# SPECIAL TERMS AND CONDITIONS INFORMATION TECHNOLOGY GOODS AND SERVICES

The following is a list of Special Terms and Conditions that may be used at the buyer’s discretion in Information Technology IFBs and RFPs as appropriate. The Commonwealth’s General Terms & Conditions, any other special terms and conditions as listed in previous sections of this appendix, and any specific terms developed by the buyer should also be included as needed.

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52. **ACCEPTANCE AND TESTING**: Final acceptance will be based on the successful delivery and performance by the contractor of its contractual commitments at the location(s) designated in the contract, including completed and successful acceptance testing as agreed to between the Commonwealth and the contractor. Acceptance will be in conformance with the functional, performance, operational, compatibility, acceptance testing criteria and other parameters and characteristics of the services, solution, software, hardware and deliverables, as authorized by the contract and such other parameters, characteristics, or performance standards that may be agreed upon in writing by the Commonwealth and the contractor.

# When used: In information technology solicitations and contracts to address what final acceptance is for services, software, software maintenance, hardware, a solution or a system and related deliverables.

1. **CERTIFICATION TESTING PERIOD – SYSTEMS, SOLUTIONS, OR SOFTWARE**: The system, solution and/or software specified in the contract shall be considered ready for testing upon receipt of documentation from the contractor that a successful system audit or diagnostic test was performed at the site demonstrating that the system meets the minimum design/performance capabilities stipulated in the purchase agreement. The day testing period shall commence on the next calendar day following receipt of this documentation. Upon request, the procuring agency will provide written confirmation of its acceptance following successful completion of the certification period. Such acceptance may not be conclusive of complete conformance in all respects to the contract specifications and other requirements, or the nonexistence of potential latent defects.

# When Used: In solicitations for software, a solution or a system requiring the installation of one or multiple components and configuration prior to system operation. Testing should be based on the agency’s expected operational usage including peak use scenarios. Specific certification criteria should be stated either in the specification or as a part of this provision. Often the solicitation will require the offeror to propose testing criteria or require a test plan deliverable that becomes a milestone deliverable. Agency should approve any such test plan.

1. **CERTIFICATION TESTING PERIOD - HARDWARE:** Hardware ordered herein shall be subject to inspection and a 30-day testing period by the procuring agency. Contractor hardware which is found to not meet the specifications or other requirements of the purchase agreement may be rejected and returned to the vendor at no cost (including return transportation) by the procuring agency. Unless otherwise notified or mutually agreed, acceptance shall become effective at the end of the 30-day testing period. Such acceptance may not be conclusive of complete conformance in all respects to the contract specifications and other requirements, or the nonexistence of potential latent defects.

# When Used: In solicitations for technology hardware requiring the integration of one or multiple components for utilization. Specific certification/performance criteria should be stated either in the specification or as a part of this provision.

1. **COMPONENT WARRANTY:** Contractor warrants that for any software or deliverable (“Component”) provided under the contract, the applicable warranty period shall be the period from written acceptance of the Component until final acceptance of the solution.

# When Used: In solicitations for a solution.

1. **CONFIDENTIALITY (Commonwealth):** The Commonwealth agrees that neither it nor its employees, representatives, or agents shall knowingly divulge any proprietary information with respect to the operation of the software, the technology embodied therein, or any other trade secret or proprietary information related thereto, except as specifically authorized by the contractor in writing or as required by the Freedom of Information Act or similar law. It shall be the contractor’s responsibility to fully comply with § 2.2-4342F of the *Code of Virginia*. All trade secrets or proprietary information must be identified in writing or other tangible form and conspicuously labeled as “proprietary” either prior to or at the time of submission to the Commonwealth.

# When Used: In solicitations and contracts for commercially developed software that has been patented, copyrighted, otherwise protected by law, or when it is anticipated the vendor may claim that the software contains trade secrets or proprietary information.

1. **CONFIDENTIALITY (Contractor):** 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 will not be divulged without the individual’s and the agency’s written consent. Any information to be disclosed, except to the agency, must be in summary, statistical, or other form which does not identify particular individuals. Contractors and their employees working on this project will be required to sign the Confidentiality statement in this solicitation.

# When Used: In solicitations and contracts when Commonwealth proprietary information or confidential data needs protection.

1. **CURRENT SOFTWARE VERSION:** Unless otherwise specified by the procuring agency, any software provided under the contract shall be the current release version available to the general public as of the date of contract execution.

# When Used: For solicitations and contracts for software, hardware (that has embedded system software), a solution or a system.

1. **DEFINITION - COMPONENT**: Software or deliverable delivered by contractor under the contract for the system or solution being provided.

# When used: In solicitations and contracts for a solution.

1. **DEFINITION - SOFTWARE:** If software is authorized under the contract, means the programs and code provided by contractor under the contract as a component(s) of any deliverable or component of any solution, and any subsequent modification of such programs and code, excluding work product. For COTS (boxed) software, means the programs and code, and any subsequent releases, provided by contractor under the contract as described on contractor's US and International price lists in effect at time of contract award. For software maintenance contracts, software also includes the programs and code provided by contractor under the contact in the form of software updates.

# When Used: In solicitations and contracts for services, software, software maintenance, a solution or a system.

1. **DEFINITION - SOFTWARE PUBLISHER:** The third-party licensor of the Software, other than the Supplier, provided by Supplier under this Contract.

# When Used: In solicitations and contracts for services, software, software maintenance, a solution or a system when third-party software could be proposed by the offeror.

1. **DEFINITION - SOLUTION:** The contractor’s contractually committed technical approach for solving a technology business objective and associated requirements as defined and authorized by the scope of the contract. Solution means all contractor and contractor’s third-party providers’ software or deliverable components making up the solution, including but not limited to software, hardware, configuration design, implementation, contractor- developed interfaces, services and work product.

# When Used: In solicitations and contracts for a solution.

1. **DEFINITION - SYSTEM:** As used herein, the term system shall include hardware and software, as applicable, which makes the system operational and includes any materials or supporting documentation. Such documentation may include but is not limited to: users’ guides, operations manuals with part lists, copies of all applicable warranties, and any other pertinent information necessary for the proper operation and maintenance of the system being acquired.

# When Used: In solicitations for hardware and software, other than a solution, to assure that the Commonwealth receives all supporting materials needed for utilization and maintenance of the purchased system.

1. **DEFINITION - SYSTEM SOFTWARE:** The operating system code, including software, firmware and microcode, (object code version) for each hardware product, including any subsequent revisions, as well as any applicable documentation.

# When Used: In solicitations and contracts for hardware that has embedded software to be operational.

1. **DEFINITION - UPDATE:** As applicable, any update, modification or new release of the software, system software, documentation or hardware that contractor makes generally available to its customers at no additional cost.software updates include patches, fixes, upgrades, enhancements, improvements, or access mode, including without limitation additional capabilities to or otherwise improve the functionality, increase the speed, efficiency, or base operation of the software.

# When Used: In solicitations and contracts for services, software, software maintenance, hardware that has embedded system software, a solution or a system.

1. **DEFINITION – WORK PRODUCT:** Inventions, combinations, machines, methods, formulae, techniques, processes, improvements, software designs, computer programs, strategies, specific computer-related know-how, data and original works of authorship (collectively, the "Work Product") discovered, created, or developed by contractor, or jointly by contractor and the Commonwealth in the performance of the contract. Work Product shall not include configuration of software.

# When Used: In solicitations and contracts for services, software, a solution or a system when work product could potentially be developed.

1. **DEMONSTRATIONS:** By submitting a bid or proposal, the bidder or offeror certifies that the specified hardware, software, solution or system is in productive use and capable of demonstration in the proposed configuration. The Commonwealth reserves the right to require bidders or offerors to demonstrate the functionality of proposed hardware, software, solution or system to its satisfaction prior to making an award decision. Such demonstration is intended to show that a vendor’s products will perform in a completely satisfactory manner and that they will meet or exceed the performance specifications contained in the solicitation. Failure by a vendor to promptly comply with a request for demonstration could result in their bid being rejected. Failure to reject shall not relieve the vendor of its obligation to fully comply with all requirements of the contract.

# When Used: In solicitations for hardware, software, a solution or a system. This will allow Commonwealth to verify the hardware, software, solution or system will satisfy the business needs and technical/functional requirements of the solicitation.

1. **ERRORS AND OMISSIONS INSURANCE:** In addition to other insurance coverages required in the contract, contractor shall carry Errors and Omissions insurance coverage in the amount of $2,000,000 per occurrence.

# When used: In information technology solicitations and contracts for a solution, software maintenance, a system, services, or hardware. The amount should be based on procuring agency’s project risk, its criticality and business continuity needs.

1. **EXCESSIVE DOWNTIME:** Unless otherwise agreed to in a Service Level Agreement in the contract, all hardware, software, solutions or systems furnished under the contract shall be capable of continuous operation. Should the hardware, software, solution or system become inoperable for a period of more than 24 hours, the contractor agrees to pro-rate maintenance charges to account for each full day of inoperability. The period of inoperability shall commence upon initial notification by the procuring agency. Unless otherwise described in specific cure and remedy clauses in the contract, in the event the hardware, software, solution or system remains inoperable for more than consecutive calendar days, the contractor shall promptly replace the hardware, software, solution, solution component or system at no charge upon request of the procuring agency. Such replacement shall be with new, unused product(s) of comparable quality, and must be installed and operational within days following the request for replacement.

# When Used: In solicitations for hardware, software, solutions or systems that are to be used on a continuous basis to support business operations and services, and when the contractor is responsible for providing support services maintenance.

1. **INTEROPERABILITY WARRANTY:** Contractor warrants that each component, regardless of the origin of the component, delivered under the contract shall be interoperable with other components so as to meet or exceed the performance specified in the contract’s requirements.

# When Used: In solicitations and contracts for a solution.

1. **LIMITATION OF USE - SOFTWARE:** The Commonwealth’s right to use software developed entirely at private expense may be limited by the contractor as stipulated in this contract. Notwithstanding any provision to the contrary however, the Commonwealth shall have at a minimum: unlimited use of the software on the equipment computers for which it is purchased; use of the software on a secondary system for backup purposes should the primary system become unavailable, malfunction, or is otherwise rendered inoperable; use of the software at another Commonwealth site should the system be entirely transferred to that location; the right to allow access by Commonwealth third-party governmental or commercial agents solely for the business of the Commonwealth, the right to make a backup copy for safekeeping; the right to modify or combine the software with other programs or materials at the Commonwealth’s risk; and the right to reproduce any and all documentation provided such reproduction is for the sole use of the Commonwealth. These rights are perpetual and irrevocable; in the event of any actual or alleged breach by the Commonwealth, the contractor’s sole remedy shall be to pursue a monetary claim in accordance with § 2.2-4363 of the *Code of Virginia*.

# When Used: In solicitations and contracts for software, software maintenance, a solution or a system.

1. **LIMITATION OF USE - SYSTEM SOFTWARE:** The Commonwealth or any agent of the Commonwealth may make a reasonable number of backup, archival, and disaster recovery copies of the system software. Any copies of the software or documentation made by the Commonwealth pursuant to the contract shall bear all copyright, trademarks and other proprietary notices included therein by contractor and, except as expressly authorized, neither the Commonwealth shall not distribute same to any third-party without contractor's prior written consent. The Commonwealth may distribute the system software and documentation if such distribution is incidental to transfer of hardware to which it has taken title. The Commonwealth may not resell the system software except if such resale is incidental to the resale of hardware to which the Commonwealth has taken title.

# When Used: In solicitations and contracts for hardware that has embedded system software to be functional.

1. **MAINTENANCE:** Upon expiration of the specified warranty period and at the Commonwealth’s option, the contractor shall provide up to additional one-year periods of on-site maintenance (including labor, parts, and travel) at the prices set forth in the pricing schedule. Maintenance shall not include external electrical work, providing supplies, and adding or removing accessories not provided for in the contract. Maintenance shall also not include repairs of damage resulting from: acts of God, transportation between state locations, negligence by state personnel, or other causes not related to ordinary use in the production environment in which installed. Each successive year of maintenance may be ordered by the Commonwealth in writing at least days prior to expiration of the existing maintenance period.

# When Used: In solicitations for hardware, software, a solution or a system when agency needs continuing maintenance support services. If used in software maintenance solicitations and contracts, modify to remove warranty period language.

1. **NEW HARDWARE:** Unless otherwise expressly stated in this solicitation, any hardware furnished under the contract shall be new, unused hardware.

# When Used: For hardware solicitations and contracts when used, reconditioned, or remanufactured hardware and parts are not acceptable.

1. **NO SUBSEQUENT, UNILATERAL MODIFICATIONS OF TERMS BY CONTRACTOR (“SHRINK- WRAP”):**

Notwithstanding any other provision or other unilateral license terms which may be issued by contractor after the Effective Date of the contract, for software or system software licensed under this contract, or the fact that such other agreement may be affixed to or accompany the software or system software upon delivery (“shrink wrap”), the terms and conditions set forth herein shall supersede and govern licensing and delivery of all software and system software hereunder.

# When Used: In solicitations and contracts for software, hardware, a solution or a system.

1. **NON-VISUAL ACCESS TO TECHNOLOGY**: 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:

1. effective, interactive control and use of the Technology shall be readily achievable by nonvisual means;
2. 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;
3. Nonvisual Access Technology shall be integrated into any networks used to share communications among employees, program participants or the public; and
4. 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*.

# When Used: In all solicitations and contracts for information technology, unless the agency head determines and provides written justification for non-compliance using the exceptions listed above for the procurement file.

1. **OPEN SOURCE:** Contractor will notify the Commonwealth if the system, solution, components, deliverables, hardware, software, or updates, as obligated and provided by contractor, contains any Open Source code and identify the specific Open Source License that applies to any embedded code dependent on Open Source code, provided by contractor under the contract.

# When Used: In solicitations and contracts for software, software maintenance, hardware that has embedded system software to be operational, a solution or a system.

1. **OPERATIONAL COMPONENTS:** Unless otherwise requested in the solicitation, stated hardware prices shall include all cables, connectors, interfaces, documentation for all components, and any other items necessary for full systems operation at the user site. This does not include consumable supplies such as paper, tapes, disks, etc., unless such supplies are expressly identified in the pricing schedule.

# When Used: For system purchases requiring incidental hardware for the interconnection of system components.

1. **OWNERSHIP:** Contractor warrants that it has the right to perform and provide all contractual obligations and provide all needed services, software and hardware without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party.

# When Used: In all solicitations and contracts for the procurement of information technology products and services.

1. **OWNERSHIP OF INTELLECTUAL PROPERTY:** All copyright and patent rights to all papers, reports, forms, materials, creations, or inventions created or developed in the performance of this contract shall become the sole property of the Commonwealth. On request, the contractor shall promptly provide an acknowledgment or assignment in a tangible form satisfactory to the Commonwealth to evidence the Commonwealth’s sole ownership of specifically identified intellectual property created or developed in the performance of the contract.

# When Used: In all information technology solicitations and contracts which may result in deliverables that are developed to specifically meet the state's performance requirements, or when state employees will participate in the creation or invention of any copyright or patentable material.

1. **QUALIFIED REPAIR PERSONNEL:** All warranty or maintenance services to be performed on the items specified in this solicitation as well as any associated hardware or software shall be performed by qualified technicians properly authorized by the manufacturer to perform such services. The Commonwealth reserves the right to require proof of certification prior to award and at any time during the term of the contract.

# When Used: In solicitations and contracts for hardware, software, a solution or a system or services when the performance of warranty/maintenance must be performed by qualified personnel so as not to invalidate any warranty or support provided by the product manufacturer.

1. **RELOCATION OF HARDWARE:** Should it become necessary to move hardware covered by the contract to another location, the Commonwealth reserves the right to do so at its own expense. If contractor supervision is required, the Commonwealth will provide prior written notice of the move at least thirty (30) days in advance, in which case the contractor shall provide the required services and be reasonably compensated by the Commonwealth. Both the compensation to be paid and any adjustment to the maintenance terms resulting from the move shall be as mutually agreed between the parties. Regular maintenance charges shall be suspended on the day the hardware is dismantled and resume once the hardware is again certified ready for operational use.

# When Used: In solicitations and contracts for the acquisition of hardware for which the contractor is normally the sole provider of maintenance services.

1. **RENEWAL OF MAINTENANCE:** Maintenance of any hardware, software, solution or system specified in the resultant contract may be renewed by the mutual written agreement of both parties for an additional one-year period(s), under the terms and conditions of the original contract except as noted herein. Price changes may be negotiated at time of renewal; however, in no case shall the maintenance costs for a succeeding one-year period exceed the prior year’s contract price(s), increased or decreased by more than the percentage increase or decrease in the category of the CPI-W section of the US Bureau of Labor Statistics Consumer Price Index, for the latest twelve months for which statistics are available.

# When Used: In solicitations and contracts for hardware, software, solutions or systems where extended maintenance beyond the warranty period is not included in the pricing schedule, but the agency wishes to retain the option to acquire such maintenance services with a pre-established cap on the future cost of such services.

1. **REPAIR PARTS:** In the event that the performance of maintenance services under the contract results in a need to replace defective parts or components, such items may only be replaced by new parts or components. In no instance shall the contractor be permitted to replace defective parts or components with refurbished, remanufactured, or surplus items without prior written authorization of the Commonwealth.

# When Used: In solicitations and contracts for computer hardware, solutions or systems that require maintenance after the sale, and the agency wishes to have defective parts or components replaced only by new parts or components.

1. **SECURITY COMPLIANCE:** Contractor agrees to comply with all provisions of the then-current Commonwealth of Virginia security procedures, published by the Virginia Information Technologies Agency (VITA) and which may be found at: (<https://www.vita.virginia.gov/it-governance/itrm-policies-standards/>) or a successor URL(s), as are pertinent to contractor's operation. Contractor further agrees to comply with all provisions of the relevant Commonwealth agency’s then-current security procedures as are pertinent to contractor's operation and which have been supplied to contractor by the Commonwealth agency. Contractor shall also comply with all applicable federal, state and local laws and regulations. For any Commonwealth location, 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 contractor employee or agent, additional forms which may include non-disclosure agreements to be signed by contractor's employees or agents acknowledging that the Commonwealth information with which such employees and agents come into contact while at the Commonwealth site is confidential and proprietary.

Any unauthorized release of proprietary or personal information by the contractor or an employee or agent of contractor shall constitute a breach of its obligations under this Section and the contract. Contractor shall immediately notify the Commonwealth of any Breach of Unencrypted and Unredacted Personal Information, as those terms are defined in Virginia Code §18.2-186.6, and other personal identifying information, such as insurance data or date of birth, provided by the Commonwealth to Contractor. Contractor shall provide the Commonwealth, including VITA, the opportunity to participate in the investigation of the Breach and to exercise control over reporting the unauthorized disclosure, to the extent permitted by law.

Contractor shall indemnify, defend, and hold the Commonwealth, VITA, their officers, directors, employees and agents harmless from and against any and all fines, penalties (whether criminal or civil), judgments, damages and assessments, including reasonable expenses suffered by, accrued against, or charged to or recoverable from the Commonwealth, VITA, their officers, directors, agents or employees, on account of the failure of Contractor to perform its obligations pursuant this Section.

# When Used: in all information technology solicitations and contracts.

1. **SOFTWARE DISPOSITION:** Unless otherwise instructed by the contractor, the Commonwealth shall render unusable all copies of software acquired under the contract within thirty (30) days of termination of its license, except that the Commonwealth does reserve the right to retain one copy of the software for archival purposes when appropriate.

# When Used: In solicitations and contracts for software when it is anticipated that the software license will only be maintained for a limited period of time.

1. **SOFTWARE EVOLUTION:** Should contractor or software publisher merge or splinter the software previously provided to the Commonwealth, such action on the part of contractor or software publisher shall not in any way result in the Commonwealth being charged additional license or support fees in order to receive enhancements, releases, upgrade or support for the software. If contractor or software publisher reduces or replaces functionality contained in a licensed software product and provides the same or substantially similar functionality as or within a separate or renamed software product, then the Commonwealth shall be entitled to license such software product at no additional license or maintenance fee, and subject to the terms and conditions herein. If contractor or software publisher releases an option, future software product or other release that has substantially the same functionality as the software products provided under the contract, and software publisher and/or contractor ceases to provide maintenance for the older software product, then contractor shall offer the Commonwealth the option to exchange licenses for such replacement software product or function at no additional charge.

# When Used: In solicitations and contracts for software, software maintenance, a solution or system when software is a component.

1. **SOFTWARE OR SYSTEM SOFTWARE LICENSED BY SOFTWARE PUBLISHER:** Any software or system software provided by contractor that is licensed directly from a software publisher through an End User Licensing Agreement (EULA) shall be subject to the License Agreement Addendum (LAA) attached hereto as Attachment (or Exhibit). Contractor shall have sole responsibility for ensuring that any such software publisher executes the LAA. The software publisher's EULA, along with the LAA executed by software publisher shall be added to Exhibit (or Attachment) for reference, but shall not become a part of the contract.

# When to Use: In solicitations and contracts for software, hardware that has embedded system software to be operational, a solution or a system when an offeror could propose other third-party software. Agency would request any proposed software publisher’s EULA and signed LAA be submitted with the offeror’s proposal. The LAA is available at this URL: <https://www.vita.virginia.gov/media/vitavirginiagov/supply-chain/docs/License-Agreement-Addendum-Non-VITA-Use-eff-2019-06-04.docx>

1. **SOFTWARE OR HARDWARE SUBSTITUTION**: During the term of any contract resulting from this solicitation, the vendor is not authorized to substitute any item for that hardware and/or software identified in the solicitation without the prior written consent of the contracting officer whose name appears on the front of this solicitation, or their designee.

# When Used: In solicitations and contracts where the vendor will be responsible for maintenance after the sale, and the agency desires to protect against item substitutions.

1. **SOFTWARE UPGRADES:** The Commonwealth shall be entitled to any and all upgraded versions of the software covered in the contract that becomes available from the contractor. The maximum charge for upgrade shall not exceed the total difference between the cost of the Commonwealth’s current version and the price the contractor sells or licenses the upgraded software under similar circumstances.

# When Used: In solicitations and contracts for the purchase of software when the agency desires the opportunity to acquire future upgrades as they become available, and the availability of upgrades is not a condition stated elsewhere in the contract.

1. **SOURCE CODE:** In the event the contractor ceases to maintain experienced staff and the resources needed to provide required software maintenance or ceases to do business or enters bankruptcy proceedings, the Commonwealth shall be entitled to have, use, and duplicate for its own use, a copy of the source code and associated documentation for the software products covered by the contract. Until such time as a complete copy of such material is provided, the Commonwealth shall have exclusive right to possess all physical embodiments of such contractor owned materials. The rights of the Commonwealth in this respect shall survive for a period of twenty (20) years after the expiration or termination of the contract. All lease and royalty fees necessary to support this right are included in the initial license fee as contained in the pricing schedule.

# When Used: In solicitations and contracts for the purchase of software when it is necessary to assure either the availability of program support or the opportunity to provide internal program support. If the software supports a critical business service, solution or system for the Commonwealth, you may elect to use VITA’s Escrow language found at this URL: [https://www.vita.virginia.gov/media/vitavirginiagov/supply-chain/pdf/Guidance-on-Source-Code-Escrow-Q02FY2017,-v1.pdf](https://www.vita.virginia.gov/media/vitavirginiagov/supply-chain/pdf/Guidance-on-Source-Code-Escrow-Q02FY2017%2C-v1.pdf)

1. **SUPPORT SERVICE PERIOD (EXTENDED):** Due to the criticality of the applications for which the hardware and/or software is purchased, unless otherwise agreed to in writing between the Commonwealth and contractor, the contractor shall provide 24 hours a day, 7 days a week, maintenance support, including state holidays. On-site response time shall be within hours following initial notification. All necessary repairs or corrections shall be completed within hours of the initial notification by Commonwealth.

# When Used: In solicitations and contracts for hardware or software, a solution or system when it is essential that the hardware or software, solution or system remain in continuous operation due to the criticality of the process or function for which it was obtained.

1. **SUPPORT SERVICE PERIOD (ROUTINE):** Unless otherwise agreed to in writing between the Commonwealth and contractor, contractor shall provide 24 hour toll-free phone support with a hour return call response time. On-site maintenance support services shall carry an hour response time following initial notification and be available during the normal working hours of 8 A.M. to 5 P.M. Monday through Friday, excluding state holidays. All necessary repairs or corrections shall be completed within XX hours of the initial notification.

# When Used: In solicitations and contracts for hardware or software, a solution or system which requires regular maintenance support.

1. **SUPPORT SERVICE REPORTS:** Upon completion of any maintenance call, the contractor shall provide the agency with a signed service report that includes, at a minimum: a general statement as to the problem, action taken, any materials or parts furnished or used, and the number of hours required to complete the repairs.

# When Used: In solicitations and contracts requiring maintenance services when the agency intends to maintain detailed service records. This clause should always be included in any solicitation or contract where maintenance is to be performed on a time and materials basis.

1. **SURVIVAL**: Any provisions of the contract regarding software license, rights to intellectual property, security, warranty, escrow, confidentiality, content/data privacy and security, liability, indemnification, transition of services, and the General Terms and Conditions shall survive the expiration or termination of the contract.

# When Used: In information technology solicitations and contracts to protect the Commonwealth. Procurement lead can determine if their General Terms and Conditions should be included in this clause, or may delete.

1. **SYSTEM ENVIRONMENT:** Environmental specifications for any hardware or software to be delivered under the resulting contract shall be furnished in writing along with the vendor’s bid or proposal, should any such requirements be applicable. These specifications must be in sufficient detail to permit all installed equipment to function efficiently from an environmental perspective. Unless otherwise stated in the solicitation, it will be the procuring agency’s responsibility to prepare the site at its own expense to meet the environmental specifications provided.

# When Used: In solicitations and contracts for hardware, software, a solution or system when it is anticipated that the hardware, software, solution or system must function in a controlled or specific environment.

1. **TERM OF SOFTWARE LICENSE:** Unless otherwise stated in the solicitation, the software license(s) identified in the pricing schedule shall be purchased on a perpetual basis and shall continue in perpetuity. However the Commonwealth reserves the right to terminate the license at any time, although the mere expiration or termination of this contract shall not be construed as an intent to terminate the license. All acquired license(s) shall be for use at any computing facilities, on any equipment, by any number of users, and for any purposes for which it is procured. The Commonwealth may allow access to the software by third party vendors who are under contract with the Commonwealth to provide services to or on behalf of the Commonwealth, or by other entities as required for conducting the business of government. Access includes loading or executing the software on behalf of the Commonwealth or their agents. The Commonwealth further reserves the right to transfer all rights under the license to another state agency to which some or all of its functions are transferred.

# When Used: In solicitations and contracts for software, a solution or a system.

1. **TERM OF SYSTEM SOFTWARE LICENSE:** Contractor grants to the Commonwealth a fully paid, perpetual, worldwide, nonexclusive, transferable, irrevocable license to use, and to permit any agent of the Commonwealth to use, system software for the hardware. The license granted authorizes the Commonwealth and any agent of the Commonwealth to use supplier-licensed programs in machine readable form on any system without limitation. It is expressly understood that “perpetual” license rights shall commence upon delivery of the system software to the Commonwealth and shall exist in perpetuity unless otherwise terminated in accordance with the applicable provisions of the contract. The system software is the property of contractor, and no title or ownership of the system software or any of its parts, including documentation, is transferred to the Commonwealth.

# When Used: In solicitations and contracts for hardware that has embedded system software to be operational.

1. **THIRD PARTY ACQUISITION OF SOFTWARE:** The contractor shall notify the procuring agency in writing should the intellectual property, associated business, or all of its assets be acquired by a third party. The contractor further agrees that the contract’s terms and conditions, including any and all license rights and related services, shall not be affected by the acquisition. Prior to completion of the acquisition, the contractor shall obtain, for the Commonwealth’s benefit and deliver thereto, the assignee’s agreement to fully honor the terms of the contract.

# When Used: In solicitations and contracts for software, a solution or system when it is necessary to maintain continuity of support even in the event of sale or transfer of rights to another party.

1. **WARRANTY AGAINST SHUTDOWN DEVICES:** The contractor warrants that the hardware, software, solution or system provided under the contract shall not contain any lock, counter, CPU reference, virus, worm, or other device capable of halting operations or erasing or altering data or programs. Contractor further warrants that neither it, nor its agents, employees, or subcontractors, shall insert any shutdown device following delivery of the hardware, software solution or system.

# When Used: In information technology solicitations and contracts to protect Commonwealth technology investments and business continuity.

1. **WARRANTY OF SOFTWARE:** Unless otherwise stated in the contract, the contractor warrants the operation of all software products for a period of months from the date of acceptance. During the warranty period, if there is no Service Level Agreement that is incorporated in the contract, the contractor shall provide hour toll free phone support and all patches, fixes, revisions, updates, upgrades, and minor releases to both the software and its supporting documentation. In addition, the contractor shall provide a two hour return call response time and complete all necessary patches/fixes within hours of initial notification.

# When Used: In solicitations and contracts for software, a solution or system. The warranty requirements or duties are not cited and need to either be added to this clause or included in the specification.