



**COMMONWEALTH OF VIRGINIA
STANDARD CONTRACT**

Contract No. UCPJMU4469

This contract entered into this 29th day of September 2015, by **The CBORD Group, Inc.** hereinafter called the "Contractor" and Commonwealth of Virginia, James Madison University called the "Purchasing Agency".

WITNESSETH that the Contractor and the Purchasing Agency, in consideration of the mutual covenants, promises and agreements herein contained, agree as follows:

SCOPE OF CONTRACT: The Contractor shall provide the services to the Purchasing Agency as set forth in the Contract Documents.

PERIOD OF PERFORMANCE: From October 1, 2015 through September 30, 2016 with nine (9) one-year renewal options.

The contract documents shall consist of:

- (1) This signed form;
- (2) The attached purchasing description which consists of:
 - (a) The Scope of Work,
 - (b) The General Terms and Conditions,
 - (c) The Special Terms and Conditions.

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

By: Christine Curkendall
(Signature)

Christine Curkendall
Director of Contracts Administration
(Printed Name)

Title: 9/29/15

PURCHASING AGENCY:
By: Matasha Owens
(Signature)

MATASHA OWENS
(Printed Name)

Title: Buyer Senior

SCOPE OF SERVICES

- A. The Contractor shall offer a full range of software licenses, hardware, maintenance, and services to all Commonwealth of Virginia agencies and institutions (*public and private*) which currently have CBORD systems installed. This contract shall encompass all goods and services available from the Contractor and is not limited to specific product lines or services. All new systems must be procured at an institution/agency level prior to obtaining access to this contract. CBORD requires each institution to sign their Card Systems Master Agreement prior to being granted access to this contract. Some systems may require additional addenda to the Card Systems Master Agreement which may be specific to the nature of the additional goods and services.
- B. James Madison University is the sponsoring agency and will administer the contract on behalf of all users.
- C. COOPERATIVE PURCHASING/USE OF AGREEMENT BY THIRD PARTIES: Any public body (*to include government/state agencies, political subdivisions, etc.*), cooperative purchasing organizations, public or private health or private educational institutions, or any University related foundation and affiliated corporations may access this contract if authorized by the Contractor and providing that the agency or institution has a CBORD system already installed.

Participation is strictly voluntary. If authorized by the Contractor, this contract will be extended to the entities indicated above to purchase goods and services in accordance with contract terms. As a separate contractual relationship, the participating entity will place its own orders directly with the Contractor and shall fully and independently administer its use of the contract to include contractual disputes, invoicing and payments without direct administration from the University. No modification of this contract is required to participate; however, the execution of CBORD's Card System Master Agreement is required by each institution or agency. The participating entity and the Contractor may modify the terms and conditions of this contract to accommodate specific governing laws, regulations, policies, and business goals required by the participating entity. Any such modifications will apply solely between the participating entity and the Contractor.

The Contractor will notify the University in writing and provide semi-annual usage reports for all entities accessing the contract. The University shall not be held liable for any costs or damages incurred by any other participating entity as a result of any authorization by the Contractor to extend the contract. It is understood and agreed that the University is not responsible for the acts or omissions of any entity and will not be considered in default of the contract no matter the circumstances.

Use of this contract does not preclude any participating entity from using other contracts or competitive processes as needed. The following Institutions shall immediately have access to this contract:

James Madison University
Bridgewater College
College of William and Mary
Eastern Mennonite University
Emory & Henry College
Longwood University
Marymount University
Norfolk State University
Northern Virginia Community College
Old Dominion University
Radford University
Randolph Macon College
Tidewater Community College
University of Richmond
University of Virginia
Virginia Commonwealth University
Virginia Polytechnic Institute and State University
Virginia Wesleyan College

PRICING SCHEDULE

- A. The Contractor shall offer participating institutions and agencies the following tiered discount structure for the current contract year based on their combined spend from the previous contract year (*October 1 – September 30*). No other discounts can be combined with the following discounts; however, if other discounts become available, the institution or agency may choose the discount that benefits it most. Professional services (e.g. Project Management, On-site assistance by systems engineers, etc.), annual fees, transaction fees, and third-party software and hardware are non-discountable. The latter shall be included in the aggregate spend from the previous contract year, with the exception of transaction fees. The Contractor shall provide a detailed report to James Madison University Procurement Services no later than October 31st of each year that specifies each participating institution or agency and their previous contract year spend. Discounts are applied to the then-current product list price. All products must be quoted at the time of purchase. The quote provided by the Contractor shall provide the list price and discounted price. The tiered discount structure is as follows:

| | Total Aggregate Spend | Discount |
|--------|------------------------------|-----------------|
| Tier 1 | Less than \$1,000,000 | No Discount |
| Tier 2 | \$1,000,001 - \$1,500,000 | 7.5% |
| Tier 3 | \$1,500,001 - \$2,000,000 | 10% |
| Tier 4 | \$2,000,001 - \$3,000,000 | 12.5% |
| Tier 5 | \$3,000,000+ | 15% |

- B. The Contractor shall grant participating institutions and agencies access to CBORD's Off-Campus Advantage ("UGryd") program. Each institution or agency will be required to sign an Off-Campus Advantage Addendum. Enhanced revenue share percentages will be made available to applicable campuses as follows:

1. Group A campuses shall receive a revenue share payment equal to 45% of all interchange fees collected on applicable sales, per site, per month. Group A campuses include:
James Madison University
Longwood University
Old Dominion University
Virginia Commonwealth University
2. Group B campuses shall receive a revenue share payment equal to 20% of all interchange fees collected on applicable sales, per month. Group B campuses include:
The College of William and Mary

The Contractor shall separately amend each existing Off-Campus Advantage Agreement for Groups A and B to align with this contract.

If any Group A or B campus modifies their existing Merchant Interchange Fees for every merchant on their existing program, both CBORD and the participating institution shall modify in writing the Off-Campus Advantage Agreement for revenue shares.

3. Group C campuses shall include any participating institution or agency not a current Off-Campus Advantage customer as of the effective date of this agreement. Each new participating institution or agency shall be provided the following enhanced revenue share percentages, which shall be based on the Merchant Interchange Rate:
15% share for Merchant Interchange Rates from 3.5 to 5.9 percent.
35% share for Merchant Interchange Rates from 6 to 8.9 percent.
55% share for Merchant Interchange Rates of 9 percent or higher.

If any participating institution that is self-operating an off-campus program becomes a CBORD Off-Campus Advantage customer, and at any time thereafter can provide previous twelve (12) months data showing gross merchant sales greater than -\$750,000, both CBORD and the participating institution shall modify in writing the Off-Campus Advantage Agreement to move from Group C to Group A.

These enhanced revenue share percentages shall be offered year round and are not subject to modification based on gross sales levels attained individually or collectively. Each participating institution or agency shall receive a monthly payment based on each individual previous month's total applicable sales and using the associated revenue share.

The Contractor shall meet with participating institutions or agencies at least once a year to discuss progress and potential new sites for the UGryd program. The Contractor shall provide merchant window signage noting participating in the UGryd program at no cost to the institution or agency.

GENERAL TERMS AND CONDITIONS GOODS AND NONPROFESSIONAL SERVICES

Rev. 7/3/14

- A. PURCHASING MANUAL: This contract is subject to the provisions of the Commonwealth of Virginia's Purchasing Manual for Institutions of Higher Education and Their Vendors and any revisions thereto, which are hereby incorporated into this contract in their entirety. A copy of the manual is available for review at the purchasing office. In addition, the manual may be accessed electronically at <http://www.jmu.edu/procurement> or a copy can be obtained by calling Procurement Services at (540) 568-3145.
- B. APPLICABLE LAWS AND COURTS: This contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Contractor shall comply with applicable federal, state and local laws and regulations.
- C. ANTI-DISCRIMINATION: By entering into this contract, the Contractor certifies to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and §10 of the Rules Governing Procurement, Chapter 2, Exhibit J, Attachment 1 (available for review at <http://www.jmu.edu/procurement>). If the Contractor is a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*§6 of the Rules Governing Procurement*)

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

- 1. During the performance of this contract, the Contractor agrees as follows:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such contractor is an equal opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
- 2. The Contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

- C. ETHICS IN PUBLIC CONTRACTING: By entering into this contract, the Contractor certifies that they have acted without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with this contract, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
- D. IMMIGRATION REFORM AND CONTROL ACT OF 1986: By entering into a written contract with the Commonwealth of Virginia, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
- E. ANTITRUST: By entering into a contract, the Contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.
- F. PAYMENT:
1. To Prime Contractor:
 - a. Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (*for individual contractors*) or the federal employer identification number (*for proprietorships, partnerships, and corporations*).
 - b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
 - c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the Contractor at the contract price, regardless of which public agency is being billed.
 - d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
 - e. Unreasonable Charges. Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the Contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Rules Governing Procurement, Chapter 2, Exhibit J, Attachment 1 § 53; available for review at <http://www.jmu.edu/procurement>*).
 2. To Subcontractors:
 - a. A Contractor awarded a contract under this solicitation is hereby obligated:
 - (1) To pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or

- (2) To notify the agency and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.
- b. The Contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.
3. Each prime contractor who wins an award in which provision of a SWAM procurement plan is a payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWAM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.
4. The Commonwealth of Virginia encourages contractors and subcontractors to accept electronic and credit card payments.
- H. PRECEDENCE OF TERMS: Paragraphs A through G of these General Terms and Conditions and the Commonwealth of Virginia Purchasing Manual for Institutions of Higher Education and their Vendors, shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.
- I. TESTING AND INSPECTION: The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
- J. ASSIGNMENT OF CONTRACT: A contract shall not be assignable by the Contractor in whole or in part without the written consent of the Commonwealth.
- K. CHANGES TO THE CONTRACT: Changes can be made to the contract in any of the following ways:
1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
 2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the Contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Contractor shall comply with the notice upon written acceptance. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:
 - a. By mutual agreement between the parties in writing; or
 - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the Contractor's records and/or to determine the correct number of units independently; or
 - c. By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the Contractor as it deems

necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia Purchasing Manual for Institutions of Higher Education and their Vendors. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with the changes ordered by the Purchasing Agency that has been accepted by both parties in writing or with the performance of the contract generally.

- L. DEFAULT: In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Participating Agency, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs, not to exceed the cumulative total of all fees paid by the Participating Agency during the previous twelve (12) months. This remedy shall be in addition to any other remedies which the Participating Agency may have.
- M. INSURANCE: By signing this contract, the Contractor certifies it has the following insurance coverage. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with § 25 of the Rules Governing Procurement – Chapter 2, Exhibit J, Attachment 1, and 65.2-800 et. Seq. of the Code of Virginia (available for review at <http://www.jmu.edu/procurement>). The Contractor further certifies the Contractor and any subcontractors will maintain these insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:

1. Workers' Compensation – Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirement under the Code of Virginia during the course of the contract shall be in noncompliance with the contract.
 2. Employer's Liability - \$100,000.
 3. Commercial General Liability - \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.
 4. Automobile Liability - \$1,000,000 combined single limit. *(Required only if a motor vehicle not owned by the Commonwealth is to be used in the contract. Contractor must assure that the required coverage is maintained by the Contractor (or third party owner of such motor vehicle).)*
- N. DRUG-FREE WORKPLACE: During the performance of this contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

- O. AVAILABILITY OF FUNDS: It is understood and agreed between the parties herein that the Commonwealth of Virginia shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.
- P. E-VERIFY REQUIREMENT OF ANY CONTRACTOR: Any employer with more than an average of 50 employees for the previous 12 months entering into a contract in excess of \$50,000 with James Madison University to perform work or provide services pursuant to such contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to any awarded contract.
- Q. TAXES: Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.
- R. TRANSPORTATION AND PACKAGING: By signing this contract, the Contractor certifies and warrants that the price offered for FOB destination, unless otherwise agreed to in writing by the parties, includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.

SPECIAL TERMS AND CONDITIONS

- A. AUDIT: The Contractor hereby agrees to retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.
- B. CANCELLATION OF CONTRACT: James Madison University reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the Contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.
- C. SUBMISSION OF INVOICES/PAYMENTS: All invoices shall be submitted within sixty days of contract term expiration for the initial contract period as well as for each subsequent contract renewal period. If requested by the institution or agency, the Contractor shall accept electronic payments (*ghost card or ACH*).
- D. OPERATING VEHICLES AT PARTICIPATING INSTITUTIONS AND AGENCIES' LOCATION: Operating vehicles on sidewalks, plazas, and areas heavily used by pedestrians is prohibited. In the unlikely event a driver should find it necessary to drive on sidewalks, plazas, and areas heavily used by pedestrians, the driver must yield to pedestrians. Accordingly, violators may be charged.
- E. SMALL BUSINESS SUBCONTRACTING AND EVIDENCE OF COMPLIANCE:
1. It is the goal of the Commonwealth that 40% of its purchases are made from small businesses. This includes discretionary spending in prime contracts and subcontracts. All Contractors are required to submit a Small Business Subcontracting Plan. Unless the Contractor is registered as a DMBE-certified small business and where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the Contractor is encouraged to offer such subcontracting opportunities to DMBE-certified small businesses. This shall not exclude DMBE-certified women-owned and minority-owned businesses when they have received DMBE small business certification. No Contractor or subcontractor shall be considered a Small Business, a Women-Owned Business or a Minority-Owned Business unless certified as such by the

Department of Minority Business Enterprise (DMBE). If small business subcontractors are used, the prime contractor agrees to report the use of small business subcontractors by providing the purchasing office at a minimum the following information: name of small business with the DMBE certification number or FEIN, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product/service provided. This information shall be submitted to each participating institution or agency as requested.

2. Each prime contractor who wins an award in which provision of a small business subcontracting plan is a condition of the award, shall deliver to the contracting agency or institution with every request for payment, evidence of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the small business subcontracting plan. This information shall be submitted to each participating institution or agency as requested. When such business has been subcontracted to these firms and upon completion of the contract, the Contractor agrees to furnish the purchasing office at a minimum the following information: name of firm with the DMBE certification number or FEIN number, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product or service provided. Payment(s) may be withheld until compliance with the plan is received and confirmed by the agency or institution. The agency or institution reserves the right to pursue other appropriate remedies to include, but not be limited to, termination for default.
3. Each prime contractor who wins an award valued over \$200,000 shall deliver to the contracting agency or institution with every request for payment, information on use of subcontractors that are not DMBE-certified small businesses. When such business has been subcontracted to these firms and upon completion of the contract, the Contractor agrees to furnish the purchasing office at a minimum the following information: name of firm, phone number, FEIN number, total dollar amount subcontracted, and type of product or service provided. This information shall be submitted to each participating institution or agency as requested.

F. ADDITIONAL GOODS AND SERVICES: Participating institutions and agencies may acquire other goods or services that the supplier provides than those specifically solicited. Participating institutions and agencies reserves the right, subject to mutual agreement, for the Contractor to provide additional goods and/or services under the same pricing, terms, and conditions. Such additional goods and services may include other products, components, accessories, subsystems, or related services that are newly introduced during the term of this Agreement.

G. AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH: A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with a public body shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

H. CRIMINAL BACKGROUND CHECKS OF PERSONNEL ASSIGNED BY CONTRACTOR TO PERFORM WORK ON THE PROPERTY OF PARTICIPATING INSTITUTIONS OR AGENCIES: The Contractor shall obtain criminal background checks on all of their contracted employees who will be assigned to perform services on the property of a participating institution or agency. The results of the background checks will be directed solely to the Contractor. The Contractor bears responsibility for confirming to the participating institution or agency's contract administrator that the background checks have been completed prior to work being performed by their employees or subcontractors. The Contractor shall only assign onsite work to those individuals whom it deems qualified and permissible based on the results of completed background checks. Notwithstanding any other provision herein, and to ensure the safety of students, faculty, staff and facilities, the participating institution or agency reserves the right to approve or disapprove any contract employee that will work onsite. Disapproval by a participating institution or agency will solely apply to that institution or agency's property.

- I. PRIME CONTRACTOR RESPONSIBILITIES: The Contractor shall be responsible for completely supervising and directing the work under this contract and all subcontractors that he may utilize, using his best skill and attention. Subcontractors who perform work under this contract shall be responsible to the prime contractor. The Contractor agrees that he is as fully responsible for the acts and omissions of his subcontractors and of persons employed by them as he is for the acts and omissions of his own employees.
- J. SUBCONTRACTS: No portion of the work shall be subcontracted without prior written consent of the purchasing agency. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish the purchasing agency the names, qualifications and experience of their proposed subcontractors. The contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the contract.
- K. DEFINITION EQUIPMENT: As used herein, the terms equipment, product, or system shall include hardware and software (when applicable) and any materials or supporting documentation. Such documentation may include but is not limited to: users' guides, operations manuals with part lists, copies of all applicable warranties, and any other pertinent information necessary for the proper operation and maintenance of the equipment being acquired.
- L. DEFINTION SOFTWARE: As used herein, the terms software, product, or software products shall include all related materials and documentation whether in machine readable or printed form.
- M. LATEST SOFTWARE VERSION: Any software product(s) provided under this contract shall be the latest version available to the general public.
- N. NEW EQUIPMENT: Unless otherwise expressly stated, any equipment furnished under this contract shall be new, unused equipment.
- O. OPERATIONAL COMPONENTS: Unless otherwise requested, equipment prices shall include all cables, connectors, interfaces, documentation for all components, and any other items necessary for full systems operation at the user site.
- P. QUALIFIED REPAIR PERSONNEL: All warranty or maintenance services shall be performed by qualified technicians properly authorized by the manufacturer to perform such services.
- Q. REPAIR PARTS: In the event that the performance of maintenance services under the contract results in a need to replace defective parts, such items may only be replaced by new parts. In no instance shall the Contractor be permitted to replace defective items with refurbished, remanufactured, or surplus items without prior written authorization of the institution or agency.
- R. SERVICE PERIOD (EXTENDED): Due to the criticality of the applications for which the software is purchased, the Contactor shall provide 24 hours a day, 7 days a week, maintenance support, including state holidays.
- S. THIRD PARTY ACQUISITION OF SOFTWARE: The Contractor shall notify the procuring agency in writing should the intellectual property, associated business, or all of its assets be acquired by a third party. The Contractor further agrees that the contract's terms and conditions, including any and all license rights and related services, should not be affected by the acquisition. Prior to completion of the acquisition, the Contractor shall obtain, for the Commonwealth's benefit and deliver thereto, the assignee's agreement to fully honor the terms of the contract if possible.
- T. WARRANTY AGAINST SHUTDOWN DEVICES: The Contractor warrants that the equipment and software provided under the contract shall not contain any lock, counter, CPU reference, virus, worm, or other device capable of halting operations or erasing or altering data or programs. Contractor further warrants that neither it, nor its agents, employees, or subcontractors shall insert any shutdown device following delivery of the equipment and software. The Contractor warrants it utilizes the most current, general-release, industry-standard virus protection software.

- U. SOFTWARE UPGRADES: The Commonwealth shall be entitled to any and all upgraded versions of the software covered in the contract that becomes available from the Contractor, with the exception of major version upgrades for CS Gold, which shall be offered at the then-current costs.
- V. CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION: The Contractor assures that information and data obtained as to personal facts and circumstances related to faculty, staff, students, and affiliates will be collected and held confidential, during and following the term of this agreement, and will not be divulged without the individual's and the agency's written consent and only in accordance with federal law or the Code of Virginia. Contractors who utilize, access, or store personally identifiable information as part of the performance of a contract are required to safeguard this information and immediately notify the agency of any breach or suspected breach in the security of such information. Contractors shall allow the agency to both participate in the investigation of incidents and exercise control over decisions regarding external reporting. Contractors and their employees working on this project may be required to sign a confidentiality statement.
- W. RENEWAL OF ANNUAL LICENSE & MAINTENANCE FEES: All annual license and maintenance fees of the hardware or software specified in the resultant contract may be renewed by the mutual written agreement of both parties for additional one-year periods, under the terms and conditions of the original contract except as noted herein. Price changes may be negotiated at time of renewal; however, annual license and maintenance fees for CBORD Systems shall in no event increase by more than the percentage increase of the U.S. Bureau of Labor Statistics Consumer Price Index ("CPI"), U.S. City Average, All Items, All Urban Consumers for the prior calendar year. The CPI cap shall not apply to annual license fees for any third party hardware or software licensed under this contract.
- X. RENEWAL OF CONTRACT: This contract may be renewed by the Commonwealth for a period of nine (9) successive one year periods under the terms and conditions of the original contract. Written notice of the Commonwealth's intention to renew shall be given approximately 90 days prior to the expiration date of each contract period.