



**Commonwealth of Virginia  
Virginia Information Technologies Agency**

**STATEWIDE MOBILE & FIXED INTERNET EQUIPMENT & SERVICES**

**DATE:** November 10, 2010

**CONTRACT #:** VA-081117-MST

**VENDOR:** Mobil Satellite Technologies  
1500 Technology Drive, Suite 102  
Chesapeake, VA 23320-5976

**FIN:** 54-1923859

**CONTACT PERSON:** Kirk Williams  
Phone: 757-312-8300 x306  
Fax: 757-282-7702  
Email: [kirk@mobilsat.com](mailto:kirk@mobilsat.com)

**TERM:** November 17, 2010 – November 16, 2011

**PAYMENT:** 30 Days

For Additional Contract Information, Please Contact:

Virginia Information Technologies Agency  
Supply Chain Management Division

Jimmy MacKenzie  
Strategic Sourcing Specialist  
Phone: 804-416-6247  
E-mail: [james.mackenzie@vita.virginia.gov](mailto:james.mackenzie@vita.virginia.gov)  
Fax: 804-416-6361

NOTE: Individual Commonwealth of Virginia employees are not authorized to purchase equipment or services for their personal use from this agreement.

For updates, please visit our Website at <http://www.vita.virginia.gov/procurement/contracts.cfm>





## COMMONWEALTH of VIRGINIA

Samuel A. Nixon, Jr  
Chief Information Officer  
E-mail: [cio@vita.virginia.gov](mailto:cio@vita.virginia.gov)

**Virginia Information Technologies Agency**  
11751 Meadowville Lane  
Chester, Virginia 23836-6315  
(804) 416-6100

TDD VOICE -TEL. NO.  
711

November 9, 2010

Mr. Kirk Williams  
Mobil Satellite Technologies  
2021 Scenic Parkway  
Chesapeake, VA 23323

Re: Contract VA-081117-MST between the Commonwealth of Virginia and  
Mobil Satellite Technologies.  
Notice of Contract Term Extension

Mr. Williams:

Pursuant to Section 3 A. (Contract Term) of Contract VA-081117-MST, the Commonwealth is exercising its right to extend the above-referenced contract for a one (1) year period or until November 16, 2011 for Mobile and Fixed Satellite Internet Equipment and Service. This letter should serve as the Commonwealth's official notice to Mobil Satellite Technologies of its intent to extend the term of the contract for a one (1) year period.

Please do not hesitate to contact me if you need any additional information concerning this one-year contract extension.

Sincerely,

A handwritten signature in red ink, appearing to read "Jimmy MacKenzie".

Jimmy MacKenzie  
Strategic Sourcing Consultant  
Supply Chain Management

**MODIFICATION # 1  
TO  
CONTRACT NUMBER VA-081117-MST  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
MOBIL SATELLITE TECH**

This MODIFICATION # 1 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and Mobil Satellite Tech hereinafter referred to as "Contractor". This Modification is hereby incorporated into and made an integral part of Contract VA-081117-MST (the Agreement).

The purpose of this Modification # 1 is to document both parties' agreement to extend the term of this contract from November 17, 2009 through November 16, 2010.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-081117-MST and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.**

**PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.**

MOBIL SATELLITE TECH

BY: Bud A. Burton  
NAME: Bud Burton  
TITLE: CEO  
DATE: 9/16/09

COMMONWEALTH OF VIRGINIA

BY: [Signature]  
NAME: James MacKenzie  
TITLE: Sourcing Consultant  
DATE: 10/2/09



# COMMONWEALTH of VIRGINIA

VIRGINIA INFORMATION TECHNOLOGIES AGENCY  
SUPPLY CHAIN MANAGEMENT  
MEADOWVILLE TECHNOLOGY PARK  
11751 MEADOWVILLE LANE  
CHESTER, VIRGINIA 23836

## CONTRACT VA-081117-MST

### SATELLITE INTERNET EQUIPMENT AND SERVICES

#### SUPPLIER

COMPANY NAME:	<u>Mobil Satellite Technologies</u>	SALES CONTACT:	<u>Kirk Williams</u>
ADDRESS:	<u>1500 Technology Drive</u> <u>Suite 102</u>	TITLE:	<u>Director of Sales</u>
CITY/STATE/ZIP:	<u>Chesapeake, VA 23320-5976</u>	PHONE NO:	<u>757-312-8300 x 306</u>
FEIN:	<u>54-1923859</u>	FAX:	<u>757-282-7702</u>
WEBSITE URL:	<u>www.mobilsat.com</u>	E-MAIL ADDRESS:	<u>kirk@mobilsat.com</u>

#### VITA TERM CONTRACT for Telecommunications Goods and Service

<b>Products and Services:</b>	<b>Mobile and Fixed Satellite Internet Equipment and Service</b>
<b>Authorized Contract Users:</b>	<b>Commonwealth of Virginia Agencies, Institutions and Other Public Bodies</b>
<b>Contract Term:</b>	<b>One (1) year initial period with three (3) one (1) year renewals</b>
<b>Pricing:</b>	<b>See Exhibit "A"</b>
<b>Service Delivery Intervals:</b>	<b>See Exhibit "B"</b>
<b>Additional Discounts:</b>	<b>None</b>
<b>Installation:</b>	<b>See Exhibit "B"</b>
<b>Orders:</b>	<b><u>Standard Order Process:</u> As depicted in Item 4 of the Hardware Terms and Conditions; and depicted in Item 7 of the Services Terms and Conditions.</b>

VITA SCM Contacts: Contract Information  
*Stuart L. Thacker*  
 Voice: (804) 416-6163  
 Fax: (804) 416-6361  
 E-mail Address [stuart.thacker@vita.virginia.gov](mailto:stuart.thacker@vita.virginia.gov)

This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, §2.2-4343.1 or against any Bidder because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

## Exhibit A – Pricing Schedule

### Item 1. Mobile Satellite System

The system should consist of a mobile mount and antenna, receiver and transmitter modems, an antenna control unit and a gateway. System should be capable of automatically pointing to the required satellite. System should have GPS location, heading and altitude. System should be capable of manual operation. System to be similar to DataStorm G74 or approved equal.

Quantity: 1 Each

State Make: MotoSAT DataStorm

Model: G-74 w/HughesNet HN7000S modem \$ \$5,295 /each

Annual Maintenance: \$ N/A

**Total:** \$ \$5,295

### Item 2. Fixed Satellite System

The system should consist of a fixed mount and antenna, receiver and transmitter modems and a Network Access Point (NAP) or gateway. System to be similar to DirecWay DW7000 w/.74m antenna or approved equal.

Quantity: 1 Each

State Make: HughesNet (Formerly Direcway)

Model: .74 meter fixed system w/HN7000S modem \$ \$685 /each

Installation: \$ \$600

Annual Maintenance: \$ N/A

**Total:** \$ \$1,285

**Item 3. Broadband Internet Satellite Service**

This service must provide broadband Internet satellite service to the Commonwealth. Service should be based on both dynamically assigned IP addresses and static IP addresses. The service should be set up to allow multiple users. Service should be available throughout the United States. The service must provide for satellite latency, must ensure encryption and allow the data stream to be used efficiently in a Virtual Private Network (VPN) environment. Service to be similar to HughesNet Elite or equal and should be compatible with the mobile and/or fixed system bid.

Satellite Service: HughesNet Business Internet Access 100

Satellite Flat Rate Service per month \$ \$68.99

Dynamic IP Address \$ included

Static IP Address \$ \$19.00/mo.

Set-up Fee \$ N/A

**Total:** \$ \$68.99 - \$87.99

**Award Totals**

**Item 1 (Mobile System) and Item 3 (Service)** \$ \$5,295  
\$68.99/mo - \$87.99/mo for Service

**Item 2 (Fixed System) and Item 3 (Service)** \$ \$1,285  
\$68.99/mo - \$87.99/mo for Service

**Item 3 Satellite Service** \$ \$68.99 - \$87.99

Exhibit A – Pricing

**Attachment A**

Item 3 – Broadband Internet Satellite Service (Cont'd)

HughesNet Business Internet Access 200	\$118.49/month
HughesNet Business Internet Access 300	\$198.49/month

## EXHIBIT B – PRODUCT AND SERVICE REQUIREMENTS

### 1. PRODUCT REQUIREMENTS

#### A. Delivery Procedure

Supplier shall deliver the requested Product ready for use within thirty (30) days after receipt of order from an Authorized User, or such shorter time as may be agreed to between Supplier and such Authorized User. Contractor shall deliver Product on an emergency basis at no additional cost to any Authorized User. 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.

Supplier shall deliver all Product F.O.B. destination, with such destination being the "ship to" address specified in the applicable order. Supplier shall bear all risk of loss or damage to the Product until Receipt. Additionally, if the Supplier is to provide installation of the Product, Supplier shall bear all risk of loss of or damage to the Product, to the extent that such loss or damage is caused by the Supplier or Supplier's negligence, until Acceptance by the Authorized User/completion of installation. In all cases, Supplier shall arrange and pay for all transportation and insurance sufficient to fully protect the Product while in transit. If any loss to, or damage of, the Product due to any act, omission, or negligence of the Supplier occurs prior to Acceptance by the Authorized User, Supplier shall immediately provide a replacement item.

All Product furnished shall be new and in current production. Clear and unrestricted title to all Product, excluding System Software, purchased under this Contract shall pass to the Authorized User upon payment of the purchase price.

#### B. Failure to Deliver

Supplier hereby acknowledges and agrees that failure to deliver the Product ordered in strict accordance with the agreed upon delivery schedule determined in accordance with this Contract shall constitute a material default on this Contract. If Product is not delivered / installed within the time specified herein, or as otherwise agreed between Authorized User and Supplier in a particular order, the Authorized User may terminate the applicable order for default without further obligation.

In the event Supplier fails for any reason, other than a Force Majeure event or failure of the Authorized User to provide any required access or support, to deliver in a timely manner or according to Contract terms the Product or Services set forth in the Pricing Exhibit, VITA or the ordering Authorized User, at its own discretion, may give Supplier written notice of default. Once notice is provided to Supplier, VITA or the Authorized User may immediately procure the products or services from another source. In no event shall VITA or the Authorized User be held to pay Supplier any costs incurred by Supplier, including but not limited to ordering, marketing, manufacturing, or delivering the Product(s) or Service(s) which are subject of the notice by VITA or the Authorized User of breach. This remedy is in addition to and not in lieu of any other remedy VITA or the Authorized User may have under this Contract or at law or in equity.

#### C. Product Installation

Unless otherwise agreed, Supplier shall provide the initial installation of all Product at no additional charge. Installation shall include: unpacking, removal of all shipping/packing materials, positioning, connecting to internal utility services, testing, related necessary services to allow for Acceptance by the Authorized User. If Supplier is providing installation of the Product, Supplier shall complete such installation within five (5) days of delivery of the Product to the Authorized User. Installation shall take place at a time and day agreed upon by Supplier and the Authorized User. Supplier must be prepared to perform installation services during Authorized User's standard business hours. An Authorized User may delay installation by notifying the Supplier at least five (5) days before the required installation date. Supplier shall not be responsible for delays in installation caused by the Authorized User's failure to provide required access to its facilities.

All Product installations shall comply with building and facilities standards established by the ordering Authorized User. If such Authorized User installs the Product, Supplier shall provide all reasonably necessary telephone assistance at no charge.

**D. Site Preparation**

Product environmental specifications, if required, for the Product to be delivered under this Contract shall be furnished in writing by the Supplier upon award. These specifications shall be in sufficient detail to ensure that the Product to be installed shall operate efficiently within the Authorized User's environment.

The Authorized User shall prepare the installation site at its own expense and in accordance with the Product environmental specifications provided by Supplier.

**E. Product Acceptance**

All Product and Services are subject to inspection and testing by the Authorized User, and any that does not meet or exceed the specifications or other Requirements of the Contract may be rejected. The Supplier shall provide the Authorized User ten (10) days from the completion of installation by the Supplier, or ten (10) days after delivery if the Product is installed by the Authorized User, or such longer time period as may be mutually agreed upon by the Parties to an order, ("Evaluation Period") to test, evaluate and accept or reject the Product or Services delivered, installed, or furnished under this Contract. The Authorized User, in its sole discretion, may accept the same prior to expiration to the Evaluation Period. Supplier agrees to provide to the Authorized User such assistance and advice as the Authorized User may reasonably require, at no additional cost, during such Evaluation Period, other than pre-approved travel expenses incurred which are reimbursable by the Authorized User at the then-current per diem amounts as published by the Virginia Department of Accounts (<http://www.doa.virginia.gov/procedures/adminservices/capp/pdfdocs/20335.pdf>, or a successor URL(s)).

Acceptance shall be effective for the purpose of making payment and thus determining title to the Product; however, Acceptance by the Authorized User following testing and evaluation during the Evaluation Period shall not be conclusive that the Product or Services conform in all respects to the Contract specifications and other Requirements. In the event that nonconformance therewith is discovered by the Authorized User after Acceptance and within the Warranty Period, whether due to a latent defect or otherwise, the Supplier shall take whatever action is necessary to conform the Product or Services to the Contract specifications and other Requirements, including but not limited to modification or replacement of the same. The Supplier's failure to do so shall constitute default of Contract for which VITA or the Authorized User may exercise the remedies provided in this Contract, including the Term and Termination section herein, in addition to and not in lieu of any other remedies available at law or in equity.

**F. Cure Period**

Supplier shall correct the non-conformities identified hereunder and shall thereafter re-submit such previously non-conforming Product or Service for re-testing within ten (10) days of written notice of non-conformance from an Authorized User, or as otherwise agreed between the Authorized User and Supplier. In the event that Supplier fails to deliver Product or Service which meets the Requirements, such Authorized User may, in its sole discretion: (i) reject the Product or Service in its entirety and recover amounts previously paid hereunder; (ii) issue a "partial Acceptance" of the Product or Service with an equitable adjustment in the price to account for such deficiency; or (iii) conditionally accept the applicable Product or Service while reserving its right to revoke Acceptance if timely correction is not forthcoming. If the Supplier's Product or Service fails to meet the Contract specifications or other Requirements, including the specifications of the brand name, if any (see Pricing Exhibit), or those required by the Supplier's or Product manufacturer's technical documentation, then the same may be rejected and returned to the Supplier. Such rejection will terminate the order for such Product or Services, or the relevant portion thereof, and exempt the Authorized User from all costs incurred by the Supplier related to such Product or Services. Notwithstanding

the foregoing, VITA or the Authorized User shall be entitled to pursue any other remedies that are available to it under this Contract and at law or in equity.

**G. Product Discontinuation**

During the term of this Contract, if any Product listed on the Pricing Exhibit is discontinued and Supplier does not offer a substitute acceptable to VITA, Supplier shall, for each Authorized User who purchased the discontinued Product, continue to meet such Authorized User's needs for the discontinued Product for not less than six (6) months. Additionally, Supplier shall make available to the Authorized User maintenance parts for discontinued Product for three (3) years from the date of such discontinuation. In every event, Supplier shall use best efforts to provide any Authorized User with one hundred twenty (120) days advance written notice of its intent to discontinue any Product type previously ordered by such Authorized User.

**2. PRODUCT SUPPORT AND ADDITIONAL SERVICES**

**A. Engineering Changes and Product Modification**

Supplier-sponsored modifications and/or engineering changes shall be made with the consent of the Authorized User at no additional charge for a period of one (1) year from the date of installation. The Authorized User reserves the right at all times to schedule these Supplier-sponsored modifications and/or changes to minimize the impact on its daily operations.

**B. Training**

Supplier shall provide an instructional/maintenance manual with each unit, including accessories provided.

**3. WARRANTY AND MAINTENANCE SERVICES**

**A. Product Covered**

The Pricing Exhibit lists all Product types covered under warranty and maintenance. No Authorized User is obligated to continue warranty or maintenance on Product that has been removed from service, provided Supplier has been notified in writing of such removal.

Supplier shall maintain an inventory record ("Inventory Record") of all units of Product covered under warranty or maintenance by type, quantity and location. Inventory Record shall also include the end date for each unit's Warranty Period or, if applicable, the period for which the unit of Product is covered under maintenance. Product quantities and types may vary as Product is added or deleted from coverage. Supplier shall be notified in writing of any Product removed from service, and Supplier shall automatically amend the Inventory Record without further action by Authorized User to reflect the relocation, addition or deletion of Product. Supplier shall provide a copy of the most current Inventory Record to any Authorized User upon request of such Authorized User.

**B. Dispatch Procedures and Product Service Record**

Authorized User's designated control organization shall have the exclusive authority to request warranty or maintenance services. Supplier shall not respond to calls for service from any other source without prior written approval of Authorized User's agreement administrator designated on the relevant order.

Upon request by the Authorized User, Supplier shall, at completion of any service call performed by Supplier pursuant to this Warranty and Maintenance Services section, provide a Product Service Record detailing the services performed. Product Service Record shall record the following, as applicable:

- i). Installation/Relocation/Removal/Modifications
- ii). Remedial actions
- iii). Preventive actions

**C. Description of Warranty and Maintenance Services**

At any time during the Warranty Period, Contractor shall provide, at no additional charge, the Product manufacturer's standard warranty services to any Authorized User who has

purchased Product pursuant to this Contract in order to maintain the Product in accordance with the manufacturer's specifications or replace the Product, if required. A description of such standard warranty services is incorporated herein as Exhibit D.

At any time during the Maintenance Period, Contractor shall provide, at the prices identified in the Pricing Schedule, the Product manufacturer's standard maintenance services to any Authorized User who has purchased Product pursuant to this Contract in order to maintain the Product in accordance with the manufacturer's specifications. A description of such standard maintenance services is incorporated herein as Exhibit D.

Notwithstanding the foregoing, Contractor shall, at a minimum, provide the following limited warranty services during the Warranty Period:

Contractor warrants that the Product will perform in accordance with the Product specifications throughout the Warranty Period. In the event that any Authorized User identifies, within the Warranty Period, any design defect or non-conformance to the Requirements, Contractor, at Contractor's sole expense, shall provide all parts, components and services required to correct the design defect and restore such item or shall replace it, so that it functions as warranted. In the event Product must be shipped from Authorized User's site for mechanical repair or replacement purposes, Contractor shall bear all costs associated with return of Product to the Contractor's repair facility. When repair of Product is completed, Contractor shall bear all costs associated with returning such Product to the Authorized User's original point of shipment. Cost of shipping includes but is not limited to, costs of packing, transportation, rigging, drayage and insurance for damage or loss. For all repairs pursuant to this Contract, Contractor shall use new or certifiable as new parts. Any Product or any component part thereof that has been replaced by Contractor shall become the property of the Contractor, and any replacement Product or component part thereof shall become the property of the Authorized User.

Contractor shall repair the non-conforming unit of Product or provide an interim replacement product, within seventy-two (72) hours of notification by the Authorized User that a malfunction exists. Any interim product(s) shall be provided at no additional cost to such Authorized User, until the original unit of Product is returned, in Operating Condition. If Contractor is unable to make the defective Product conform within twenty (20) days following notification by such Authorized User, Contractor shall, at the Authorized User's request, accept return of such Product(s), and return all monies paid for the failed units.

NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, THE COST OF ALL WARRANTIES AND MAINTENANCE SERVICES / SUPPORT PLANS SHALL INCLUDE SERVICES AND SUPPORT FOR ALL SYSTEM SOFTWARE. ALL WARRANTIES AND MAINTENANCE SERVICES ARE CONSIDERED PERFORMANCE-BASED AND THEREFORE THE CONTRACTOR IS RESPONSIBLE FOR ANY REPORTED FAILURE OF THE PRODUCT DURING ANY WARRANTY PERIOD OR THE TERM OF ANY MAINTENANCE SERVICES / SUPPORT PLAN ORDERED BY ANY AUTHORIZED USER PURSUANT TO THIS CONTRACT.

#### **D. Product Maintenance Services and Renewal Options**

Upon expiration of the Warranty Period set forth herein, or at such earlier or later time as may be requested by the Authorized User, the Supplier, at the sole discretion of the relevant Authorized User, shall provide additional one (1) year periods of maintenance services, including labor, parts and travel, at the prices identified in the Pricing Exhibit and shall keep the Product and System Software in good Operating Condition. Maintenance services shall not include electrical work external to the Supplier's Product or repair of damage resulting from accident, transportation by the Commonwealth between Commonwealth sites, negligence on the part of Commonwealth personnel, or causes other than ordinary use in the production environment in which the Product is installed. Notwithstanding the foregoing, an Authorized User may purchase maintenance services at any time. The Maintenance Period shall commence upon Authorized User's purchase of maintenance services from Supplier.

Supplier shall notify Authorized User sixty (60) days prior to expiration of the Warranty Period or Maintenance Period for each Product. Should the Authorized User, at its sole discretion,

choose to continue maintenance for a unit of Product, such Authorized User shall issue an order to the Supplier for each twelve (12) month period that maintenance services are required after the initial Warranty Period and or subsequent Maintenance Period, in accordance with the Supplier's pricing, as set forth in the Pricing Exhibit.

Supplier warrants that it shall make Product Maintenance Services available for all the Product, including System Software, listed in the Pricing Exhibit, or which are components of Products listed in the Pricing Exhibit, for a period of not less than five (5) years from the date of the last purchase at the cost set forth on the Pricing Exhibit. Cancellation of Product Maintenance Services, including System Software Maintenance Services, by an Authorized User shall not affect this Contract or the grant of any license by Supplier.

Supplier shall make best efforts to notify the Authorized User one (1) year prior to the effective date of any discontinuance of maintenance services. Should Supplier advise the Authorized User of its intent to discontinue certain maintenance services for any Product type ordered by the Authorized User, the Authorized User has the option to request and Supplier has the obligation to provide, all documentation required to ensure ongoing support, including full maintenance and repair by the Authorized User or its designated third-party maintenance provider within thirty (30) days prior to the discontinuance date or replace the unsupported Product with a supported Product at no more than the cost delta between the supported Product and the unsupported Product.

**E. Certification of Product**

At the end of the Warranty Period or upon termination of this Contract or any order for Product Maintenance Services, the Supplier must ensure that the equipment covered under the contract is certified for maintenance by the Product Manufacturer. Supplier shall provide all appropriate documentation. All expenses for any recertification process shall be borne by the Supplier.

**THE OBLIGATIONS OF SUPPLIER UNDER THIS WARRANTY AND MAINTENANCE SERVICES SECTION ARE MATERIAL. SUPPLIER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY CONCERNING MERCHANTABILITY OR FITNESS FOR ANY OTHER PARTICULAR PURPOSE.**

#### **4. SATELLITE SERVICE REQUIREMENTS**

##### **A. Service Commencement Date**

The Supplier shall begin delivery of Services in accordance with the Installation and Service Delivery Intervals or on the date requested by VITA or the Authorized User and agreed to by the Supplier in an order. VITA or an Authorized User may delay the Service commencement date by notifying the Supplier at least ten (10) days before the scheduled Service commencement date.

VITA requires that Supplier provide delivery equal to or better than that provided its commercial and retail customers. Failure to comply with this provision may be considered grounds for termination of this Contract.

##### **B. Service Delivery Intervals**

Once initial installation Services have been performed by Supplier and accepted by VITA or the Authorized User specified on the applicable order, VITA or the Authorized User may issue a new order for the performance of additional Services. Upon receipt of such order, Supplier shall deliver the Services specified therein, which may include making changes to existing services or de-installation or disconnecting of existing services.

Upon receipt of an order of an order from VITA or an Authorized User for Service contained in Exhibit A, the Supplier shall deliver the Service within thirty (30) calendar days. Supplier shall deliver Services on an emergency basis at no additional costs.

Supplier's failure to comply with the above identified time frame shall be deemed a default, and VITA or the affected Authorized User may, at its sole discretion and in addition to all other available remedies, exercise its rights pursuant to the Term and Termination section of this Contract. Supplier shall not be deemed in default if its failure to comply is a result of the failure of the public body which is to receive Supplier's Services to support the desired service.

##### **C. Acceptance**

Service(s) shall be accepted when VITA or the Authorized User determines that the Services ordered meet the requirements or written criteria set forth in Exhibit B hereto and/or the applicable order. VITA or the Authorized User shall commence Acceptance testing within a reasonable time period after performance of the Service or within such longer time period mutually agreed upon by the Parties to the order. VITA or the Authorized User shall have seventy-two (72) hours, or such longer period as may be agreed upon between Supplier and VITA or the Authorized User in an order, from completion of Services to evaluate and accept the Services ("Evaluation Period"), provided that VITA or the Authorized User, in its sole discretion, may accept the same prior to expiration of the Evaluation Period. If the Supplier's Services fail to meet the specifications or requirements of the Contract or the applicable order, or those required by the Supplier's own technical documentation, then VITA or the Authorized User may require the Supplier to re-perform such Services.

Supplier agrees to provide to VITA or the Authorized User such assistance and advice as VITA or such Authorized User may reasonably require, at no additional cost, during such Acceptance testing. Any travel expenses not included in the fixed price of an order must be pre-approved by VITA or the Authorized User and shall be reimbursable by VITA or the Authorized User at the then-current per diem amounts as published by the Virginia Department of Accounts

(<http://www.doa.virginia.gov/procedures/adminservices/capp/pdfdocs/20335.pdf>, or a successor URL(s)).

Acceptance shall be effective for the purpose of making payment for Services, as applicable, provided, however, Acceptance by VITA or Authorized User following the evaluation period shall not be conclusive that the Services conform in all respects to the specifications and requirements of the Contract or the applicable order. In the event that nonconformance therewith is discovered by VITA or Authorized User after Acceptance, whether due to a latent defect or otherwise, the Supplier shall take whatever action is necessary, including but not limited to re-performance of Services, to conform the Services to the specifications and

requirements of the Contract or the applicable order. The Supplier's failure to do so shall constitute a default on the Contract for which VITA or Authorized User may exercise the remedies provided in the section herein entitled "Termination for Breach or Default," in addition to and not in lieu of any other remedies available at law or in equity.

**D. Cure Period**

Supplier shall correct the non-conformities identified hereunder and shall thereafter commence re-performance of Services, within fifteen (15) days of written notice of non-conformance by VITA or the Authorized User, or as otherwise agreed between VITA and Supplier or Authorized User and Supplier. In the event that Supplier fails to deliver a Service which meets the Requirements, VITA or the Authorized User may, in its sole discretion: (i) reject the Service in its entirety and recover amounts previously paid hereunder; (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. Rejection will terminate the individual order issued under this Contract, and at the sole option of VITA, the Contract. Notwithstanding the foregoing, VITA or the Authorized User shall be entitled to pursue any other remedies that are available to it under this Contract and at law or in equity.

**E. Service Performance Standard**

Following acceptance of the initial installation Services, the Supplier shall continue to provide the same level of Services pursuant to the individual order and shall maintain such Services at the same availability and quality levels for the term of such order. The procedures utilized for acceptance shall be used during the entire term of this Contract by the Authorized User for monitoring performance levels.

**F. Service Levels and Remedies**

Supplier shall provide a Single Point of Contact (SPOC) for the reporting of service problems encountered by an Authorized User which is the recipient of Supplier's Services while using the Services. The SPOC shall be staffed and available twenty-four (24) hours per day, seven (7) days a week, including weekends and holidays. A toll-free telephone number to contact the SPOC shall be indicated here **866-561-0357**

Authorized User shall be rebated, or credited, a prorated hourly portion of the applicable monthly service charges for each occurrence during which Authorized User is denied use of the Service due to Service failures and disruptions for four (4) or more hours during any single twenty-four (24) hour period. The rebate shall apply to the initial four (4) hours and all additional hours, or portions thereof, during which Authorized User is denied access to the Service.

In addition, Authorized User shall be rebated, or credited, a prorated hourly portion of the applicable monthly service charges for each occurrence during which such Authorized User is denied use of the Service for eight (8) hours or more during any consecutive thirty (30) day period. The rebate shall apply to the initial eight (8) hours and all additional hours, or portions thereof, during which such Authorized User is denied access to the Service.

Credits and rebates are remedies available to VITA and all Authorized Users in addition to, and not in lieu of, any other remedies available pursuant to this Contract or at law or in equity.

**G. Training and Documentation**

Any training or documentation necessary for public body recipient of the Service to have full benefit of such Service shall be deemed included in the scope of the order unless expressly excluded.

Supplier shall be responsible for providing hands-on training on the use of the Service(s) for all Commonwealth end users. Supplier shall coordinate scheduling for all training directly with such public body. In conjunction with verbal explanations of the system features and configuration, Supplier shall supply documentation including operations manuals, instruction cards, and other materials as necessary for each Service. Training and training materials shall be provided at no additional cost to any Authorized User which is the recipient of Supplier's Services.

#### **H. Failure to Deliver**

In the event the Supplier fails for any reason, other than a Force Majeure event or the failure of the public body which is to receive Supplier's Services to provide any necessary access or support as identified in the applicable order, to deliver in a timely manner or according to Contract terms the Services set forth in the Pricing Exhibit, VITA or the Authorized User, at its sole discretion, may give Supplier written notice of default. Once notice by VITA or Authorized User is sent or given, VITA or the Authorized User may, if allowable pursuant to applicable law and regulation, immediately procure services from another source. Once VITA or the Authorized User has effected a purchase from an alternate source, in accordance with the Virginia Public Procurement Act (§2.2-4300 et seq. of the Code of Virginia), the parties agree that VITA or the Authorized User may charge-back Supplier, in which case Supplier agrees to reimburse VITA or the Authorized User for any difference in cost between the original Contract price and cost to VITA or the Authorized User to cover from the alternate source. In no event shall VITA or the Authorized User be held to pay Supplier any costs incurred by Supplier, including but not limited to ordering, marketing, manufacturing, or delivering the item(s) which are subject of notice of default by VITA or the Authorized User. This remedy is in addition to and not in lieu of any other remedy VITA or the Authorized User may have under this Contract or at law or in equity.

#### **I. Current Satellite Service Users**

The following are the current users on HughesNet.

- Virginia State University
- Hampton Roads Medical Strike Force
- Virginia Information Technology Agency
- York County Virginia

## EXHIBIT C – CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

- i). No Federal appropriated funds have been paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee or an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal Contract, grant, loan, or cooperative agreement.
- ii). If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- iii). The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and Contracts under grants, loans and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature:



Printed Name:

D. M. Burton

Organization:

Burton Enterprises, LLC  
T/A Mobil Satellite Technologies

Date:

10/31/2008

## Exhibit D – WARRANTY AND MAINTENANCE SERVICES DESCRIPTION

### Fixed HughesNet Satellite System Warranty

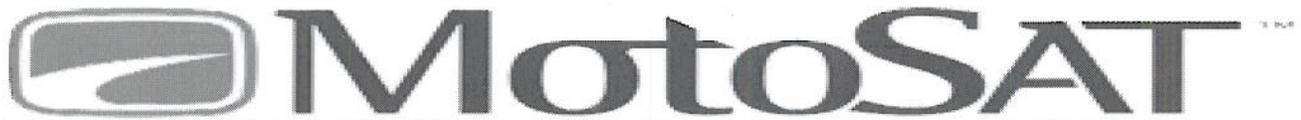
All parts are warranted to be free from defects for 18 months

### Mobile MotoSAT Satellite System Warranty

(Manufacturers warranty is attached)

### Equipment Maintenance Agreement

(Attached)



Advanced Mobile Satellite TV/ Internet Solutions

### 1 YEAR SUPPORT WARRANTY

Warranty available through Technical Support  
Details Below

MotoSAT designs and manufactures high quality equipment and makes every effort to insure that you are getting the most reliable product available. In the event your product should fail please follow the guidelines set below.

#### 1 YEAR SUPPORT WARRANTY

- MotoSAT will provide technical support for 1 year from date of support warranty purchase.
- MotoSAT offers replacement parts at a fair price. Customer agrees to pay for replacement parts or components once they have been determined by MotoSAT Technical Support Department to be defective.
- Customer agrees to pay labor and/or freight charges associated with repairing or replacing a defective component.
- MotoSAT does not cover the cost of removal, reinstallation, alignment or any other service performed under this warranty.
- Any item being returned to MotoSAT must be properly packaged and addressed including return material authorization (RMA) number to:

MotoSAT  
Attn: Returns Department  
(place RMA number here)  
1955 S. Milestone Drive  
Salt Lake City, UT 84104

#### WARRANTY EXCLUSIONS AND LIMITATIONS

- This support warranty extends only to the original customer and is not transferable
- This support warranty does not apply to any component or product not manufactured by MotoSAT, included but not limited to:
  - Modems, (IRU/ITU), feed horn, LNB, transmitter, dish face and Satellite TV receiver.
- All components not manufactured by MotoSAT are subject to separate warranties issued by the Original Equipment Manufacturer (OEM).
  - Hughes.Net, Prodelin, UnaSat, IDirect, etc.
- MotoSAT shall in no event be liable for damage to or loss of any equipment or consequential damages. Including but not limited to damages to other equipment resulting from the installation or operation of the MotoSAT components.
- This support warranty does not cover installation by Dealers or individuals who are independent contractors and not employees of MotoSAT.
- MotoSAT reserves the right to make changes in design or improvements in its products without the obligation to incorporate the same in any product previously manufactured.

NOTE: Consult your dealer/installer for any support warranty provided by the dealer/installer.

#### WARRANTY SERVICE

- Internet Technical Support Department is available 24 hours a day 7 days a week at 800-247-7486, listen for your options for day, evening and after hours/weekend support.
- TV Technical Support Department is available from 8am – 5pm (MST) at 800-247-7486 ask for Satellite Television support.
- For support concerning your Internet Service please contact your VAR or ISP, these are the companies you are paying for your internet service.
- For support concerning your Satellite Receiver please contact your Satellite TV provider; DirecTV, Dish Network, Bell Express VU or Star Choice.
- For additional after hours support or issues relating to the installation or operation of this product please contact your installing dealer.

#### MISREPRESENTATIONS

- MotoSAT has not authorized anyone to make representations or warranties other than the warranties contained herein.
- This warranty gives the purchases specific legal rights which may vary from state to state. Some states do not allow exclusion of limitations of incidental or consequential damages or allow limitations on the duration of an implied warranty.

  
1955 S. Milestone Dr.  
Salt Lake City, UT 84104  
www.motosat.com  
1.800.247.7486



Customer Name:		Account Phone:	
Primary Contact:		Primary Email:	
Primary Contact Phone:		Fax:	
<b>Service Address:</b>		<b>Billing Address:</b>	
Technical Contact:		Phone:	Cell Phone:
Check One: Fixed Equipment <input type="checkbox"/> Mobile Equipment <input type="checkbox"/>			
<b>Covered Equipment:</b>			
<u>Quantity</u>	<u>Item</u>	<u>Serial Number</u>	<u>Original Cost</u>
<b>Total Original Equipment Cost</b>			
Multiplied by EMA percentage (15% or 25%)			X _____ %
= <b>EMA Annual Premium</b>			
<b>Fixed Sites</b>			
Annual premium - 25% of the original equipment cost – paid annually in advance			
Service Deductible - \$200 per truck roll			
Replacement Hardware Deductible - out of warranty – 25% of equipment replacement cost			
<b>Mobile Sites</b>			
Annual premium - 15% of the original equipment cost – paid annually in advance			
Service Deductible - \$200 per truck roll			
Replacement Hardware Deductible - out of warranty – 25% of equipment replacement cost			

**Terms:**

The term of this agreement is for 12 months from the date of the equipment purchase, and is applicable only to equipment bought from and installed by Mobil Satellite Technologies. Customer installed equipment is not eligible for coverage by this Equipment Maintenance Agreement. The Agreement may not be canceled or revoked, and no refund of any portion will be made for any reason. This Maintenance Agreement is fully transferable to a new owner of covered equipment for the remaining term of the covered period. At the end of the term of this agreement, it can be renewed on an annual basis. Once ordered, the order is non-cancelable. Any deposits or advance payments are non-refundable.

For all customers who have purchased an Equipment Maintenance Agreement, Mobil Satellite Technologies will restore all covered malfunctioning satellite equipment to good working condition by performing the following corrective maintenance as required:

- Diagnostic testing to determine the existence and cause of the malfunction
- Repair or Removal and replacement of any malfunctioning field equipment
- Re-pointing of the antenna in the event of misalignment
- Re-commissioning of modem and re-establishment of service

Maintenance includes travel and repair or replacement of purchased equipment where applicable. Mobil Satellite will provide onsite corrective maintenance for satellite terminals in the continental United States in accordance with the terms provided in this Agreement.

Onsite maintenance does not include any of the following:

- Maintenance, repair, or replacement of parts damaged or lost through theft, misuse, fault, or negligence of the customer, or causes external to the equipment, including, but not limited to, failure of, or faulty, electrical power or air conditioning, operator error, failure, or malfunction of data communication equipment not provided to customer by Mobil satellite Technologies, or from any cause other than intended and ordinary use.
- Maintenance, repair, or replacement of parts damaged or lost as a result of an improper or incomplete installation not performed by Mobil Satellite Technologies or Mobil Satellite Technologies designated sub-contractor.
- Changes, modifications, or alterations in or to the equipment by anyone other than Mobil Satellite technologies, their affiliates, subcontractors, and other agents, other than approved upgrades and configuration changes.
- De-installation, relocation, or removal of the equipment or any accessories, attachments, or other devices.

This Equipment Maintenance Agreement does not relieve customer of responsibility to attempt to return the unit to service by working with our live 7 day per week technical support staff. Customer specifically agrees to work with our telephone technical support staff to attempt to return the unit to normal service before an onsite service call will be dispatched. If all level 1 telephone technical supported procedures (re-booting, checking connections, upgrading to latest firmware, etc.) have been completed and the unit is still malfunctioning an onsite service call will be scheduled.

Next-day onsite support is not possible in many cases due to distance from the nearest technician. Service calls will be scheduled for the soonest possible time, but in any case a technician will be onsite within 4 business days.

This Equipment Maintenance Agreement incorporates all manufacturers' warranties normally provided by a dealer. Customer shall have no claims to any reimbursement by the manufacturer to Mobil Satellite Technologies for parts and/or labor.

**I authorize Mobilsat to charge my credit card for the EMA Annual Premium amount listed on this Equipment Maintenance Agreement Form. If this order is being placed by a business, I certify that the business listed as Customer above is an existing legal entity and that I am authorized to sign this contract and make a term commitment on behalf of this entity.**

**My Credit Card number is:** \_\_\_\_\_ **Card Type:** \_\_\_\_\_

**Credit Card Expiration Date:** \_\_\_\_\_ **Credit Card CV Code:** \_\_\_\_\_

**Billing Address of Credit Card:** Same as billing address above

**Signature of Card Holder:** \_\_\_\_\_ **Signature of Subscriber:** \_\_\_\_\_  
Cardholder Sign Here Subscriber Sign Here

**Date:** \_\_\_\_\_ **Date:** \_\_\_\_\_

VA-081117.MST  
Page 17 of 50

**Mobilsat Sales Engineer: Kirk Williams Date 10/31/2008**

**Proprietary & Confidential**

The receiving party must hold this proprietary information in confidence and take reasonable precautions to protect such proprietary information and not to divulge any such proprietary information or any information derived therefrom to any third person, and to not make any use whatsoever at any time of such proprietary information except to evaluate this quotation internally.

## Mobil Satellite Technologies Contact Information

### TECHNICAL SUPPORT

Technical Support Manager  
757 312 8300, Option 2  
support@mobilsat.com

### BILLING

Debra Burton  
757 312 8300, Option 5  
dburton@mobilsat.com

### NEW ORDERS

Kirk Williams, Director of Sales  
757 312 8300, Ext 306  
kirk@mobilsat.com

**CONTRACTUAL TERMS AND CONDITIONS  
TELECOMMUNICATIONS HARDWARE CONTRACT  
TABLE OF CONTENTS**

<b>1. PURPOSE AND SCOPE</b>	<b>22</b>
<b>2. DEFINITIONS</b>	<b>22</b>
A. Acceptance	22
B. Agent	22
C. Authorized Users	22
D. Confidential Information	22
E. Maintenance Period	22
F. Operating Condition	22
G. Party	22
H. Principal Period of Maintenance (PPM)	22
I. Product	22
J. Receipt (of Product)	22
K. Requirements	23
L. Service	23
M. Software Manufacturer	23
N. Supplier	23
O. System Software	23
P. VITA	23
Q. Warranty Period	23
<b>3. TERM AND TERMINATION</b>	<b>23</b>
A. Contract Term	23
B. Termination for Convenience	23
C. Termination for Breach or Default	24
D. Transition of Services	24
<b>4. PURCHASE, DELIVERY, INSTALLATION AND ACCEPTANCE</b>	<b>24</b>
A. Orders	24
B. Purchase Price and Price Protection	25
C. Purchase Payment Terms	25
D. Invoice Procedure	26
E. Supplier's Report of Sales and Industrial Funding Adjustment	26
F. Small, Woman, and Minority-Owned Business (SWaM) Subcontracting Report	27
G. Universal Service Fund (USF)	27
<b>5. GENERAL WARRANTY</b>	<b>27</b>
A. Supplier	27
B. Ownership	27
C. Product	28
D. Supplier's Viability	28
E. Supplier's Past Experience	28
<b>6. SCOPE OF USE</b>	<b>28</b>
<b>7. SOFTWARE LICENSE</b>	<b>28</b>
A. License Grant	28
B. Limitations on Copying and Disclosure	29
C. Business Continuity and Recovery	29
D. Ownership	29
<b>8. CONFIDENTIALITY</b>	<b>29</b>
A. Treatment and Protection	29
B. Exclusions	30
C. Return or Destruction	30
<b>9. LIABILITY AND INDEMNIFICATION</b>	<b>30</b>
<b>10. SECURITY COMPLIANCE</b>	<b>31</b>

<b>11. BANKRUPTCY</b>	<b>32</b>
<b>12. GENERAL PROVISIONS</b>	<b>32</b>
<b>A. Relationship Between VITA, Authorized Users, and Supplier</b>	<b>32</b>
<b>B. Licenses and Permits</b>	<b>32</b>
<b>C. Incorporated Contractual Provisions</b>	<b>32</b>
<b>D. Compliance with the Federal Lobbying Act</b>	<b>32</b>
<b>E. Governing Law</b>	<b>33</b>
<b>F. Dispute Resolution</b>	<b>33</b>
<b>G. Advertising and Use of Proprietary Marks</b>	<b>33</b>
<b>H. Notices</b>	<b>33</b>
<b>I. No Waiver</b>	<b>34</b>
<b>J. Assignment</b>	<b>34</b>
<b>K. Captions</b>	<b>34</b>
<b>L. Severability</b>	<b>34</b>
<b>M. Survival</b>	<b>34</b>
<b>N. Force Majeure</b>	<b>34</b>
<b>O. Remedies</b>	<b>34</b>
<b>P. Right to Audit</b>	<b>34</b>
<b>Q. Taxes—Federal, State, and Local</b>	<b>35</b>
<b>R. Contract Administration and Account Management</b>	<b>35</b>
<b>S. Entire Contract</b>	<b>35</b>

## **CONTRACTUAL TERMS AND CONDITIONS TELECOMMUNICATIONS HARDWARE CONTRACT**

THIS HARDWARE AND MAINTENANCE CONTRACT ("Contract") is entered into by and between the Virginia Information Technologies Agency (hereinafter referred to as "VITA"), pursuant to §2.2-2012 of the Code of Virginia and on behalf of the Commonwealth of Virginia, and Supplier to be effective as of the date in set forth on the signature page of this Contract ("Effective Date").

### **1. PURPOSE AND SCOPE**

This Contract sets forth the terms and conditions under which Supplier agrees to sell Satellite Internet equipment, and to provide various related Services to the Authorized Users.

### **2. DEFINITIONS**

#### **A. Acceptance**

Acceptance shall take the form of completed acceptance testing in conformance with the Requirements as determined by Authorized User in the applicable order, or successful delivery to the designated ship to location (Receipt), as specified in the applicable order.

#### **B. Agent**

Any third party independent agent of any Authorized User.

#### **C. Authorized Users**

All Public Bodies, including VITA and all Commonwealth agencies, as defined by §2.2-4301 and referenced by §2.2-4304 of the Code of Virginia.

#### **D. Confidential Information**

Any confidential or proprietary information of a Party that is disclosed in any manner, including oral or written, graphic, machine readable or other tangible form, to any other Party in connection with or as a result of discussions related to this Contract or any order issued hereunder, and which at the time of disclosure either (i) is marked as being "Confidential" or "Proprietary", (ii) is otherwise reasonably identifiable as the confidential or proprietary information of the disclosing Party, or (iii) under the circumstances of disclosure should reasonably be considered as confidential or proprietary information of the disclosing Party.

#### **E. Maintenance Period**

One (1) year after Authorized User's purchase or renewal of maintenance services.

#### **F. Operating Condition**

That condition which allows the Product to function in a normal, acceptable working manner, as designed by the Product manufacturer.

#### **G. Party**

Supplier, VITA, or any Authorized User.

#### **H. Principal Period of Maintenance (PPM)**

Days and times during which Supplier shall answer or respond to Authorized User's calls or emails for warranty or maintenance services.

#### **I. Product**

Hardware, peripherals, and any other equipment, including the System Software, all upgrades, all applicable user documentation and related accessories, as set forth in the Pricing Exhibit, provided pursuant to this Contract.

#### **J. Receipt (of Product)**

An Authorized User or its Agent has physically received, by means of inside delivery, the Product at the correct "ship-to" location.

**K. Requirements**

The functional, performance, operational, compatibility, Acceptance testing criteria and other parameters and characteristics of the Product described in the applicable documentation, an Authorized User's order, Exhibit A hereto, and such other parameters, characteristics, or performance standards for the Product that may be agreed upon in writing by VITA and Supplier or the Parties to an order issued hereunder.

**L. Service**

Any Product-related service provided by Supplier under this Contract, including certain maintenance services for the Product.

**M. Software Manufacturer**

The owner of the System Software provided by Supplier under this Contract.

**N. Supplier**

Any individual who is an employee, sub-contractor, or independent contractor of Supplier who is assigned by Supplier to perform Services under this Contract.

**O. System Software**

The operating system code, including software, firmware and microcode, (object code version) for each Product, including any subsequent revisions, as well as any applicable documentation.

**P. VITA**

Virginia Information Technologies Agency, an agency of the Commonwealth of Virginia pursuant to Chapter 20.1 (§§2.2-2005 et seq.) of the Code of Virginia.

**Q. Warranty Period**

As defined by the Product manufacturer.

**3. TERM AND TERMINATION**

**A. Contract Term**

This Contract is effective and legally binding as of the Effective Date and, unless terminated as provided for in this section, shall continue to be effective and legally binding for a period of one (1) year. VITA, in its sole discretion, may extend this Contract for up to three (3) additional twelve (12) month periods after the expiration of the initial one (1) year period. VITA will issue a written notification to the Supplier stating the extension period, not less than thirty (30) days prior to the expiration of any current term. Warranty or maintenance on any Product ordered during the term of the Contract may extend beyond the term of this Contract. Expiration of the term of this Contract or any order shall not affect any perpetual license granted to an Authorized User pursuant to this Contract, provided such Authorized User has paid all fees for such license.

**B. Termination for Convenience**

VITA may terminate for convenience this Contract, in whole or in part, or any order issued hereunder, in whole or in part, or an Authorized User may terminate for convenience an order, in whole or in part, upon not less than thirty (30) days prior written notice at any time for any reason. In addition, VITA may immediately terminate this Contract, in whole or in part, or any order issued hereunder, if Supplier becomes a party excluded from Federal Procurement and Nonprocurement Programs. VITA shall provide written notice to Supplier of such termination, and Supplier shall provide written notice to VITA if federal debarment proceedings are instituted against Supplier. Supplier shall submit any contractual dispute to VITA or the terminating Authorized User for resolution according to the terms of the Dispute Resolution Section of this Contract. Upon termination, the Commonwealth shall have no future liability except for Product accepted or Services rendered by Supplier prior to the termination date. Termination of this Contract or any order shall not affect any perpetual license granted to an Authorized User pursuant to this Contract, provided such Authorized User has paid all fees for such license.

**C. Termination for Breach or Default**

VITA shall have the right to terminate this Contract, in whole or in part, or any order issued hereunder, in whole or in part, or an Authorized User may terminate an order, in whole or in part, for breach and/or default of Supplier (“Termination for Breach” or “Termination for Default”). Supplier shall be deemed in breach and/or default in the event that Supplier fails to meet any material obligation set forth in this Contract or in any order issued hereunder.

If VITA or an Authorized User deems the Supplier to be in breach and/or default, VITA or the Authorized User shall issue a “Show Cause Notice” identifying the failure and providing Supplier fifteen (15) days to cure the failure/nonperformance. If Supplier fails to answer the Show Cause Notice, or does not correct the deficiencies noted, VITA may immediately terminate this Contract, in whole or in part, or any order issued hereunder, in whole or in part, or the Authorized User may immediately terminate its order, in whole or in part. Such termination shall be deemed a Termination for Breach or Termination for Default.

VITA may immediately terminate this Contract, in whole or in part, for breach and/or default if Supplier is found by a court of competent jurisdiction to be in violation of or to have violated 31 USC 1352, and VITA shall provide written notice to Supplier of such termination.

Upon Termination for Breach or Termination for Default, neither the Commonwealth, nor VITA, nor any Authorized User shall have any future liability except for Services rendered by Supplier and accepted by the Authorized User or Product delivered by Supplier and accepted by the Authorized User prior to the termination date. Supplier shall accept return of any Product that was not accepted by the Authorized User(s), and Supplier shall refund any monies paid by any Authorized User for such Product. All costs of de-installation and return of Product shall be borne by Supplier.

The failure of VITA or an Authorized User to exercise its right to terminate for breach and/or default under this provision shall not be construed as a waiver of its right to terminate for breach and/or default, rescind or revoke this Contract or any order issued hereunder in the event of any subsequent breach and/or default on any provisions of such agreements.

Supplier shall submit any contractual dispute to VITA or the terminating Authorized User for resolution according to the terms of the Dispute Resolution Section.

The terms of the Termination for Convenience and Termination for Breach or Default Sections shall not apply to termination for non-appropriation of funds.

**D. Transition of Services**

Prior to or upon expiration or termination of this Contract and at the request of VITA, Supplier shall provide all assistance as VITA or an Authorized User may reasonably require to transition Services to any other supplier with whom VITA or such Authorized User contracts for provision of Product-related services. This obligation may extend beyond expiration or termination of the Contract for a period not to exceed six (6) months. In the event of a termination for breach and/or default of Supplier, Supplier shall provide such assistance at no charge or fee to VITA or any Authorized User; otherwise, Supplier shall provide such assistance at a reasonable hourly rate or a charge agreed upon by Supplier and VITA or an Authorized User.

**4. PURCHASE, DELIVERY, INSTALLATION AND ACCEPTANCE**

**A. Orders**

Notwithstanding all Authorized User’s rights to license or purchase Supplier’s products or services under this Contract, an Authorized User is under no obligation to license or purchase from Supplier any of Supplier’s products or services. This Contract is optional use and non-exclusive and all Authorized Users may, at their sole discretion, purchase,

license or otherwise receive benefits from third party suppliers of products and services similar to, or in competition with, the products and services provided by Supplier.

Supplier is required to accept any order placed by an Authorized User through the eVA electronic procurement website portal (<http://www.eva.state.va.us>). eVA is the Commonwealth of Virginia's e-procurement system. Commonwealth agencies, as defined in §2.2-2006 of the Code of Virginia, shall order through eVA. All other Authorized Users are encouraged to order through eVA, but may order through the following means:

- i). Purchase Order (PO): An official PO form issued by an Authorized User.
- ii). Any other order/payment charge or credit card process, such as AMEX, MASTERCARD, or VISA under contract for use by an Authorized User.

This ordering authority is limited to issuing and canceling orders for the Products and Services available under this Contract. Under no circumstances shall any Authorized User have the authority to modify this Contract. An order from an Authorized User may contain additional terms and conditions; however, to the extent that the terms and conditions of the Authorized User's order are inconsistent with the terms and conditions of this Contract, the terms of this Contract shall supersede.

Notwithstanding the foregoing, Supplier shall not accept any order from an Authorized User if such order is to be funded, in whole or in part, by federal funds and if, at the time the order is placed, Supplier is not eligible to be the recipient of federal funds as may be noted on any of the Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs.

ALL CONTRACTUAL OBLIGATIONS UNDER THIS CONTRACT IN CONNECTION WITH AN ORDER PLACED BY ANY AUTHORIZED USER ARE THE SOLE OBLIGATION OF SUCH AUTHORIZED USER AND NOT THE RESPONSIBILITY OF VITA UNLESS VITA IS THE AUTHORIZED USER.

#### **B. Purchase Price and Price Protection**

The Pricing Exhibit sets forth the fees and the applicable discounts. Neither VITA nor any Authorized User will pay any additional costs above those costs provided for in the Pricing Exhibit. Supplier may submit to VITA a request for an increase in such fees or a decrease in such discounts. Such request must be accompanied by written documentation to VITA demonstrating the additional value reflected by such increase in fee or decrease in discount. VITA may, in its sole discretion, agree to a modification of this Contract to effectuate such increase in fees or decrease in discounts.

Any price decrease effectuated during the Contract term, or any extension thereto, by reason of market change shall be passed on to VITA and all Authorized Users. This decrease will be effective on the date the price decrease is announced to the general public.

Authorized charges do not include operational supplies (e.g. paper, tape) unless such supplies are specifically identified in the Pricing Exhibit. All supplies used by the Authorized User shall conform to the Supplier's published specifications provided to such Authorized User at time of Product installation. The Authorized User reserves the right to acquire such supplies from any vendor of its choice.

#### **C. Purchase Payment Terms**

All payment obligations under this Contract are subject to the availability of legislative appropriations at the federal, state, or local level, for this purpose. In the event of non-appropriation of funds, irrespective of the source of funds, for the items under this Contract, VITA may terminate this Contract, in whole or in part, or any order, in whole or in part, or an Authorized User may terminate an order, in whole or in part, for those goods or services for which funds have not been appropriated. Written notice will be provided to the Supplier as soon as possible after legislative action is completed.

If there are any disputed items, an Authorized User shall pay all undisputed charges and promptly notify Supplier in writing of any disputed amount. Supplier shall thereupon

review its records, and, if it does not concur with the Authorized User, provide the Authorized User with documentation to support the charge. If such charges remain in dispute, such dispute shall be resolved in accordance with the Dispute Resolution section of this Contract. In the absence of the Supplier's written evidence identifying the merit of the disputed amounts, Authorized User may not pay the disputed amounts and may consider the matter concerning the specific identified amounts closed. All payment terms are net 30 days after Acceptance of Product or net 30 days after receipt of a valid invoice for Services invoiced in advance.

**D. Invoice Procedure**

Supplier shall remit each invoice to the "bill to" address provided with the order promptly after all Products or Services have been accepted. Payment for Product Maintenance Services shall be annually in advance unless otherwise stated herein. No invoice shall include any costs other than those identified in the executed order, which costs shall be in accordance with the Pricing Exhibit. Without limiting the foregoing, all shipping costs are the Supplier's responsibility except to the extent such charges are identified in the Pricing Exhibit or as noted in the executed order. Invoices issued by the Supplier shall identify at a minimum:

- i). Product or Service type and description
- ii). Product serial number, if any
- iii). Quantity, charge and extended pricing for each Product and/or Service item
- iv). This Contract number and the applicable order number
- v). Supplier's Federal Employer Identification Number (FEIN).

Any credits due any Authorized User under the terms of this Contract may be applied against Supplier's invoices with appropriate information attached.

The Parties agree that any terms included on Supplier's invoice shall have no force or effect and will in no way bind VITA or any Authorized User.

**E. Supplier's Report of Sales and Industrial Funding Adjustment**

By the 10th day of every month, the Supplier shall submit the "Supplier Monthly Report of Sales". A template showing the format in which the report is to be submitted is available at <http://www.vita.virginia.gov/procurement/supplierResources.cfm>. The report shall be submitted via electronic mail to the VITA IFA Coordinator and the VITA Controller (contact information provided below), and shall report all invoices submitted by Supplier pursuant to the Contract to all Authorized Users during the preceding month. The report shall also show a cumulative record of all invoices submitted to all Authorized Users pursuant to the Contract.

The Supplier shall submit the Industrial Funding Adjustment (IFA) payment for the period covered by such "Supplier Monthly Report of Sales" within thirty (30) days of submitting the "Supplier Monthly Report of Sales". The IFA payment shall be submitted in the form of a check or electronic funds disbursement made payable to the Treasurer of Virginia. The IFA payment is equal to two percent (2%) of total sales under this Contract during the relevant month, as determined by the amount invoiced to Authorized Users. The IFA payment shall reference this Contract number, "report amounts", and "report period".

Supplier shall remit IFA payments made via check to VITA, Attention VITA Controller. Supplier shall also provide a copy of the IFA payment to the VITA IFA Coordinator via email or fax. Failure to comply with reporting and payment requirements of this section may result in default of Contract.

Contact Information

Virginia Information Technologies Agency (VITA) Attn:VITA Controller 11751 Meadowville Lane Chester, VA 23836 VITAController@vita.virginia.gov	VITA IFA Coordinator 11751 Meadowville Lane Chester, VA 23836 804-416-6055 (Phone) 804-416-6361 (Fax) ifacoordinator@vita.virginia.gov
---	---

**F. Small, Woman, and Minority-Owned Business (SWaM) Subcontracting Report**

Supplier and VITA agree to meet promptly after the Effective Date of this Contract to discuss the participation of Virginia Department of Minority Business Enterprise (DMBE)-certified Small, Woman, and Minority Owned Businesses (SWaMs) as subcontractors and second-tier suppliers under this Contract. Supplier and VITA will review Supplier's SWaM subcontracting plan, which was submitted with Supplier's proposal, and SWaM subcontract reporting, and will discuss ways of encouraging SWaM participation and increasing subcontracting spend with SWaM suppliers.

Supplier and VITA agree to meet annually thereafter to review SWaM subcontracting reports and discuss further action with respect to SWaM subcontracting and spend.

In addition, by the 10th day of every month, Supplier shall submit to VITA the Small, Woman, and Minority Owned Business (SWaM) Subcontracting Monthly Report (template available at <http://www.vita.virginia.gov/procurement/supplierResources.cfm>).

Supplier's report should include spend on all Supplier's contracts with second-tier suppliers which provide products or services under this Contract. The report should specify the amount of such spend provided to SWaM vendors, by SWaM category, regardless of such SWaM vendors' certification status. Supplier shall submit the report to [SWaM@vita.virginia.gov](mailto:SWaM@vita.virginia.gov).

**G. Universal Service Fund (USF)**

Supplier agrees to make available all Products and Services as listed and priced herein to any Authorized User which is a USF participant. Supplier agrees to provide the Products and Services directly to the USF participant, and to bill each USF participant directly. Supplier agrees and understands that the responsibility for collection of all charges incurred, and the responsibility for resolving all Product and Service problems as well as administration of this Contract for USF participation shall be the sole responsibility of the Supplier.

Supplier warrants that it is qualified under applicable Federal Communications Commission and Virginia State Corporation Commission rules to apply for and receive USF allocations/disbursements for products and services provided pursuant to this Contract to Authorized Users which are eligible for those allocations/disbursements on behalf, and for the benefit, of those Authorized Users. Supplier also agrees to maintain those qualifications and to assist Authorized Users in applying for and receiving these allocations/disbursements.

**5. GENERAL WARRANTY**

With respect to the Services provided by Supplier, Supplier represents and warrants the following:

**A. Supplier**

Supplier shall perform its warranty and maintenance obligations hereunder in accordance with the highest professional duty of care.

**B. Ownership**

Supplier is the owner of the Product or otherwise has, to the best of its knowledge, the right to grant to any Authorized User title to or the right to use the Product provided

hereunder. Upon Supplier's receipt of payment, the ordering Authorized User shall obtain good and clear title to the Product, excluding the System Software, free and clear of all liens, claims, security interests and encumbrances.

**C. Product**

Supplier warrants the following with respect to the Product:

- i). Upon delivery, the Product shall be new and in Operating Condition and shall have all released engineering changes released to date already installed;
- ii). Each Product delivered hereunder shall function in conformance with the Product specifications;
- iii). No engineering change made to the Product or System Software revision shall degrade the performance of the Product to a level below that defined in the published specifications;
- iv). Upon delivery, all System Software shall be at the current release level unless otherwise requested by the ordering Authorized User; and
- v). The System Software shall not contain any embedded device or code (e.g., time bomb) that is intended to obstruct or prevent any Authorized User's use of the System Software, nor shall Supplier disable any Authorized User's use of such System Software through remote access or otherwise.

**D. Supplier's Viability**

Supplier warrants that it has the financial capacity to perform and continue to perform its obligations under this Contract; that Supplier has no constructive or actual knowledge of an actual or potential legal proceeding being brought against Supplier that could materially adversely affect performance of this Contract; and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction.

**E. Supplier's Past Experience**

Supplier warrants that Product has been provided and Services have been successfully performed for a non-related third-party without significant problems due to the Product, Services, or Supplier.

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

**6. SCOPE OF USE**

Any Authorized User may use the Product, and any System Software licensed in connection with such Product, on a worldwide basis for the benefit of itself and its agents, subject to export laws and regulations. Supplier further authorizes use of the Product by third parties who are under contract with an Authorized User to provide outsourcing services, including but not limited to providing application development services, data processing or facilities management services for the benefit of such Authorized User. For Products to which an Authorized User takes title under the terms of this Contract, there are no restrictions on such Authorized User's subsequent resale or distribution thereof. In the event that such Product contains System Software to which Authorized User does not take title, the Authorized User may resell or distribute such System Software to the extent that such resale or distribution is incidental to the resale or distribution of the hardware component(s) of the Product.

**7. SOFTWARE LICENSE**

**A. License Grant**

Supplier hereby grants to each Authorized User a fully paid, perpetual, worldwide, nonexclusive, irrevocable license to use System Software for each Product. The Authorized User shall be permitted to transfer the license if such transfer is incidental to the transfer or sale of the Product for which the System Software was acquired. All licenses granted under this Contract shall commence upon the acceptance of the Product

by the Authorized User. Notwithstanding the foregoing, VITA or the Authorized User may terminate a license at anytime. In no event shall Supplier's remedies for any breach of this Contract include the right to terminate any license or support services hereunder.

Each license granted under this Contract authorizes the Authorized User to use the System Software programs in machine readable form on the unit of Product for which it was acquired. The System Software is the property of Supplier or its licensor, and no title or ownership of the System Software or any of its parts, including documentation, is transferred to the Authorized User.

Notwithstanding anything to the contrary in this Contract, the Commonwealth shall have:

- i). Unlimited use of the System Software on the unit of Product for which it is acquired and on any replacement Product;
- ii). Use of such System Software with a backup system (a) if the system(s) for which it was acquired is for any reason, inoperative, (b) during an emergency, or (c) during the performance of engineering changes in features or model;
- iii). The right to use such System Software at any Commonwealth installation to which the machine(s) may be transferred by the Commonwealth; and
- iv). The right to copy such System Software for safekeeping, backup, or archival purposes.

The Commonwealth shall have the right to reproduce any and all physical documentation supplied under the terms of this Contract, provided, however, that such reproduction shall be for the sole use of the Commonwealth and shall be subject to the same restrictions or use and disclosure as are contained elsewhere in this Contract.

Nothing contained herein shall be construed to restrict or limit the Commonwealth's rights to use any technical data which the Commonwealth may already possess or acquire under proper authorization from other sources.

**B. Limitations on Copying and Disclosure**

An Authorized User may make a reasonable number of backup copies of the System Software. Such Authorized User agrees that any copies of the software or documentation which it makes pursuant to this Contract shall bear all copyright, trademark and other proprietary notices included therein by Supplier and, except as expressly authorized, the Authorized User shall not distribute same to any third-party without Supplier's prior written consent. Authorized User may not resell the System Software except if such resale is incidental to the resale of Product to which the Authorized User has taken title.

**C. Business Continuity and Recovery**

In the event that all of an Authorized User's copies of the System Software, including all backup copies, are destroyed, irreparably damaged or otherwise lost due to fire, explosion, sabotage, flood or other natural disaster not occasioned by the fault of such Authorized User, Supplier shall provide to the Authorized User, at no additional cost, a replacement copy of the System Software and documentation; provided however, that nothing contained in this Section shall obligate Supplier to replace or assist in the recovery of data lost concurrent with the loss of the System Software.

**D. Ownership**

For any System Software provided as an integral component of the Product, Supplier represents and warrants that it is the sole owner of the System Software product or, if not the owner, has received all proper authorizations from the owner to license the System Software product, and has the full right and power to grant the rights contained in this Contract.

**8. CONFIDENTIALITY**

**A. Treatment and Protection**

Each Party shall (i) hold in strict confidence all Confidential Information of any other Party, (ii) use the Confidential Information solely to perform or to exercise its rights under

this Contract, and (iii) not transfer, display, convey or otherwise disclose or make available all or any part of such Confidential Information to any third-party. However, VITA or any Authorized User, may disclose the Confidential Information as delivered by Supplier to subcontractors, contractors or agents of VITA or such Authorized User that are bound by non-disclosure contracts with VITA or such Authorized User. Each Party shall take the same measures to protect against the disclosure or use of the Confidential Information as it takes to protect its own proprietary or confidential information (but in no event shall such measures be less than reasonable care).

#### **B. Exclusions**

The term "Confidential Information" shall not include information that is:

- i). in the public domain through no fault of the receiving Party or of any other person or entity that is similarly contractually or otherwise obligated;
- ii). obtained independently from a third-party without an obligation of confidentiality to the disclosing Party and without breach of this Contract;
- iii). developed independently by the receiving Party without reference to the Confidential Information of the other Party; or
- iv). required to be disclosed under The Virginia Freedom of Information Act (§§2.2-3700 et seq. of the Code of Virginia) or similar laws or pursuant to a court order.

#### **C. Return or Destruction**

Upon the termination or expiration of this Contract or upon the earlier request of the disclosing Party, the receiving Party shall (i) at its own expense, (a) promptly return to the disclosing Party all tangible Confidential Information (and all copies thereof except the record required by law) of the disclosing Party, or (b) upon written request from the disclosing Party, destroy such Confidential Information and provide the disclosing Party with written certification of such destruction, and (ii) cease all further use of the other Party's Confidential Information, whether in tangible or intangible form.

### **9. LIABILITY AND INDEMNIFICATION**

Supplier agrees to indemnify, defend and hold harmless VITA, any Authorized User, their officers, directors, agents and employees ("Commonwealth's Indemnified Parties") from and against any and all third party claims, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, fines, judgments, settlements, expenses (including attorneys' and accountants' fees and disbursements) and costs (each, a "Claim" and collectively, "Claims"), incurred by, borne by or asserted against any of Commonwealth's Indemnified Parties to the extent such Claims in any way relate to, arise out of or result from: (i) any intentional or willful conduct or negligence of any employee or subcontractor of Supplier, (ii) breach of any representation, warranty or covenant of Supplier contained herein, (iii) any defect in the Product or Services, or (iv) any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Product or Services. Selection and approval of counsel and approval of any settlement shall be accomplished in accordance with all applicable laws, rules and regulations. For state agencies the applicable laws include §§ 2.2-510 and 2.2-514 of the Code of Virginia. In all cases the selection and approval of counsel and approval of any settlement shall be satisfactory to VITA or the Authorized User against whom the claim has been asserted.

In the event that a Claim is commenced against any of Commonwealth's Indemnified Parties alleging that the Products or Services provided under this Contract infringes any third party's intellectual property rights and Supplier is of the opinion that the allegations in such Claim in whole or in part are not covered by this indemnification provision, Supplier shall immediately notify VITA and the affected Authorized User(s) in writing, via certified mail, specifying to what extent Supplier believes it is obligated to defend and indemnify under the terms and conditions of this Contract. Supplier shall in such event protect the interests of the Commonwealth's Indemnified Parties and secure a continuance to permit VITA and the affected Authorized User(s) to appear and defend their interests in cooperation with Supplier

as is appropriate, including any jurisdictional defenses VITA or the affected Authorized User(s) may have.

In the event of a Claim pursuant to any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Product or Services, or in the event any Product or Service, in the Supplier's opinion, is likely to become the subject of a claim of infringement, and in addition to all other obligations of Supplier in this Section, Supplier shall at its expense, either (a) procure for all Authorized Users the right to continue use of such infringing Product or Services, or any component thereof; or (b) replace or modify such infringing Product or Services, or any component thereof, with non-infringing Products or Services satisfactory to VITA. And in addition, Supplier shall provide any Authorized User with a comparable temporary replacement Product or reimburse VITA or any Authorized User for the reasonable costs incurred by VITA or such Authorized User in obtaining an alternative product in the event such Authorized User cannot use the affected Product. If Supplier cannot accomplish any of the foregoing within a reasonable time and at commercially reasonable rates, then Supplier shall accept the return of the infringing component of the Product or Services, along with any other components of any products rendered unusable by any Authorized User as a result of the infringing component, and refund the price paid to Supplier for such components.

**EXCEPT WITH REGARD TO CLAIMS FOR PROPERTY DAMAGE, PERSONAL INJURY OR INFRINGEMENT, AND THE INDEMNIFICATION AND CONFIDENTIALITY OBLIGATIONS, WITH RESPECT TO EACH OF WHICH LIABILITY SHALL NOT BE LIMITED PURSUANT TO THIS SECTION, IN NO EVENT WILL ANY PARTY BE LIABLE TO ANY OTHER PARTY (OR THE INDEMNIFIED PARTIES OF SUCH PARTY) FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING (WITHOUT LIMITATION) LOSS OF PROFIT, INCOME OR SAVINGS, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, EXCEPT WHEN SUCH DAMAGES ARE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE PARTY, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS.**

#### **10. SECURITY COMPLIANCE**

Supplier agrees to comply with all provisions of the then-current Commonwealth of Virginia security procedures, published by the Virginia Information Technologies Agency (VITA) and which may be found at (<http://www.vita.virginia.gov/docs/psg.cfm>) or a successor URL(s), as are pertinent to Supplier's operation. Supplier further agrees to comply with all provisions of the relevant Authorized User's then-current security procedures as are pertinent to Supplier's operation and which have been supplied to Supplier by such Authorized User. Supplier shall also comply with all applicable federal, state and local laws and regulations.

For any individual Commonwealth location, security procedures may include but not be limited to: background checks, records verification, photographing, and fingerprinting of Supplier's employees or agents. Supplier may, at any time, be required to execute and complete, for each individual Supplier employee or agent, additional forms which may include non-disclosure agreements to be signed by Supplier's employees or agents acknowledging that all Commonwealth information with which such employees and agents come into contact while at the Authorized User site is confidential and proprietary. Any unauthorized release of proprietary information by the Supplier or an employee or agent of Supplier shall constitute a breach of this Contract.

Supplier shall indemnify, defend, and hold VITA, the Commonwealth, and any Authorized User, their officers, directors, employees and agents harmless from and against any and all fines, penalties (whether criminal or civil), judgments, damages and assessments, including reasonable expenses suffered by, accrued against, or charged to or recoverable from VITA, the Commonwealth, any Authorized User, their officers, directors, agents or employees, on account of the failure of Supplier to perform its obligations pursuant this Section.

## 11. BANKRUPTCY

If Supplier becomes insolvent, takes any step leading to its cessation as a going concern, fails to pay its debts as they become due, or ceases business operations continuously for longer than fifteen (15) business days, then VITA may immediately terminate this Contract, and an Authorized User may terminate an order, on notice to Supplier unless Supplier immediately gives VITA or such Authorized User adequate assurance of the future performance of this Contract or the applicable order. If bankruptcy proceedings are commenced with respect to Supplier, and if this Contract has not otherwise terminated, then VITA may suspend all further performance of this Contract until Supplier assumes this Contract and provides adequate assurance of performance thereof or rejects this Contract pursuant to Section 365 of the Bankruptcy Code or any similar or successor provision, it being agreed by VITA and Supplier that this is an executory contract. Any such suspension of further performance by VITA pending Supplier's assumption or rejection shall not be a breach of this Contract, and shall not affect the rights of VITA or any Authorized User right to pursue or enforce any of its rights under this Contract or otherwise.

## 12. GENERAL PROVISIONS

### A. Relationship Between VITA, Authorized Users, and Supplier

Supplier has no authority to contract for VITA or any Authorized User or in any way to bind or to commit VITA or any Authorized User to any agreement of any kind or to assume any liabilities of any nature in the name of or on behalf of VITA or any Authorized User. Under no circumstances shall Supplier, or any of its employees, hold itself out as or be considered an agent or an employee of VITA or any Authorized User, and neither VITA nor any Authorized User shall have any duty to provide or maintain any insurance or other employee benefits on behalf of Supplier or its employees. Supplier represents and warrants that it is an independent contractor for purposes of federal, state and local employment taxes and agrees that neither VITA nor any Authorized User is responsible to collect or withhold any federal, state or local employment taxes, including, but not limited to, income tax withholding and social security contributions, for Supplier. Any and all taxes, interest or penalties, including, but not limited to, any federal, state or local withholding or employment taxes, imposed, assessed or levied as a result of this Contract shall be paid or withheld by Supplier or, if assessed against and paid by VITA or an Authorized User, shall be reimbursed by Supplier upon demand by VITA or such Authorized User.

### B. Licenses and Permits

Supplier shall be responsible for obtaining all rights-of-way, licenses, and/or permits required by applicable authorities in order to perform installation Services at the location(s) specified on any order issued pursuant to this Contract.

### C. Incorporated Contractual Provisions

The contractual provisions at the following URL are statutorily mandated provisions that are hereby incorporated by reference:

<http://www.vita.virginia.gov/procurement/documents/StatutorilyMandatedTsandCs.pdf>

The contractual claims provision at §2.2-4363 of the Code of Virginia is also incorporated by reference.

The terms and conditions in the document posted to the aforementioned URL are subject to change pursuant to action by the legislature of the Commonwealth of Virginia. If a change is made to the terms and conditions, a new effective date will be noted in the document title. Supplier is advised to check the URL periodically.

### D. Compliance with the Federal Lobbying Act

Supplier shall not, in connection with this Contract, engage in any activity prohibited by 31 USC 1352 (entitled "Limitation on use of appropriated funds to influence certain Federal Contracting and financial transactions") or by the regulations issued from time to time thereunder (together, the "Lobbying Act"), and shall promptly perform all obligations mandated by the Lobbying Act in connection with this Contract, including, without

limitation, obtaining and delivering to the Commonwealth all necessary certifications and disclosures.

Supplier is hereby advised that a significant percentage of the funds used to pay Supplier's invoices under this Contract may be federal funds. Under no circumstances shall any provision of this Contract be construed as requiring or requesting the Supplier to influence or attempt to influence any person identified in 31 USC 1352(a)(1) in any matter.

Supplier's signed certification of compliance with the foregoing is incorporated as Exhibit C hereto.

**E. Governing Law**

This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without regard to that body of law controlling choice of law. Any and all litigation shall be brought in the circuit courts of the Commonwealth of Virginia. The English language version of this Contract prevails when interpreting this Contract. The United Nations Convention on Contracts for the International Sale of Goods and all other laws and international treaties or conventions relating to the sale of goods are expressly disclaimed. UCITA shall apply to this Contract only to the extent required by §59.1-501.15 of the Code of Virginia.

**F. Dispute Resolution**

In accordance with §2.2-4363 of the Code of Virginia, Contractual claims, whether for money or other relief, shall be submitted in writing to the public body from whom the relief is sought no later than sixty (60) days after final payment; however, written notice of the Supplier's intention to file such claim must be given to such public body 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 relevant public body shall render a final decision in writing within thirty (30) days after its receipt of the Supplier's written claim.

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

Upon request from the public body from whom the relief is sought, Supplier agrees to submit any and all contractual disputes arising from this Contract to such public body's alternative dispute resolution (ADR) procedures, if any. Supplier may invoke such public body's ADR procedures at any time and concurrently with any other statutory remedies prescribed by the Code of Virginia.

In the event of any breach by a public body, Supplier's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section. In no event shall Supplier's remedies include the right to terminate any license or support services hereunder.

**G. Advertising and Use of Proprietary Marks**

Supplier shall not use the name of VITA or any Authorized User or refer to VITA or any Authorized User, directly or indirectly, in any press release or formal advertisement without receiving prior written consent of VITA or such Authorized User. In no event may Supplier use a proprietary mark of VITA or an Authorized User without receiving the prior written consent of VITA or the Authorized User.

**H. Notices**

Any notice required or permitted to be given under this Contract shall be in writing and shall be deemed to have been sufficiently given if delivered in person, or if deposited in the US mails, postage prepaid, for mailing by registered, certified mail, or overnight

courier service addressed to the addresses shown on the signature page. VITA or Supplier may change its address for notice purposes by giving the other Party notice of such change in accordance with this Section.

**I. No Waiver**

Any failure to enforce any terms of this Contract, including termination for breach, shall not constitute a waiver.

**J. Assignment**

This Contract shall be binding upon and shall inure to the benefit of the permitted successors and assigns of VITA and Supplier. Supplier may not assign, subcontract, delegate or otherwise convey this Contract, or any of its rights and obligations hereunder, to any entity without the prior written consent of VITA, and any such attempted assignment or subcontracting without consent shall be void. VITA may assign this Contract to any entity, so long as the assignee agrees in writing to be bound by the all the terms and conditions of this Contract.

If any law limits the right of VITA or Supplier to prohibit assignment or nonconsensual assignments, the effective date of the assignment shall be thirty (30) days after the Supplier gives VITA prompt written notice of the assignment, signed by authorized representatives of both the Supplier and the assignee. Any payments made prior to receipt of such notification shall not be covered by this assignment.

**K. Captions**

The captions are for convenience and in no way define, limit or enlarge the scope of this Contract or any of its Sections.

**L. Severability**

Invalidity of any term of this Contract, in whole or in part, shall not affect the validity of any other term. VITA and Supplier further agree that in the event such provision is an essential part of this Contract, they shall immediately begin negotiations for a suitable replacement provision.

**M. Survival**

The provisions of this Contract regarding Warranty, Confidentiality, and Liability and Indemnification, and the General Provisions shall survive the expiration or termination of this Contract.

**N. Force Majeure**

No Party shall be responsible for failure to meet its obligations under this Contract if the failure arises from causes beyond the control and without the fault or negligence of the non-performing Party. If any performance date under this Contract is postponed or extended pursuant to this section for longer than thirty (30) calendar days, VITA, by written notice given during the postponement or extension, may terminate Supplier's right to render further performance after the effective date of termination without liability for that termination.

**O. Remedies**

The remedies set forth in this Contract are intended to be cumulative. In addition to any specific remedy, VITA reserves any and all other remedies that may be available at law or in equity.

**P. Right to Audit**

VITA reserves the right to audit those Supplier records that relate to the Services rendered or the amounts due Supplier for such Services under this Contract. VITA's right to audit shall be limited as follows:

- i). Three (3) years from Service performance date;
- ii). Performed at Supplier's premises, during normal business hours at mutually agreed upon times; and
- iii). Excludes access to Supplier cost information.

The Supplier shall not have the right to audit, or require to have audited, VITA or any Authorized User.

**Q. Taxes—Federal, State, and Local**

The Commonwealth of Virginia is exempt from Federal excise and all State and Local taxes. Such taxes shall not be included in Contract prices. Tax certificates of exemption, Form ST-12 can be obtained online at <http://www.tax.state.va.us/>. Deliveries against this Contract shall be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K. The Commonwealth is also exempt from paying E-911 charges.

**R. Contract Administration and Account Management**

Supplier agrees that at all times during the term of this Contract an account executive ("Account Manager"), at Supplier's senior management level, shall be assigned and available to VITA and all Authorized Users. Supplier reserves the right to change such account executive upon reasonable advance written notice to VITA.

The Account Manager's responsibilities should include (i) resolution of technical support questions and issues which have not been resolved by Supplier's technical support division; (ii) preparation of account information and response to and resolution of inquiries regarding billing and payment; and (iii) investigation and resolution of customer service issues and complaints.

**S. Entire Contract**

The following documents, including all subparts thereof, are attached to this Contract and are made a part of this Contract for all purposes:

- iv). Exhibit A Pricing
- v). Exhibit B Product and Service Requirements
- vi). Exhibit C Certification Regarding Lobbying
- vii). Exhibit D Warranty and Maintenance Services Description

This Contract, all its Exhibits, and any prior non-disclosure agreement constitute the entire agreement between VITA and Supplier, and supersede any and all previous representations, understandings, discussions or agreements between VITA and Supplier as to the subject matter hereof. Any and all terms and conditions contained in, incorporated into, referenced by or provided with the Supplier's bid shall be deemed invalid. The provisions of the Virginia Department of General Services, Division of Purchases and Supply Vendor's Manual do not apply to this Contract. This Contract may only be amended by an instrument in writing signed by VITA and Supplier.

In the event of a conflict, the following order of precedence shall apply: this Contract document, Exhibit A, Exhibit B, then any specific order. VITA and Supplier each acknowledge that it has had the opportunity to review this Contract and to obtain appropriate legal review if it so chose.

This Contract is effective as of the date set forth below.

Supplier:	<u>Mobil Satellite Technologies</u>	VITA
Name:	<u>Paul A. [Signature]</u>	Name: <u>Day [Signature]</u>
Title:	<u>CEO</u>	Title: <u>Sourcing Manager, VITA</u>
Date:	<u>10/31/08</u>	Date: <u>11/17/08</u>

**CONTRACTUAL TERMS AND CONDITIONS  
TELECOMMUNICATIONS SERVICES CONTRACT  
TABLE OF CONTENTS**

<b>1. PURPOSE AND SCOPE</b>	<b>38</b>
<b>2. DEFINITIONS</b>	<b>38</b>
A. ACCEPTANCE	38
B. CONFIDENTIAL INFORMATION	38
C. PARTY	38
D. SERVICE	38
E. SUPPLIER	38
F. VITA	38
G. WARRANTY PERIOD	38
<b>3. TERM AND TERMINATION</b>	<b>38</b>
A. CONTRACT TERM	38
B. TERMINATION FOR CONVENIENCE	39
C. TERMINATION FOR BREACH OR DEFAULT	39
D. TRANSITION OF SERVICES	39
<b>4. SERVICES</b>	<b>40</b>
A. NATURE OF SERVICES AND ENGAGEMENT	40
B. SUBCONTRACTORS	40
C. SUBSTITUTION OF SERVICES	40
<b>5. SUPPLIER PERSONNEL</b>	<b>40</b>
A. SELECTION AND MANAGEMENT OF SUPPLIER PERSONNEL	40
B. SUPPLIER PERSONNEL SUPERVISION	40
<b>6. GENERAL WARRANTY</b>	<b>40</b>
A. OWNERSHIP	41
B. PERFORMANCE	41
C. SERVICES WARRANTY AND REMEDY	41
D. SUPPLIER'S VIABILITY	41
E. SUPPLIER'S PAST EXPERIENCE	41
<b>7. ORDERS AND COMPENSATION</b>	<b>41</b>
A. ORDERS	41
B. PURCHASE PRICE AND PRICE PROTECTION	42
C. INVOICE AND PAYMENT TERMS	42
D. INVOICE PROCEDURES	43
E. SMALL, WOMAN, AND MINORITY-OWNED BUSINESS (SWAM) SUBCONTRACTING REPORT	43
F. UNIVERSAL SERVICE FUND	43
G. SUPPLIER'S REPORT OF SALES AND INDUSTRIAL FUNDING ADJUSTMENT	43
<b>8. CONFIDENTIALITY</b>	<b>44</b>
A. TREATMENT AND PROTECTION	44
B. EXCLUSIONS	44
C. RETURN OR DESTRUCTION	44
<b>9. LIABILITY AND INDEMNIFICATION</b>	<b>45</b>

<b>10. SECURITY COMPLIANCE</b>	<b>45</b>
<b>11. BANKRUPTCY</b>	<b>46</b>
<b>12. GENERAL PROVISIONS</b>	<b>46</b>
A. RELATIONSHIP BETWEEN VITA, COMMONWEALTH PUBLIC BODIES, AND SUPPLIER	46
B. LICENSES AND PERMITS	46
C. INCORPORATED CONTRACTUAL PROVISIONS	47
D. COMPLIANCE WITH THE FEDERAL LOBBYING ACT	47
E. GOVERNING LAW	47
F. DISPUTE RESOLUTION	47
G. ADVERTISING AND USE OF PROPRIETARY MARKS	48
H. NOTICES	48
I. NO WAIVER	48
J. ASSIGNMENT	48
K. CAPTIONS	48
L. SEVERABILITY	48
M. SURVIVAL	48
N. FORCE MAJEURE	48
O. REMEDIES	49
P. RIGHT TO AUDIT	49
Q. TAXES—FEDERAL, STATE, AND LOCAL	49
R. CONTRACT ADMINISTRATION AND ACCOUNT MANAGEMENT	49
S. ENTIRE CONTRACT	49

## **CONTRACTUAL TERMS AND CONDITIONS TELECOMMUNICATIONS SERVICES CONTRACT**

THIS TELECOMMUNICATIONS SERVICES CONTRACT ("Contract") is entered into by and between the Virginia Information Technologies Agency (hereinafter referred to as "VITA"), pursuant to §2.2-2012 of the Code of Virginia and on behalf of the Commonwealth of Virginia, and Supplier to be effective as of the date in set forth on the signature page of this Contract ("Effective Date").

### **1. PURPOSE AND SCOPE**

This Contract sets forth the terms and conditions under which Supplier shall provide delivery and installation of satellite Internet services to any public body as defined by §2.2-4301 and referenced by §2.2-4304 of the Code of Virginia.

### **2. DEFINITIONS**

#### **A. Acceptance**

Acceptance shall take the form of successful performance of the Services at the designated location, or completed Acceptance testing in conformance with the requirements as determined by VITA or an Authorized User in the applicable order.

#### **B. Confidential Information**

Any confidential or proprietary information of a Party that is disclosed in any manner, including oral or written, graphic, machine readable or other tangible form, to any other Party in connection with or as a result of discussions related to this Contract or any order issued hereunder, and which at the time of disclosure either (i) is marked as being "Confidential" or "Proprietary", (ii) is otherwise reasonably identifiable as the confidential or proprietary information of the disclosing Party, or (iii) under the circumstances of disclosure should reasonably be considered as confidential or proprietary information of the disclosing Party.

#### **C. Party**

Supplier, VITA, or a Commonwealth public body, including an Authorized User, which is a recipient of Supplier's Services.

#### **D. Service**

Any work performed or service provided by Supplier under this Contract for the benefit of VITA, an Authorized User, or another public body on whose behalf VITA has placed an order with Supplier.

#### **E. Supplier**

Any individual who is an employee, sub-contractor, or independent contractor of Supplier who is assigned by Supplier to perform Services under this Contract.

#### **F. VITA**

Virginia Information Technologies Agency, an agency of the Commonwealth of Virginia pursuant to Chapter 20.1 (§§2.2-2005 et seq.) of the Code of Virginia.

#### **G. Warranty Period**

All Services purchased under this Contract remain under warranty for the time period commencing after acceptance by VITA or the Authorized User and continuing through expiration of the Contract or discontinuance of the Services at the discretion of VITA or the Authorized User.

### **3. TERM AND TERMINATION**

#### **A. Contract Term**

This Contract is effective and legally binding as of the Effective Date and, unless terminated as provided for in this section, shall continue to be effective and legally binding through the end of the initial term of one (1) year. VITA, at its sole option, may extend the term of this Contract for up to three (3) additional one (1) year periods after the expiration of the initial contract term. VITA will issue

a written notification to the Supplier stating the extension period, not less than thirty (30) days prior to the expiration of any current term.

**B. Termination for Convenience**

VITA may terminate for convenience this Contract, in whole or in part, or any order issued hereunder, in whole or in part, or an Authorized User may terminate for convenience an order, in whole or in part, upon not less than thirty (30) days prior written notice at any time for any reason. VITA may also immediately terminate this Contract, in whole or in part, or any order issued hereunder, if Supplier becomes a party excluded from Federal Procurement and Nonprocurement Programs. VITA shall provide written notice to Supplier of such termination, and Supplier shall provide prompt written notice to VITA if federal debarment proceedings are instituted against Supplier. Supplier shall submit any contractual dispute to VITA or the terminating Authorized User for resolution according to the terms of the Dispute Resolution Section of this Contract.

Upon termination for convenience, neither the Commonwealth nor VITA nor any public body, to include any Authorized User, shall have any future liability except for (i) Services rendered by Supplier prior to the termination date of the Contract or order and (ii) costs associated with circuit or service de-installation for services installed prior to termination. The Commonwealth makes no assurances that any Service purchased under this Contract will remain in service for any minimum amount of time.

**C. Termination for Breach or Default**

VITA shall have the right to terminate this Contract, in whole or in part, or any order issued hereunder, in whole or in part, or an Authorized User may terminate an order, in whole or in part, for breach and/or default of Supplier (“Termination for Breach” or “Termination for Default”). Supplier shall be deemed in breach and/or default in the event that Supplier fails to meet any material obligation set forth in this Contract or in any order issued hereunder.

If VITA or an Authorized User deems the Supplier to be in breach and/or default, VITA or the Authorized User shall issue a “Show Cause Notice” identifying the failure and providing Supplier fifteen (15) days to cure the failure/nonperformance. If Supplier fails to answer the Show Cause Notice, or does not correct the deficiencies noted, VITA may immediately terminate this Contract, in whole or in part, or any order issued hereunder, in whole or in part, or the Authorized User may immediately terminate its order, in whole or in part. Such termination shall be deemed a Termination for Breach or Termination for Default.

VITA may immediately terminate this Contract, in whole or in part, for breach and/or default if Supplier is found by a court of competent jurisdiction to be in violation of or to have violated 31 USC 1352, and VITA shall provide written notice to Supplier of such termination, and Supplier shall provide prompt written notice to VITA if Supplier is charged with violation of 31 USC 1352.

Upon Termination for Breach or Termination for Default, neither the Commonwealth, nor VITA, nor any public body, to include any Authorized User, shall have any future liability except for Services accepted prior to the termination date. Supplier shall refund any monies paid by VITA or any Authorized User for Services that were not accepted by VITA or the Authorized User.

The failure of VITA or an Authorized User to exercise its right to terminate for breach and/or default under this provision shall not be construed as a waiver of its right to terminate for breach and/or default, rescind or revoke this Contract or any order issued hereunder in the event of any subsequent breach and/or default on any provisions of such agreements.

Supplier shall submit any contractual dispute to VITA or the terminating Authorized User for resolution according to the terms of the Dispute Resolution Section.

The terms of the Termination for Convenience and Termination for Breach or Default Sections shall not apply to termination for non-appropriation of funds.

**D. Transition of Services**

Prior to or upon expiration or termination of this Contract, Supplier shall provide all assistance reasonably required to transition Services to any other supplier with whom VITA contracts for provision of services identical or similar to the Services provided by Supplier pursuant to this Contract. This obligation may extend beyond expiration or termination of the Contract. This obligation

may extend beyond expiration or termination of the Contract for a period not to exceed six (6) months. In the event of a termination for breach and/or default of Supplier, Supplier shall provide such assistance at no charge or fee to VITA or any Authorized User; otherwise, Supplier shall provide such assistance at a reasonable hourly rate or a charge agreed upon by Supplier and VITA or the Authorized User.

#### **4. SERVICES**

##### **A. Nature of Services and Engagement**

Supplier is an independent contractor engaged to perform certain Services, including but not limited to installation and/or support activities for public bodies as described in Exhibit B and the Pricing Exhibit. VITA and all Authorized Users reserve the right to order any of Supplier's Services at any time during the term of this Contract or any extension thereto. Notwithstanding all VITA's or Authorized User's rights to obtain Supplier's Services under this Contract, neither VITA nor any public body is under any obligation to purchase any of Supplier's Services. This Contract is non-exclusive and VITA and all public bodies may, at their sole discretion and in accordance with applicable law and regulation, purchase, license or otherwise receive benefits from third party suppliers of services similar to, or in competition with, the services provided by Supplier.

##### **B. Subcontractors**

If Supplier subcontracts the provision of Services under this Contract to any other party, Supplier (i) shall act as prime contractor and shall be the sole point of contact with regard to all obligations under this Contract, and (ii) hereby represents and warrants that any authorized subcontractors performing the Services shall perform the Services in accordance with the warranties set forth in this Contract. Supplier shall not subcontract any Services pursuant to this Contract to any subcontractor that is a party excluded from Federal Procurement and Nonprocurement Programs.

##### **C. Substitution of Services**

During the term of this Contract, the Supplier is not authorized to substitute for any Service identified in the Pricing Exhibit a service not identified in the Pricing Exhibit. Violation of this condition may be considered grounds for termination of the Contract. Supplier is not authorized to substitute for any Service identified in the Pricing Exhibit any other Service identified in the Pricing Exhibit without the written permission of VITA or the Authorized User. Violation of this condition may be considered grounds for termination of the Contract.

#### **5. SUPPLIER PERSONNEL**

##### **A. Selection and Management of Supplier Personnel**

Supplier shall be solely responsible for the conduct of its employees, agents, and subcontractors, including all acts and omissions of such employees, agents, and subcontractors, and shall ensure that such employees, agents, and subcontractors comply with the appropriate public body's site security, information security and personnel conduct rules, as well as applicable federal, state and local laws and regulations, including those related to imports and exports. The public body on whose site Supplier is performing Services shall have the right to require the immediate removal from its premises of any employee, subcontractor or agent of Supplier whom such public body believes has failed to comply or whose conduct or behavior is unacceptable or unprofessional or results in a security or safety breach.

##### **B. Supplier Personnel Supervision**

Supplier acknowledges that Supplier, or any of its agents, contractors, or subcontractors, is and shall be the employer of Supplier personnel, and shall have sole responsibility to supervise, counsel, discipline, review, evaluate, set the pay rates of and terminate the employment of Supplier personnel.

#### **6. GENERAL WARRANTY**

With respect to the Services provided by Supplier, Supplier represents and warrants the following:

#### **A. Ownership**

Supplier has the right to provide the Services and, to the best of its knowledge, the provision of such Services does not violate or infringe any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party.

#### **B. Performance**

- i). All Services shall be performed with care, skill and diligence, consistent with or above applicable professional standards currently recognized in Supplier's profession, and Supplier shall be responsible for the professional quality, technical accuracy, completeness and coordination of all Services furnished under this Contract;
- ii). The Services are pursuant to a particular solicitation, and therefore such Services and Deliverables shall be fit for the stated purposes specified by VITA and Supplier is possessed of superior knowledge with respect to the Services and is aware that VITA, Authorized Users, and public bodies on whose behalf VITA acquires Supplier's Services are relying on Supplier's skill and judgment in providing the Services;
- iii). The Services shall meet or exceed the stated requirements;
- iv). Any documentation which Supplier is required to provide under this Contract shall be sufficient in detail and content to allow a properly trained user to fully utilize the Services without reference to any other materials or information.

#### **C. Services Warranty and Remedy**

Throughout the Contract term, including any extensions thereto, Supplier shall respond to reports of interruption of Service and acknowledge all requests for restoration of Service with a status report within one (1) hour after notification by VITA or an Authorized User that a Service failure has occurred. Supplier shall include in its status report a description of the failure and the estimated time to repair/restore Services.

Supplier's response may be on-site or from a remote location based on the Supplier's determination of the source of Service failure. If an on-site response is required, then the Supplier's repair personnel shall be on-site and working to restore Service within four (4) hours after notification of Service failure.

#### **D. Supplier's Viability**

Supplier warrants that it has the financial capacity to perform and continue to perform its obligations under this Contract; that Supplier has no constructive or actual knowledge of an actual or potential legal proceeding being brought against Supplier that could materially adversely affect performance of this Contract; and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction.

#### **E. Supplier's Past Experience**

Supplier warrants that the Services have been successfully performed for a non-related third-party without significant problems due to the Services or Supplier.

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

### **7. ORDERS AND COMPENSATION**

#### **A. Orders**

Notwithstanding all Authorized User's rights to license or purchase Supplier's services under this Contract, an Authorized User is under no obligation to license or purchase from Supplier any of Supplier's services. This Contract is optional use and non-exclusive and all Authorized Users may, at their sole discretion, purchase, license or otherwise receive benefits from third party suppliers of services similar to, or in competition with, the services provided by Supplier.

Supplier is required to accept any order placed by an Authorized User through the eVA electronic procurement website portal (<http://www.eva.state.va.us>). eVA is the Commonwealth of Virginia's e-

procurement system. Commonwealth agencies, as defined in §2.2-2006 of the Code of Virginia, shall order through eVA. All other Authorized Users are encouraged to order through eVA, but may order through the following means:

- i) Purchase Order (PO): An official PO form issued by an Authorized User.
- ii) Any other order/payment charge or credit card process, such as AMEX, MASTERCARD, or VISA under contract for use by an Authorized User.

This ordering authority is limited to issuing and canceling orders for the Services available under this Contract. Under no circumstances shall any Authorized User have the authority to modify this Contract. An order from an Authorized User may contain additional terms and conditions; however, to the extent that the terms and conditions of the Authorized User's order are inconsistent with the terms and conditions of this Contract, the terms of this Contract shall supersede.

Notwithstanding the foregoing, Supplier shall not accept any order from an Authorized User if such order is to be funded, in whole or in part, by federal funds and if, at the time the order is placed, Supplier is not eligible to be the recipient of federal funds as may be noted on any of the Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs.

**ALL CONTRACTUAL OBLIGATIONS UNDER THIS CONTRACT IN CONNECTION WITH AN ORDER PLACED BY ANY AUTHORIZED USER ARE THE SOLE OBLIGATION OF SUCH AUTHORIZED USER AND NOT THE RESPONSIBILITY OF VITA UNLESS VITA IS THE AUTHORIZED USER.**

#### **B. Purchase Price and Price Protection**

The Pricing Exhibit sets forth the fees and the applicable discounts. No public body will be required to pay any additional costs above those costs provided for in the Pricing Exhibit. Supplier may submit to VITA a request for an increase in such fees or a decrease in such discounts. Such request must be accompanied by written documentation to VITA demonstrating the additional value reflected by such increase in fee or decrease in discount. VITA may, in its sole discretion, agree to a modification of this Contract to effectuate such increase in fees or decrease in discounts.

Any price decrease effectuated during the Contract term, or any extension thereto, by reason of market change shall be passed on to VITA and all Authorized Users. This decrease shall be effective on the date the price decrease is announced to the general public.

At all times during the term of this Contract and any extensions thereto, Supplier's prices on the Pricing Exhibit shall at all times comply with §§ 56-234 et seq. of the Code of Virginia. Supplier's failure to comply with the aforereferenced statute shall be grounds for termination of the Contract or any order issued hereunder for default and/or breach; and VITA and any Authorized User may pursue any remedies available at law or in equity with regard to such failure to comply.

#### **C. Invoice and Payment Terms**

All payment obligations under this Contract are subject to the availability of legislative appropriations at the federal, state, or local level, for this purpose. In the event of non-appropriation of funds, irrespective of the source of funds, for the items under this Contract, VITA may terminate this Contract, in whole or in part, or any order, in whole or in part, or a Authorized User may terminate an order, in whole or in part, for those services for which funds have not been appropriated. Written notice will be provided to the Supplier as soon as possible after legislative action is completed.

Supplier shall deliver to VITA one consolidated monthly invoice for all services ordered by and billable to VITA pursuant to this Contract. Supplier shall also deliver to each Authorized User one consolidated monthly invoice for all services ordered by and billable to such Authorized User pursuant to this Contract. Neither VITA nor any Authorized User is obligated to pay against an invoice that is not readable and verifiable.

Supplier is responsible for the accuracy of its billing information. Charges for Services accepted more than ninety (90) days prior to receipt of a valid invoice may not be paid.

If there are any disputed items, VITA or the appropriate Authorized User shall pay all undisputed charges and promptly notify Supplier in writing of any disputed amount. Supplier shall thereupon review its records, and, if Supplier does not concur with VITA or such Authorized User, shall provide

VITA or such Authorized User with documentation to support the charge within fifteen (15) days of notification of the disputed amount. If such charges remain in dispute, such dispute shall be resolved in accordance with the Dispute Resolution section of this Contract. In the absence of the Supplier's written evidence identifying the merit of the disputed amounts, VITA or such Authorized User may not pay the disputed amounts and may consider the matter concerning the specific identified amounts closed.

#### **D. Invoice Procedures**

Supplier shall promptly remit each invoice to the "bill-to" address provided with the order. Supplier shall submit invoices for monthly recurring charges monthly in advance and for usage-based or other miscellaneous charges in arrears. No invoice shall include any costs other than those identified in the executed order, which costs shall be in accordance with the Pricing Exhibit. In addition, all Services provided under this Contract shall be billed by the Supplier at the Contract price, regardless of which public body is benefiting from the Services. Without limiting the foregoing, all shipping costs are the Supplier's responsibility except to the extent such charges are identified in the Pricing Exhibit, or as noted in the executed order. Invoices issued by the Supplier shall identify at a minimum:

- i). Service type and description, with charges identified at the lowest level of detail (i.e., phone level)
- ii). Applicable order date
- iii). This Contract number and the applicable order number
- iv). Supplier's Federal Employer Identification Number (FEIN).

No invoice will be paid without adequate billing details. If available, charges should be provided on electronic media at the detail level.

Any credits due VITA or any Authorized User under the terms of this Contract may be applied against Supplier's invoices to VITA or such Authorized User on the same account with appropriate information attached.

The Parties agree that any terms included on Supplier's invoice shall have no force or effect and will in no way bind VITA or any other public body.

#### **E. Small, Woman, and Minority-Owned Business (SWaM) Subcontracting Report**

By the 10th day of every month, Supplier shall submit to VITA the Small, Woman, and Minority Owned Business (SWaM) Subcontracting Monthly Report (template available at <http://www.vita.virginia.gov/procurement/supplierResources.cfm>). Supplier's report should include spend on all Supplier's contracts with second-tier suppliers which provide products or services under this Contract. The report should specify the amount of such spend provided to SWaM vendors, by SWaM category, regardless of such SWaM vendors' certification status. Supplier shall submit the report to [SWaM@vita.virginia.gov](mailto:SWaM@vita.virginia.gov).

#### **F. Universal Service Fund**

Supplier agrees to make available all Services as listed and priced herein to any Authorized User which is a Universal Service Fund (USF) participant. Supplier agrees to provide the Services directly to the USF participant, and to bill each USF participant directly. Supplier agrees and understands that the responsibility for collection of all charges incurred, and the responsibility for resolving all Product and Service problems as well as administration of this Contract for USF participation shall be the sole responsibility of Supplier.

#### **G. Supplier's Report of Sales and Industrial Funding Adjustment**

By the 10th day of every month, the Supplier shall submit the "Supplier Monthly Report of Sales". A template showing the format in which the report is to be submitted is available at <http://www.vita.virginia.gov/procurement/supplierResources.cfm>. The report shall be submitted via electronic mail to the VITA IFA Coordinator and the VITA Controller (contact information provided below), and shall report all invoices submitted by Supplier pursuant to the Contract to all Authorized Users during the preceding month. The report shall also show a cumulative record of all invoices submitted to all Authorized Users pursuant to the Contract.

The Supplier shall submit the Industrial Funding Adjustment (IFA) payment for the period covered by such "Supplier Monthly Report of Sales" within thirty (30) days of submitting the "Supplier Monthly Report of Sales". The IFA payment shall be submitted in the form of a check or electronic funds disbursement made payable to the Treasurer of Virginia. The IFA payment is equal to two percent (2%) of total sales under this Contract during the relevant month, as determined by the amount invoiced to Authorized Users. The IFA payment shall reference this Contract number, "report amounts", and "report period".

Supplier shall remit IFA payments made via check to VITA, Attention VITA Controller. Supplier shall also provide a copy of the IFA payment to the VITA IFA Coordinator via email or fax. Failure to comply with reporting and payment requirements of this section may result in default of Contract.

**Contact Information**

Virginia Information Technologies Agency (VITA) Attn:VITA Controller 11751 Meadowville Lane Chester, VA 23836 VITAController@vita.virginia.gov	VITA IFA Coordinator 11751 Meadowville Lane Chester, VA 23836 804-416-6055 (Phone) 804-416-6361 (Fax) ifacoordinator@vita.virginia.gov
--	---

**8. CONFIDENTIALITY**

**A. Treatment and Protection**

Each Party shall (i) hold in strict confidence all Confidential Information of any other Party, (ii) use the Confidential Information solely to perform or to exercise its rights under this Contract, and (iii) not transfer, display, convey or otherwise disclose or make available all or any part of such Confidential Information to any third-party. However, VITA or any public body recipient of Supplier's Services, including Authorized Users, may disclose the Confidential Information as delivered by Supplier to subcontractors, contractors or agents of VITA or such public body that are bound by non-disclosure contracts with VITA or such public body. Each Party shall take the same measures to protect against the disclosure or use of the Confidential Information as it takes to protect its own proprietary or confidential information (but in no event shall such measures be less than reasonable care).

**B. Exclusions**

The term "Confidential Information" shall not include information that is:

- i). in the public domain through no fault of the receiving Party or of any other person or entity that is similarly contractually or otherwise obligated;
- ii). obtained independently from a third-party without an obligation of confidentiality to the disclosing Party and without breach of this Contract;
- iii). developed independently by the receiving Party without reference to the Confidential Information of the other Party; or
- iv). required to be disclosed under The Virginia Freedom of Information Act (§§2.2-3700 et seq. of the Code of Virginia) or similar laws or pursuant to a court order.

**C. Return or Destruction**

Upon the termination or expiration of this Contract or upon the earlier request of the disclosing Party, the receiving Party shall (i) at its own expense, (a) promptly return to the disclosing Party all tangible Confidential Information (and all copies thereof except the record required by law) of the disclosing Party, or (b) upon written request from the disclosing Party, destroy such Confidential Information and provide the disclosing Party with written certification of such destruction, and (ii) cease all further use of the other Party's Confidential Information, whether in tangible or intangible form.

## 9. LIABILITY AND INDEMNIFICATION

Supplier agrees to indemnify, defend and hold harmless VITA, the Commonwealth, Authorized Users, or any other public body recipient of Services, their officers, directors, agents and employees ("Commonwealth's Indemnified Parties") from and against any and all third party claims, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, fines, judgments, settlements, expenses (including attorneys' and accountants' fees and disbursements) and costs (each, a "Claim" and collectively, "Claims"), incurred by, borne by or asserted against any of Commonwealth's Indemnified Parties to the extent such Claims in any way relate to, arise out of or result from: (i) any intentional or willful conduct or negligence of any employee or subcontractor of Supplier, (ii) any act or omission of any employee or subcontractor of Supplier, (iii) breach of any representation, warranty or covenant of Supplier contained herein, (iv) any defect in the Services provided by Supplier, or (v) any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Services.

Selection and approval of counsel and approval of any settlement shall be accomplished in accordance with all applicable laws, rules and regulations. For state agencies the applicable laws include §§ 2.2-510 and 2.2-514 of the Code of Virginia. In all cases the selection and approval of counsel and approval of any settlement shall be satisfactory to VITA or the public body against whom the claim has been asserted.

In the event that a Claim is commenced against any of Commonwealth's Indemnified Parties alleging that the provision of Services under this Contract infringes any third party's intellectual property rights and Supplier is of the opinion that the allegations in such Claim in whole or in part are not covered by this indemnification provision, Supplier shall immediately notify VITA and the affected public body(ies) in writing, via certified mail and via email, if available, specifying to what extent Supplier believes it is obligated to defend and indemnify under the terms and conditions of this Contract. Supplier shall in such event protect the interests of the Commonwealth's Indemnified Parties and secure a continuance to permit VITA and the affected public body(ies) to appear and defend their interests in cooperation with Supplier as is appropriate, including any jurisdictional defenses VITA or the affected public body(ies) may have.

In the event of a Claim pursuant to any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Services, and in addition to all other obligations of Supplier in this Section, Supplier shall at its expense, either (a) procure for all public bodies the right to continue use of such infringing Services, or any component thereof; or (b) replace or modify such infringing Services, or any component thereof, with non-infringing products or services satisfactory to VITA. And in addition, Supplier shall reimburse VITA or any affected public body for the reasonable costs incurred by VITA or such public body in obtaining an alternative service in the event such public body cannot use the affected Services

**EXCEPT WITH REGARD TO CLAIMS FOR PROPERTY DAMAGE, PERSONAL INJURY OR INFRINGEMENT, AND THE INDEMNIFICATION AND CONFIDENTIALITY OBLIGATIONS, WITH RESPECT TO EACH OF WHICH LIABILITY SHALL NOT BE LIMITED PURSUANT TO THIS SECTION, IN NO EVENT WILL ANY PARTY BE LIABLE TO ANY OTHER PARTY (OR THE INDEMNIFIED PARTIES OF SUCH PARTY) FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING (WITHOUT LIMITATION) LOSS OF PROFIT, INCOME OR SAVINGS, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, EXCEPT WHEN SUCH DAMAGES ARE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE PARTY, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS.**

## 10. SECURITY COMPLIANCE

Supplier agrees to comply with all provisions of the then current security procedures of VITA and/or the relevant public body recipient of Supplier's Services as are pertinent to Supplier's operation and have been supplied to Supplier by VITA or such public body and further agrees to comply with all applicable federal, state and local laws. For any individual Commonwealth location, security procedures may include but not be limited to: background checks, records verification, photographing, and fingerprinting of Supplier's employees or agents. Supplier may, at any time, be required to

execute and complete, for each individual Supplier employee or agent, additional forms which may include non-disclosure agreements to be signed by Supplier's employees or agents acknowledging that all Commonwealth information with which such employees and agents come into contact while at the end user public body site is confidential and proprietary. Any unauthorized release of proprietary information by the Supplier or an employee or agent of Supplier shall constitute a breach of this Contract.

Supplier shall indemnify, defend, and hold VITA, the Commonwealth, any Authorized User, and any other public body recipient of Supplier's Services, their officers, directors, employees and agents harmless from and against any and all fines, penalties (whether criminal or civil), judgments, damages and assessments, including reasonable expenses suffered by, accrued against, or charged to or recoverable from VITA, the Commonwealth, any Authorized User, and any other public body recipient of Supplier's Services, their officers, directors, agents or employees, on account of the failure of Supplier to perform its obligations pursuant this Section.

## **11. BANKRUPTCY**

If Supplier becomes insolvent, takes any step leading to its cessation as a going concern, fails to pay its debts as they become due, or ceases business operations continuously for longer than fifteen (15) business days, then VITA may immediately terminate this Contract or any order issued hereunder, or a Authorized User may terminate an order, on notice to Supplier unless Supplier immediately gives VITA or such Authorized User adequate assurance of the future performance of this Contract or the applicable order. If bankruptcy proceedings are commenced with respect to Supplier, and if this Contract has not otherwise terminated, then VITA may suspend all further performance of this Contract until Supplier assumes this Contract and provides adequate assurance of performance thereof or rejects this Contract pursuant to Section 365 of the Bankruptcy Code or any similar or successor provision, it being agreed by the VITA and Supplier that this is an executory contract. Any such suspension of further performance by VITA pending Supplier's assumption or rejection shall not be a breach of this Contract, and shall not affect VITA's right to pursue or enforce any of its rights under this Contract or otherwise.

## **12. GENERAL PROVISIONS**

### **A. Relationship Between VITA, Commonwealth Public Bodies, and Supplier**

Supplier has no authority to contract for VITA or any Commonwealth public body or in any way to bind, to commit VITA or any Commonwealth public body to any agreement of any kind, or to assume any liabilities of any nature in the name of or on behalf of VITA or any Commonwealth public body. Under no circumstances shall Supplier, or any of its employees, hold itself out as or be considered an agent or an employee of VITA or any Commonwealth public body, and neither VITA nor any Commonwealth public body shall have any duty to provide or maintain any insurance or other employee benefits on behalf of Supplier or its employees. Supplier represents and warrants that it is an independent contractor for purposes of federal, state and local employment taxes and agrees that neither VITA nor any Commonwealth public body is responsible to collect or withhold any federal, state or local employment taxes, including, but not limited to, income tax withholding and social security contributions, for Supplier. Any and all taxes, interest or penalties, including, but not limited to, any federal, state or local withholding or employment taxes, imposed, assessed or levied as a result of this Contract shall be paid or withheld by Supplier or, if assessed against and paid by VITA or any Commonwealth public body, shall be reimbursed by Supplier upon demand by VITA or such Commonwealth public body.

### **B. Licenses and Permits**

Supplier shall be responsible for obtaining all rights-of-way, licenses, and/or permits required by applicable authorities in order to perform installation Services at the location(s) specified on any order issued pursuant to this Contract.

**C. Incorporated Contractual Provisions**

The contractual provisions at the following URL are statutorily mandated provisions that are hereby incorporated by reference:

<http://www.vita.virginia.gov/procurement/documents/StatutorilyMandatedTsandCs.pdf>

The contractual claims provision at §2.2-4363 of the Code of Virginia is also incorporated by reference.

The terms and conditions in the document posted to the aforementioned URL are subject to change pursuant to action by the legislature of the Commonwealth of Virginia. If a change is made to the terms and conditions, a new effective date will be noted in the document title. Supplier is advised to check the URL periodically.

**D. Compliance with the Federal Lobbying Act**

Supplier shall not, in connection with this Contract, engage in any activity prohibited by 31 USC 1352 (entitled "Limitation on use of appropriated funds to influence certain Federal Contracting and financial transactions") or by the regulations issued from time to time thereunder (together, the "Lobbying Act"), and shall promptly perform all obligations mandated by the Lobbying Act in connection with this Contract, including, without limitation, obtaining and delivering to the Commonwealth all necessary certifications and disclosures.

Supplier is hereby advised that a significant percentage of the funds used to pay Supplier's invoices under this Contract may be federal funds. Under no circumstances shall any provision of this Contract be construed as requiring or requesting the Supplier to influence or attempt to influence any person identified in 31 USC 1352(a)(1) in any matter.

Supplier's signed certification of compliance with the foregoing is incorporated as Exhibit C hereto.

**E. Governing Law**

This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without regard to that body of law controlling choice of law. Any and all litigation shall be brought in the circuit courts of the Commonwealth of Virginia. The English language version of this Contract prevails when interpreting this Contract. The United Nations Convention on Contracts for the International Sale of Goods and all other laws and international treaties or conventions relating to the sale of goods are expressly disclaimed. UCITA shall apply to this Contract only to the extent required by §59.1-501.15 of the Code of Virginia.

**F. Dispute Resolution**

In accordance with §2.2-4363 of the Code of Virginia, Contractual claims, whether for money or other relief, shall be submitted in writing to the public body from whom the relief is sought no later than sixty (60) days after final payment; however, written notice of the Supplier's intention to file such claim must be given to such public body 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 relevant public body shall render a final decision in writing within thirty (30) days after its receipt of the Supplier's written claim.

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

Upon request from the public body from whom the relief is sought, Supplier agrees to submit any and all contractual disputes arising from this Contract to such public body's alternative dispute resolution (ADR) procedures, if any. Supplier may invoke such public body's ADR procedures at any time and concurrently with any other statutory remedies prescribed by the Code of Virginia.

In the event of any breach by a public body, Supplier's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section. In no event shall Supplier's remedies include the right to terminate any license or support services hereunder.

**G. Advertising and Use of Proprietary Marks**

Supplier shall not use the name of VITA or any Commonwealth public body or refer to VITA or any Commonwealth public body, directly or indirectly, in any press release or formal advertisement without receiving prior written consent of VITA or such Commonwealth public body. In no event may Supplier use a proprietary mark of VITA or any Commonwealth public body without receiving the prior written consent of VITA or such Commonwealth public body.

**H. Notices**

Any notice required or permitted to be given under this Contract shall be in writing and shall be deemed to have been sufficiently given if delivered in person, or if deposited in the US mails, postage prepaid, for mailing by registered, certified mail, or overnight courier service addressed to the addresses shown on the signature page. VITA or Supplier may change its address for notice purposes by giving the other Party notice of such change in accordance with this Section.

**I. No Waiver**

Any failure to enforce any terms of this Contract, including termination for breach, shall not constitute a waiver.

**J. Assignment**

This Contract shall be binding upon and shall inure to the benefit of the permitted successors and assigns of VITA and Supplier. Supplier may not assign, subcontract, delegate or otherwise convey this Contract, or any of its rights and obligations hereunder, to any entity without the prior written consent of VITA, and any such attempted assignment or subcontracting without consent shall be void. VITA may assign this Contract to any entity, so long as the assignee agrees in writing to be bound by the all the terms and conditions of this Contract.

If any law limits the right of VITA or Supplier to prohibit assignment or nonconsensual assignments, the effective date of the assignment shall be thirty (30) days after the Supplier gives VITA prompt written notice of the assignment, signed by authorized representatives of both the Supplier and the assignee. Any payments made prior to receipt of such notification shall not be covered by this assignment.

**K. Captions**

The captions are for convenience and in no way define, limit or enlarge the scope of this Contract or any of its Sections.

**L. Severability**

Invalidity of any term of this Contract, in whole or in part, shall not affect the validity of any other term. VITA and Supplier further agree that in the event such provision is an essential part of this Contract, they shall immediately begin negotiations for a suitable replacement provision.

**M. Survival**

The provisions of this Contract regarding Warranty, Confidentiality, and Liability and Indemnification, and the General Provisions shall survive the expiration or termination of this Contract.

**N. Force Majeure**

No Party shall be responsible for failure to meet its obligations under this Contract if the failure arises from causes beyond the control and without the fault or negligence of the non-performing Party. If any performance date under this Contract is postponed or extended pursuant to this section for longer than thirty (30) calendar days, VITA, by written notice given during the postponement or extension, may terminate Supplier's right to render further performance after the effective date of termination without liability for that termination, and in addition an Authorized User may terminate any order affected by such postponement or delay.

**O. Remedies**

The remedies set forth in this Contract are intended to be cumulative. In addition to any specific remedy, VITA and all Commonwealth public bodies reserve any and all other remedies that may be available at law or in equity.

**P. Right to Audit**

VITA reserves the right to audit those Supplier records that relate to the Services rendered or the amounts due Supplier for such Services under this Contract. VITA's right to audit shall be limited as follows:

- i). Three (3) years from Service performance date;
- ii). Performed at Supplier's premises, during normal business hours at mutually agreed upon times; and
- iii). Excludes access to Supplier cost information.

The Supplier shall not have the right to audit, or require to have audited, VITA or any Commonwealth public body.

**Q. Taxes—Federal, State, and Local**

The Commonwealth of Virginia is exempt from Federal excise and all State and Local taxes. Such taxes shall not be included in Contract prices. Tax certificates of exemption, Form ST-12 can be obtained online at <http://www.tax.state.va.us/>. Deliveries against this Contract shall be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K. The Commonwealth is also exempt from paying E-911 charges.

**R. Contract Administration and Account Management**

Supplier agrees that at all times during the term of this Contract an account executive ("Account Manager"), at Supplier's senior management level, shall be assigned and available to VITA and all Authorized Users. Supplier reserves the right to change such account executive upon reasonable advance written notice to VITA.

The Account Manager's responsibilities should include (i) resolution of technical support questions and issues which have not been resolved by Supplier's technical support division; (ii) preparation of account information and response to and resolution of inquiries regarding billing and payment; and (iii) investigation and resolution of customer service issues and complaints.

**S. Entire Contract**

The following documents, including all subparts thereof, are attached to this Contract and are made a part of this Contract for all purposes:

- i). Exhibit A Pricing Exhibit
- ii). Exhibit B Service Requirements
- iii). Exhibit C Certification Regarding Lobbying

This Contract, all its Exhibits, and any prior non-disclosure agreement constitute the entire agreement between VITA and Supplier, and supersede any and all previous representations, understandings, discussions or agreements between VITA and Supplier as to the subject matter hereof. Any and all terms and conditions contained in, incorporated into, referenced by or provided with the Supplier's bid shall be deemed invalid. The provisions of the Virginia Department of General Services, Division of Purchases and Supply Vendor's Manual do not apply to this Contract. This Contract may only be amended by an instrument in writing signed by VITA and Supplier.

In the event of a conflict, the following order of precedence shall apply: this Contract document, Exhibit B, Pricing Exhibit, then any specific order. VITA and Supplier each acknowledge that it has had the opportunity to review this Contract and to obtain appropriate legal review if it so chose.

This Contract is effective as of the date set forth below.

Supplier: Mobil Satellite Tech

VITA

Name: Bud R. [Signature]

Name: Doug [Signature]

Title: CEO

Title: Sales Manager, VITA

Date: 10/31/08

Date: 11/17/08