

SPECIAL TERMS AND CONDITIONS:

- A. **ADDITIONAL INFORMATION:** The Commonwealth reserves the right to ask any offeror to submit information missing from its offer, to clarify its offer, and to submit additional information which the Commonwealth deems desirable.

- B. **ADVERTISING:** In the event a contract is awarded for supplies, equipment, or services resulting from this solicitation, no indication of such sales or services to the Commonwealth of Virginia will be used in product literature or advertising. The Contractor shall not state in any of the advertising or product literature that the Commonwealth of Virginia or any agency or institution of the Commonwealth has purchased or uses its products or services.

- C. **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.

- D. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

- E. **CANCELLATION OF CONTRACT:** The purchasing agency 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. Cancellation of Purchases Orders shall be made in accordance with Section 7-12 of the Vendors Manuals.

- F. **CONFIDENTIALITY:** The Commonwealth agrees that neither it nor its employees, representatives, or agents shall knowingly divulge any proprietary information with respect to the operation of the software, the technology embodied therein, or any other trade secret or proprietary information related thereto, except as specifically authorized by the contractor in writing or as required by the Freedom of Information Act or similar law. It shall be the contractor's responsibility to fully comply with Section 11-52 D. of the Code of Virginia. All trade secret or proprietary information must be identified in writing or other tangible form and conspicuously labeled as "proprietary" either prior to or at the time of submission to the Commonwealth.

- G. **IDENTIFICATION OF PROPOSAL ENVELOPE:** If a special envelope is not furnished, or if return in the special envelope is not possible, the signed proposal should be returned in a separate envelope or package, sealed and identified as follows:

From: _____
Name of Offeror _____ Due Date / Time _____
Street or Box Number _____ RFP No. _____
City, State, Zip Code _____ RFP Title _____
Name of Contract/Purchase Officer or Buyer: _____

The envelope should be addressed as directed on Page 1 of the solicitation.

If a proposal not contained in the special envelope is mailed, the Offeror takes the risk that the envelope, even if marked as described above, may be inadvertently opened and the information compromised which may cause the proposal to be disqualified. Proposals may be hand delivered to the designated location in the office issuing the solicitation. No other correspondence or other proposals should be placed in the envelope.

- H. **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of the Issuing agency. In the event that the Contractor desires to subcontract some part of the work specific 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.
- I **RENEWAL OF CONTRACT:** This contract may be renewed by the Commonwealth for one (1) successive one year period under the terms and conditions of the original contract except as stated in 1 and 2 below. (*BUYER'S NOTE: The original RFP 86 allowed for two (2) one-year renewal options*). Price increases may be negotiated only at the time of renewal. Written notice of the Commonwealth's intention to renew shall be given approximately 90 days prior to the expiration date of each contract period.
1. If the Commonwealth elects to exercise the option to renew the contract for an additional one-year period, the contract price(s) for the additional one year should not exceed the contract price(s) of the original contract increased/decreased by more than the percentage increase/decrease of the Consumer Price Index, Commodity and Service Group, Transportation Services category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.
 2. If during any subsequent renewal periods, the Commonwealth elects to exercise the option to renew the contract, the contract price(s) for the subsequent renewal period should not exceed the contract price(s) of the previous renewal period increased/decreased by more than the percentage increase/decrease of the Consumer Price Index, Commodity and Service Group, Transportation Services category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.

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 pursuant to the Virginia Public Procurement Act 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.

STATE CORPORATION COMMISSION IDENTIFICATION NUMBER: Pursuant to Code of Virginia, §2.2-4311.2 subsection B, a bidder or offeror 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.

REPORTS/SURCHARGE ADJUSTMENT FEE (SCA):

A. **CONTRACTOR'S QUARTERLY REPORT OF SALES:** Contractors shall provide electronic reports in Microsoft Excel format on a quarterly basis showing invoiced sales data. See the attached report template, which identifies the information and format to be provided. Reports are due no later the 15th of the month following the end of the calendar year quarter, reporting total invoiced sales and returns transactions that took place in the immediately three prior months. **Quarterly reports shall be sent to the contract officer AND to the following email address:** VappReport@dgs.virginia.gov. Consistent report tardiness may be cause for contract termination.

	<u>Sales Months</u>	<u>Quarterly Report Due:</u>
1 st Quarter	January, February, March	Due 15 th of April
2 nd Quarter	April, May, June	Due 15 th of July
3 rd Quarter	July, August, September	Due 15 th of October
4 th Quarter	October, November, December	Due 15 th of January

B. **SURCHARGE ADJUSTMENT:** The Contractor must pay the Department of General Services (DGS), a Surcharge Adjustment (SCA) fee under this Contract. The SCA fee reimburses the Commonwealth and defrays the costs for Spend Management procurements and the administration of the subsequent awards. The Contractor must remit the SCA fee within 30 days after the end of each calendar year quarter. It is the intent of the Commonwealth to capture 2% of all invoiced

transactions under the Contract. The SCA fee equals two percent (2%) of the total invoiced sales as reported in the Contractor's quarterly reports for the previous calendar year quarter. The SCA fee amount due must be paid by check. The check stub or other remittance material must include "VAPP SCA fee", the contract number, and dates of the three-month reporting period. DGS may at its discretion, agree to an electronic funds transfer, in lieu of a check, however in the absence of an express written agreement from DGS that validates agreement, then the payment shall be made by check as described herein made payable to the Treasurer of Virginia.

Checks are to be payable to: **Treasurer of Virginia.**

Checks are to be mailed to:
Department of General Services
P.O. Box 267
Richmond, VA 23218-0267

SCA FEES DUE:

1 st Quarter (sales reports Jan, Feb, March)	Due 30 th of April
2 nd Quarter (sales reports Apr, May, June)	Due 30 th of July
3 rd Quarter (sales reports July, Aug, Sept)	Due 30 th of October
4 th Quarter (sales reports Oct, Nov, Dec)	Due 30 th of January

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