

## MASTER SERVICE CONTRACT TABLE OF CONTENTS

<b>1.</b>	<b>PURPOSE AND SCOPE</b>	<b>3</b>
<b>2.</b>	<b>DEFINITIONS</b>	<b>3</b>
	<b>A. Acceptance</b>	<b>3</b>
	<b>B. Agent</b>	<b>3</b>
	<b>C. Authorized User</b>	<b>3</b>
	<b>D. Confidential Information</b>	<b>3</b>
	<b>E. Deliverable</b>	<b>3</b>
	<b>F. SMSA Deliverable</b>	<b>3</b>
	<b>G. SMSA Solution Requirements</b>	<b>3</b>
	<b>H. SMSA Service</b>	<b>3</b>
	<b>I. Statement of Work (SOW)</b>	<b>3</b>
	<b>J. Subcontractor</b>	<b>3</b>
	<b>K. Subcontractor Service</b>	<b>4</b>
	<b>L. CAI</b>	<b>4</b>
	<b>M. CAI's Proposal</b>	<b>4</b>
	<b>N. VITA</b>	<b>4</b>
	<b>O. Work Product</b>	<b>4</b>
<b>3.</b>	<b>TERM AND TERMINATION</b>	<b>4</b>
<b>4.</b>	<b>SMSA SERVICES</b>	<b>4</b>
	<b>A. Nature of Services and Engagement</b>	<b>4</b>
	<b>B. Statement of Work (SOW)</b>	<b>5</b>
	<b>C. Acceptance Criteria</b>	<b>5</b>
	<b>D. Cure Period</b>	<b>5</b>
	<b>E. Training and Documentation</b>	<b>5</b>
<b>5.</b>	<b>RIGHTS TO WORK PRODUCT</b>	<b>5</b>
	<b>A. Work Product</b>	<b>5</b>
	<b>B. Ownership</b>	<b>5</b>
<b>6.</b>	<b>CAI PERSONNEL</b>	<b>6</b>
	<b>A. Selection and Management of CAI Personnel</b>	<b>6</b>
	<b>B. CAI Personnel Supervision</b>	<b>6</b>
<b>7.</b>	<b>REPRESENTATIONS AND WARRANTY OF CAI</b>	<b>6</b>
	<b>A. Ownership</b>	<b>6</b>
	<b>B. Performance</b>	<b>6</b>
	<b>C. Performance Service Standards and Remedies</b>	<b>7</b>
	<b>D. Limited Warranty Period and Remedy</b>	<b>7</b>
<b>8.</b>	<b>ORDERS AND COMPENSATION</b>	<b>7</b>
	<b>A. Order</b>	<b>7</b>
	<b>B. Purchase Price and Price Protection</b>	<b>8</b>
	<b>C. Invoice and Payment Terms</b>	<b>8</b>
	<b>D. Invoice Procedures</b>	<b>8</b>
	<b>E. Overtime Policy</b>	<b>9</b>
	<b>F. Acceptance</b>	<b>9</b>
	<b>G. Reimbursement of Expenses</b>	<b>9</b>
	<b>H. CAI's Report of Sales and Industrial Funding Adjustment</b>	<b>9</b>
<b>9.</b>	<b>COMPETITIVE PRICING</b>	<b>9</b>
<b>10.</b>	<b>CONFIDENTIALITY</b>	<b>10</b>
	<b>A. Treatment and Protection</b>	<b>10</b>
	<b>B. Exclusions</b>	<b>10</b>
	<b>C. Court Order</b>	<b>10</b>
	<b>D. Return or Destruction</b>	<b>10</b>
<b>11.</b>	<b>LIABILITY AND INDEMNIFICATION</b>	<b>10</b>

<b>12. SECURITY COMPLIANCE</b>	<b>11</b>
<b>13. BANKRUPTCY</b>	<b>11</b>
<b>14. GENERAL PROVISIONS</b>	<b>12</b>
<b>A. Relationship Between VITA and CAI</b>	<b>12</b>
<b>B. Incorporated Contractual Provisions</b>	<b>12</b>
<b>C. Governing Law</b>	<b>12</b>
<b>D. Dispute Resolution</b>	<b>12</b>
<b>E. Advertising and Use of Proprietary Marks</b>	<b>13</b>
<b>F. Notices</b>	<b>13</b>
<b>G. No Waiver</b>	<b>13</b>
<b>H. Assignment</b>	<b>13</b>
<b>I. Captions</b>	<b>13</b>
<b>J. Severability</b>	<b>13</b>
<b>K. Survival</b>	<b>13</b>
<b>L. Force Majeure</b>	<b>13</b>
<b>M. Remedies</b>	<b>13</b>
<b>N. Right to Audit</b>	<b>13</b>
<b>O. Offers of Employment</b>	<b>14</b>
<b>P. Contract Administration</b>	<b>14</b>
<b>Q. Entire Contract</b>	<b>14</b>
<b>15. EXHIBIT A CAI'S PROPOSAL (INCORPORATED BY REFERENCE)</b>	<b>15</b>
<b>16. EXHIBIT B PERFORMANCE STANDARDS</b>	<b>15</b>
<b>17. EXHIBIT C SWAM REPORT FORMAT</b>	<b>15</b>
<b>18. EXHIBIT D JOB RATE CARDS</b>	<b>15</b>
<b>19. EXHIBIT E IMPLEMENTATION PLAN</b>	<b>15</b>
<b>20. EXHIBIT F MINIMUM TERM FOR CONTRACTS WITH SUBCONTRACTORS</b>	<b>15</b>
<b>21. EXHIBIT G SMSA MANAGEMENT GUIDELINES</b>	<b>15</b>
<b>22. EXHIBIT H-1 - STATEMENT OF WORK ROLL OUT</b>	<b>16</b>
<b>23. EXHIBIT H-2 - STATEMENT OF WORK TRANSITION OF CURRENT RESOURCES</b>	<b>17</b>
<b>24. EXHIBIT G TRANSITION PLAN</b>	<b>18</b>

## MASTER SERVICES CONTRACT

THIS SERVICES CONTRACT ("Contract") is entered into by and between the Virginia Information Technologies Agency (hereinafter referred to as "VITA"), pursuant to §2.2-2012 of the Code of Virginia, and Computer Aid, Inc. ("CAI") to be effective as of November xx, 2005 ("Effective Date"). VITA and CAI are referred to herein individually as "Party" and collectively as the "Parties."

### 1. PURPOSE AND SCOPE

This Contract sets forth the terms and conditions under which CAI shall provide CAI Managed Staff Augmentation ("SMSA") Services to the Authorized Users.

### 2. DEFINITIONS

#### A. Acceptance

Acceptance shall take the form of completed Acceptance testing in conformance with the requirements as set forth by the ordering Authorized User in the applicable requisition in CAI's system or Statement of Work.

#### B. Agent

Any third party independent agent of any Authorized User.

#### C. Authorized User

All public bodies, including VITA, as defined by §2.2-4301 and referenced by §2.2-4304 of the Code of Virginia.

#### D. Confidential Information

Any confidential or proprietary information of a Party that is disclosed in any manner, including oral or written, graphic, machine readable or other tangible form, to the other Party in connection with or as a result of discussions related to this Contract, and which at the time of disclosure either (i) is marked as being "Confidential" or "Proprietary", (ii) is otherwise reasonably identifiable as the confidential or proprietary information of the Disclosing Party, or (iii) under the circumstances of disclosure should reasonably be considered as confidential or proprietary information of the disclosing Party.

#### E. Deliverable

Means the tangible embodiment of the Subcontractor Services performed or provided by a Subcontractor.

#### F. SMSA Deliverable

Means the tangible embodiment of the SMSA Services performed or provided by CAI.

#### G. SMSA Solution Requirements

The functional, performance, operational, compatibility, Acceptance testing criteria and other parameters and characteristics of the SMSA Service described in the applicable documentation, CAI's Proposal and such other parameters, characteristics, or performance standards for the product that may be agreed upon in writing by the Parties.

#### H. SMSA Service

Any work performed or service provided by CAI under this Contract for VITA.

#### I. Statement of Work (SOW)

A Statement of Work means any incorporated, attached or subsequent document to an order which, upon acceptance by a CAI or Subcontractor in response thereto, shall be deemed a part of this Contract, and which describes the Deliverables, due dates, assignment duration and payment obligations for a specific project, engagement, or assignment for which Subcontractor shall be providing Subcontractor Services.

#### J. Subcontractor

Any entity with which CAI has entered a subcontractor contract, Exhibit F, to provide the resources to perform the various Subcontractor Services required during the term of the Contract.

**K. Subcontractor Service**

Any work performed or service provided, including any Deliverable described in the applicable order or SOW attached thereto, by a Subcontractor for an Authorized User.

**L. CAI**

The prime contractor responsible for managing a base of Subcontractors who provide the resources to perform the various SMSA Services required during the term of the Contract.

**M. CAI's Proposal**

Proposal submitted by CAI and accepted by VITA, attached hereto as part of Exhibit A that describes the SMSA Services to be performed by CAI.

**N. VITA**

Virginia Information Technologies Agency, an agency of the Commonwealth of Virginia pursuant to Chapter 20.1 (§§2.2-2005 et seq.) of the Code of Virginia

**O. Work Product**

The discovery, creation or development of inventions, combinations, machines, methods, formula, techniques, processes, improvements, software designs, computer programs, strategies, specific computer-related know-how, data and original works of authorship (collectively, the "Work Product").

**3. TERM AND TERMINATION**

**1. Term**

This Contract is effective and legally binding as of the Effective Date and, unless terminated as provided for in this section, shall continue to be effective and legally binding for a period of two (2) years. Subject to the mutual written agreement of both Parties, this Contract may be extended for up to three (3) additional one-year periods after the expiration of the initial two (2) year-period. VITA will issue a written notification to CAI stating the extension period, 30 days prior to the expiration of any current term.

**2. Termination**

VITA may terminate this Contract, in whole or in part, upon not less than thirty (30) days prior written notice at any time for any reason. CAI shall submit any contractual dispute to VITA for resolution according to the terms of the Dispute Resolution Section. Upon termination, VITA shall have no future liability except for SMSA Services rendered by CAI prior to the termination date.

**3. Transition Plan Upon Expiration or Termination**

At VITA's request, CAI shall provide a transition plan to VITA at least one hundred and twenty (120) days prior to the termination effective date hereof. The transition plan will provide for the orderly transition and migration to VITA or VITA's designated third party, of all services then being performed or provided by CAI hereunder. CAI will continue to provide Services to VITA until the transition is complete. Each party will cooperate fully and in good faith with the other and/or its designees, so that the transition of Services rendered under this Agreement shall be timely and efficient and implemented in a manner so as not to interfere with VITA's orderly conduct of its business or CAI's other operations. VITA and its employees will cooperate in good faith with CAI in connection with CAI's obligations under this section. Exhibit G sets forth the details to be included in the transition plan.

**4. SMSA SERVICES**

**A. Nature of Services and Engagement**

CAI is an independent contractor engaged to provide SMSA Service, including but not limited to management of the SMSA system and management of the Subcontractor base. Both Parties acknowledge that this Contract is non-exclusive, in that any Authorized User may utilize the services of others, and CAI may provide services to others so long as those services do not breach the terms of this Contract.

**B. Statement of Work (SOW)**

All Subcontractor Services provided by a subcontractor shall be performed at the rates set forth in an order executed by Authorized User. Subcontractor personnel shall maintain daily time records of hours and tasks performed which shall be submitted or made available for inspection by the ordering Authorized User upon forty eight (48) hours advance written notice. Any total dollar amounts or not-to-exceed limitations appearing in the applicable order or SOW attached thereto shall be considered reasonably accurate estimates.

**C. Acceptance Criteria**

SMSA Service(s) shall be accepted when the Deliverable meets the SMSA Solution Requirements as tested pursuant to the Acceptance Criteria in Exhibit H. VITA agrees to commence Acceptance testing within a reasonable time period after receipt of the SMSA Service or within such other time period mutually agreed upon by the Parties. CAI agrees to provide to VITA such assistance and advice as VITA may reasonably require, at no additional cost, during such Acceptance testing, other than pre-approved travel expenses incurred which will be reimbursable by VITA at the then-current per diem amounts as published by the Virginia Department of Accounts.

**D. Cure Period**

CAI shall correct the non-conformities identified hereunder and shall thereafter re-submit such previously non-conforming SMSA Service for re-testing within seven (7) business days of VITA's notice of non-conformance, or as otherwise agreed between VITA and CAI. In the event that CAI fails to re-submit a SMSA Service which meets the SMSA Solution Requirements, VITA may, in its sole discretion: (i) reject the SMSA Service in its entirety and recover amounts previously paid hereunder; (ii) issue a "partial Acceptance" of the SMSA Service with an equitable adjustment in the price to account for such deficiency; or (iii) conditionally accept the applicable SMSA Service while reserving its right to revoke Acceptance if timely correction is not forthcoming. Notwithstanding the foregoing, VITA shall be entitled to pursue any other remedies that are available to it under this Contract.

**E. Training and Documentation**

Any training or documentation necessary for VITA to have full benefit of the SMSA Service shall be deemed included in the scope of this Contract unless expressly excluded.

**5. RIGHTS TO WORK PRODUCT**

**A. Work Product**

VITA and CAI each acknowledge that performance of this Contract may result in Work Product. The Parties agree to document all Work Product specifications and make such specifications an incorporated Exhibit to the applicable order or SOW attached thereto. CAI agrees that it shall require all Subcontractors, pursuant to Exhibit F, to promptly and fully disclose to the ordering Authorized User any and all Work Product generated, conceived, reduced to practice or learned by Subcontractor or any of its employees, either solely or jointly with others, during the term of this Contract, which in any way relates to the business of such Authorized User.

**B. Ownership**

CAI agrees that, whether or not the services are considered "works made for hire" or an employment to invent, all Work Product discovered, created or developed under this Contract shall be and shall remain the sole and exclusive property of VITA and its assigns. Except as specifically set forth in writing and signed by both VITA and CAI, CAI agrees that VITA shall have all rights with respect to any new Work Product discovered, created or developed under this Contract without regard to the origin of the Work Product. If and to the extent that any preexisting rights of CAI are embodied in the Work Product, CAI hereby grants to VITA the irrevocable, perpetual, non-exclusive, world-wide, royalty-free right and license to (1) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such pre-existing rights and any derivative works thereof, and (2) authorize others to do any or all of the foregoing.

If and to the extent that CAI or Subcontractor may, under applicable law and/or contract, be entitled to claim any ownership interest in the Work Product, CAI hereby transfers, grants, conveys, assigns and relinquishes exclusively to VITA any and all right, title and interest it now has or may hereafter acquire in and to the Work Product under patent, copyright, trade secret and trademark law in perpetuity or for the longest period otherwise permitted by law. If any moral rights are created, CAI waives such rights in the Work Product.

CAI further agrees, and will require all Subcontractors to agree that neither CAI, Subcontractor, Subcontractor's employees, nor any party claiming through CAI, Subcontractor, or Subcontractor's employees, shall, other than in the performance of this Contract, make use of or disclose to others any proprietary information relating to the Work Product.

All Subcontractor Services performed hereunder shall include delivery of all source and object code and all executables and documentation. CAI agrees that it shall require all Subcontractors, pursuant to Exhibit F, to provide the ordering Authorized User a copy of the most recent source code at all times.

CAI further agrees as to the Work Product to assist VITA in every reasonable way to obtain and, from time to time, enforce patents, copyrights, trade secrets and other rights and protection relating to Work Product, and to that end, CAI and its employees shall execute all documents for use in applying for and obtaining such patents, copyrights, trade secrets and other rights and protection with respect to such Work Product, as VITA may reasonably request, together with any assignments thereof to VITA or persons designated by it. CAI's and its employees' obligations to assist VITA in obtaining and enforcing such rights shall continue beyond the termination of this Contract.

## **6. CAI PERSONNEL**

### **A. Selection and Management of CAI Personnel**

CAI shall take such steps as may be necessary to ensure that all CAI personnel and Subcontractors provided under this Contract are competent and knowledgeable of the contractual arrangements between VITA and CAI. CAI shall be solely responsible for the conduct of its employees and Subcontractors and shall ensure that such employees and Subcontractors comply with the appropriate Authorized User's site security, information security and personnel conduct rules, as well as applicable federal, state and local laws. VITA reserves the right to require the immediate removal from such Authorized User's premises of any employee, Subcontractor or agent of CAI whom such Authorized User believes has failed to comply or whose conduct or behavior is unacceptable or unprofessional or results in a security or safety breach.

### **B. CAI Personnel Supervision**

CAI and VITA acknowledge that CAI shall be and is the sole employer of CAI personnel, and shall have sole responsibility to supervise, counsel, discipline, review, evaluate, set the pay rates of and terminate the employment of CAI personnel.

## **7. REPRESENTATIONS AND WARRANTY OF CAI**

With respect to the SMSA Services provided by CAI and the Subcontractor Services, CAI represents and warrants the following:

### **A. Ownership**

CAI has the right to provide the services, including SMSA Deliverables, without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party.

### **B. Performance**

- i). All SMSA Services and Subcontractor Services shall be performed with care, skill and diligence, consistent with or above applicable professional standards currently recognized in its profession, and CAI shall be responsible for the professional quality, technical accuracy, completeness and coordination of all plans, information, specifications, computer programs,

software, SMSA Deliverables, Subcontractor Services and SMSA Services furnished under this Contract;

- ii). If the SMSA Services are pursuant to a particular Request for Proposal, such SMSA Services and SMSA Deliverables shall be fit for the particular purposes specified by VITA and CAI is possessed of superior knowledge with respect to the SMSA Services and is aware that VITA is relying on CAI's skill and judgment in providing the Services;
- iii). The SMSA Services shall meet or exceed the SMSA Solution Requirements;
- iv). The SMSA Services and Subcontractor Services shall be performed in a professional manner;
- v). CAI warrants that the documentation which CAI is required to provide under this Contract shall be sufficient in detail and content to allow a user to understand fully the software or other SMSA Deliverables without reference to any other materials or information.

**C. Performance Service Standards and Remedies**

CAI will meet or exceed the Service levels detailed in Exhibit B, attached hereto. In the event CAI fails to meet the Service levels, CAI agrees to the following remedies:

- i). A discussion will take place between the CAI representatives and the VITA contract manager. The CAI will be given a warning, and a plan will be developed to improve on the problem areas within thirty (30) days.
- ii). If a second monthly review occurs with minimal or no improvement in the problem areas, CAI will be placed on Probation, and CAI will be given two (2) months to improve their overall service score.
- iii). If a third monthly review with below-threshold score occurs within the two (2) month probationary period, CAI will be required to give a three percent (3%) rebate on the month's revenue back to each Authorized User which has provided revenue to CAI.
- iv). If a fourth below-threshold score occurs within the next three (3) months, CAI will be required to provide a five percent (5%) rebate on the month's revenue back to each Authorized User which has provided revenue to CAI, and the Contract may be terminated by VITA.

**D. Limited Warranty Period and Remedy**

During the Warranty Period, CAI warrants that the SMSA Deliverables do not contain any material errors and shall conform to the SMSA Solution Requirements. CAI shall correct all errors at no additional cost to any Authorized User. If CAI is unable to make the SMSA Deliverable conform in accordance with the Acceptance Criteria, as set forth in the Statement of Work, and Cure Period Paragraph herein, in all material aspects, within seven ( 7) business days following notification by VITA, CAI shall, at VITA's request, accept return of any SMSA Deliverables, and return all monies paid by any Authorized User for the non-conforming SMSA Deliverable and any other related SMSA Deliverable rendered unusable. If any Subcontractor Services fail to meet the requirements as documented, all such service will be re-performed at no additional expense to any Authorized User.

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

**8. ORDERS AND COMPENSATION**

**A. Order**

CAI is required to accept any valid order placed through the eVA electronic procurement website portal (<http://www.eva.state.va.us>). eVA is the Commonwealth of Virginia's total electronic procurement solution. State agencies, as defined in §2.2-2006 of the Code of Virginia, shall order through eVA.

All other Authorized Users are encouraged to order through eVA, but if an Authorized User does not use eVA, such Authorized User must order through the order process or processes implemented by CAI and approved by VITA. This ordering authority is limited to issuing orders for the Subcontractor Services available under this Contract. Under no circumstances shall any Authorized User have the authority to modify this Contract.

**B. Purchase Price and Price Protection**

Exhibit D sets forth the fees and the appropriate VITA discounts. CAI management fees shall not increase for a period of not less than two (2) years from the Effective Date. Thereafter, any increase in price shall be limited to once per twelve (12) month period and shall not exceed the lesser of 3% or the annual increase in the Consumer Price Index for All Urban Consumers, All US Cities Average, Seasonally Adjusted, All Items Less Food and Energy, as published by the Bureau of Labor Statistics of the Department of Labor (<http://www.bls.gov/cpi/home.htm>), for the effective date of the increase compared with the same index one (1) year prior. CAI shall demonstrate the added value for any requested price increase. Any such change in price shall be submitted to VITA in writing in accordance with the above and shall not become effective for sixty (60) days thereafter. Semi-annually the resource rates set forth in Exhibit D shall be checked against the ERI Index, or other applicable industry data, and the prices in Exhibit D shall be appropriately adjusted to ensure continued price competitiveness, if required. CAI agrees to offer Service price reductions to ensure compliance with the Competitive Pricing Section.

**C. Invoice and Payment Terms**

All payment obligations under this Contract are subject to the availability of legislative appropriations for this purpose. In the event of non-appropriation of funds for the items under this Contract, VITA may terminate this Contract, any order or Statement of Work, for those goods or services for which funds have not been appropriated. Written notice will be provided to CAI as soon as possible after legislative action is completed.

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, and can be obtained online at <http://www.tax.state.va.us/>. 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 any purchases are to be supported by federal funding, and such funding is not made available, VITA may terminate this Contract or appropriate Statement of Work, or an Authorized User may terminate an order or SOW, for goods or services dependent on such federal funds without further obligation.

CAI is responsible for the accuracy of its billing information. CAI agrees not to issue invoices hereunder until services have been performed. Charges older than ninety (90) days may not be paid.

If there are any disputed items, the appropriate Authorized User shall pay all undisputed charges and promptly notify CAI in writing of any disputed amount. CAI shall thereupon review its records, and, if it does not concur with such Authorized User, provide such Authorized User with documentation to support the charge. CAI agrees not to bill VITA for Subcontractor Services until the hiring manager has approved the applicable time card(s). All payment terms are due 30 days from receipt of invoice.

**D. Invoice Procedures**

CAI shall remit each invoice to the bill to address provided with the order promptly after all services have been accepted. Travel expenses must be itemized as a separate line item on all invoices. No invoice shall include any costs other than those identified in Exhibit D or the executed order or Statement of Work. In the event that the Authorized User approves overtime work under this Contract, CAI will be compensated at overtime rates (time and one-half) for those positions identified in Exhibit D, attached hereto and incorporated herein, required to be paid overtime under the Fair Labor Standards Act.

Invoices issued by CAI shall identify at a minimum:

- i). This Contract number and the applicable order number
- ii). CAI's Federal Employer Identification Number (EIN).
- iii). Additional items as determined through negotiation by the Parties.

**ALL CONTRACTUAL OBLIGATIONS UNDER THIS CONTRACT IN CONNECTION WITH AN ORDER PLACED BY ANY PUBLIC BODY (as that term is defined in §2.2-4301 of the Code of Virginia) OF ANY COUNTY, CITY OR TOWN LOCATED WITHIN THE COMMONWEALTH OF VIRGINIA ARE THE SOLE OBLIGATION OF THE COUNTY CITY OR TOWN PLACING THE ORDER AND NOT THE RESPONSIBILITY OF VITA.**

**E. Overtime Policy**

No overtime premiums will be paid to CAI for work which is performed after normal business hours (8:00 a.m. local time – 5:00 local time) in order to complete a task on time, unless otherwise agreed to in writing in advance by Authorized User.

**F. Acceptance**

Defined in the applicable SOW or other documentation.

**G. Reimbursement of Expenses**

The appropriate Authorized User shall pay, or reimburse CAI, for all reasonable and actual travel-related expenses greater than thirty (30) miles from portal to portal incurred by CAI during the relevant period; provided, however, that such Authorized User shall only be liable to pay for CAI's travel-related expenses, including transportation, meals, lodging and incidental expenses, that have been authorized by such Authorized User in advance and which will be reimbursable by such Authorized User at the then-current per diem amounts as published by the Virginia Department of Accounts, <http://www.doa.state.va.us/procedures/AdminServices/capp/pdfdocs/20335REV0701042.pdf>. All reimbursed expenses will be billed to the Authorized User on a pass through basis without any markup by CAI.

**H. CAI's Report of Sales and Industrial Funding Adjustment**

CAI shall submit the "CAI Monthly Report of Sales" which is available online at: (to be furnished at later date). The report shall be submitted in electronic form via electronic mail to the VITA Contract Administrator and the VITA Controller (email addresses to be provided upon award), by the 10<sup>th</sup> day of every month, reporting all invoices paid by VITA for the preceding month. The report shall also show a cumulative record of all sales which shall carry forward for the duration of the Contract. The CAI Monthly Report of Sales template (in MS Excel format) indicated at the link above is required to be used by the CAI and provided to VITA.

"CAI Monthly Report of Sales" is a detailed record that is prepared from actual invoices submitted to and paid by the Authorized User pursuant to this Contract. Data submitted shall include Name of Project, CAI's tax identification number, invoice date, invoice number, order number, name of requesting entity, User name and telephone number, amount billed for services performed for previous month, and IT service category.

CAI shall submit Industrial Funding Adjustment payment at the same time as submitting the "CAI Monthly Report of Sales" in the form of a check or electronic funds disbursement made payable to the Controller of VITA, based on 2% of total sales under this Contract. CAI shall include this Contract number, "report amounts" and "report period" with all Industrial Funding Adjustment payments. CAI shall remit (i) Industrial Funding Adjustment payments made via check to: VITA, ATTN: Controller; 110 South 7th Street, 3rd Floor; Richmond, VA 23219-3931, and (ii) a copy of the means of payment to the VITA Contract Administrator. Failure to comply with reporting and payment requirements of this section shall result in default of Contract.

**9. COMPETITIVE PRICING**

CAI warrants and agrees that each of the charges, economic or product terms or warranties granted to VITA pursuant to this Contract are comparable to or better than the equivalent charge, economic or product term or warranty being offered to any commercial or government customer of CAI. If CAI enters into any arrangements with another customer of CAI or with an Authorized User to provide

services under more favorable prices, as the prices may be indicated on CAI's current US and International price lists or comparable documents, then this Contract shall be deemed amended as of the date of such other arrangements to incorporate those more favorable prices, and CAI shall immediately notify VITA of such change.

## 10. CONFIDENTIALITY

### A. Treatment and Protection

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

### B. Exclusions

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

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

### C. Court Order

The owner of Confidential Information ordered to be disclosed pursuant to a court order may seek a protective order and such disclosure will not reclassify the information.

### D. Return or Destruction

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

## 11. LIABILITY AND INDEMNIFICATION

CAI agrees to indemnify, defend and hold harmless any Authorized User, its officers, directors, agents and employees ("Indemnified Parties") from and against any and all third party claims, or direct damages suffered by Authorized Users, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, fines, judgments, settlements, expenses (including attorneys' and accountants' fees and disbursements) and costs (each, a "Claim" and collectively, "Claims"), incurred by, borne by or asserted against any of Authorized User's Indemnified Parties to the extent such Claims in any way relate to, arise out of or result from: (i) any act of any CAI employee or Subcontractor of CAI, or (ii) breach of any representation, warranty or covenant of CAI contained herein, (iii) any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Deliverables or services. Selection and approval of counsel and approval of any settlement shall be accomplished in accordance with all applicable laws, rules and regulations. For state agencies the applicable laws include §§ 2.2-510 and 2.2-514 of the Code

of Virginia. In all cases the selection and approval of counsel and approval of any settlement shall be satisfactory to the Authorized User against whom the claim has been asserted.

In the event of a Claim pursuant to any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Deliverable or services, and in addition to all other obligations of CAI in this Section, CAI shall at its expense, either (a) procure for all Authorized Users the right to continue use of such infringing Deliverable or services, or any component thereof; or (b) replace or modify such infringing Deliverable or services, or any component thereof, with non-infringing products or services satisfactory to the Authorized User. . And in addition, CAI shall provide any Authorized User with a comparable temporary replacement Deliverable or reimburse any Authorized User for the reasonable costs incurred by such Authorized User in obtaining an alternative product in the event such Authorized User cannot use the affected product. If CAI cannot accomplish any of the foregoing within a reasonable time and at commercially reasonable rates, then CAI shall accept the return of the infringing component of the Software or services, along with any other components of any products rendered unusable by any Authorized User as a result of the infringing component, and refund the price paid to CAI for such components.

At the express request of the Commonwealth of Virginia Attorney General, CAI shall defend any such Claim with counsel reasonably satisfactory to VITA and shall pay any interim or final judgment or award entered against VITA, or settlement amount agreed to by CAI, within sixty (60) days of such judgment award being entered and shall, in addition, pay any and all other reasonable expenses incurred by VITA in connection with any such claim. CAI may settle any Claim without VITA's written consent unless such settlement (A) contains an admission of liability or wrongdoing by VITA; (B) does not include a release of all covered claims pending against VITA; or (C) imposes any obligations upon VITA other than an obligation to stop using any infringing items.

**EXCEPT WITH REGARD TO CLAIMS FOR PROPERTY DAMAGE, PERSONAL INJURY, DEATH OR INFRINGEMENT, AND THE INDEMNIFICATION AND CONFIDENTIALITY OBLIGATIONS, WITH RESPECT TO EACH OF WHICH LIABILITY SHALL NOT BE LIMITED PURSUANT TO THIS SECTION, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY (OR THE INDEMNIFIED PARTIES OF SUCH PARTY) FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING (WITHOUT LIMITATION) LOSS OF PROFIT, INCOME OR SAVINGS, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, EXCEPT WHEN SUCH DAMAGES ARE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE PARTY, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS.**

## **12. SECURITY COMPLIANCE**

CAI agrees to comply with all provisions of VITA's then current security procedures as are pertinent to CAI's operation and have been supplied to CAI by VITA and further agrees to comply with all applicable federal, state and local laws. CAI shall indemnify, defend, and hold VITA, its 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 VITA, its officers, directors, agents or employees, on account of the failure of CAI to perform its obligations pursuant this Section.

## **13. BANKRUPTCY**

If CAI becomes insolvent, takes any step leading to its cessation as a going concern, fails to pay its debts as they become due, or ceases business operations continuously for longer than fifteen (15) business days, then VITA may immediately terminate this Contract on notice to CAI unless CAI immediately gives VITA adequate assurance of the future performance of this Contract. If bankruptcy proceedings are commenced with respect to CAI, and if this Contract has not otherwise terminated, then VITA may suspend all further performance of this Contract until CAI assumes this Contract and provides adequate assurance of performance thereof or rejects this Contract pursuant to Section 365 of the Bankruptcy Code or any similar or successor provision, it being agreed by the Parties that this is an executory contract. Any such suspension of further performance by VITA pending CAI's

assumption or rejection shall not be a breach of this Contract, and shall not affect VITA's right to pursue or enforce any of its rights under this Contract or otherwise.

#### 14. GENERAL PROVISIONS

##### A. Relationship Between VITA and CAI

CAI has no authority to contract for VITA or in any way to bind, to commit VITA to any agreement of any kind, or to assume any liabilities of any nature in the name of or on behalf of VITA. Under no circumstances shall CAI, or any of its employees, hold itself out as or be considered an agent or an employee of VITA, and VITA shall have no duty to provide or maintain any insurance or other employee benefits on behalf of CAI or its employees. CAI represents and warrants that it is an independent contractor for purposes of federal, state and local employment taxes and agrees that VITA is not responsible to collect or withhold any federal, state or local employment taxes, including, but not limited to, income tax withholding and social security contributions, for CAI. Any and all taxes, interest or penalties, including, but not limited to, any federal, state or local withholding or employment taxes, imposed, assessed or levied as a result of this Contract shall be paid or withheld by CAI or, if assessed against and paid by VITA, shall be reimbursed by CAI upon demand by VITA.

##### B. Incorporated Contractual Provisions

The contractual provisions at the following URL are statutorily mandated provisions that are hereby incorporated by reference, including the contractual claims provision §2.2-4363 of the Code of Virginia: [http://www.vita.virginia.gov/procurement/documents/terms\\_04-05sw.pdf](http://www.vita.virginia.gov/procurement/documents/terms_04-05sw.pdf).

##### C. Governing Law

This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without regard to that body of law controlling choice of law. Any and all litigation shall be brought in the circuit courts of the Commonwealth of Virginia. The English language version of this Contract prevails when interpreting this Contract. The United Nations Convention on Contracts for the International Sale of Goods and all other laws and international treaties or conventions relating to the sale of goods are expressly disclaimed. UCITA shall apply to this Contract only to the extent required by §59.1-501.15 of the Code of Virginia.

##### D. Dispute Resolution

In accordance with §2.2-4363 of the Code of Virginia, Contractual claims, whether for money or other relief, shall be submitted in writing to the public body from whom the relief is sought no later than sixty (60) days after final payment; however, written notice of CAI's intention to file such claim must be given to VITA at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment. VITA shall render a final decision in writing within thirty (30) days after its receipt of CAI's written claim.

CAI may not invoke any available administrative procedure under §2.2-4365 of the Code of Virginia nor institute legal action prior to receipt of the purchasing agency's decision on the claim, unless that agency fails to render its decision within thirty (30) days. The decision of the purchasing agency shall be final and conclusive unless the CAI, within six (6) months of the date of the final decision on the claim, invokes appropriate action under §2.2-4364, Code of Virginia or the administrative procedure authorized by §2.2-4365, Code of Virginia.

Upon request from the public body from whom the relief is sought, CAI agrees to submit any and all contractual disputes arising from this Contract to VITA's alternative dispute resolution (ADR) procedures. CAI may invoke VITA's ADR procedures at any time and concurrently with any other statutory remedies prescribed by the Code of Virginia.

In the event of any breach by VITA, CAI's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section. In no event shall CAI's remedies include the right to terminate any license or support services hereunder.

**E. Advertising and Use of Proprietary Marks**

CAI shall not use any Authorized User's name or refer to any Authorized User, directly or indirectly, in any press release or formal advertisement without receiving prior written consent of such Authorized User. In no event may CAI use a proprietary mark without receiving the prior written consent of the Authorized User.

**F. Notices**

Any notice required or permitted to be given under this Contract shall be in writing and shall be deemed to have been sufficiently given if delivered in person, or if deposited in the US mails, postage prepaid, for mailing by registered, certified mail, or overnight courier service addressed to the addresses shown on the signature page. Either Party may change its address for notice purposes by giving the other Party notice of such change in accordance with this Section.

**G. No Waiver**

Any failure to enforce any terms of this Contract shall not constitute a waiver.

**H. Assignment**

This Contract shall be binding upon and shall inure to the benefit of the permitted successors and assigns of each party hereto. CAI may not assign, subcontract, delegate or otherwise convey this Contract, or any of its rights and obligations hereunder, to any entity without the prior written consent of VITA, and any such attempted assignment or subcontracting without consent shall be void. VITA may assign this Contract to any entity, so long as the assignee agrees in writing to be bound by the all the terms and conditions of this Contract.

If any law limits the right of the Parties to prohibit assignment or nonconsensual assignments, the effective date of the assignment shall be sixty (60) days after CAI gives VITA prompt written notice of the assignment, signed by authorized representatives of both CAI and the assignee. Any payments made prior to receipt of such notification shall not be covered by this assignment.

**I. Captions**

The captions are for convenience and in no way define, limit or enlarge the scope of this Contract or any of its Sections.

**J. Severability**

Invalidity of any term of this Contract, in whole or in part, shall not affect the validity of any other term. The Parties further agree that in the event such provision is an essential part of this Contract, they shall immediately begin negotiations for a suitable replacement provision.

**K. Survival**

The provisions of this Contract regarding Rights to Work Product, Warranty, Confidentiality, Liability and Indemnification, Exhibit F and the General Provisions shall survive the expiration or termination of this Contract.

**L. Force Majeure**

Neither Party shall be responsible for failure to meet its obligations under this Contract if the failure arises from causes beyond the control and without the fault or negligence of the non-performing Party. If any performance date under this Contract is postponed or extended pursuant to this section for longer than thirty (30) calendar days, VITA, by written notice given during the postponement or extension, may terminate CAI's right to render further performance after the effective date of termination without liability for that termination.

**M. Remedies**

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

**N. Right to Audit**

VITA reserves the right to audit those CAI records that relate to the Subcontractor Services rendered or the amounts due CAI for such services under this Contract. VITA's right to audit shall be limited as follows:

- i). Three (3) years from Service performance date;

- ii). Performed at CAI's premises, during normal business hours at mutually agreed upon times; and
- iii). Excludes access to CAI cost information.

**O. Offers of Employment**

During the first twelve (12) months of the Contract, should either party hire an employee of the other who has substantially worked on any project covered by this Contract without prior written consent, the hiring party shall be billed for 50% of the employee's annual salary in effect at the time of termination.

**P. Contract Administration**

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

**Q. Entire Contract**

The following Exhibits, including all subparts thereof, are attached to this Contract and are made a part of this Contract for all purposes:

- i). Exhibit A CAI's Proposal
- ii). Exhibit B Performance Service Standards
- iii). Exhibit C SWAM Report
- iv). Exhibit D Job Rate Cards/Pricing
- v). Exhibit E Implementation Plan
- vi). Exhibit F Subcontractor Services Agreement Mandatory Terms and Conditions for Subcontractor Agreements
- vii). Exhibit G Transition Plan
- viii). Exhibit H Implementation SOWs
- ix). Exhibit I SMSA Management Guidelines

This Contract, its Exhibits, all orders and any prior NDA constitute the entire agreement between the Parties and supersedes any and all previous representations, understandings, discussions or agreements between VITA and CAI as to the subject matter hereof. This Contract may only be amended by an instrument in writing signed by VITA and CAI. In the event of a conflict, the following order of precedents shall apply:

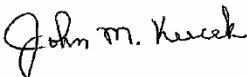
The Contract; Exhibit F, Subcontractor Services Agreement Mandatory Terms and Conditions for Subcontractor Agreements; Exhibit H, Implementation, Exhibit E, Implementation Plan; Exhibit B, Performance Service Standards; Exhibit D, Job Rate Cards/Pricing; Exhibit I, SMSA Management Guidelines, Exhibit A: CAI's Proposal.

---

VITA and CAI each acknowledge that it has had the opportunity to review this Contract with its legal counsel.

Executed as of the last date set forth below by the undersigned authorized representatives of the Parties.

CAI VITA



By: \_\_\_\_\_

By: \_\_\_\_\_

(Signature)

Name: John M. Kucek

(Print)

Title, Its: Region Manager

Date: November 23, 2005

Address for Notice:

James P. Cooney

470 Friendship Road

Harrisburg, PA 17111

Attention: \_\_\_\_\_

(Signature)

Name: \_\_\_\_\_

(Print)

Title, Its: \_\_\_\_\_

Date: \_\_\_\_\_

Address for Notice:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Attention: Contract Administrator

**15. EXHIBIT A CAI'S PROPOSAL (INCORPORATED BY REFERENCE**

**16. EXHIBIT B PERFORMANCE STANDARDS**

**17. EXHIBIT C SWAM REPORT FORMAT**

**18. EXHIBIT D JOB RATE CARDS**

**19. EXHIBIT E IMPLEMENTATION PLAN**

**20. EXHIBIT F MINIMUM TERM FOR CONTRACTS WITH SUBCONTRACTORS**

**21. EXHIBIT G SMSA MANAGEMENT GUIDELINES**

**22. EXHIBIT H-1 - STATEMENT OF WORK ROLL OUT**

**23. EXHIBIT H-2 - STATEMENT OF WORK TRANSITION OF CURRENT RESOURCES**

**24. EXHIBIT G TRANSITION PLAN**

The transition plan will include the following:

- a). CAI will develop and submit to VITA a transition plan setting forth the respective tasks to be accomplished by each party in connection with the orderly transition and schedule pursuant to which the tasks are to be completed.
- b). All VITA's Confidential Information shall be promptly delivered or returned (as applicable) to VITA or at VITA's written request destroyed and so certified by CAI.
- c). All documents, records, books, tapes, disks and files provided by VITA (which have not been disposed of with VITA's permission) shall be returned to VITA in substantially the same condition as received, ordinary usage excluded.
- d). CAI will provide VITA with reasonably detailed specifications for all hardware, software or other equipment VITA will require to properly assume and perform the Services previously performed by CAI under this Agreement. This will include a complete list of all software by versions then being used by CAI in connection with the Services hereunder.
- e). CAI will reasonably assist VITA in the installation of any such hardware or equipment obtained by VITA in connection with the transition plan.
- f). If during the course of this Agreement, CAI has developed any software program(s) for use by CAI in providing the Services hereunder or for VITA to which CAI has retained ownership, CAI will grant to VITA a nonexclusive, nontransferable, perpetual license to use the software program(s) including all documentation. VITA and Supplier shall enter into an agreement in form and substance reasonably satisfactory to CAI and VITA containing such terms and conditions as may be appropriate for such a transaction.
- g). CAI will assist VITA to obtain any necessary rights to access, run, copy or otherwise use any third party software then being used by CAI in connection with providing the Service hereunder.
- h). CAI will deliver to VITA copies of existing documentation relating to the Service provided hereunder and as appropriate, including third party documentation.
- i). CAI will delivery to VITA all VITA data in a format or formats reasonably acceptable to VITA in order to eliminate or minimize the effort required to manually enter data or re-key information.
- j). CAI will assist VITA by providing training for VITA employees who will be assuming responsibility for the Services previously provided by CAI hereunder.