**COMMONWEALTH OF VIRGINIA**

**CONTRACT FORM ADDENDUM TO CONTRACTOR'S FORM - IT**

**AGENCY NAME: WILLIAM & MARY**

**CONTRACTOR: (Enter Contractor Name)**

William & Mary, an Agency of the Commonwealth of Virginia (“W&M”), and the Contractor are this day entering into a contract and, for their mutual convenience; the parties are using the standard form agreement provided by the Contractor, (Enter Contractor Name). This addendum, duly executed by the parties, is attached to and hereby made a part of the contract.

The Contractor represents and warrants that it is a(n) / / individual proprietorship  association  partnership  corporation  governmental agency or authority authorized to do in Virginia the business provided for in this contract.

Notwithstanding anything in the Contractor's form to which this Addendum is attached, the payments to be made by W&M for all goods, services and other deliverables under this contract shall not exceed the quoted amount unless approved in writing by W&M Procurement Services Department**;** payments will be made only upon receipt of a proper invoice, detailing the goods/services provided and submitted to W&M. The total cumulative liability of W&M, its officers, employees and agents in connection with this contract or in connection with any goods, services, actions or omissions relating to the contract, shall not under any circumstance exceed payment of the above maximum purchase price plus liability for an additional amount equal to such maximum purchase price. In its performance under this contract, the Contractor acts and will act as an independent contractor and not as an agent or employee of W&M.

**SECTION I: Provisions of this Addendum**

The Contractor's form contract is, with the exceptions noted herein, acceptable to W&M. Nonetheless, because certain standard clauses that may appear in the Contractor's form agreement cannot be accepted by W&M and in consideration of the convenience of using that form, and this form, without the necessity of specifically negotiating a separate contract document, the parties hereto specifically agree that, notwithstanding any provisions appearing in the attached Contractor's form contract, none of the following shall have any effect or be enforceable against W&M:

1. Requiring W&M to maintain any type of insurance either for W&M's benefit or for the contractor's benefit;
2. Requiring W&M not to disclose records as is required under the Freedom of Information Act in Virginia and/or requiring written permission from the Contractor prior to disclosure of said record.
3. Renewing or extending the agreement beyond the initial term or automatically continuing the contract period from term to term;
4. Requiring or stating that the terms of the attached Contractor's form agreement shall prevail over the terms of this addendum in the event of conflict;
5. Requiring W&M to indemnify or to hold harmless the Contractor for any act or omission;
6. Imposing interest charges contrary to that specified by the Code of Virginia, Section 2.2-4355, Prompt Payment; the provisions required by Va. Code §2.2-4354 obligating Contractor to make prompt payment to all subcontractors and provide W&M with a valid taxpayer identification number;
7. Requiring any total or partial compensation or payment for lost profit or liquidated damages by W&M if the contract is terminated before its ordinary period;
8. Requiring the application of the law of any state other than Virginia in interpreting or enforcing the contract or requiring that any dispute under the contract be resolved in the courts of any state other than Virginia;
9. Requiring that the contract be "accepted" or endorsed by the home office or by any other officer subsequent to execution by an official of W&M before the contract is considered in effect;
10. Delaying the acceptance of this contract or its effective date beyond the date of execution;
11. Limiting or adding to the time period within which claims can be made or actions can be brought;
12. Limiting the liability of the Contractor for property damage or personal injury;
13. Permitting unilateral modification of this contract by the Contractor;
14. Binding W&M to any arbitration or to the decision of any arbitration board, commission, panel or other entity;
15. Obligating W&M to pay costs of collection or attorney's fees;
16. Granting the Contractor a security interest in property of W&M;
17. Bestowing any right or incurring any obligation that is beyond the duly granted authority of the undersigned agency representative to bestow or incur on behalf of W&M.
18. Requiring transportation terms other than ‘FOB Destination’, with potential risk loss passing to W&M at delivery by Contractor to ‘FOB Origin/Point’.
19. Requiring W&M to agree to or be subject to any form of equitable relief not authorized by the Constitution of laws of Virginia.
20. Granting Supplier or an agent of Supplier the right to audit or examine, directly or indirectly, our/Customer’s computers, networks, books, records, or accounts, whether stored electronically or on paper, for any Authorized User. This requirement may not be waived by any party unless agreed upon in writing by a duly authorized Officer of the Purchasing Department.

**The Contractor shall observe the following:**

1. Immigration: Contractor does not, and shall not during the performance of this Contract, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
2. NONVISUAL ACCESS TO TECHNOLOGY:All information technology which, pursuant to this agreement, is purchased or upgraded by or for the use of anyState agency or institution or political subdivision of the Commonwealth (the “Technology”) shall comply with the following nonvisual access standards from the date of purchase or upgrade until the expiration of this agreement:
3. effective, interactive control and use of the Technology shall be readily achievable by nonvisual means;
4. the Technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user of the technology interacts;
5. Nonvisual Access Technology shall be integrated into any networks used to share communications among employees, program participants or the public; and
6. the Technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

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

Installation of hardware, software or peripheral devices used for nonvisual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information shall permit the installation and effective use of nonvisual access software and peripheral devices.

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

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

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

1. If the agreed upon compensation for this Agreement exceeds $10,000, the provisions required by §10 Rules Governing Procurement Chapter 4.10 (§23-38.88 et seq.) of Title 23 of the Code of Virginia prohibiting Contractor from discriminating in employment and Governing Rules §11 obligating Contractor to provide a drug-free workplace.

**SECTION II: Required Terms and Conditions**

The following clauses shall be incorporated as part of the agreement:

1. **PURCHASING MANUAL;** This Agreement is subject to the provisions of the Commonwealth of Virginia Purchasing Manual for Institutions of Higher Education, hereby incorporated into this contract in their entirety. These policies are structured to support the mission of higher education and to comply with the principles of the Virginia Public Procurement Act and are in compliance with the individually adopted “Rules Governing Procurement of Goods, Services, Insurance, and Construction by a Public Institution of Higher Education of the Commonwealth of Virginia” (hereafter referred to as “The Governing Rules”). A copy of the manual is normally available for review at[www.wm.edu/procurement](http://www.wm.edu/procurement).
2. **CANCELLATION OF CONTRACT:** W&M reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 30 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.
3. **CONFIDENTIALITY:** Trade secrets or proprietary information shall not be subject to public disclosure under the Virginia Freedom of Information Act. However, to prevent disclosure you must invoke the protections of Section 34, Rules Governing Procurement, in writing. The written request must specifically identify the data or other materials to be protected and state the reasons why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information.
4. **The classification of an entire document, line item prices and/or total prices or fees as proprietary or trade secrets is not acceptable. The parties agree that Confidential Information may be disclosed in response to a Virginia Freedom of Information request.**
5. **ASSIGNMENT OF CONTRACT**: A contract shall not be assignable by the Contractor in whole or in part without the written consent of W&M.
6. **MODIFICATIONS:** This Contract may be modified in accordance with §8 of the *Rules Governing Procurement*. The representatives noted below may only make such modifications. No modifications to this Contract shall be effective unless it is in writing and signed by the duly authorized representative of both parties. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent to breach is in writing.

Any Contract issued on a firm fixed price basis may not be increased more than twenty five percent (25%) or $50,000.00, whichever is greater, without the advance written approval of the Institution’s president or his authorized designee.

1. **DEFAULT**: In case of failure to deliver goods or services in accordance with the contract terms and conditions, W&M, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which W&M may have.
2. **INSURANCE**: Contractor certifies that if awarded the contract, it will have the following insurance coverages at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §*25* of the *Rules Governing Procurement*. The Contractor further certifies that the Contractor and any subcontractors will maintain these insurance coverages during the entire term of the contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

In instances where a resulting contract award requires the contractor’s employees presence on state property at any time, the contractor shall issue a Certificate of Liability Insurance (COL) prior to the beginning of the project. It shall be understood that William & Mary and the Virginia Institute of Marine Science (W&M), are deemed to be one agency of W&M.

**INSURANCE COVERAGES AND LIMITS REQUIRED:**

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 W&M of increases in the number of employees that change their workers’ compensation requirements under the *Rules Governing Procurement* 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. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. William and Mary must be named as an additional insured and so endorsed on the policy.
4. Automobile Liability- $1,000,000 – per occurrence.
5. **TAXES:** Sales to W&M 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. W&M’s excise tax exemption registration number is 10-546001718F.
6. **CLAIMS PROCEDURE:** Contractual claims for payment under the Agreement shall be submitted in writing no later than sixty (60) days after W&M states in a writing delivered to the Contractor that it has made its final payment to the contractor under the Agreement and that Contractor must submit any claim within 60 days thereafter. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

W&M’s procedure for deciding such contractual claims is:

The Contractor must provide the written claim to:

Director of Procurement

Grigsby Drive, Facilities Management Bldg, Lower Level

William and Mary

P.O. Box 8795

Williamsburg, Virginia 23187-8795

* Although the Contractor may, if it chooses, attempt to resolve its claim directly with W&M department using the product or services rather than the one stated in the above paragraph, the Contractor must submit any unresolved claim in writing, no later than sixty (60) days after notice of final payment is delivered to the Contractor in accordance with the opening paragraph of this subsection (w), to the Director of Procurement if it wishes to pursue its claim.
* Upon receiving the written claim, the Director of Procurement will review the written materials relating to the claim and decide whether to discuss the merits of the claim with the contractor. If such discussion is to be held, the Director of Procurement will contact the Contractor and arrange such discussion.
* The Director of Procurement will mail his or her decision to the Contractor within sixty (60) days after receipt of the claim. The decision will state the reason for granting or denying the claim.
* The Contractor may appeal the Director of Procurement’s decision to:

Chief Financial Officer

College Apartments

William & Mary

P.O. Box 8795

Williamsburg, Virginia 23187-8795

Upon receiving the written appeal, the Chief Financial Officer will review the written materials relating to the claim and decide whether to discuss the merits of the claim with the Contractor. If such discussion is to be held, Chief Financial Officer will contact the Contractor and arrange such discussion.

The Chief Financial Officer will mail his or her decision to the Contractor within thirty (30) days after the Chief Financial Officer’s receipt of the appeal. The decision will state the reasons for granting or denying the appeal.

1. Nothing set forth in this section shall limit, delay or reduce the Contractor’s ability to seek equitable relief from a court of competent jurisdiction in the Commonwealth of Virginia to the extent permitted by Virginia law. In addition, to the extent W&M brings a claim against the Contractor, then the Contractor shall in no event be precluded from asserting a counterclaim for payments due under the Agreement regardless of whether such counterclaim is raised within the 60 day period specified above. In the event that a contract allows for reimbursement to the Contractor for out-of-pocket expenses, travel, meals, lodging, etc., reimbursement will be processed in accordance with W&M’s travel regulations posted at: <http://www.wm.edu/offices/financialoperations/travel/>
2. **TAXPAYER IDENTIFICATION NUMBER AND CERTIFICATION:**

If requested, Contractor will provide an accurate, completed Commonwealth of Virginia substitute W-9 form. <http://www.wm.edu/offices/financialoperations/documents/wmsubw9.pdf>

**SECTION III: IT Terms & Conditions**

1. 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.
2. DEFINITION - 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.
3. ACCEPTANCE: W&M shall commence Acceptance testing within five (5) days, or within such other period as agreed upon. Acceptance testing will be no longer than thirty (30) days, or such longer period as may be agreed in writing between W&M and Contractor, for each Deliverable. Contractor agrees to provide to W&M such assistance and advice as W&M may reasonably require, at no additional cost, during such Acceptance testing. W&M shall provide to Contractor written notice of Acceptance upon completion of installation and successful Acceptance testing. Should W&M fail to provide Contractor written notice of successful or unsuccessful Acceptance testing within ten (10)) days following the Acceptance testing period, the Service shall be deemed Accepted.
4. CURE PERIOD: Contractor shall correct any non-conformities identified during Acceptance testing and re-submit such non-conforming Service for re-testing within seven (7) days of written notice of non- conformance, or as otherwise agreed between W&M and Contractor. Should Contractor fail to cure the non-conformity or deliver a Service which meets the Requirements, W&M may, in its sole discretion: (i) reject the Service in its entirety, and any Service rendered unusable due to the non- conforming Service, and recover amounts previously paid hereunder for all such Services; (ii) issue a “partial Acceptance” of the Service with an equitable adjustment in the price to account for such deficiency, or (iii) conditionally accept the applicable Service while reserving its right to revoke Acceptance if timely correction is not forthcoming. Failure of a Service to meet, in all material respects, the Requirements after the second set of acceptance tests may constitute a default by Contractor. In the event of such default, W&M may, at its sole discretion, terminate its Contractor.
5. OWNERSHIP OF INTELLECTUAL PROPERTY**:** All copyright and patent rights to all papers, reports, forms, materials, creations, or inventions created or developed in the performance of this contract shall become the sole property of W&M. On request, the contractor shall promptly provide an acknowledgment or assignment in a tangible form satisfactory to W&M to evidence W&M’s sole ownership of specifically identified intellectual property created or developed in the performance of the contract.
6. DATA OWNERSHIP: Other than the rights and interests expressly set forth in this Agreement, and excluding Vendor and works derived from Vendor, the university reserves all right, title and interest (including all intellectual property and proprietary rights) in and to University content. University data and content includes the results of any processing that occurs within the Vendor's system.
7. DATA ACCESS: W&M retains the right to use services and University-defined tools to access and retrieve University content and data stored on Vendor's infrastructure at University's sole discretion and on a timeline mutually agreed upon between parties. Provisions must be made for University's immediate access to data in both emergency and in normal operating circumstances.
8. DATA LOCATION: The Contractor shall store all W&M data on servers located only in the United States.
9. DATA BREACH NOTIFICATION: The Contractor shall notify W&M of any data breach or other data security issues affecting access to W&M secure data within 24 hours of the breach.
10. PRODUCT SUBSTITUTION**:** During the term of any contract, the contractor is not authorized to substitute any item for that product and/or software identified in the contract without the prior written consent of the contracting officer whose name appears on the front of this solicitation, or their designee.
11. QUALIFIED REPAIR PERSONNEL: All warranty or maintenance services to be performed on the items specified in this contract as well as any associated hardware or software shall be performed by qualified technicians properly authorized by the manufacturer to perform such services. W&M reserves the right to require proof of certification prior to award and at any time during the term of the contract.
12. OWNERSHIP: Contractor has the right to provide the Services, including Deliverables, without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party.
13. CONTRACTOR’S VIABILITY: Contractor warrants that it has the financial capacity to perform and continue to perform its obligations under any contract hereunder; that Contractor has no constructive or actual knowledge of an actual or potential legal proceeding being brought against Contractor that could materially adversely affect performance of any Contract awarded hereunder; and that entering into any Contract Contact hereunder is not prohibited by any contract, or order by any court of competent jurisdiction.
14. CONTRACTOR’S PAST EXPERIENCE; Contractor warrants that the Services have been successfully performed for a non-related third-party without significant problems due to the Services or Contractor.
15. PERFORMANCE:
    1. All Services shall be performed with care, skill and diligence, consistent with or applicable professional standards currently recognized in its profession, and Contractor shall be responsible for the professional quality, technical accuracy, completeness and coordination of all plans, information, specifications, Deliverables and Services furnish under this Contract.
    2. The documentation which Contractor shall provide under any Contract hereunder shall be sufficient in detail and content to all W&M to understand and fully utilize the Deliverables without reference to any other materials or information.
16. MALICIOUS CODE: Contractor shall use its best efforts through quality assurance procedures to ensure that there are no computer viruses or undocumented features in any of the media or means used to deliver the Services. Contractor has used the best available means to scan any media on which Deliverables are provided to W&M.
17. CONFIDENTIALITY/DATA DESTRUCTION**:** The Contractor assures that information and data obtained as to personal facts and circumstances related to students, staff, and/or W&M affiliates will be collected and held confidential, during and following the term of this Agreement, and will not be divulged without W&M’s written consent. Any information to be disclosed, except to W&M, must be in summary, statistical, or other form which does not identify particular individuals. Contractor understands that any student, staff, and/or W&M affiliates data shared with Contractor must not be utilized for anything other than support, must not be shared with a third party and must be destroyed upon termination of Agreement or upon written request of W&M.
18. SENSITIVE DATA*:* Contracts/agreements that require a third party vendor to collect credit and/or debit card information from individuals must require the third party vendor to demonstrate proof of current compliance with all federal and state Payment Card Industry (PCI) Data Security Standards (DSS). Additionally, contracts/agreements that will require the collection, storage, transmission, or exchange of sensitive data shall include (1) an annual assessment of the Contractor’s information security program and controls and (2) an annual, independent audit report verifying compliance with security guidelines set by the Contractor.

**Definition of Sensitive Data:**

## Sensitive data is highly confidential and/or personal information protected by statutes, regulations, university policies or contractual language which, if exposed or breached, could result in legal damages, fines/penalties, identify theft and/or financial fraud. Data stewards may also designate data as sensitive if it requires the same level of protection. Data elements defined as sensitive include

1. Social security numbers,
2. Driver's license numbers,
3. Credit/debit card numbers,
4. Passport numbers,
5. Federal ID numbers.
6. Employee health records, protected by the Virginia Health Records Privacy Act.
7. Financial data that informs the university’s end-of-year financial statements
8. System account credentials.

Sensitive data does not include information in the William & Mary directory or data that is made public by the university. Furthermore, the university has no obligation to protect an individual’s personal information if the personal information is provided to a third-party by another supplier without the involvement of the university.

1. DATA PROTECTION:
   1. The vendor shall maintain a formal security program in accordance with industry standards that is designed to: (i) ensure the security and integrity of university data; (ii) protect against threats or hazards to the security or integrity of university data; and (iii) prevent unauthorized access to university data.
   2. The vendor shall be responsible for ensuring that university data, per the Virginia Public Records Act, “is preserved, maintained, and accessible throughout their lifecycle, including converting and migrating electronic data as often as necessary so that information is not lost due to hardware, software, or media obsolescence or deterioration.”
   3. The vendor will ensure backups are successfully completed daily or more frequently and that restoration capability is maintained for restoration to a point-in-time and\or to the most current backup available.
   4. The vendor will maintain an uptime of 99.99% or greater, as agreed to for the contracted services via the use of appropriate redundancy, continuity of operations and disaster recovery planning and implementations.
2. AUDITS: The University reserves the right in its sole discretion to perform audits of the Vendor at the University’s expense to ensure compliance with the terms of this Agreement. The Vendor shall reasonably cooperate in the performance of such audits. This provision applies to all agreements under which the Vendor must create, obtain, transmit, use, maintain, process, or dispose of University Data.
3. LIMITED WARRANTY PERIOD AND REMEDY: During the warranty period of one year, Contractor warrants that the services shall meet or exceed the Requirements. Contractor shall correct, at no additional cost to W&M, all errors identified during the warranty period that result in a failure of the Services to meet the Requirements. If Contractor is unable to make the Service/Deliverable conform, in all material respects, to the Requirements within ten (10) days following written notification of W&M, Contractor shall, accept return of such Deliverable and other related Deliverable(s) rendered unusable, and return all monies paid by W&M for the non-conforming Services and Deliverable and such other related Deliverable(s) rendered unusable.

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

**HARDWARE** – If this purchase includes equipment as defined above, Contractor shall meet the following requirements:

1. NEW EQUIPMENT: Unless otherwise expressly stated, any equipment furnished under the contract shall be new, unused equipment unless otherwise agreed in writing between Contractor and W&M.
2. CERTIFICATION TESTING PERIOD - HARDW ARE: Equipment ordered herein shall be subject to inspection and a 30-day testing period by W&M. Contractor equipment which is found to not meet the specifications or other requirements of the purchase agreement may be rejected and returned to the contractor at no cost (including return transportation) by W&M. Unless otherwise notified or mutually agreed, acceptance shall become effective at the end of the 30-day testing period. Such acceptance shall not be conclusive of complete conformance in all respects to the contract specifications and other requirements, or the nonexistence of potential latent defects.
3. DEMONSTRATIONS: By submitting a bid or proposal, the bidder or contractor certifies that the specified equipment is in productive use and capable of demonstration in the proposed configuration. The Commonwealth reserves the right to require bidders or contractors to demonstrate the functionality of proposed equipment to its satisfaction prior to making an award decision. Such demonstration is intended to show that a contractor’s products will perform in a completely satisfactory manner and that they will meet or exceed the performance specifications contained in the solicitation. Failure by a contractor to promptly comply with a request for demonstration could result in their bid being rejected or their offer to receive no further review. Failure to reject shall not relieve the contractor of its obligation to fully comply with all requirements of the contract.
4. OPERATIONAL COMPONENTS: Unless otherwise requested in this contract, stated 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. This does not include consumable supplies such as paper, tapes, disks, etc., unless such supplies are expressly identified in the pricing schedule.
5. RELOCATION OF EQUIPMENT: Should it become necessary to move equipment covered by the contract to another location, W&M reserves the right to do so at its own expense. If contractor supervision is required, W&M will provide prior written notice of the move at least thirty (30) days in advance, in which case the contractor shall provide the required services and be reasonably compensated by W&M. Both the compensation to be paid and any adjustment to the maintenance terms resulting from the move shall be as mutually agreed between the parties. Regular maintenance charges shall be suspended on the day the equipment is dismantled and resume once the equipment is again certified ready for operational use.
6. 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 W&M.
7. SERVICE REPORTS: Upon completion of any maintenance call, the contractor shall provide the agency with a signed service report that includes, at a minimum: a general statement as to the problem, action taken, any materials or parts furnished or used, and the number of hours required to complete the repairs.

**SOFTWARE** – If this purchase includes software as defined above, Contractor shall meet the following requirements:

1. LATEST SOFTWARE VERSION: Any software product(s) provided under the contract shall be the latest version available to the general public as of the date of contract.
2. SOFTWARE UPGRADES: W&M shall be entitled to any and all upgraded versions of the software covered in the contract that becomes available from the contractor. The maximum charge for upgrade shall not exceed the total difference between the cost of the W&M’s current version and the price the contractor sells or licenses the upgraded software under similar circumstances.
3. SOURCE CODE: In the event the contractor ceases to maintain experienced staff and the resources needed to provide required software maintenance, W&M shall be entitled to have, use, and duplicate for its own use, a copy of the source code and associated documentation for the software products covered by the contract. Until such time as a complete copy of such material is provided, W&M shall have exclusive right to possess all physical embodiments of such contractor owned materials. The rights of W&M in this respect shall survive for a period of twenty (20) years after the expiration or termination of the contract. All lease and royalty fees necessary to support this right are included in the initial license fee as contained in the pricing schedule.
4. TERM OF SOFTWARE LICENSE: Unless otherwise stated, the software license(s) identified in the contract shall be purchased on a perpetual basis and shall continue in perpetuity. However, W&M reserves the right to terminate the license at any time, although the mere expiration or termination of this contract shall not be construed as an intent to terminate the license. All acquired license(s) shall be for use at any computing facilities, on any equipment, by any number of users, and for any purposes for which it is procured. W&M further reserves the right to transfer all rights under the license to another state agency to which some or all of its functions are transferred.
5. THIRD PARTY ACQUISITION OF SOFTWARE: The contractor shall notify the procuring agency in writing should the intellectual property, associated business, or all of its assets be acquired by a third party. The contractor further agrees that the contract’s terms and conditions, including any and all license rights and related services, shall not be affected by the acquisition. Prior to completion of the acquisition, the contractor shall obtain, for W&M’s benefit and deliver thereto, the assignee’s agreement to fully honor the terms of the contract.
6. TITLE TO SOFTWARE: The Contractor represents and warrants that it is the sole owner of the software or, if not the owner, that it has received all legally required authorizations from the owner to license the software, has the full power to grant the rights required by this solicitation, and that neither the software nor its use in accordance with the contract will violate or infringe upon any patent, copyright, trade secret, or any other property rights of another person or organization.
7. 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.

This contract consisting of this W&M addendum and the attached Contractor's form contract constitute the entire agreement between the parties and may not be waived or modified except by written agreement between the parties.

This contract is subject to appropriations by the Virginia General Assembly.

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

**CONTRACTOR: (Enter Contractor Name) WILLIAM & MARY**

**CONTRACTOR by \_\_\_\_\_ AGENCY by**

**Title \_\_\_ Title**

**Date of Signature Date of Signature**

W&M does not discriminate against faith-based organizations.