall ensure that external connections incorporated into the application and/or licensed services 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 Vendor/supplier.
8. Provide evidence of a comprehensive continuous monitoring program encompassing all systems with access to content.

**J. Configuration Management and Hardening**

1. Application and/or licensed services must have the capability to set affinity on tiered systems. Vendor/supplier ensures that no one hypervisor can host the application and the data storage.
2. Provide evidence that the application and/or licensed services adhere to a security baseline, which is based on least functionality and compliant with ongoing VITA hardening security standards. The vendor/supplier and subcontractors shall not use as part of the solution, or in support of the solution, any hardware, software, or service that have been prohibited by the U.S. Department of Homeland Security
3. Vendor/supplier shall ensure that all changes to proposed application and/or licensed services are authorized according to VITA and VADOC change management policies.
4. Vendor/supplier shall ensure that the application and/or licensed services will use industry standard encryption techniques to protect content that is transmitted or stored on behalf of the Commonwealth. Vendor/supplier shall ensure that the application will provide for the Commonwealth to maintain exclusive control of all encryption keying material.
5. Vendor/supplier shall ensure that the application and/or licensed services will utilize industry standard firewalls regulating all data entering the internal data network from any external source, which will enforce secure connections between internal and external systems and will permit only authorized data to pass through.
6. Vendor/supplier shall ensure that they will apply all security updates to their systems as required by Commonwealth security standards. For third-party hosted

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systems, updates should be installed in compliance with SEC 525. Systems hosted by the Commonwealth should have updates installed in compliance with SEC 501. Please refer to the following link for the above-mentioned Commonwealth security standards: <https://www.vita.virginia.gov/it-governance/itrm-policies-standards/>.

7. Vendor/supplier shall ensure that they will utilize industry standard malware protection, incorporating both signature and non-signature-based detection mechanisms, on all systems with access to content.
8. Vendor/supplier shall ensure that malware protection will be centrally managed and receive regular automatic updates to malicious code protection mechanisms and data files from the software Vendor/supplier.
9. Within fifteen (15) business days after the expiration or termination of this Contract, vendor/supplier shall confirm in writing to VADOC 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: <https://www.vita.virginia.gov/it-governance/itrm-policies-standards/>. 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 VADOC.
10. Regular testing of the systems and procedures outlined in this Section; and Audit controls that record and monitor application and licensed services activity continuously.

## **V. CLOUD SERVICES CONTRACT TERMS AND CONDITIONS**

These additional terms and conditions for provision of ShadowTrack Technologies, Inc. as part of the Supplier's contractual obligations for an overall solution provided by the Supplier are in support of and incorporated herewith under Contract No. DOC-22-032 / GSA 47QSWA19D004G. The set forth additional terms and conditions under which Supplier shall provide such Licensed Services ("**Licensed Services**") to Virginia Department of Corrections (VADOC).

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## 1. DEFINITIONS

### A. Acceptance

Successful delivery and performance by the Supplier of its contractual commitments at the location(s) designated in the Contract, including completed and successful Acceptance testing in conformance with the requirements of the Contract.

### B. 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 the Contract, including any Updates, enhancements, and replacements to the Application.

### C. Application Users

Application User(s) include employees of VADOC, independent contractors engaged by VADOC, or entities contracting with VADOC for services. Application User(s) also include customers, suppliers, members of the general public, and other entities with whom VADOC may find it necessary or desirable to process or communicate electronically in pursuit of its business.

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

### D. 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 the contract.

### E. Supplier Product

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

### F. Update

As applicable, any update, modification or new release of the Application, documentation or Supplier Product that Supplier makes generally available to its customers at no additional cost. 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 Application and Licensed Services.

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**G. VITA**

Virginia Information Technologies Agency.

**H. Web Site**

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

**2. TERM AND TERMINATION**

**A. Scalability**

VADOC may make a written request to increase or decrease the scope (e.g., number of USERIDs) of Licensed Services (“revised usage”) under a change order to the Contract. 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 the Pricing Schedule of the Contract 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 VADOC designated administrator.

**3. DESCRIPTION OF LICENSED SERVICES**

During the term of this Contract, Supplier hereby agrees to host the Application(s) listed and described and specified in the Contract on servers owned, operated, housed, and maintained by Supplier and shall make such Application(s) available to VADOC’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 obligated by the Contract.

Supplier hereby grants to VADOC and its Application Users a non-exclusive, transferable, worldwide license to access and use by any method the Application during the term of the Contract. The license fee for the rights shall be as set forth in the Pricing Schedule of the Contract, and shall apply regardless of access mode.

VADOC is an agency, as defined by §2.2-2006 and legislative, judicial, and independent agencies of the Commonwealth, 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.

Notwithstanding any other provision or other unilateral license terms which may be issued by Supplier after the Effective Date of the Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of this Contract for Licensed Services, including access to the Application(s), or the fact that such other agreement may be presented to VADOC or its Application Users at the time of accessing the Application(s) (“click wrap”), the terms and conditions set forth in this Contract and any amendments or

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modifications thereto shall supersede and govern licensing and use of all products and services hereunder.

#### **4. SUPPLIER RESPONSIBILITIES**

##### **A. Standard Application Responsibilities**

Unless otherwise indicated in the requirements section of the Contract, Supplier shall acquire and maintain, at no charge to VADOC, 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 the requirements section of the Contract.
- 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 authorized under the Contract. No information regarding VADOC 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 VADOC and its designated Application Users 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 VADOC or its Application Users due to scheduled network, hardware or service maintenance and/or upgrades. Except in cases of emergency, VADOC 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 VADOC 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.

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vii). If non-Excusable Downtime exceeds the parameters listed above, Supplier will credit to VADOC the total recurring fees that would otherwise be owed by VADOC 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 VADOC 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 VADOC at Contract award. The purpose of this notice is to allow sufficient time for Supplier and VADOC 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 VADOC and paid for solely by VADOC. The associated technical data, code, documentation and other necessary information about such customizations shall be provided by Supplier to VADOC 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 VADOC in a reasonable manner to ensure proper and efficient use of Application and Licensed Services without degrading performance thereof.

x). Supplier agrees to work with VADOC to ensure compliance with any approved security exceptions or other identified gaps or requirements provided to VADOC in writing by VITA.

xi). Supplier shall not use any software, hardware or services which have been prohibited pursuant to § 2.2-5514 of the Code of Virginia.

xii). Supplier further agrees to comply with the following:

- Vendor/Supplier agrees to configure the ability to disable inactive accounts to meet SEC 525 AC-2 prior to project onset.
- Vendor/Supplier agrees to set the inactivity timeouts to meet SEC 525 AC-2 prior to project onset.
- Vendor/Supplier agrees to meet SEC 525 RA-5 requirements for scanning by project onset.

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In addition, and at no additional cost to VADOC, 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 VADOC. 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 VADOC 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 VADOC or another party.

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**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 VADOC personnel in the use of the Application; (ii) develop modifications to the Application as agreed by VADOC and Supplier in the Contract or any exhibit hereto or as agreed to by Supplier and VADOC; and (iii) otherwise support the Application as provided under this Contract and any exhibits hereto or as agreed to between Supplier and VADOC.

**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 VADOC.

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 any part of this Contract is supported in whole or in part with federal funds, Supplier shall not subcontract any Services 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.

**5. VADOC RESPONSIBILITIES**

Unless otherwise agreed and as applicable, VADOC or its Agent, or an Application User, will be responsible for input of Content into Supplier's Application and VADOC or its Agent will be responsible for keeping said Content current and accurate. Supplier will have no

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responsibility for assisting VADOC in creating, modifying or inputting the Content, unless specified in this Contract.

If Supplier issues unique USERIDs and passwords to an Application User:

- i). VADOC is responsible for protecting said passwords and for any authorized and unauthorized use made of the passwords. VADOC will fully cooperate with law enforcement authorities in the detection and prosecution of illegal activity related to unauthorized use of the Licensed Services.
- ii). VADOC shall have the right to add, activate, change access for, or disable USERIDs at its sole discretion. VADOC shall designate administrators who will be authorized to add, activate, change access for or disable USERIDs.
- iii). Upon notification by VADOC of an Application User's disabled access, Supplier shall remove access authorization by said Application User from its server within one (1) hour of receipt of such notification, ensuring that historical access audit details of such Application User shall not be deleted or lost. If Supplier fails to make such a removal of access, VADOC shall not be held liable for any charges or damages incurred due to use of the unauthorized USERID.
- iv). VADOC and Application 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. VADOC further agrees to provide Supplier the opportunity to participate in the investigation of the reported situation.
- v). VADOC agrees to submit any required Security exceptions to [Commonwealthsecurity@vita.virginia.gov](mailto:Commonwealthsecurity@vita.virginia.gov) within five (5) days of VITA notification to VADOC.

## **6. 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 Commonwealth's security standards located at: <https://www.vita.virginia.gov/it-governance/itrm-policies-standards/> 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 VADOC is intended solely for the business of VADOC and is considered private data. Therefore, Supplier shall, at a minimum, implement the following procedures designed to protect the privacy and security of Content:

- a) User identification and access controls designed to limit access to Content to Application Users in accordance with the principles of least privilege.

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- b) Supplier shall ensure that all personnel with physical or logical access to Content will receive industry standard annual security awareness training and all other training as required by Content owner, Commonwealth security standards, regulation, or law.
- c) Supplier shall ensure that the Application and/or Licensed Services are capable of auditing the following events. Successful and unsuccessful account logon events, account management events, object access, policy change, privilege functions, process tracking, and system events.
- d) Supplier shall ensure that the Application and/or Licensed Services are capable of auditing the following events, for Web applications. All administrator activity, authentication checks, authorization checks, data deletions, data access, data changes, and permission changes.
- e) Supplier shall ensure that the Application and/or Licensed Services employs automated mechanisms to centrally review, analyze and correlate audit and log records from multiple components of the Application and/or Licensed Services to support organizational processes for investigation, alerting and response to suspicious activities.
- f) Supplier shall ensure that the Application and/or Licensed Services support exporting of log files to the Commonwealth for review and analysis.
- g) Supplier shall ensure that the Application and/or Licensed Services are capable of maintaining all audit records in accordance with Commonwealth record retention policies found at the following URL: <http://www.lva.virginia.gov/agencies/records/>.
- h) Provide evidence of a comprehensive continuous monitoring program encompassing all systems with access to Content.
- i) Provide evidence that the Application and/or Licensed Services adhere to a security baseline, which is based on least functionality.
- j) Supplier shall ensure that all changes to proposed Application and/or Licensed Services are authorized according to change management policies.
- k) Supplier agrees to maintain all metadata associated with any original Content submitted into the Application and/or Licensed Services by VADOC for easy retrieval and access, using secure industry standard protocols, within a predefined period as specified in the Contract.
- l) Supplier agrees to provide a secure method of exporting Content when requested.

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- m) Supplier shall ensure that the Content exported from the supplier's Application or infrastructure is in an industry standard format that provides for interoperability and portability.
- n) Supplier shall ensure that the Application and/or Licensed Services provides and maintains a backup of Content that can be recovered in an orderly and timely manner within a predefined frequency consistent with recovery time and recovery point objectives, as specified in the Contract.
- o) Supplier shall ensure that the Application and/or Licensed Services can store a backup of Content, at least daily, in an off-site "hardened" facility, located within the continental United States, maintaining the security of the Content.
- p) Implement a contingency plan designed to maintain the access to the Application and/or Licensed Services and to prevent the unintended destruction or loss of Content. This plan should provide a predefined frequency, consistent with recovery time and recovery point objectives, as specified in the Contract, for disaster recovery and archival purposes of Content at a secure facility located within the continental United States.
- q) Supplier shall partition, in aggregate for this contract, all Content submitted into the Application and/or Licensed Services by VADOC 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 VADOC.
- r) Service must support multi-factor authentication for access to any administrative portal and/or any remote administrative interface.
- s) Supplier shall fully cooperate with Commonwealth incident response resources and all required law enforcement personnel for assistance in the handling and reporting of security incidents.
- t) Supplier shall maintain an incident response program that implements incident handling for security incidents that includes preparation, detection and analysis, containment, eradication, and recovery processes.
- u) Incident response must have the capability to support automated mechanisms for supporting incident handling processes.

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- v) Supplier shall provide the capability to document incidents and investigations in the Commonwealth's incident handling system.
- w) Supplier shall provide quarterly summary reports of Intrusion Detection System (IDS) and Intrusion Prevention System (IPS) events to: [enterpriseservices@vita.virginia.gov](mailto:enterpriseservices@vita.virginia.gov)
- x) Supplier ensures that all Content is removed or destroyed in accordance with and/or exceeding the requirements of the Commonwealth Data Removal standard located at the following URL: <https://www.vita.virginia.gov/it-governance/itrm-policies-standards/>.
- y) Supplier shall support physical security measures, including securing all Content on a secure server, in locked data cabinets within a secure facility located within the continental United States.
- z) Supplier shall ensure that access to facilities housing Content or supporting applications are restricted to only allow access to Supplier's personnel and agents who have a need to know in connection with operation and support of the Application and/or Licensed Services.
- aa) Supplier shall ensure that notification is sent to VADOC 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. The VADOC may reject any additional or new third parties who may be provided access to Content.
- bb) Supplier shall ensure that the Application and/or Licensed Services operating systems, middleware, applications, and interfaces will be scanned for vulnerabilities every 30 days and scanning reports be provided to VADOC as required by Commonwealth security standards.
- cc) Supplier shall cooperate with the Commonwealth to allow monthly vulnerability scans against all public-facing interfaces with access to Commonwealth data.
- dd) Application and/or Licensed Services must have the capability to set affinity on tiered systems. Supplier ensures that no one hypervisor can host the application and the data storage.
- ee) Supplier shall ensure that all Content is stored, processed and maintained within the continental United States at all times.
- ff) Supplier shall report the exact geographic location of all Commonwealth data at all times if that Content is not stored in a Commonwealth facility. Supplier shall provide a report to

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confirm the exact geographic location of any Content not stored in a Commonwealth facility every 30 days.

gg) Supplier shall, at all times, remain compliant with the privacy and security requirements mandated by federal, state and local laws and regulations.

hh) Supplier shall ensure performance of an AICPA SOC-2 (Type 2) audit at least once annually of the Application's environment. Upon request from VADOC, Supplier shall provide a non-redacted copy of current AICPA SOC-2 (Type 2) audit. Supplier shall assist VADOC in obtaining the current AICPA SOC-2 (Type 2) audit report from any third-party providing services to Supplier, if said third-party services involve the processing or storage of any Content. The Trust Service Principles that should be covered in the SOC -2 Type 2 are: Security, Availability, Processing Integrity, Privacy and Confidentiality.

ii) Supplier understands that VADOC or a third-party audit organization is responsible for performing a security audit within 90 days after contract award to determine control gaps between the supplied audit and the Hosted Environment Information Security Standard (SEC525). If no audit is supplied, a complete security controls audit utilizing SEC525 must be performed. Failure to do so may result in remedies being levied as provided in the terms and conditions of the contract.

jj) Supplier shall ensure that external connections incorporated into the Application and/or Licensed Services 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.

kk) Supplier shall ensure that the Application and/or Licensed Services will utilize industry standard firewalls regulating all data entering the internal data network from any external source which will enforce secure connections between internal and external systems and will permit only authorized data to pass through.

ll) Supplier shall ensure that the Application and/or Licensed Services will use industry standard encryption techniques to protect Content that is transmitted or stored on behalf of the Commonwealth. Supplier shall ensure that the Application will provide for the Commonwealth to maintain exclusive control of all encryption keying material.

mm) Supplier shall ensure that they will apply all security updates to their systems as required by Commonwealth security standards. For third-party hosted systems, updates should be installed in compliance with SEC 525. Systems hosted by the Commonwealth should have updates installed in compliance with SEC 501. Please refer to the following link for the above

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mentioned Commonwealth security standards: <https://www.vita.virginia.gov/it-governance/itrm-policies-standards/>.

nn) Supplier shall ensure that they will utilize industry standard malware protection, incorporating both signature and non-signature-based detection mechanisms, on all systems with access to Content.

oo) Supplier shall ensure that malware protection will be centrally managed and receive regular automatic updates to malicious code protection mechanisms and data files from the software vendor.

pp) Within fifteen (15) business days after the expiration or termination of this Contract, Supplier shall confirm in writing to VADOC 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: <https://www.vita.virginia.gov/it-governance/itrm-policies-standards/>. 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 (iii) the date the removals were performed. All metadata, in its original form, shall be returned to VADOC.

qq) Regular training for Supplier personnel regarding the security and data recovery programs referenced in this Section.

rr) Regular testing of the systems and procedures outlined in this Section; and

ss) Audit controls that record and monitor Application and Licensed Services activity continuously.

tt) Should Supplier fail to perform in compliance with any provision of this Section, VADOC may provide Supplier with a written notice to cure. Supplier shall have fifteen (15) days to cure its noncompliance, or with agreement from VADOC and VITA, in its governance role, may request a reasonable extension for time to cure providing VADOC, and a copy to VITA at: [enterpriseservices@vita.virginia.gov](mailto:enterpriseservices@vita.virginia.gov), with a written plan of action to cure. If Supplier fails to cure, VADOC may deem Supplier in breach and/or default of the Contract and may immediately terminate the Contract, in whole or in part. Upon such termination, neither the Commonwealth, nor VADOC, nor VITA shall have any future liability except VADOC will be responsible for deliverables accepted by VADOC and Licensed Services rendered to VADOC by Supplier. In the event of such termination, Supplier shall accept return of any

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deliverable that was not accepted by VADOC, and Supplier shall refund any monies paid by VADOC for such deliverable and for any unused, remaining term paid for in advance by VADOC for the Licensed Services up to the date of such termination. Supplier agrees that VADOC may pursue all remedies provided under law in the event of a breach or threatened breach of this Section, including reprocurement or transition costs or injunctive or other equitable relief.

## **7. 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. VADOC Requirements and License Restrictions**

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

- i). VADOC will use commercially reasonable efforts to ensure that Application Users comply with all of the terms and conditions hereof;
- ii). VADOC 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). VADOC 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, VADOC may reproduce and distribute any Application output generated from the VADOC's Content, and an Application User may reproduce and distribute any Application output generated pursuant to the permissions set forth in the Contract;
- iv). VADOC 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, VADOC may reproduce and distribute any Application output (e.g., reports) generated by VADOC 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 Contract;
- v). VADOC shall only use the Application and Supplier Product in the normal course of business, in connection with, and as part of, the Licensed Services;

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vi). VADOC 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). VADOC 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). VADOC 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). VADOC shall not use the Application or Licensed Services for any illegal, obscene, offensive or immoral purpose.

### **C. VADOC Proprietary Rights**

Except as otherwise stated herein and with the exception of any applicable third-party rights, Content and any customizations made for VADOC's operation of the Application or for interoperability with other VADOC's systems or applications paid for by VADOC, are and shall remain the sole and exclusive property of VADOC, 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 VADOC's business shall remain the property of VADOC, 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 the Contract, Supplier agrees to either provide the Content and customizations to VADOC, or, at VADOC's request, certify in writing that said Content and customizations in all formats, have been destroyed.

## **8. CLOUD EXIT ASSISTANCE**

Upon execution of this Contract, Supplier and VADOC will develop an exit plan ("Exit Plan") detailing each party's respective tasks for the orderly transition and migration of all Content stored by Supplier pursuant to the Contract to VADOC's archive and/or to a system or application maintained by VADOC.

At a minimum, the Exit Plan must provide that within 30 days of the expiration or termination of this Contract for any reason, Supplier shall return all Content in its possession provided to Supplier by VADOC and/or its Application Users and stored by the Application on behalf of VADOC to the VADOC in a format accessible without the use of Supplier's Application. Supplier's failure to do so will constitute a material breach of this Contract and VADOC may

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exercise all available rights and remedies under law and equity, in addition to any remedies set forth in this Contract.

In addition, at VADOC's option, Supplier shall continue to provide Licensed Services for up to six (6) months after the date of expiration or termination of the Contract in order to facilitate VADOC's transition to another service model or provider. Supplier shall also provide such reasonable assistance as may be requested by VADOC and agrees such assistance will not be unreasonably withheld. Supplier shall perform such assistance at the hourly rate or a charge agreed upon by Supplier and VADOC. In the event of a termination for breach by Supplier, Supplier shall provide the transition assistance at no charge or fee to VADOC.

## **9. COMMENCEMENT AND ACCEPTANCE OF LICENSED SERVICES**

### **A. Licensed Services Commencement Date**

The Supplier shall begin delivery of Licensed Services on the date requested by VADOC and agreed to by the Supplier in the Contract. VADOC 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 VADOC reasonably determines that VADOC and its Application Users can successfully access and use all functionalities of the Application which Supplier is required to provide to such Users. VADOC agrees to complete Acceptance testing within 90 days after receiving written notice from Supplier of the ability of VADOC and its Application Users to access the Application, or within such other period as set forth in the Contract. Supplier agrees to provide to VADOC such assistance and advice as VADOC may reasonably require, at no additional cost, during such Acceptance testing, other than pre-approved travel expenses incurred which will be reimbursable by VADOC 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). VADOC shall provide to Supplier written notice of Acceptance upon completion of successful Acceptance testing. Should VADOC 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, VADOC is unable to access the licensed functionalities of the Application, Supplier shall provide VADOC with such access, and VADOC's Application Users with their required access, within seven (7) days of written notice of inability to access, or as otherwise agreed between VADOC and Supplier in the Contract. Should Supplier fail to provide access to the licensed functionalities of the Application, VADOC may, in its sole discretion: (i) reject the Application in its entirety

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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 VADOC 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 Contract. In the event of such default, VADOC may, at its sole discretion, terminate the Contract, in whole or in part, for the Licensed Services to be provided thereunder by Supplier.

## **10. RECORDS AND AUDIT**

Supplier shall maintain accurate records and other evidence pertaining to the costs and expenses for all Licensed Services performed/delivered under this Contract in support of its charges invoiced to VADOC. The records will be to the extent and in such detail as will properly reflect all direct and indirect costs associated with the Contract. 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. VADOC 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 the Contract. Supplier shall preserve such records for three (3) years after termination/completion of the Licensed Services agreed to under this Contract.

## **11. APPLICATION AND LICENSED SERVICES SUPPORT**

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

### **A. Coverage**

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

### **B. Service Levels**

Within one (1) hour after a request from VADOC or VITA, in its governance role, 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 Attachment A, Table of Service Levels, Response and Resolution Times and Escalation Procedures for Licensed Services. In each case, VADOC may describe the problem by telephone or electronic mail or via a web site

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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 VADOC.

**C. Application Evolution**

Should Supplier merge or splinter the Application previously provided to VADOC, such action on the part of Supplier shall not in any way result in VADOC 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.

**12. SERVICE LEVELS AND REMEDIES**

**A. Availability**

Supplier's failure to make the Licensed Services Available to VADOC and its Application Users at least 99% of the time in any given month during the term of the Contract, excluding scheduled maintenance or excusable downtime, shall be deemed a service level default ("**Service Level Default**") and VADOC may obtain the non-exclusive remedies set forth in Attachment A, Table of Service Levels and Remedies for Licensed Services. For purposes of this Contract, "Available" means that VADOC and its Application Users are able to access all features and functions of the Application and Licensed Services required by VADOC, including but not limited to the Application and Supplier Product.

In the event VADOC is eligible for a 100% Service Level Credit under this Section during any given month of the term the Contract, VADOC may terminate the Contract 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 VADOC has given notice of termination pursuant to the Term and Termination section of this Contract or due to non-appropriation of funds, or VADOC 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 VADOC the amount of the appropriate Service Level Credit due for the period of default.

**B. Provisioning**

Incremental adds, access authorizations, moves or reductions, including disabled access updates, 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 VADOC'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.

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## **C. Reporting Requirements**

### **(i) Monthly Reports:**

By the 5<sup>th</sup> of each calendar month during the term of this Contract, Supplier shall provide VADOC with the following written monthly reports:

(a) Service Level Performance Report - a report that contains 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 VADOC.

(b) System/Application Patching Compliance Report – a report that illustrates that the supplier has installed security relevant software and firmware updates within 30 days of the release of the updates. .

(c) Scanning Reports (OS, Middleware, Applications and Interfaces) Report – a report that illustrates vulnerability scanning of Cloud Service Providers Operating Systems/infrastructure, databases and web applications(d) Geographic Locations of Data Being Hosted Report – a report that illustrates the location of Commonwealth data

### **(ii) Quarterly Reports:**

By the 5<sup>th</sup> day of the first month of a calendar quarter, during the term of this Contract, Supplier shall provide the Virginia Information Technologies Agency (VITA) with the following written quarterly report

(a) Summary Report of Intrusion Detection Scans and Intrusion Prevention Scans – a report that demonstrates that supplier protects Commonwealth data with intrusion monitoring tools from unauthorized access, modification and deletion.

Supplier shall submit a copy of each report to VITA at: [enterpriseservices@vita.virginia.gov](mailto:enterpriseservices@vita.virginia.gov).

Representatives of Supplier and VADOC, and VITA at its option, shall meet as often as may be reasonably requested by either party, but no less often than once each calendar quarter during the term of this Contract, 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 any other matters related to the above required reports and to this Contract in general that may be reasonably requested by either Supplier or VADOC or VITA. Supplier shall notify VITA of such meetings by email to: [enterpriseservices@vita.virginia.gov](mailto:enterpriseservices@vita.virginia.gov). VADOC or VITA may independently audit the report at its expense no more than two (2) times annually.

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**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 VADOC 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, VADOC may exercise all available rights and remedies under law and equity.

**13. CYBER SECURITY LIABILITY INSURANCE**

In addition to other insurance coverage requirements in the Contract, Supplier shall carry Cyber Security Liability insurance coverage in the amount of \$1,000,000 per occurrence.

**A. Application Escrow Agreement**

Supplier is providing a General Use or COTS Application and no custom built source code is authorized under this Contract. Therefore, Application Escrow is not required.

**B.** Should Supplier cease to do business, file bankruptcy or fail to support VADOC Supplier shall promptly make all VADOC Content available to VADOC as a native database export provided through Supplier's FTP server.

**14. CLOUD SERVICES WARRANTY**

Supplier warrants and represents to VADOC that Supplier will fulfill its contractual obligations and meet all needed requirements as described in the Contract as follows:

**A. Licensed Services, Application and Documentation**

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

i). Supplier represents and warrants (i) that it shall perform the Licensed Services in conformity to the specifications set forth in the requirements of this Contract 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.

ii). Supplier warrants that the Application and Licensed Services will conform in all material respects to the requirements set forth in this Contract. Supplier warrants that the Application and 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.

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ii). The Application provided hereunder is at the current release level unless VADOC has specified an older version in the Contract;

iv). No corrections, work arounds or future Application releases provided by Supplier shall degrade the Application, cause any other warranty to be breached, or require VADOC to acquire additional hardware equipment, software, or licensed services;

v). 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.

vi). Supplier warrants that the Documentation and all modifications or amendments thereto which Supplier is required to provide under this Contract shall be sufficient in detail and content to allow a user to understand and utilize fully the Application without reference to any other materials or information.

**B. 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 VADOC of any occurrence of such as soon as possible after discovery and provide VADOC with fixes or upgrades for security vulnerabilities within 90 days of discovery.

**C. 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.

**D. 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 VADOC or its Application Users. In addition, Supplier warrants that VADOC 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

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tokens that enable continuous use of the Application by VADOC and its Application Users during the term of this Contract. Supplier further warrants that the Application and Licensed Services are compatible with and will operate successfully on the equipment.

**E. Malicious Code**

Supplier has used commercially reasonable efforts through quality assurance procedures to verify that there are no Computer Viruses or undocumented features in any of the Deliverables, as obligated and provided by Supplier under the Contract. Supplier has used the best available means to scan any media provided to VADOC. Supplier warrants that the Deliverables, as obligated and provided by Supplier under the Contract, do not contain any embedded device or code (e.g., time bomb) that is intended to obstruct or prevent VADOC's use of the deliverables.

Notwithstanding any rights granted under this Contract or at law, Supplier waives, under any and all circumstances, any right it has or may have in the future to exercise its license termination rights by electronic means. Supplier agrees that VADOC may pursue all remedies provided under law in the event of a breach or threatened breach of this section, including injunctive or other equitable relief.

**F. Open Source**

Supplier will notify VADOC if any deliverables, as obligated and provided by Supplier, contain any Open Source code and identify the specific Open Source License that applies to any embedded code dependent on Open Source code, provided by Supplier under this Contract.

**G. Supplier's Viability**

Supplier has the financial capacity to perform and continue to perform its obligations under this Contract. 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. Further, Supplier is not prohibited by any contract, or order by any court of competent jurisdiction from entering into this Contract.

**H. Supplier's Past Experience**

Supplier has met similar contractual obligations and fulfilled the requirements as set forth 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.

**15. ACCEPTABLE USE POLICY (IF APPLICABLE)**

VADOC agrees to abide by Supplier's Acceptable Use Policy ("AUP"), as amended by the parties hereby and incorporated in the Contract. Because certain standard clauses that may appear in, or be incorporated by reference into, Supplier's standard AUP cannot be accepted by VADOC, and in consideration of the convenience of using that form, and this form, without

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the necessity of specifically negotiating a separate contract document, the parties hereto specifically agree that:

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

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

## **16. THIRD PARTY TERMS AND CONDITIONS**

Should Supplier's provision of the Licensed Services or any performance obligations under the Contract include third-party terms and conditions, the aforementioned referenced Commonwealth security policies standards and guidelines; i.e., SEC501 and SEC525, shall take precedence over any third party terms and conditions. For the purposes of statutory law as referenced and incorporated in the Contract, if there is any conflict with any third party terms, such statutory law shall govern.

## **17. LIABILITY**

### **A. Supplier Liability**

Except for liability arising from any combination of:

- i. any intentional or willful misconduct, fraud, or recklessness of Supplier or any Supplier personnel; or
- ii. any act or omission of Supplier or any Supplier personnel that results in claims for bodily injury, including death, and damage to real property or tangible property resulting from the negligence of a Supplier or any Supplier personnel; or
- iii. Supplier's indemnification, confidentiality, security compliance, or data privacy and security obligations as specified in this Contract,

Supplier's indemnification obligations and liability shall not exceed, in aggregate, twice the value of the Contract. This limitation will apply on a per-incident basis; it being understood that multiple losses stemming from the same root cause constitute a single incident.

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**B. Limitation of Liability**

Supplier will be liable for damages caused by its employees, agents, or subcontractors. Except for liability arising out of a Party's negligence or willful misconduct, neither Party will be liable to the 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 of these damages.

**VI. PRIMARY CONTACT:**

The Primary contacts for this Contract Rider Agreement are as follows:

Virginia Department of Corrections  
Community Operations:

Name: Dale Jacobson, Chief OLU/Voice Verification Biometrics  
Address: 6900 Atmore Drive  
Richmond, Virginia 23225  
Phone: 804.695.7803  
E-mail: [dale.jacobson@vadoc.virginia.gov](mailto:dale.jacobson@vadoc.virginia.gov)

Virginia Department of Corrections  
Procurement:

Name: Nicole L. Hicks, VCO, VCA, Procurement Specialist Senior  
Address: 6900 Atmore Drive  
Richmond, Virginia 23225  
Phone: 804.887.8224  
E-mail: [nicole.hicks@vadoc.virginia.gov](mailto:nicole.hicks@vadoc.virginia.gov)

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## **ATTACHMENT A**

### **TABLE OF SERVICE LEVELS AND REMEDIES FOR LICENSED SERVICES**

There are many factors that contribute to or affect an application's availability, speed, functionality, security and other characteristics that may normally be subject to an SLA. Those factors that can be controlled by ShadowTrack or its Vendors are generally covered by the appropriate Service Level Agreement (SLA).

#### **Not Covered by SLA**

Some factors that affect the end-user experiences cannot reasonably be controlled by a Vendor and therefore cannot reasonably be covered by an SLA. For example, if the Client is running their application on a slow computer or across a slow internal network, the application may perform more slowly. SLA deficiencies caused by factors such as these are not subject to any SLA remedy.

#### **SLA Focuses on Factors Controllable by Provider**

All SLA performance factors are provider-only, meaning that they pertain to factors reasonably controlled by the provider. For example, in a cloud hosted environment the provider controls how the application is provided to the internet, but the provider does not control how the application is received from the internet or processed by the Client. In all cases, Client-facing performance values in the SLA presume that the Client is using currently supported technologies and that they are running at reasonable performance levels, and that only provider-centric factors are deficient.

#### **Factors Covered by the SLA**

##### **ShadowTrack Facilitated Cloud Servers**

All modern cloud-based web applications are powered by computers known as "Servers". These computers can be physical or virtual and can come in a variety of configurations and sizes. Cloud Servers directly impact the performance of the Client's application and are covered within the SLA when utilizing Cloud Servers that are facilitated by ShadowTrack.

##### **Software Performance on Cloud Servers**

Software is processed by the Server, and its performance is directly attributable to the efficiency with which it was written, the language it was written in, and volume that is demanded from it by the Users. Server Software Performance is covered within the appropriate SLA.

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**Cloud Server-side Network**

Cloud Server Software runs on Servers that sit behind a Network. The Network can include a wide range of routers and switches, network connections, firewalls, and more. These components are covered within the appropriate SLA on Clouds managed by ShadowTrack.

**Cloud Server-side Connection to Internet**

Once Web Server Software is processed, the Server sends it to the User through the Internet. The Server's connection to the Internet can be a factor in Application Performance. The Server-side Connection to the Internet is covered within the appropriate SLA for ShadowTrack-facilitated Clouds.

**Software Performance on Supported Browsers and Hardware**

A supported browser must be used, and it must be running on performing hardware. Supported client technologies are necessary for coverage by the appropriate SLA.

**Factors Not Covered by the SLA****Internet**

Internet performance is not covered by the SLA.

**Client Managed Servers**

Servers such as Private Cloud servers that are under management of the Client or their chosen 3rd Party Vendor are not covered by the SLA.

**Client Managed Server-Side Networks**

Networks managed by the Client or their chosen 3rd Party Vendor are not covered by the SLA.

**Client Managed Server-Side Internet**

Server-side Internet connections managed by the Client or their chosen 3rd Party Vendor are not covered by the SLA.

**Users Internet**

Client-side Internet connections managed by the Client or their chosen 3rd Party Vendor are not covered by the SLA.

**Users Network**

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Network performance on networks managed by the Client or their chosen 3rd Party Vendor are not covered by the SLA.

**Users Computer**

Deficient performance by the User’s computer is not covered by the SLA.

**Users Browser**

Deficient browsers used by the User to run the Application are not covered by the SLA.

**Specific Application Features**

Application Users enjoy a wide range of features, but applications can also exhibit undesired features or bugs. These characteristics of the application itself, whether desired or undesired, are not covered by this SLA. Direct consequences of these features, such as undesired behavior of servers, networks, vendor actions etc., are also not covered by this SLA.

**Service Specific Terms**

This Service Level Agreement (SLA) is provided to assure Client’s that their software will always perform consistently and at peak levels.

**SLA**

During the Term of the Agreement for the Covered Service, the Covered Service will provide the Metrics to Customer as specified in the table below (collectively, the “Service Level Objective ” or “SLO”). If ShadowTrack does not meet the SLO, and if Customer meets its obligations under this SLA, Customer will be eligible to receive the Financial Credits described for the period of Unavailability. This SLA states Customer’s sole and exclusive remedy for any failure by ShadowTrack to meet the SLO. ShadowTrack utilizes third party services to meet the SLO outlined. ShadowTrack reserves the right to change third party service providers to provide the same or better SLO.

<b>SLA</b>	<b>Metric</b>	<b>Remedy</b>
Availability	99.0% Monthly	Financial Credits

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Response Time (Fix/work-around within)	< 8 hours inside of business hours < 24 hours outside of business hours	Financial Credits
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**Definitions and Terms**

<b>Term</b>	<b>Definition</b>
Covered Service	Covered service includes instances hosted as part of the ShadowTrack application.
Uptime	Uptime refers to the target server’s ability to receive and process an input, typically a request from the internet.
Downtime	Downtime is the opposite of Uptime, and it occurs when a target server is unable to receive an input from the internet.
Availability	<p>Availability refers to a specific service’s ability to process an input. In this case, the specific service is the ShadowTrack Application governed by this SLA, and it has Availability during a period of Uptime when it is able to process some User request and return a result.</p> <p>There are three levels of Availability SLA, Standard, High Availability, and Ultra High Availability. Unless otherwise stated in an Order, your SLA is for Standard Availability.</p> <p>Note that the nature of the result returned is a function of the features of the software application itself. Therefore, while the existence of the result is covered by this SLA, its characteristics or qualities are not. Additionally, a perceived lack of Availability caused by the natural and intended behavior (including “bugs”) of a software Application (for example an application that invokes an unprotected infinite loop, or an application that generates inordinate requests for the resources it is assigned) does not constitute a</p>

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period of Unavailability, as the application is functioning as it was configured to.

**Unavailability** Unavailability is the opposite of Availability, and occurs during a period of Uptime when the ShadowTrack Application governed by this SLA is not able to receive some User request or to return some User result.

**Planned Maintenance** Planned Maintenance is an important part of the SLA as it allows the Client to receive the most recent patches and updates and to maintain the highest levels of performance, security and compliance. ~~Planned Maintenance~~ requires advance notice, is typically scheduled during periods of minimum usage, and is not counted as Downtime or Unavailability.

**Unplanned Maintenance** From time to time during a period of Uptime, emergency maintenance will be required to maintain the highest levels of performance, security and compliance. This Unplanned Maintenance does not require advance notice, could be scheduled at any time but is usually scheduled during periods of minimum usage, and is counted as Unavailability.

**Response Time** During a period of Unavailability, Response time represents the time it takes for a ShadowTrack support team member to identify the Unavailability and to initiate a Resolution process. Response time is calculated using the following formula:  
Response Time = Time Resolution Begins – Time Unavailability Began

**Resolution Time** During a period of Unavailability (or other deficient metric), Resolution time represents the time it takes for a ShadowTrack support team member to restore Availability (or other deficient metric). It is calculated using the following formula:  
Resolution Time = Time Metric is Restored – Time Metric Became Deficient

**Metric** Metrics are either performing or for some period of time they may be underperforming. Underperforming Metrics are addressed by the SLA and may entitle the Customer to a Remedy.

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% Percentage Availability Metric (or % Percentage Uptime)

Frequently, Uptime and/or Availability Metrics are expressed as a ratio or a percentage as described below (example provided for Uptime and Downtime; also substitute the phrase “Availability” for “Uptime” and “Unavailability” for “Downtime”):

<b>Uptime %</b>	<b>Downtime per year</b>	<b>Downtime per month</b>	<b>Downtime per week</b>	<b>Downtime per day</b>
90%	36.5 days	72 hours	16.8 hours	2.4 hours
95%	18.25 days	36 hours	8.4 hours	1.2 hours
97%	10.96 days	21.6 hours	5.04 hours	43.2 minutes
98%	7.30 days	14.4 hours	3.36 hours	28.8 minutes
99%	3.65 days	7.20 hours	1.68 hours	14.4 minutes

Remedy

Remedies are the benefits provided to the Client as a result of an underperformance that is covered by this SLA. For any period of Unavailability, there are two possible Remedies;

1. The products and services necessary to restore Availability
2. Financial Credits for periods of excessive Unavailability

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Customer Must Request Financial Credit In order to receive any of the Financial Credits described above, Customer must notify ShadowTrack technical support within five days from the time Customer becomes eligible to receive a Financial Credit. Customer must also provide ShadowTrack with server log files showing loss of external connectivity errors or other SLA metrics and the date and time those errors occurred. If Customer does not comply with these requirements, Customer will forfeit its right to receive a Financial Credit. If a dispute arises with respect to an SLA, ShadowTrack will make a determination in good faith based on its system logs, monitoring reports, configuration records, and other available information, which ShadowTrack will make available for auditing by Customer at Customer's request.

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Financial Credit Calculation The Financial Credit will be calculated as follows:  
Note that Financial Credits do not "stack" across multiple metrics or multiple SLA's during any period of underperformance. In other words, if multiple metrics underperform at the same time, the Financial Credit will only be calculated once as a Remedy for all of the simultaneously underperforming metrics. The aggregate maximum number of Financial Credits to be issued by ShadowTrack to Customer for any and all underperforming Periods that occur in a single specified period will not exceed the amount due for the Covered Service for the applicable period as outlined below:

- Less than 99% to 98% uptime = 05% Credit
- Less than 98% to 97% uptime = 10% Credit
- Less than 97% to 95% uptime = 20% Credit
- Less than 95% to 90% uptime = 30% Credit
- Less than 90% uptime = max credit of 50% Credit

Financial Credits will be made in the form of a monetary credit applied to future use of the Service and will be applied within 60 days after the Financial Credit was requested.

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SLA  
Exclusions

The SLA does not apply to any: (a) features designated Alpha or Beta (unless otherwise set forth in the associated Documentation), (b) features excluded from the SLA (in the associated Documentation), or (c) errors: (i) caused by factors outside of ShadowTrack's reasonable control; (ii) that resulted from Customer's software or hardware or third party software or hardware, or both. A complete detailing of SLA Exclusions can be found above and are hereby fully incorporated herein as the list of SLA Exclusions applicable to this Agreement.

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**ATTACHMENT B – GSA PRICE SCHEDULE**



**GENERAL SERVICES ADMINISTRATION**

**Federal Supply Service**  
*Authorized Federal Supply Schedule Price List*

On-line access to contract ordering information, terms and conditions, up-to-date pricing, and the option to create an electronic delivery order is available through **GSA Advantage!**™, a menu-driven database system. The INTERNET address for **GSA Advantage!**™ is: **GSAAdvantage.gov**.

**Multiple Award Schedule (MAS)**

**Federal Supply Group:** Professional Services

**Contract Number:** 47QSWA19D004G

**For more information on ordering from Federal Supply Schedules go to the GSA Schedules page at GSA.gov.**

**Contract Period:** March 1, 2019 through February 29, 2024

**Effective as of PS-0014 dated 04/01/2021**

ShadowTrack Technologies, Inc.  
1001 Ochsner Blvd Ste 425A  
Covington, LA 70433-8152  
Robert Magaletta, President & CEO  
robert@shadowtrack.com  
V: 985-867-3771  
F: 985-867-3771

Contractor's internet address/web site where schedule information can be found: [www.shadowtrack.com](http://www.shadowtrack.com)

Business size: Small

1a. Table of awarded special item number(s) with appropriate cross-reference to item descriptions and awarded price(s).

334290: Security and Detection Systems  
OLM: Order Level Materials

1b.

SERVICE	GSA PRICE
Central Station Monitoring	25,001-Above Enrollees: 5.80

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1c.

The ShadowtrackONE biometric platform is a powerful and complete community supervision package, that includes a suite of comprehensive compliance services, that can be implemented individually, or as a complete solution, with no geographical restrictions. ShadowtrackONE can be accessed from any smartphone, tablet, or computer. The platform allows users to manage their caseload activity, enroll new participants, enable monitoring services, schedule monitoring services and events, and electronically communicate with the enrollee. Users can view all tracking and compliance history, enter notes, and generate custom reports.

The suite consists of the following core elements and services:

**CORE ELEMENTS:**

- Voice Verification
- Facial Recognition
- Mobile Application
- Tamper Proof Tracking Device

**CORE SERVICES:**

- ShadowInteractive
- ShadowNotice
- ShadowVoice
- ShadowPass
- ShadowTest
- ShadowFace
- ShadowLocate
- ShadowView
- ShadowPay
- ShadowChat
- ShadowNotes
- ShadowPhone
- ShadowWatch

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## Description of Services

### ShadowInteractive

ShadowInteractive allows an enrollee to answer a series of questions without having to meet face to face with their supervising agent. Prior to initiating a ShadowInteractive session, the enrollee must pass facial recognition and a valid location must be determined. Upon success of verification, the enrollee will answer a set of questions through typing the answers on their mobile device, speaking the answers using the device microphone, or calling into the Shadowtrack IVR.

### ShadowNotice

ShadowNotice allows the user to communicate with one or more enrollees by delivering scheduled notifications. Notifications can be placed via Text to Speech (TTS), SMS, Voicemail, or Email. This automated solution eliminates the need to communicate with enrollees directly thus increasing user efficiency. The user can schedule one time or recurring notifications for upcoming appointments, court dates, or probation related reminders. The Shadowtrack application logs the date and time and the details of the notification message in the enrollee's profile.

### ShadowVoice

ShadowVoice is a voice verification service that is utilized with the Shadowtrack enrollee mobile app. This feature is used to identify the enrollee during curfew calls. ShadowVoice is used as the primary form of verification for all curfew calls and can be paired with the ShadowLocate and ShadowFace services. This biometric technology allows the user to verify the enrollee's identity and location simultaneously.

### ShadowPass

ShadowPass allows the user to monitor the enrollee's approved travel. This service allows the user to schedule a travel return date via the enrollee profile. The enrollee is then required to call and check in via the Shadowtrack application prior to the return travel date to remain compliant. The enrollee's location is simultaneously verified during the check in call to ensure they are in fact back at their home location.

### ShadowTest

The ShadowTest service offers a turnkey-solution to refine the entire drug testing process from start to finish. Shadowtrack's Random Drug Test feature is a solution for all aspects of drug testing including payment collection, verified notifications, integration with testing facilities, and final test results integrated into the platform. This feature allows the user the ability to create random or scheduled drug testing notifications. The frequency of drug testing notifications are customized according to the agency's needs. The drug testing notification can be placed to the enrollee via an automated telephone call initiated by the Shadowtrack application, by email, or by SMS utilizing multi-factor drug test verification. The SMS multi-factor drug test verification requires the enrollee to confirm they have received the text to report for testing. The date and time the message was confirmed is listed. If the enrollee does not respond and confirm receipt of the notification, Shadowtrack will initiate an automated phone call and deliver the notification via text to speech. This feature also offers the ability for the enrollee to call into the automated system to hear the notification if the original call was missed. The date and time the message was listened to will be listed. Shadowtrack will also place an SMS message to enrollee's utilizing a mobile phone if they miss the automated telephone call. The user can conveniently manage drug testing for their enrollees with Random Drug Tests multiple detailed reports that display who was notified to report for testing for any past, current, or future dates specified.



### ShadowFace

**ShadowFace** is a facial recognition feature that is utilized with the Shadowtrack enrollee mobile app. This feature can be used as a secondary form of verification to voice verification. This feature can also be used as a primary form of verification for hearing impaired enrollees. This service is paired with the ShadowLocate service so that the identity and location of the enrollee are verified simultaneously.

### ShadowLocate

**ShadowLocate** allows the user to verify the enrollees location on a random basis to ensure they are located within an inclusion zone during the designated curfew period. This feature is utilized with the Shadowtrack enrollee mobile app so that the GPS and WIFI technology of the mobile phone are used to determine location. This service can be used as a standalone feature to silently locate the enrollee or it can be paired with Shadowtrack's voice and facial recognition to verify the enrollee location and identity simultaneously.

### ShadowView

**ShadowView** eliminates face to face contact by utilizing an interactive video session similar to facetime. ShadowView is used to conduct live video sessions with the enrollee while being able to see the enrollee's surroundings and verify their location at the same time.

### ShadowPay

**ShadowPay** allows users to manage supervision related fees within the Shadowtrack application. Users can process debits and credits and view a detailed register with a line by line record of all transactions via the enrollee profile. Users can send scheduled payment reminders and notifications when payments are past due. This service also allows enrollees to make online payments utilizing a custom payment portal.

### ShadowChat

**ShadowChat** allows the user to engage in a live chat session with the enrollee. This feature allows for real time communication between the user and the enrollee via the ShadowView App and ShadowTrack enrollee mobile app. All ShadowChat calls are logged on the enrollee profile in the ShadowTrack application so there is a record of all communication with the enrollee.

### ShadowNotes

**ShadowNotes** allows the user the convenience of typing case notes regarding the enrollee via the ShadowView app. This feature allows the user to easily note any pertinent information regarding the enrollee. These notes are then logged on the enrollee profile in the ShadowTrack application.

### ShadowPhone

**ShadowPhone** allows the user to place a phone call to the enrollee via the ShadowView app. This phone call is then logged on the enrollee profile in the ShadowTrack application so there is a record of all communication with the enrollee.

### ShadoWatch

The ShadoWatch incorporates Wi-Fi, GPS, and network location technology to increase location accuracy while enhancing battery life. The ShadoWatch features an attractive tamper proof wrist watch with color display. The watch is also waterproof and includes motion sensors, vibration alerts, messaging, heart rate, and blood pressure detection. The watch offers the ability to communicate with the enrollee by using two-way voice or electronic messaging. For more information on the ShadoWatch please access our brochure via this link: <https://www.flipsnack.com/shadowtrack/shadowwatch-tamperproof-tracking-device.htm>



2. Maximum order. 334290: \$250,000; OLM: \$250,000
3. Minimum order. \$100.00
4. Geographic coverage (delivery area). 50 United States; District of Columbia; Puerto Rico
5. Point(s) of production (city, county, and State or foreign country). Not Applicable
6. Discount from list prices or statement of net price. Net prices set forth above.
7. Quantity discounts. None
8. Prompt payment terms. Net 30
9. Foreign items (list items by country of origin). None.
- 10a. Time of delivery. (Contractor insert number of days.) As negotiated with ordering agency and the contractor.
- 10b. Expedited Delivery. As negotiated with ordering agency and the contractor.
- 10c. Overnight and 2-day delivery. As negotiated with ordering agency and the contractor.
- 10d. Urgent Requirements. As negotiated with ordering agency and the contractor.
11. F.O.B. point(s). Destination.
- 12a. Ordering address.  
1001 Ochsner Blvd Ste 425A  
Covington, LA 70433-8152
- 12b. Ordering procedures: For supplies and services, the ordering procedures, information on Blanket Purchase Agreements (BPA's) are found in Federal Acquisition Regulation (FAR) 8.405-3.
13. Payment address.  
1001 Ochsner Blvd Ste 425A  
Covington, LA 70433-8152
14. Warranty provision. None.
15. Export packing charges, if applicable. Not Applicable
16. Terms and conditions of rental, maintenance, and repair (if applicable). Not Applicable
17. Terms and conditions of installation (if applicable). Not Applicable
- 18a. Terms and conditions of repair parts indicating date of parts price lists and any discounts from list prices (if applicable). Not Applicable
- 18b. Terms and conditions for any other services (if applicable). Not Applicable
19. List of service and distribution points (if applicable). Not Applicable
20. List of participating dealers (if applicable). Not Applicable
21. Preventive maintenance (if applicable). Not Applicable
- 22a. Special attributes such as environmental attributes (e.g., recycled content, energy efficiency, and/or reduced pollutants). Not Applicable



22b. If applicable, indicate that Section 508 compliance information is available on Electronic and Information Technology (EIT) supplies and services and show where full details can be found (e.g. contractor's website or other location.) The EIT standards can be found at: [www.Section508.gov/](http://www.Section508.gov/). [www.shadowtrack.com](http://www.shadowtrack.com)

23. Data Universal Number System (DUNS) number. 083759394

24. Contractor is registered in the SAM database. Current and valid.



**Final Pricing:**  
The rates shown below include the Industrial Funding Fee (IFF) of 0.75%.

ShadowtrackONE Suite of Services	Unit	0-100 Enrollees	101-5000 Enrollees	5,001-10,000 Enrollees	10,001-20,000 Enrollees	20,001-25,000 Enrollees	25,001-Above Enrollees
ShadowInteractive <sup>1</sup> ShadowNotice ShadowVoice ShadowPass ShadowTest ShadowFace ShadowLocate ShadowView ShadowPay <sup>2</sup> ShadowChat ShadowNotes ShadowPhone	Month	\$30.00	\$20.00	\$15.00	\$6.25	\$6.13	\$6.00
ShadowWatch Monitoring	Day	\$5.00	\$4.75	\$4.50	\$4.25	\$4.00	\$3.75
Central Station Monitoring	Day	\$1.00	\$0.80	\$0.80	\$0.80	\$0.80	\$0.80

<sup>1</sup> Voice verification is included with the price of the interview

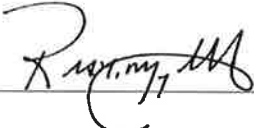


<sup>2</sup> ShadowPay - Service is available to the state at no cost but if the service is utilized, the enrollee pays a 5% technology fee (In states and entities where applicable)

Service Contract Labor Standards: The Service Contract Labor Standards (SCLS), formerly known as the Service Contract Act (SCA), is applicable to this contract as it applies to the entire Professional Services Schedule (PSS) Schedule and all services provided. While no specific labor categories have been identified as being subject to SCLS/SCA due to exemptions for professional employees (FAR 22.1101, 22.1102 and 29 CFR 541.300), this contract still maintains the provisions and protections for SCLS/SCA eligible labor categories. If and / or when the contractor adds SCLS/SCA labor categories to the contract through the modification process, the contractor must inform the Contracting Officer and establish a SCLS/SCA matrix identifying the GSA labor category titles, the occupational code, SCLS/SCA labor category titles and the applicable WD number. Failure to do so may result in cancellation of the contract.



This Contract Rider Agreement DOC-22-032 and GSA Contract # 47QSWA19D004G, together with its supporting documentation, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Except as provided herein, all terms and conditions of this Contract Rider Agreement and GSA Contract # DOC-20-032 / 47QSWA19D004G are in full force and effect.

**IN WITNESS WHEREOF** the parties have caused this Contract Rider Agreement to be duly executed intending to be bound thereby.

CONTRACTOR:	PURCHASING AGENCY:
Signature: 	Signature: 
Name (printed): Robert L. Magaletta	Name (printed): Harold W. Clarke
Title: President & CEO	Title: Director
Date: 01-28-2022	Date: 

**Note:** This public body does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, sexual orientation, gender identity, political affiliation, or veteran status or any other basis prohibited by state law relating to discrimination in employment. Faith-based organizations may request that the issuing agency not include subparagraph 1.f in General Terms and Condition C. Such a request shall be in writing and explain why an exception should be made in that invitation to bid or request for proposal.

**DOC-22-032, Shadowtrack Technologies, Inc.**

**GSA#47QSWA19D004G**

