

PARTICIPATING ADDENDUM
NASPO ValuePoint
Cloud Solutions
Administered by the State of Utah (Hereinafter "Lead State")

Master Agreement No: AR2490
(Hereinafter "Master Agreement" or "Contract")
Between
CherryRoad Technologies Inc.
And
The Commonwealth of Virginia
(Hereinafter "Commonwealth" or "Participating State")

1. SCOPE

This participating addendum, hereinafter "Participating Addendum" or "Addendum" or "PA", by and between the Commonwealth of Virginia, through the Virginia Information Technologies Agency ("Commonwealth" or "VITA" or "Participating State") and CherryRoad Technologies Inc. ("Supplier" or "Contractor") finalizes and governs the Commonwealth's participation and use of the Master Agreement, executed and administered by the State of Utah for Cloud Solutions, for the benefit and use by all Commonwealth localities, institutions of higher education, or any other public body, as defined in § 2.2-4301 entitled "Definitions" and § 2.2-4304 entitled "Joint and cooperative procurement" and as referenced by § 2.2-2012 of the Code of Virginia ("Code"). Commonwealth Authorized Users shall include private institutions of higher education that are listed at: <http://www.cicv.org/Our-Colleges/Profiles.aspx>. Collectively, all aforementioned Commonwealth parties are to be referred to in the aggregate hereinafter as "Authorized Users". Note that Commonwealth Executive Branch Agencies may not participate in this contract without the written permission of the CIO of the Commonwealth. Further, except for VITA, no executive, legislative, judicial branch agencies or independent agencies of the Commonwealth are authorized to procure Platform as a Service or Infrastructure as a Service solutions under this Addendum or any order or Statement of Work issued thereunder, unless authorized to do so in writing by the CIO of the Commonwealth. Any such authorization shall be attached to any such order or SOW.

To ensure maximum transparency and public access to all Commonwealth procurement opportunities, and consistent with Code § 2.2-1110, Contractor agrees that all orders from any Commonwealth Authorized User shall be accepted solely through the Commonwealth's central electronic procurement website, "eVA," www.eva.virginia.gov, as delineated with the ordering instructions herein.

Capitalized terms used, but not defined herein, have the meanings ascribed to such terms in the Master Agreement between the Lead State and the Contractor.

2. PARTICIPATION

Use of specific NASPO ValuePoint cooperative contracts by Commonwealth agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use state contracts are subject, according to NASPO ValuePoint policies, to the prior approval of the respective State Chief Procurement Official, defined here as the Director, Division of Purchases and Supply. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

3. PARTICIPATING STATE MODIFICATIONS OR ADDITIONS TO MASTER AGREEMENT

The following modifications or additions apply only to contractual actions and relationships within the Participating State. Participating State to check one box:

No changes to the terms and conditions of the Master Agreement are required

The following changes are modifying or supplementing the Master Agreement terms and conditions

4. INCORPORATED CONTRACTUAL PROVISIONS

The contractual provisions at the following URL are mandatory contractual provisions, required by law or by VITA, and are incorporated by reference:

https://www.vita.virginia.gov/uploadedfiles/VITA_Main_Public/scm/StatutorilyMandatedTsandCs.pdf.

The contractual claims provision of §2.2-4363 of the Code of Virginia and the required eVA provisions at: http://www.vita.virginia.gov/uploadedfiles/VITA_Main_Public/scm/eVATsandCs.pdf are also incorporated by reference.

For any orders or SOWs issued by an Authorized User under a Contract that will or may include the entry, handling, processing, storage, movement, sharing of or access to Federal Tax Information (FTI) by Supplier or any subcontractor of Supplier in any manner, IRS Publication 1075 shall apply to that order, SOW and Contract. The Tax Information Security Guidelines for Federal, State and Local Agencies – Exhibit 7, Safeguarding Contract Language, as appropriate, and the requirements specified in Exhibit 7 in accordance with IRC 6103(n) are included by reference and are located at this URL:

http://www.vita.virginia.gov/uploadedFiles/VITA_Main_Public/SCM/Mandatory_IRS_Pub_1075_for_FTIData.pdf. Supplier hereby acknowledges that it will comply with all applicable requirements of these terms and IRS Publication 1075 in its entirety. Non-compliance with the terms and IRS Publication 1075 may be determined, solely by VITA, as a material breach of the applicable order or SOW or the Contract. Further, the use of the term “Contractor” in these terms and IRS Publication 1075 means the same as the term “Supplier,” as defined and used in the Contract. FTI consists of federal tax returns and return information (and information derived from it) that is in the agency’s (i.e., Authorized Users of this Contract, as defined herein) possession or control which is covered by the confidentiality protections of the Internal Revenue Code (IRC) and subject to the IRC 6103(p)(4) safeguarding requirements including IRS oversight. FTI is categorized as Sensitive but Unclassified information and may contain personally identifiable information (PII).

The terms and conditions in documents posted to the aforereferenced URLs are subject to change pursuant to action by the legislature of the Commonwealth of Virginia, change in VITA policy, adoption of revised eVA business requirements, or change to IRS Publication 1075. Supplier is responsible for verifying the correct and current version of this IRS publication and related safeguarding terms language and acknowledges that VITA Authorized User issuing the order or SOW will be held harmless. If a change is made to the mandatory terms and conditions, a new effective date will be noted in the document title. Supplier is advised to check the URLs periodically

5. DEBARMENT STATUS

By participating in this Contract, the Contractor certifies that it is not currently debarred by the Commonwealth of Virginia from submitting a response for the type of Goods or Services covered by this Contract. The Contractor further certifies that it is not debarred from filling any order or accepting any resulting order, and that it is not an agent of any person or entity that is currently debarred by the Commonwealth of Virginia.

6. QUALIFICATIONS OF CONTRACTORS

The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the Contractor or any subcontractor to perform the Services/furnish the Goods and the Contractor shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect the Contractor’s or any subcontractor’s physical facilities during normal business hours with reasonable advance notice to satisfy any questions regarding the Contractor’s or subcontractor’s capabilities. The Commonwealth

further reserves the right take any actions in contract or in law, if the evidence submitted by, or investigations of, such Contractor fails to reasonably satisfy the Commonwealth that such Contractor is properly qualified to carry out the obligations of the Contract and to provide the Services and/or furnish the Goods described herein.

7. TESTING AND INSPECTION

The Commonwealth, or any Authorized User, reserves the right to conduct any test/inspection it may deem advisable to assure Goods and Services conform to the requirements and/or specifications set forth in this Agreement and the applicable Statement of Work/Order.

8. ASSIGNMENT OF CONTRACT

This Contract shall not be assignable by the Contractor in whole or in part, except to affiliate, without the prior written consent of the Commonwealth, which consent shall not be unreasonably withheld.

9. CHANGES TO THE CONTRACT

Changes can be made to the contract in any of the following ways:

- A. The parties may mutually agree in writing to modify the terms, conditions, or scope of the contract. Any additional goods or services to be provided shall be of a sort that is ancillary to the contract goods or services, or within the same broad product or service categories as were included in the contract award. Any 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.

- B. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the Contractor and approval of 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 receipt and approval, unless the Contractor intends to claim an adjustment to compensation, schedule, or other contractual impact that would be caused by complying with such notice, in which case the Contractor shall, in writing, promptly notify the Purchasing Agency of the adjustment to be sought, and before proceeding to comply with the notice, shall await the Purchasing Agency's written decision modifying, or revoking the prior written notice. If the Purchasing Agency decides to issue a notice that requires an adjustment to compensation, 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:
 - 1) By mutual agreement between the parties in writing; or
 - 2) 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
 - 3) By ordering the Contractor to proceed with the work and keep a record of all costs incurred and 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 Vendors Manual. 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 undisputed changes ordered by the Purchasing Agency or with the performance of the contract generally.

10. DEFAULT

In case of Contractor's failure to fulfill an Order to an Authorized user to deliver Goods or Services in accordance with the Contract terms and conditions, the Commonwealth or Authorized User, after due written notice of at least thirty (30) days, during which time Contractor shall have an opportunity to cure, may procure them from other sources and hold the Contractor responsible for any resulting, reasonable additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth or Authorized User may have. Contractor shall be paid for all Services performed through the cure period.

11. TAXES

Sales to the Commonwealth of Virginia are normally exempt from Virginia 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.

For Authorized Users that are not Commonwealth state agencies, it is the Contractor's sole responsibility for determining the sales tax exemption status for those Authorized Users.

12. AUDIT

The Contractor shall retain all books, records, and other documents related to this Contract for five (5) years after final payment, or until audited by the Commonwealth, whichever is sooner. The Commonwealth and its Authorized Users, and/or their respective auditors, upon reasonable notice, during normal working hours, shall have reasonable access to and the right to examine any of said materials (excluding personnel files, payroll records and related cost information) during said period.

13. ORDERS

Contractor agrees that all purchases under the Contract by any Commonwealth Authorized User shall be processed through eVA. Orders which are not processed through eVA are not authorized by this Contract. If the Contractor receives a non-eVA order that purports to be issued under this Contract, then Contractor shall promptly: a) notify the VITA/DGS Contracting Officer; b) notify the Authorized User that orders outside of eVA are not made under this Contract and require a separate competitive procurement process under the Virginia Public Procurement Act, and; c) request the Authorized User to resubmit the order through eVA. If the Contractor accepts and fulfills any order that purports to be under this Contract, but where the order has not been processed through eVA, then Contractor shall be in breach of this Contract and shall notify DGS of the occurrence and reimburse DGS for all eVA fees that would have been generated by placement of the order in accordance with this Contract. Upon the request by VITA or DGS, Contractor shall audit and certify its compliance with this section.

Except for localities and other public bodies or entities not required by the Code to use eVA, Authorized Users shall order Products and Services from this Contract by any of the following methods:

- A. eVA: An eVA order issued by an ordering entity of the Commonwealth or Authorized User through the Commonwealth's electronic procurement website portal <http://www.eva.virginia.gov>, where any Authorized User is able to register online and use eVA at no charge.

This ordering authority is solely limited to issuing orders for goods and/or services available under this Contract. Except for the required Cloud Services Terms and Conditions attached as

an exhibit to an Authorized User's order or SOW, under no circumstances shall a Contractor construe any order to be a modification to this Contract.

14. eVA ORDERS AND CONTRACTS

It is anticipated that the Contract will result in multiple purchase orders (i.e., one for each delivery requirement) with the eVA transaction fee specified in the eVA link at: <https://eva.virginia.gov/pages/eva-billing.htm> assessed for each order.

Contractors desiring to provide goods and/or services to the Commonwealth and all Authorized Users shall participate in the eVA Internet e-procurement solution and agree to comply with the following: If the solicitation was for a term contract, then failure to provide an electronic catalog (price list) (if applicable) or index page catalog (if applicable) for items awarded will be just cause for the Commonwealth to reject your Offer or terminate this Contract for default. The format of this electronic catalog shall conform to the eVA Catalog Interchange Format (CIF) Specification that can be accessed and downloaded from <http://www.eva.virginia.gov>. Contractors should email Catalog or Index Page information to eVA-catalog-manager@dgs.virginia.gov.

15. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Contract, VITA may terminate this Participating Addendum, or VITA or any Authorized User, at their sole discretion, may terminate an order under this Contract, in whole or in part by giving thirty (30) calendar days written notice, beginning on the second day after mailing to the Contractor. If an Order is so terminated, then the Authorized User shall be liable only for payment required under this Contract for properly authorized services rendered, work in progress (whether accepted or not) or materials, supplies and/or services performed by the Authorized User prior to the effective date of the Order termination and accepted by the Authorized User. Neither the Commonwealth nor the Authorized User shall have any other obligation whatsoever to the Contractor for such termination. This Termination for Convenience clause may be invoked by the Commonwealth or Authorized User when it is in the best interest of the Commonwealth or the Authorized User.

Upon termination of this Contract or in the event Authorized User terminates any order issued hereunder, upon full payment to Contractor for services performed, Contractor shall immediately return to VITA or the appropriate Authorized User all copies, in whatever form, of any and all Confidential Information, Work Product and other properties provided by VITA or such Authorized User, which are in Contractor's possession, custody or control.

16. FINAL INSPECTION

Following the performance of Services or delivery of Products, Contractor shall demonstrate to an Authorized User's representative that all Services are reasonably satisfactory to the Authorized User's specifications as set forth in the applicable Statement of Work/Order or that all Products, to include all integral and peripheral component parts, are fully operational and fully comply with all Original Equipment Manufacturers' (OEM) product specifications, operating standards, and performance requirements. Any defects shall be promptly and permanently corrected by the Contractor at its sole expense prior to final acceptance by an Authorized User. Contractor agrees to correct any material defect in the Services, provided that the defect is not caused by (a) any deficiencies in software or any inappropriate, improper or unforeseen usage of the Services by the Authorized User.

17. AUTHORIZED REPRESENTATIVES

This Contract may be modified in accordance with Code §2.2-4309. Such modifications may only be made by the representatives authorized to do so denoted below, or their duly authorized designees. No modifications to this Contract shall be effective unless in writing and signed by the duly authorized representative of both parties, delineated below. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent to breach is in writing.

Authorized Representatives:

COMMONWEALTH OF VIRGINIA
Director, Supply Chain Management
Virginia Information Technologies Agency
11751 Meadowville Lane
Chester, Virginia 23836
Tel: 804-416-6169

Supplier Name
CherryRoad Technologies Inc.
301 Gibraltar Drive, Suite 2C
Morris Plains, NJ 07950
Attn: Larry Hymson or Amy Werthmann
Tel: 708-738-4731, 708-220-6225
addresslhymson@cherryroad.com,
awerthmann@cherryroad.com

EXCEPT FOR THE REQUIRED CLOUD SERVICES TERMS AND CONDITIONS ATTACHED AS AN EXHIBIT TO AN AUTHORIZED USER'S ORDER OR SOW, UNDER NO CIRCUMSTANCES SHALL ANY AUTHORIZED USER OR OTHER ENTITY HAVE THE AUTHORITY TO MODIFY THIS CONTRACT WITHOUT WRITTEN CONSENT OF THE AUTHORIZED REPRESENTATIVES.

18. COMPLIANCE WITH VITA PROCUREMENT POLICIES

All orders or SOWs issued hereunder by Authorized Users are subject to and shall comply with all applicable VITA procurement policies located here:
<https://www.vita.virginia.gov/scm/default.aspx?id=3664>

19. COMPLIANCE WITH VITA SECURITY AND THIRD-PARTY USE POLICIES, STANDARDS AND GUIDELINES

All orders or SOWs issued hereunder by Authorized Users are subject to and shall comply with all applicable Security and Third-Party Use policies, standards and guidelines located here:
<https://vita.virginia.gov/default.aspx?id=537>.

20. EXCLUSIVITY OF TERMS AND CONDITIONS

Except for the required VITA Cloud Services Terms and Conditions attached as an exhibit to an Authorized User's order or SOW, no employee or agent of the Commonwealth or of any Authorized User shall be required to sign or execute any additional contract, license or other contractual document containing additional contractual terms and conditions. Any documents signed by persons other than the Director, DPS or his/her authorized designee as identified herein shall have no validity or effect upon the Contract.

21. NON-APPROPRIATION

All funds for payment of Products or Services ordered under this Contract are subject to the availability of legislative appropriation for this purpose. In the event of non-appropriation of funds by the Commonwealth Legislature for items provided under this Contract or by the governing body for any Authorized User, then the Commonwealth or Authorized User will terminate the Order for those Products or Services for which funds have not been appropriated. Written notice will be provided to the Contractor as soon as possible after legislative action is completed. Contractor shall be paid for all Services performed through the date of termination.

If any purchases are to be supported by federal funding, and such funding is not made available, then the Commonwealth or Authorized User may terminate an Order for Products or Services dependent on such federal funds, without further obligation.

22. LOBBYING AND INTEGRITY

Contractor is cautioned that communications with individuals other than the Contract Officer may result in incorrect and/or insufficient information being provided. In addition, Contractor shall not, in connection with this or any other contract or agreement with the Commonwealth, directly or indirectly: 1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation

of a known legal duty, or 2) offer, give, or agree to give anyone any gratuity for the benefit of or at the direction or request of any state or public officer or employee.

Upon request of the Commonwealth, the Offeror shall provide any type of information the Authorized User deems relevant to the Contractor's integrity or responsibility to provide the services or goods, described herein.

23. INDEMNIFICATION

To the fullest extent allowed by law, Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate VITA, the Commonwealth and its officers, employees, agents, and representatives from and against all third party claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, and attorneys' fees, arising out of or caused by Contractor's and/or its partners, principals, agents, employees, and/or subcontractors gross negligence or willful misconduct in the performance of/or failure to perform this Agreement. Contractor shall control the defense of any such claim, suit, etc. In the event Contractor defends said claim, suit, etc., the selection of Contractor's counsel will be subject to approval by the Commonwealth, the Commonwealth's approval not to be unreasonably withheld. Contractor shall be solely liable for all reasonable costs and/or expenses associated with such defense and the Commonwealth shall be entitled to participate in said defense at its own expense. Contractor shall not settle any equitable claim, suit, etc., without the Commonwealth's concurrence, which the Commonwealth may not unreasonably withhold.

Section 13(b) of the Master Agreement is incorporated herein.

24. NO WAIVER OF SOVEREIGN IMMUNITY

In no event shall this Participating Addendum or any order issued hereunder, or any act of the Commonwealth or an Authorized User, be a waiver by the Commonwealth of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

If a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court within the Commonwealth. This section applies to a claim brought against the Commonwealth only to the extent Congress has appropriately abrogated the Commonwealth's sovereign immunity and is not consent by the Commonwealth to be sued in federal court. This section is also not a waiver by the Commonwealth of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

25. PERSONAL LIABILITY

Contractor agree that in no event shall any official, officer, employee or agent of the Commonwealth, when executing their official duties in good faith, be in any way personally liable or responsible for any agreement herein contained whether expressed or implied, nor for any statement or representation made herein or in any connection with this Agreement.

26. CONTRACTUAL DISPUTES

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

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

The Commonwealth, VITA, its officers, agents and employees, including, without limitation, the Contract Manager and applicable Authorized User, are executing this Contract, or issuing any orders hereunder, solely in its or their statutory and regulatory capacities as agent for the Commonwealth or Authorized User that is purchasing and receiving the Products or Services identified in the Master Agreement or on the subsequent Order executed under this Participating Addendum and need not be joined as a party to any dispute that may arise there under.

In the event of any breach by the Commonwealth, then Contractor's remedies shall be limited to claims for damages and Prompt Payment Act (Code § 2.2-4347 *et seq.*) interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this section.

27. BREACH

A Contractor shall be deemed in breach of this Contract if the Contractor (a) fails to deliver goods or services on time as previously agreed upon between Contractor and Authorized User in the Statement of Work or Order unless Contractor and Authorized User mutually agree otherwise or (b) fails to comply with any other term of the order or this Contract and, in either event, fails to cure such noncompliance within twenty (30) days (or such greater period as is acceptable to the Commonwealth following Contractor's receipt of a Show Cause Notice identifying such noncompliance; or (c) fails to provide a written response to the Commonwealth's Show Cause Notice within twenty (20) days after receiving same.

The Contractor shall not be in breach of this Contract if its default was due to causes beyond the reasonable control of, and occurred without any fault or negligence on the part of, both the Contractor and its subcontractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Commonwealth or Authorized User in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

In the event of breach, in addition to any other remedies provided by law, the Commonwealth may cancel its obligations with respect to any or all unaccepted Products or services. All costs for the return of Products shall be borne by the Contractor. In no event shall any failure by the Commonwealth or Authorized User to exercise any remedy available to it be construed as a waiver of or consent to any breach. Contractor shall be paid for all Services performed pursuant to the Prompt Payment Act code 2.2-4347.

In the event of a material breach by the Authorized User or the Commonwealth, Contractor may provide the breaching party with written notice of the material breach, with such sufficient detail so the party can readily understand the claim for material breach. The breaching party shall have ninety (90) days from the date of its receipt of such notification to cure such material breach. If the material breach is not cured within that time period, then Contractor party may cancel its obligations with respect to any or all unaccepted Products or services and terminate this Agreement immediately. Contractor shall be paid for all Services performed through the date of termination.

28. PRICE CURRENCY

All prices shall be in US dollars.

29. REPORTS

A. Contractor's Monthly Reporting Requirements: Contractors shall submit to VITA the following monthly reports:

- 1) Report of Sales; and
- 2) Small Business Procurement and Subcontracting Report

These reports must be submitted using the instructions and further detailed requirements and templates found at the following URL: <http://www.vita.virginia.gov/scm/default.aspx?id=97>. Contractors are encouraged to review the site periodically for updates on Contractor reporting requirements and methods.

As required by Executive Order 20 (2014) in addition to the requirements in the Payment section of this Contract, Contractor shall provide to VITA at the time the final invoice is sent to the Authorized User, a SWaM Subcontracting Certification of Compliance certifying that Contractor has fully complied with the Contract's Supplier Procurement and Subcontracting Plan ("Plan"), originally submitted with Supplier's Proposal. If Supplier has not fully complied, meaning there is any variance between the proposed and contractually bound Plan and the actual subcontractor spend by Contractor, the SWaM Subcontracting Certification of Compliance must include a written explanation of any variances between the Plan and the actual participation. Further, VITA may require Contractor to submit on a scheduled basis (monthly, quarterly, or other frequency) a SWaM Subcontracting Certification of Compliance detailing Contractor's compliance or variance to-date, along with any variance explanation. All submitted SWaM Subcontracting Certifications of Compliance shall be certified and signed by Contractor's contractually authorized representative.

The Contractor's SWaM Subcontracting Certifications of Compliance shall be maintained by VITA in the procurement file. Should Contractor fail to comply with its contractually obligated Plan spend or fail to report its contractually obligated Plan spend, VITA may, at its sole discretion, prohibit or delay any renewals or extensions of the Contract, and/or may withhold any final payments due. Contractor's failure to comply shall be considered in the prospective award of any future contracts with Contractor.

Failure to comply with all reporting and other requirements in this Section may result in default of the Contract.

B. Industrial Funding Adjustment: The Contractor must pay the VITA Industrial Funding Adjustment (IFA) fee under this Contract. VITA will not issue invoices or statements. The Contractor must remit the SCA fee by the last day of the month following the end of the calendar month. The IFA fee equals two percent (2%) of the monthly reported total invoiced sales. The Contractor shall report sales and pay to VITA the IFA fees in accordance with instructions described on the Contractor Reporting webpage located at: <http://www.vita.virginia.gov/scm/default.aspx?id=97>.

If the full amount of the IFA fee is not paid within thirty (30) calendar days of due date, it shall constitute a debt that the Contractor is obligated contractually to pay to the Commonwealth of Virginia, and the Commonwealth may exercise all rights and remedies available under law. Failure to submit sales reports, falsification of sales reports, and or failure to pay the IFA fee in a timely manner may result in termination or cancellation of this contract.

30. WARRANTY

Contractor shall comply with the warranty language set forth in the Master Agreement.

31. STATE CORPORATION COMMISSION IDENTIFICATION NUMBER

Pursuant to Code §2.2-4311.2 subsection B, a Contractor organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 is required to include in its bid or proposal the identification number issued to it by the State Corporation Commission (SCC). Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law is required to include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized. Indicate the above information on the SCC Form provided. Contractor agrees that the process by which compliance with Titles 13.1 and 50 is checked during the solicitation stage (including without limitation the SCC Form provided) is streamlined and not definitive, and the Commonwealth's use and acceptance of such form, or its acceptance of Contractor's statement describing why the bidder or offeror was not legally required to be authorized to transact business in the Commonwealth, shall not be conclusive of the issue and shall not be relied upon by the Contractor as demonstrating compliance.

32. SALES AND SUPPORT SERVICE

The Commonwealth anticipates that this will be a high volume usage contract. The Contractor shall have a full time sales representative assigned to the Commonwealth to make regular calls to assist users, address problems, e-procurement concerns and other matters. The Contractor shall apprise the Commonwealth of any quality issues including recalls, upgrades, and product warnings that may affect product performance and safety. All service representatives must have on-line access to information to provide immediate response to inquiries concerning the status of orders, delivery information, back-order information, statewide contract pricing, and general product information. Representatives shall be available by phone, fax or email. Such contact information shall be provided to the Commonwealth and any ordering entities.

Contractor hereby agrees that it shall market the Master Agreement and this Participating Addendum through the Contractor's sales force or dealer network, which shall be properly trained, engaged and committed to offering the Master Agreement as the Contractor's primary contract offering to all Commonwealth Public Bodies, as Authorized Users of the Agreement. Contractor's compensation and incentives for all sales shall be greater than or equal to the compensation and incentives earned under any other contract that the Contractor offers to any Commonwealth public body.

Contractor shall be responsible for the proactive direct sales efforts of Contractor's Products and Services to all Authorized Users and timely follow-up to sales leads identified by the Contracting Officer. Use of product catalogs, targeted advertising, direct mail and other sales initiatives are encouraged. Contractor's sales materials targeted towards Commonwealth Authorized Users shall include the Commonwealth's electronic procurement "eVA" logo. The Commonwealth shall provide the Contractor with its logo and the standards to be employed in the use of the logo.

Contractor shall assist the Commonwealth by providing camera-ready logos, upon request, and by participating in applicable and relevant Commonwealth supplier exhibitions and conferences. At a minimum, Contractor's communications with Virginia public bodies and sales initiatives shall communicate that (i) the Master Agreement was competitively solicited by the Lead State, (ii) the Master Agreement provides the best available government pricing, (iii) that there is no cost to participating local governments and public body Authorized Users, (iv) that the Master Agreement is a non-exclusive contract, and (v) that the Commonwealth public body, as an Authorized User, may order all Products and Services from the Contractor using the Commonwealth's "eVA" electronic procurement web portal immediately upon the execution of this PA.

33. LEASE AGREEMENTS

Municipal leasing and financing arrangements for the payment of the Contractor's Products and Services are not within the scope of this Contract.

34. PRIMARY CONTACTS

The primary contact individuals for this Participating Addendum are as follows (or their named designees or successors):

CONTRACTOR

Name	Larry Hymson, Amy Werthmann
Address	301 Gibraltar Drive, Suite 2C Morris Plains, NJ 07950
Telephone	708-738-4731, 708-220-6225
E-mail	lhymson@cherryroad.com , awerthmann@cherryroad.com

PARTICIPATING STATE

Name	Director, Supply Chain Management ATTN: Manager, Strategic Sourcing Virginia Information Technologies Agency
Address	11751 Meadowville Lane Chester, Va. 23836
Telephone	(804) 416-6160
E-mail	scminfo@vita.virginia.gov

35. SUBCONTRACTORS

All Contactor dealers and resellers authorized in the Commonwealth, as shown on the dedicated Contractor NASPO ValuePoint website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The Contractor's dealer's participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.

36. COMPLIANCE WITH FEDERAL SECURITY REGULATIONS

VITA and Commonwealth Authorized Users agree that all procurements made hereunder shall be made in accordance with federal laws and regulations pertaining to information security and privacy.

37. ORDERS

Any Order placed by a Participating Entity or Purchasing Entity for a Product and/or Service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the Order agree in writing that another contract or agreement applies to such Order.

38. ENTIRE AGREEMENT

This Contract document and all subsequently issued amendments comprise the entire agreement between the Commonwealth and the Contractor. No other statements or representations, written or oral, shall be deemed a part of the Contract.

39. ORDER OF PRECEDENCE, INCORPORATED DOCUMENTS, CONFLICT AND CONFORMITY:

A. Incorporated Documents:

Each of the documents listed below is, by this reference, incorporated into this Contract as though fully set forth herein.

- 1) The State of Utah's Solicitation document #2016-2026 with all attachments and exhibits, and all amendments thereto;
- 2) Contractor's response to the State of Utah's Solicitation # 2016-2026;
- 3) The State of Utah's Master Agreement # AR 2490 with Contractor, as amended (the "Master Agreement");
- 4) This Participating Addendum ("PA") by the Commonwealth;
- 5) The Authorized User's order or Statement of Work
- 6) The terms and conditions contained on eVA Purchaser Order documents;
- 7) All Contractor or manufacturers' publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials that Contractor has made or makes available to the Commonwealth or Authorized Users and used to affect the sale of the Product and/or Service to the an Authorized User.

B. Order of Precedence

In the event of a conflict in such terms, or between the terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- 1) Applicable Federal statutes and regulations
- 2) Applicable Commonwealth statutes and regulations
- 3) This mutually agreed Participating Addendum
- 4) The Authorized User's order or Statement of Work
- 5) The Authorized User's eVA Order issued under this PA
- 6) Mutually agreed written amendments to the Utah Master Agreement No: AR2497 between Contractor and the State of Utah
- 7) The State of Utah Master Agreement No: AR 2497
- 8) The State of Utah's Solicitation document, with all attachments, exhibits, and amendments thereto.
- 9) The Contractor's response to the State of Utah's Solicitation document
- 10) Any other provision, term, or materials incorporated by reference.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

PARTICIPATING STATE:
Virginia Information Technologies Agency


By: 

Name: Nelson P. Moe

Title: CIO of the Commonwealth

Date: 12/12/17

CONTRACTOR:
CherryRoad Technologies Inc.

By: 

Name: Jeremy Gulban

Title: CEO

Date: 12/7/17

[Additional signatures as required by Participating State]

FOR COORDINATION PURPOSES ONLY

**COMMONWEALTH OF VIRGINIA
Virginia Information Technologies Agency**

By: Nelson P. Moe

Name: Nelson P. Moe

Title: CIO of the Commonwealth

Date: _____

For questions on executing a participating addendum, contact:

NASPO ValuePoint

Cooperative Development Coordinator Tim Hay

Telephone 503-428-5705

E-mail thay@naspovaluepoint.org

Please email fully executed PDF copy of this document to
PA@naspovaluepoint.org to support documentation of participation and posting in appropriate
data bases