



# Procuring and Managing IT Contingent Labor Resources Policy

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I. **Purpose.** This document covers policies for procuring information technology (IT) contingent labor staff augmentation services and IT contractors through a Statement of Work (SOW) through the managed service provider (MSP) program. All Authorized Users of the IT Contingent Labor contract (ITCL) are subject to these policies. VITA reserves the right to modify, alter, amend or waive these policies as needed. Authorized Users of the ITCL contract agree to follow these policies when utilizing the contract. Use of the ITCL contract implies consent by the Authorized User to these policies.

II. **Definitions.** These definitions were taken from Staffing Industry Analysts “Contingent Workforce Lexicon of Terms” available at: <http://www.staffingindustry.com/Research-Publications/Resources>.

- **Assignment** — A task or duty being performed by a contingent worker (i.e., a requisition for a temp, or each on boarded consultant associated with a consulting engagement). Assignment may also refer to the period of time that a temporary employee is working at an organization’s facility;
- **Authorized User(s)** - all public bodies, including VITA, as defined by §2.2-4301 and referenced by §2.2-4304 of the *Code of Virginia*.
- **Candidate** — an applicant for a contractor position who has been pre-qualified for temporary or full-time consideration. Also used to distinguish a qualified individual from a pool of unqualified applicants.
- **Co-employment (Co-employer)** — legally referred to as a “Joint Employer” relationship, co-employment is often used to describe the relationship among two or more organizations that exert some level of control over the same worker or group of workers. Co-employers often share some degree of liability for shared employees.
- **Co-employment Risk** — the specific legal and financial risk to Authorized Users arising from co-employment situations. These risks can include, but are not limited to, pay, benefits or unemployment claims; discrimination claims; harassment claims and, workers compensation claims.

- **Contingent Work/Worker** — Used to describe work arrangements that differ from regular/permanent, direct wage and salary employment. Contingent work and workers are primarily distinguished by having an explicitly defined or limited tenure. Contingent workers include resources provided by an outside staffing agency and independent contractors/consultants that are subcontractors to the Commonwealth's Managed Service Provider. The "contingent worker" label applies to all workers of any skill type or experience level who meet this definition.
- **Contractor** — an individual hired to deliver a specified service as laid out in a contract. Refers to individuals employed by a temporary staffing firm, typically at a professional level.
- **E-Verify Program** - For purposes of this program and pursuant to §2.2-4308.2 of the *Code of Virginia*, "E-Verify program" means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208), Division C, Title IV, § 403(a), as amended, operated by the U.S. Department of Homeland Security, or a successor work authorization program designated by the U.S. Department of Homeland Security or other federal agency authorized to verify the work authorization status of newly hired employees under the Immigration Reform and Control Act of 1986 (P.L. 99-603).
- **Exceptions** — In some instances, an Authorized User may request a resource which has a specialized or rare skill set or the MSP is unable to find anyone with a specific skill set within its defined rates. In those instances where a rate category is not available to meet an Authorized User's needs, the Authorized User may request that the MSP allow a "rate exception" or a rate outside of the usual rate range for a skill set in order to obtain the services of the needed resource.
- **Independent Contractor (IC)** — a self-employed individual performing services for a company under contract rather than as an employee, either on- or off-site. (Also referred to as freelancers, consultants, and, "1099s," which is the designation of the IRS form that companies use to report the money paid to independent contractors.) Unlike employees, independent contractors are free to perform their work as they see fit.
- **IT Staff Augmentation Services** — IT contractors who may supplement the current workforce for peak loads, special projects, or planned and unplanned worker absences.
- **Managed Service Provider (MSP)** — A company that takes on primary responsibility for managing an organization's contingent workforce program. Typical responsibilities of an MSP include overall program management, reporting and tracking, supplier selection and management, order distribution and often consolidated billing.
- **Named Resources** – In rare instances, an Authorized User may request the services of a named resource. A named resource is defined as a specifically identified resource who the Authorized User has determined is the ONLY resource available to provide the needed services. Authorized Users may

request a named resource or supplier provided one of the following conditions is met:

- o Emergency situation exists where the subcontractor or resources is the only firm practicable to perform the work or
- o The resource is a subject matter expert that has worked on the system or project within the last 2 years.

Agencies which must request a named resource must have prior approval from the agency AITR or CIO. Other Authorized Users requesting a named resource or supplier must have prior approval from an official within their organization who is authorized to commit the public body contractually and financially. The prior approval must be provided to CAI before any P.O. or SOW may be processed. All requests for named resources or named suppliers by executive branch agencies will be tracked and will be reported to the agency AITR, Governor's Office and the CIO of the Commonwealth

- **Off-boarding** — the process of “checking-out” a contingent worker at the close of an assignment. May include final compensation, equipment return, return of any badges and/or security access and an exit interview among other steps.
- **On-boarding** — the process of bringing a worker into a position with a goal of providing all necessary tools to be productive as soon as possible. May include agency specific training, seat assignments, equipment requirements and other steps.
- **Statement of Work (SOW)** — A document that captures the work products and services, including, but not limited to: the work activities and deliverables to be supplied under a contract or as part of a project timeline. In contrast to a typical temp or contingent work arrangement which is billed based on time worked, SOW agreements are billed based on a fixed price deliverable or for hitting specific milestones. Under the IT Contingent Labor contract, all Services shall be performed at the times and locations set forth in the applicable SOW and at the rates set forth therein.
- **Statement of Work (SOW) Consultant** — any consultant performing work on a project under a Statement of Work (SOW) arrangement.
- **Vendor Management System (VMS)** — An Internet-enabled, often Web-based application that acts as a mechanism for business to manage and procure outside contract or contingent labor. Typical features of a VMS include order distribution, consolidated billing and significant enhancements in reporting capability.
- **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 Supplier, or jointly by Supplier and an Authorized User(s) in the performance of this Contract or any order issued hereunder. Work Product shall not include configuration of software.

- III. **VITA's Statutory Purchasing Authority.** VITA has sole statutory authority to procure all IT and telecommunications goods and services (including agency-specific applications) for executive branch agencies and institutions, except those explicitly exempted by the Code of Virginia or the Appropriations Act.
- IV. **VITA's Statutory Policy Authority.** § 2.2-2010 of the *Code of Virginia* requires the Virginia Information Technology Agencies (VITA) to: "*Develop and adopt policies, standards, and guidelines for the procurement of information technology and telecommunications goods and services of every description for state agencies.*" As directed by § 2.2-2012 of the *Code of Virginia*, VITA has established a "Mandatory Use" contract for the procurement of IT-related contingent labor for use by all executive branch agencies and institutions of higher education that are not exempt from, but subject to, VITA's IT procurement authority. Executive branch agencies and institutions do not have authority to sponsor, conduct or administer an IT contingent labor procurement arrangement unless such authority is delegated by VITA.
- V. **VITA's IT Contingent Labor Contract.** After conducting a competitive procurement, VITA has awarded a mandatory use IT contingent labor services contract to Computer Aid, Inc. (CAI). The structure of the contract as well as the services being provided is structured for maximum flexibility to allow for needed adjustments in the dynamic IT staffing industry. The agreement places emphasis on two areas: assuring the availability of high quality resources and driving effective cost containment.

Some examples of items that are NOT included in the ITCL contract: Projects or initiatives that total greater than \$2,000,000.

- Software licensing
- Hardware and hardware maintenance
- Non-IT staff augmentation
- Projects or initiatives that total greater than \$2,000,000

- VI. **Who can use VITA's IT Contingent Labor Contract (ITCL).** Authorized Users for VITA's IT contingent labor contract include all public bodies, including VITA, as defined by §2.2-4301 and referenced by §2.2-4304 of the *Code of Virginia*. Authorized Users may have additional policies which must be followed by any contingent worker under this contract.
- VII. **Requirement of Competition.** Competition among subcontractors is one of the key methods to ensure the best resources at reasonable market rates are available to provide Authorized Users with the skills they need. Selection of contractors is based upon competition. Competition is required. Use of named resources or named suppliers requires prior approval by the agency's AITR or CIO or for other public bodies, the prior approval of someone who can bind the public body contractually and financially. All usage of named resources or named suppliers are tracked and recorded. Requests for named resources or named suppliers which do not have a required prior approval will not be processed.
- VIII. **Staff Augmentation.** Contingent workers provided by the MSP that are engaged to address short term temporary needs such as backfill for absences or provide specialized expertise or skills, accommodate work volume spikes. The staff augmentation portion of the ITCL contract provides IT resources at hourly market

rates based on job classification and experience. The contractors are paid based on hours worked. CAI will provide consultative assistance to Authorized Users in determining whether their needs can be best met through staff augmentation or through a Statement of Work.

**IX. Engaging a Staff Augmentation Resource.** CAI assists Authorized Users with the classification of the contractor job classification based on the User's needed skills and requirements. Through a subcontractor network, CAI competes the Authorized User's request, providing screened qualified candidates within 4 days after submission of the request. Authorized Users are required to provide a purchase order prior to the release of the requisition to the subcontractor network. Requisition and purchase order approval is in accordance with each agency's approval process and requirements.

**X. Exceptions Category for Unusual Skills or labor conditions for Staff Augmentation Resources.** Occasionally there may be a situation where the prevailing labor rates have changed or a new category of IT skills is needed. In these situations, CAI will work with the Authorized User and CAI will determine a market rate as the basis for the not-to-exceed rate. The request will be competed based on this rate calculation. The request will be categorized as an exception and reviewed for possible addition or adjustment to the rate card.

**XI. Engaging a Named Resource or Supplier.** Requesting a named resource or a named supplier for any staff augmentation or SOW purchase order is strongly discouraged. Requesting named resources/suppliers runs contrary to the competitive requirements of the ITCL contract while also driving up costs for the Commonwealth. All Authorized Users may request a named resource or supplier provided one of the following conditions is met:

- Emergency situation exists where the subcontractor or resources is the only firm practicable to perform the work or
- The resource is a subject matter expert that has worked on the system or project within the last 2 years.

Agencies which must request a named resource must have prior approval from the agency AITR or CIO. Other public bodies must have prior approval signed by someone who is authorized to bind the public body contractually and financially. The prior approval must be provided to CAI before any P.O. or SOW may be processed. All requests for named resources or named suppliers by executive branch agencies will be tracked and will be reported to the agency AITR, Governor's Office and the CIO of the Commonwealth.

**XII. Engaging a Former Full Time Employee (FTE).** Any Authorized User who is requesting to engage a former FTE must ensure that the individual meets the minimum requirements for return to work as defined by each Authorized User's Human Resources Department or policies. Generally, former agency employees are eligible for employment as a staff augmentation contractor after they have left state employment for a minimum of 30 days.

**XIII. On-boarding Staff Augmentation Resources**

A. **Background Checks** – All candidates must successfully pass a criminal background check before they can begin to perform work for any Authorized

User. Authorized Users may also have additional requirements or screening tests that candidates must pass before they can begin work. All candidates will be required to sign a criminal background check authorization form for their contractor, MSP and Authorized User. All candidates must have a NEW background check every time they are engaged under a new P.O. or SOW and all resources must have an updated background check performed annually (on the anniversary date of their start date with the Authorized User.) In the event a resource is engaged through a PO or SOW that has been extended, the resource will still have to have a background check performed annually from the original start date with the Authorized User. The MSP will work with the Authorized Users to review the results. Candidates' eligibility to perform services for an Authorized User is determined by the Authorized User after return of the background check results. Resources which are working on P.O.'s or SOWs which have been extended will also have to submit to annual background checks.

A. **E-VERIFY** – Pursuant to § 2.2-4308.2 of the *Code of Virginia* (Effective December 1, 2013) *Registration and use of federal employment eligibility verification program required*; the E-Verify program is required of any company entering into a contract in excess of \$50,000 to perform work or provide services to the Commonwealth. All new hire resources must be verified as eligible for employment through the e-verify system. This will be performed by the MSP through their subcontractors. New hire resources are those employees, agents or subcontractors of Supplier or any subcontractor hired after the Supplier or subcontractor has agreed to the MOU in the E-Verify system and all new resources that are not existing employees as of the date of the MOU. New hire resources would also include those employees, agents or subcontractors of Supplier or any subcontractor who is “newly hired” to fulfill needed services under an order or SOW under the contract. The following “new hires” are exempt from e-verify: resources who are self employed or work under a 1099 arrangement or resources who have secret or top secret security clearance that can be verified by the MSP.

- More than 96% of e-verify verification cases receive a case result of “Employment Authorized” which means the resource is authorized to work in the U.S. Resources who receive an initial mismatch of “SSA or DHS Tentative NonConfirmation (TNC) have the right to contest a case result and must be allowed to continue to work during this process. The resource has eight federal government work days from the date the case was referred to e-Verify to resolve the problem. If a resource does not resolve the mismatch, E-Verify will return a final nonconfirmation result. Only after a resource receives a nonconfirmation result may an agency terminate the resource based on E-Verify.

In rare cases, the U.S. Department of Homeland Security or the Social Security Administration will need more time to verify the resource's employment eligibility. When this happens E-Verify will return a case in continuance result. When a resource's case is in continuance the agency must allow the resource to continue to work until E-Verify gives a final result of “Employment Authorized” or a “Final Nonconfirmation.”

- B. **Authorized User Policies** – It is incumbent on each agency and each Authorized User to provide each new contingent worker or resource with a copy of all applicable policies that would be applicable to the resource providing services on site.
- C. **Equipment/Access for New Resources** – Part of the on-boarding process will involve providing security access/badging for new candidates. Candidates should not be provided access to any agency facility prior to completion of the complete on-boarding process. Authorized Users should not provide equipment and/or network access to candidates/resources unless such equipment or access is necessary for the resource to perform the work as specified in the PO or SOW.

#### XIV. **Managing the Staff Augmentation Resource**

- A. **Ethics** – All Authorized Users, resources and subcontractors utilizing this contract are expected to maintain high ethical standards in interactions with other subcontractors, employees (of Authorized Users) and other contractors and resources. Includes:
- Support of required competition
  - Ensuring agency and resources follow the contract, the Commonwealth and the Authorized Users policies and guidelines
  - All contractors are responsible for acting with integrity and supporting ethical business practices
  - All consultants must comply with all laws, rules and legal regulations.
- B. **Conflicts of Interest** – Any and all resources engaged under the IT Contingent Labor contract must not engage in activities that would present a conflict of interest related to the agency that they are working for or any Authorized User under the contract. During their assignment, all resources must disclose to the agency or Authorized User all situations where they may be conducting business with members of their family, friends or others with whom they have a close personal relationship.
- C. **Use of Authorized User Resources** – Any use of an agency or Authorized User's assets, resources or equipment must be solely for agency or Authorized User business purposes and must be consistent with the agency or Authorized User's policies and guidelines. All resources may not use an agency or Authorized User asset or equipment in violation of the law and must not allow others to use such asset or equipment for that purpose. Agency or Authorized User assets or equipments may not be used to create, transmit, share, copy or display messages, images or materials that are: for personal gain, solicitations, chain letters; or messages, gaming, images or materials that the agency or Authorized User deems to be threatening, pornographic, sexually explicit, harassing or demeaning to any person or group. Contingent workers and other resources should not have any expectation of personal privacy in any messages or records created, transmitted or shared using agency or Authorized Users assets or equipment. The agency or Authorized User has the right to access or retrieve any such data or correspondence at any time.

- D. **Confidentiality** – All IT Contingent Labor resources engaged under this contract are expected to be familiar with and adhere to all applicable agency and/or Authorized User confidentiality policies or terms. Any learned information by a resource while on assignment under a PO or SOW is considered proprietary to the agency or Authorized User and not to be discussed outside of work. Resources may not use, disclose or distribute any confidential information except as necessary or required to perform the specified assignment. All materials containing confidential information shall remain the property of the agency or Authorized User and the resource shall not retain such materials after the assignment is terminated.
- E. **Copyrights, Patents and Intellectual Property** – Resources may have opportunities to work on projects involving trade secrets, copyrighted information or other intellectual property information. Intellectual property includes but is not limited to patents, patent applications, inventions, conceptions, ideas, know-how, specifications, methods, techniques, computer programs, copyrightable works, and/or technical and product information. Any and all intellectual property that is conceived or created by a resource under assignment to an agency or Authorized User is deemed the exclusive property of the agency or Authorized User and the resource assigns all rights in such intellectual property to the agency or Authorized User without additional compensation.
- F. **Co-employment** – Authorized Users should follow practices that minimize the risk that a contingent worker is considered an employee of the Authorized User for the purposes of employment law or taxation. For more information on how to minimize the risk of co-employment refer to DHRM's Contingent Workforce Risk Management Toolkit (2009) at <http://web1.dhrm.virginia.gov/itech/talentmanagement/documents/ContingentWorkforceRiskManagementToolkit.pdf> or consult with your H/R department.
- G. **Treatment of Resource/Contingent Worker while on Premises of Agency or Authorized User** - Authorized Users should not take actions that are the responsibility of the resource's employer including: approving vacation requests or approving notifications by the resource of a sick day, or the need to work from home. Contractors may only work 40 hours a week across all engagements including those where a resource is working on more than one project or with more than one agency. In the event a hiring manager needs a resource to work more than 40 hours a week, such hiring manager shall pre-approve such additional hours.

Authorized Users should insure that Contractors do not:

- Serve in management roles or supervise any Authorized User employee
- Write or deliver performance reviews – participate or contribute to any disciplinary action, communicate feedback to MSP if needed.
- Participate in decisions related to hiring or termination
- Access any employee or contractor personal information (salary, performance reviews, etc.)

In addition, Authorized Users should insure that:

- Contractors/Resources wear their contractor badge at all times and return his/her badge upon termination of the assignment or upon request of the Authorized User.
  - Contingent Workers are not eligible for any agency or Authorized User recognition programs.
  - Contingent workers are not eligible to participate in any Authorized User's employee benefits plans and are not eligible for agency or Commonwealth benefits.
  - Careful consideration should be given to whether contingent workers or resources should attend agency or Authorized User meetings. Agencies or Authorized Users should invite contingent workers and/or resources only to meetings that directly pertain to their assignment or the service they provide.
  - Careful consideration should also be given whether to permit contingent workers and/or resources to attend non-work related functions, play on an agency-sponsored sports teams or participate in any event that is not open to visitors, guests or the general public.
- H. **Use of Title/Name in E-Mails, Presentation and Correspondence** – No contingent worker or resource provided under this contract should use agency or Authorized User titles, sign documents on behalf of the agency or Authorized User or obtain and use agency or Authorized User business cards. In addition, all contingent workers should denote their role in all e-mails, presentation and correspondence prepared during the course of their assignment as "contractor to X agency/Authorized User." At all times, the contingent worker/resource should identify themselves as a "contractor."
- I. **Wage or Pay Rates** - Negotiation of wage or pay is not allowed by contingent workers or resources. Resource rates are based on contractual rate cards and no individual increases are allowed. Contingent workers and other resources are not eligible for any other remuneration except that on the specific rate card. No additional compensation is allowed by the agency or Authorized User under any circumstances.
- J. **Contractor Performance** – Agencies and Authorized Users should be careful not to communicate any performance related feedback to any contingent worker or resource. Do not conduct performance evaluations of contingent workers or resources or attempt to discuss or resolve performance or contract related issues directly with the contingent worker or resource or subcontractor.
- K. **Removal of a Resource** - Any Authorized User may require the immediate removal from such Authorized User's premises of any resource that 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.
- L. **Travel or Business Reimbursement** – All travel and business expense reimbursement should have prior approval of the agency or Authorized User. All travel and expense reimbursements should be approved and paid by Computer Aid. All reimbursements are only allowed where expense has been approved in advance, is a line item on the PO and payments should be made through the MSP. Payments must not be directed to the individual. Reimbursement for travel expenses or other expenses under an SOW is only

allowed when negotiated in the SOW. All executive branch agencies must comply with DOA travel guidelines. Authorized Users must not approve travel related expenses within the Richmond metro area or for parking at the workplace. Expenses for spouses or relocation are not reimbursable.

- M. **Training** - Only agency specific or Authorized User-specific training shall be provided to any contingent worker or resource. No training shall be provided or required except for unique agency or Authorized User requirements as necessary to perform the specific work requested. Any and all training provided to contractors must be to meet a specific requirement of the role being filled by the contractor. Agencies and Authorized Users shall provide instruction related to agency specific procedures and policies that are necessary and essential to the engaged resource to perform work. Training for skills and competencies needed for the resource are the responsibility of the contractor and contractor's firm to provide and see that such responsibilities are met.
- N. **Agency Evaluation of Suppliers** - Supplier evaluations must be completed at expiration of engagement or if long term engagement at regular annual intervals by agencies and Authorized Users. Managers are required to complete evaluations.
- O. **Tenure** - Agencies and Authorized Users are expected to establish appropriate tenure policies and practices to minimize the risk of co-employment to their agency or institution and to the Commonwealth. Agencies and institutions should consult with their internal HR departments and DHRM.
- P. **Extensions – No Purchase Order for a staff augmentation resource can be for extended for more than six (6) months.**
- XV. **Off-Boarding the Staff Augmentation Resource**. Authorized Users must ensure that the resource returns all property including but not limited to all badging, parking permits, security fobs or access cards of the Authorized User and that all system access, including email, etc. has been disabled. Authorized Users are responsible to ensure that they require periodically receive all work product as well as all documentation generated during the resource's tenure prior to release of the resource. Hiring managers must complete feedback survey and complete the final timesheets promptly.
- XVI. **Statements of Work**. This section covers policies for procurement of temporary IT contractors through a Statement of Work through the IT Contingent Labor contract. The SOW process is designed to assist Authorized Users with the following:
- provides a common and expedited process for Authorized Users to obtain deliverables-based resources in a SOW through the IT Contingent Labor contract.
  - provides a process for deliverables-based SOW procurement that reduces costs to the Commonwealth
  - leverages competition so that agencies obtain high quality project-based consulting services at market rates.

The following list provides examples of specialty areas that may be used for SOWs:

- Application Development
- Business Continuity Planning
- Business Intelligence
- Business Process Reengineering
- Enterprise Architecture
- Enterprise Content Management
- Back Office Solutions
- Geographical Info Systems
- Information Security
- IT Infrastructure
- IT Strategic Planning
- Project Management
- Public Safety Communications
- Radio Engineering Services
- IV&V Services

All work performed on an hourly basis is considered a staff augmentation engagement, NOT an SOW-based engagement. The staff augmentation program can accommodate the special situation where there may be a need for resource with a specialized skill. CAI will provide consultative assistance to Authorized Users in determining whether their needs can be best met through staff augmentation or through a Statement of Work.

**XVII. Beginning the SOW Process**. In order to start the SOW process, a statement of requirements (SOR) is created by the Authorized User's Hiring Manager in collaboration with their Procurement Officer. Since a formal SOW will result to document the supplier's commitment to satisfy the Authorized User's SOR, the SOR should reflect all results and outcomes desired from the engagement, rather than the effort involved in producing the outcomes. SORs should be complete, comprehensive and provide sufficient detail to enable the supplier to understand the outcomes, the environment and to propose a fixed price engagement. Payments to the supplier should be based on deliverables and may include interim milestones payments after agency acceptance of such milestones. The SOR template can be downloaded by all Authorized Users from: <http://www.vita.virginia.gov/scm/default.aspx?id=11906>.

The SOR template is designed for the Authorized User to easily describe the IT services needed to a vendor or approver in a consistent manner. It includes criteria such as project roles and responsibilities and scope.

The Authorized User fills in the areas designated for entry by Authorized User personnel, and saves it under a unique name. This document is the expression of need by the Authorized User and can be used for any internal approvals.

For executive branch agencies, Statements of Requirements (SORs) and Statements of Work (SOWs) with a total value of \$1M or greater or as designated by the Secretary of Technology as a major project, must be approved by VITA. Specifically, the SOR, SOW and contract will be reviewed by VITA to ensure compliance with the agency's IT strategic plan and well as IT policies and standards of the Commonwealth. Those SORs and SOWs that are found to not comply with these standards must be modified by the agency and brought into compliance before being approved by the CIO of the Commonwealth or the Secretary of Technology.

- XVIII. Statement of Work (SOW) or Deliverables-based IT Contingent Labor Budget.** The maximum value for an SOW under the program is \$2 million. All project phases and change orders are expected to fall within that limit. Large and or highly complex projects should be publicly competed through a Commonwealth solicitation. To assist the MSP in engaging the appropriate subcontractors, users are requested to provide the estimated size of their project by selecting from the following three tiers:
- Tier 1 subcontractors are eligible for engagements up to \$300,000;
  - Tier 2 companies are eligible for engagements up to \$800,000 and
  - Tier 3 firms are eligible up to \$2 million. This classification allows a larger number of smaller subcontractors to participate in the program.
- XIX. Obtaining SOW Services – (The Engagement Phase).** The Engagement Phase begins with the review of the vendors submissions. After review for completeness, the Authorized User begins to evaluate the responses. Using pre-determined evaluation criteria, the agency/Authorized User will determine which vendor will be awarded the SOW. the Authorized User may negotiate with a vendor prior to engagement. Any changes to milestones and/or pricing are made by the vendor upon direction from the Authorized User contact. The Authorized User will then create a purchase order in the eVA system, or their designated purchasing system, and will attach the signed SOW. When the PO is approved, the requirement is ready to be “Engaged.”
- XX. SOWs Additional Terms and Conditions.** An SOW from an Authorized User may contain additional terms and conditions; however, to the extent that the terms and conditions of the Authorized User’s order are inconsistent with the terms and conditions of the Contract, the terms of this Contract shall supersede. In no event shall any SOW or any modification thereto require the Supplier to perform any work beyond the scope of this Contract as such scope is defined in the contract. If an Authorized User would like to propose longer acceptance and/or testing periods in an SOW than those provided in the IT Contingent Labor Contract, the User may do so and if those extended periods are accepted by the MSP and the subcontractor, they may become part of the SOW.
- XXI. SOWs Require Competition.** Selection of SOW contractors or firms is based on competition. Agencies shall ensure fair competition for each engagement and should not pre-select named resources or named suppliers. Use of named suppliers is not appropriate; exceptions require documentation to justify the need for such supplier and also require in the case of executive branch agencies the prior approval of the agency AITR or in the case of public bodies, the prior approval of an agency official or agent who is authorized to sign contracts and financially bind such public body.
- XXII. Selection of Named Firms or Named Resources for SOWs.** Requesting a named resource or a named supplier for any staff augmentation or SOW purchase order is strongly discouraged. Requesting named resources/suppliers runs contrary to the competitive requirements of the ITCL contract while also driving up costs for the Commonwealth. Authorized Users may request a named resource or supplier provided one of the following conditions is met:

- Emergency situation exists where the subcontractor or resources is the only firm practicable to perform the work or
- The resource is a subject matter expert that has worked on the system or project within the last 2 years.

Agencies which must request a named resource must have prior approval from the agency AITR or CIO. Other public bodies must have prior approval signed by someone who is authorized to bind the public body contractually and financially. The prior approval must be provided to CAI before any P.O. or SOW may be processed. All requests for named resources or named suppliers by executive branch agencies will be tracked and will be reported to the agency AITR, Governor's Office and the CIO of the Commonwealth.

**XXIII. Statement of Work Approvals.** Requisition approval is in accordance with each agency's or Authorized User's approval process. Additional purchase order information is available on VITA's website at <http://www.vita.virginia.gov/scm/default.aspx?id=11906>.

**XXIV. SOW Designation of Key Personnel or Project Managers.** An SOW may designate certain of Supplier's personnel as Key Personnel or Project Managers. Supplier's obligations with respect to Key Personnel and Project Managers shall be described in the SOW.

**XXV. On-Boarding of SOW Resources.** Section XIV (above) of On-Boarding Staff Augmentation Resources, including background checks, e-Verify, etc. is also applicable to SOW on-boarding.

**XXVI. Managing the SOW.** Section XIV "Managing Staff Augmentation Resources" is also applicable to managing SOW resources. If any individual resource provided under an SOW is unable to perform at an acceptable level within a reasonable length of time, as determined by the Authorized User, such Authorized User shall have the right to request that Supplier immediately remove such individual from performing on the SOW and replace such individual with a more qualified resource.

There are, however, additional responsibilities that must be performed by the Authorized User during the SOW. The Authorized User will be responsible for performing the administrative and oversight functions in the SOW, including the timely creation of change orders or extensions if the project scope changes or needs additional time for completion. The Authorized User is also responsible for performing the necessary Acceptance testing and providing written acceptance or rejection of any Services or Deliverables that have been received under the SOW. Authorized User must also provide the Supplier written notice of any non-conforming Service or Deliverable. Supplier shall correct any non-conformities identified and shall submit a new or revised Service or Deliverable within **seven (7) days** of receiving notice of the non-conformance or such other time as agreed upon between the Authorized User and the Supplier. See Section(s) XX "Acceptance of Services and Deliverables under an SOW" and XXI "Cure Period" for additional information.

**XXVII. Removal of a SOW Resource.** Any Authorized User may require the immediate removal from such Authorized User's premises of any resource that 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.

**XXVIII. SOW Change Orders.** Supplier personnel working under an SOW shall maintain daily time records of hours and tasks performed, which shall be submitted or made available for inspection by VITA upon forty-eight (48) hours advance written notice. Any total dollar amounts or not-to-exceed limitations appearing in an SOW shall be considered reasonably accurate estimates. All changes to the Services in an SOW must be described in a written change request (template provided as Exhibit), which includes any appropriate adjustments to the SOW. Either Party to an SOW may issue a change request that will be subject to written approval of the other Party before it becomes part of this Contract. An SOW from an Authorized User may contain additional terms and conditions; however, to the extent that the terms and conditions of the Authorized User's order are inconsistent with the terms and conditions of this Contract, the terms of this Contract shall supersede. In no event shall any SOW or any modification thereto require the Supplier to perform any work beyond the scope of this Contract. Any change in scope or cost must be reflected in the change order and no other changes are allowed outside of the change order process. Changes are not to exceed 50% or go over \$2M or extend the length of the SOW for more than six (6) months.

Authorized Users must keep all change orders for a period of three (3) years from the date of the original engagement or SOW date for auditing purposes.

**XXIX. Acceptance of services and deliverables under an SOW.** Service(s) and Deliverable(s) shall be deemed accepted when the Authorized User determines that such services or deliverables have met the Requirements or written criteria set forth in the applicable SOW. At a minimum, Acceptance criteria for Services and Deliverables shall ensure that all of the functionality described in the SOW has been delivered to the Authorized User.

The Authorized User is to commence Acceptance testing within ten (10) **business days** after receipt of the Service or Deliverable or within such other time period mutually agreed upon by the Parties to the SOW. Authorized User shall provide written notice of Acceptance upon completion of installation and successful Acceptance testing. Once an Authorized User has accepted a Service or Deliverable in Peoplefluent, the Service or Deliverable is deemed accepted and such acceptance cannot be revoked.

Deliverables are **deemed accepted** if the Authorized User does not communicate any nonconformities to the Supplier within **five (5)** business days following the end of the Acceptance Period

**XXX. Cure Period.** Authorized User must also provide the Supplier written notice of any non-conforming Service or Deliverable. Supplier shall correct any non-conformities identified and shall submit a new or revised Service or Deliverable within **seven (7)** days of receiving notice of the non-conformance or such other time as agreed upon between the Authorized User and the Supplier. In the event Supplier fails to deliver a Service or Deliverable which meets the Requirements of the SOW, the Authorized User, may, in its sole discretion: (i) reject the Service or Deliverable in its entirety and recover amounts previously paid hereunder; (ii) issue a "partial Acceptance" of the Service or Deliverable with an equitable adjustment in the price to account for such deficiency or nonconformity; or (iii)

conditionally accept the Service or Deliverable while reserving its right to revoke Acceptance if timely correction is not forthcoming. Failure of a Service or Deliverable to meet, in all material respects, the specifications and requirements of the SOW after the second set of Acceptance tests may constitute cause to terminate the SOW.

**XXXI. Limited Warranty Period for Services and Deliverables Following**

**Acceptance.** Authorized Users have a limited warranty on all services and deliverables provided under an SOW for 90 days from acceptance of the service or deliverables. During the Warranty Period, the Supplier warrants that the Deliverables do not contain any material errors and shall conform to the Requirements outlined in the SOW. Supplier shall correct all errors at no additional cost to the Authorized User. Authorized User must provide Supplier with written notice during the limited warranty period of any non-conforming deliverable or service. If Supplier is unable to make the Deliverable conform, in all material respects to the SOW requirements within 10 days or a time period mutually agreed upon or as specified in the SOW, Supplier shall, at Authorized User's request, accept return of such Deliverable and any other related Deliverables rendered unusable, and return all monies paid by such Authorized User for the non-conforming deliverable and other related Deliverables.

**XXXII. Reimbursement of Travel and Business Related Expenses under an SOW.**

Any travel expenses not included in the total price of a fixed price type SOW must be pre-approved by the Authorized User and shall be reimbursable by such Authorized User at the then-current per diem amounts as published by the Virginia Department of Accounts (<http://www.doa.virginia.gov/procedures/adminservices/capp/pdfdocs/20335.pdf> or a successor URL(s)).

Authorized Users are strongly encouraged to minimize travel requirements and include them in the SOW.

If included in the SOW and agreed to by the Authorized User, the Authorized User may agree to pay, or reimburse Supplier, for all reasonable and actual travel-related expenses for greater than thirty (30) miles from portal to portal incurred by Supplier during the relevant period; provided, however, that such Authorized User shall only be liable to pay for Supplier's travel-related expenses, including transportation, meals, lodging and incidental expenses, that have been authorized by such Authorized User in advance and which will be reimbursable by such Authorized User (in the case of executive branch agencies) at the then-current per diem amounts as published by the Virginia Department of Accounts (<http://www.doa.virginia.gov/procedures/adminservices/capp/pdfdocs/20335.pdf> or a successor URL(s)).

All reimbursed expenses will be billed to the Authorized User on a pass through basis. At Authorized User's request, Supplier shall provide copies of receipts for all travel expenses over US\$30.00. This Contract does not provide for reimbursement of any relocation expenses incurred by Supplier.

**XXXIII. Termination of an SOW.** On rare occasions, SOWs must be terminated. SOWs can only be terminated by an Authorized User. Suppliers do not have the right under the IT Contingent Labor Contract to terminate any SOW. In the event that the Authorized User wants or needs to terminate a SOW prior to its planned

completion, the Authorized User must give the Supplier thirty (30) days written notice of such termination. The Authorized User should determine what deliverables, milestones and/or payments are deemed accepted under the SOW. The purchase order is changed to reflect final payments for those accepted deliverables, if appropriate, and a change order is sent to CAI. It is necessary, however, to establish which deliverables or services are accepted and which services or deliverables are non-conforming to the SOW and if final payments are in order.

**XXXIV. Close-Out of an SOW.** The Finalization Phase of a project begins after the invoice/payment tasks for the final milestone have been completed. The Authorized User should verify that all assets (e.g., security card, VPN token, equipment) and documentation (e.g., knowledge transfer, application) have been returned prior to approving the final milestone deliverable for payment. If the milestone payment is the final payment, and after verifying that all invoices and expenses have been paid, the Authorized User can close out the Purchase Order in eVA, or their designated purchasing system.

**XXXV. SOW Customer Satisfaction Survey.** The Finalization Phase of a project begins after the invoice/payment tasks for the final milestone have been completed. The last task in the closeout of a project is the completion of the Customer Satisfaction Survey by the agency or Authorized User. The agency or Authorized User will receive the Customer Satisfaction Survey after project completion. Authorized Users will have two (2) weeks to complete the survey and return it to the CAI Account Manager.

**XXXVI. Authority References.**

§2.2-2010 of the *Code of Virginia*; Additional Powers of VITA including statutory authority to develop and adopt policies, standards, and guidelines for managing information technology by state agencies and institutions and to develop and adopt policies, standards, and guidelines for the procurement of information technology and telecommunications goods and services of every description for state agencies.

§2.2-2012 of the *Code of Virginia*; Procurement of information technology and telecommunications goods and services; Information technology and telecommunications goods and services of every description shall be procured by (i) VITA for its own benefit or on behalf of other state agencies and institutions or (ii) such other agencies or institutions to the extent authorized by VITA.

§2.2-2020 of the *Code of Virginia*; Procurement approval for major information technology projects.

§2.2-4300 et seq. of the *Code of Virginia*; Virginia Public Procurement Act and specifically §2.2-4301 and §2.2-4304.

§2.2-4308.2 of the *Code of Virginia*; requirement for e-Verify.