



Commonwealth of Virginia  
Virginia Information Technologies Agency

**INFORMATION TECHNOLOGY HARDWARE, SOFTWARE & SERVICES**  
Optional Use

Date: July 11, 2011

Contract #: VA-090202-LEN

Authorized User: All public bodies, including VITA, as defined by §2.2-4301 and referenced by §2.2-4304 of the *Code of Virginia*

Contractor: Lenovo (United States) Inc.  
1009 Think Place  
Morrisville, NC 27560

FIN: 52-2449153

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Term: February 2, 2011 – February 1, 2012

Payment: Net 30 days

For Additional Contract Information, Please Contact:

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

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

**VIRGINIA INFORMATION TECHNOLOGIES AGENCY (VITA):** Prior review and approval by VITA for purchases in excess of \$100,000.00 is required for State Agencies and Institutions only.



**MODIFICATION #2  
TO  
CONTRACT NUMBER VA-090202-LEN  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
LENOVO (United States), Inc.**

This MODIFICATION #2 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and LENOVO (United States), Inc., hereinafter referred to as "Contractor" relating to the modification of the above Contract. This Modification #2 is hereby incorporated into and made an integral part of Contract VA-090202-LEN (the Agreement), as modified.

Exhibit E (EULA) from the Hardware and Maintenance Contract is no longer associated with VA-090202-LEN

Exhibit A (Service Requirements) from the Information Technology Services Contract is no longer associated with VA-090202-LEN

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-090202-LEN and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

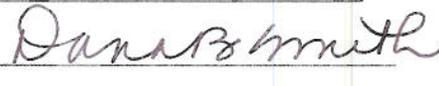
**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.**

**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.**

LENOVO (UNITED STATES), INC.

BY:   
NAME: Jacquie Johnson  
TITLE: Sales Manager  
DATE: 6/24/2011

COMMONWEALTH OF VIRGINIA

BY:   
NAME: DANA B. SMITH  
TITLE: CONTROLLER  
DATE: 7.7.2011

**MODIFICATION #1  
TO  
CONTRACT NUMBER VA-090202-LEN  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
LENOVO (United States), Inc.**

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 LENOVO (United States), Inc., hereinafter referred to as "Contractor" relating to the modification of the above Contract. This Modification #1 is hereby incorporated into and made an integral part of Contract VA-090202-LEN (the Agreement), as modified.

The term of the contract is extended under the same terms for the period beginning February 2, 2011 through February 1, 2012.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-090202-LEN 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.**

LENOVO (UNITED STATES), INC.

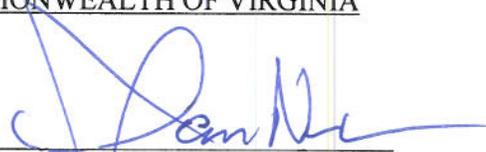
BY: 

NAME: Jason Mooneyham

TITLE: Executive Director, US Public Sector Sales

DATE: 02/02/2011

COMMONWEALTH OF VIRGINIA

BY: 

NAME: SAMUEL A. NIXON JR.

TITLE: CIO OF THE COMMONWEALTH

DATE: 2/3/11



# Hardware Contract

between

The Virginia Information Technologies Agency

on behalf of

The Commonwealth of Virginia

and

**Lenovo (United States) Inc.**

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**HARDWARE AND MAINTENANCE CONTRACT  
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## HARDWARE AND MAINTENANCE 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 Lenovo (United States), Inc. ("Supplier"), a corporation headquartered at 1009 Think Place, Morrisville, NC 27560, to be effective as of February 2, 2009 ("Effective Date").

### 1. PURPOSE

This Contract sets forth the terms and conditions under which Supplier agrees to sell certain of Supplier's Product, and to provide various Services to the Authorized Users.

### 2. DEFINITIONS

#### A. Acceptance

Acceptance is deemed to occur upon shipment of the Product to the designated ship to location, however, should the Product not conform to applicable documentation, VITA has the option to notify the Supplier within thirty (30) days to request a return of the Product or to have the Product repaired at Supplier's expense. If VITA provides such notification to Supplier, VITA's acceptance will not be deemed to occur until thirty (30) days from delivery to VITA of the corrected Product

#### B. 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.

#### C. 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.

#### D. Maintenance Level

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#### E. Maintenance Coverage Period (MCP)

The term during which Maintenance is to be provided for a unit of Product.

#### F. Maintenance Services (or Maintenance)

#### G. Operating Condition

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

#### H. Party

Supplier, VITA, or any Authorized User.

#### I. Product

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

#### J. Receipt (of Product)

An Authorized User or its Agent has physically received the Product at the correct "ship to" location.

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**K. Requirements**

The functional, performance, operational, compatibility, and other parameters and characteristics of the Product as set forth in the applicable documentation, Exhibit A and such other parameters, characteristics, or performance standards for the Product that may be agreed upon in writing by the Parties. [Note: In case of conflict, see the Entire Contract clause for order of precedence.]

**L. Response Time**

The time between Supplier's receipt of Authorized User's request for Maintenance and the time Supplier commences repair of the Product.

**M. Service**

Any Product-related work performed or service provided and provision to the Authorized User of any deliverable, by Supplier under this Contract.

**N. Software Publisher**

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

**O. Supplier**

Means the Supplier and any of its Affiliates (i.e., an entity that controls, is controlled by, or is under common control with Supplier).

**P. 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.

**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 two (2) years. VITA, at its sole discretion, may extend this Contract for up to three (3) additional one (1) year periods after the expiration of the initial two (2) 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 on or Maintenance Services for any Product ordered during the term of the Contract may extend beyond the term of this Contract. Performance of an order or SOW issued during the term of this Contract may survive the expiration of the term of this Contract, in which case all terms and conditions required for the operation of such order or SOW shall remain in full force and effect until the Warranty or Maintenance Services pursuant to such order or SOW have expired.

**B. Termination for Convenience**

VITA may terminate 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.

**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. 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 deems the Supplier to be in breach and/or default, VITA shall provide Supplier with notice of breach and/or default and allow Supplier fifteen (15) days to cure the breach and/or default. If Supplier fails to cure the breach as noted, VITA may immediately terminate this Contract or any order issued hereunder, in whole or in part. Any such termination shall be deemed a Termination for Breach or a Termination for Default. In addition, if Supplier is found by a court of competent jurisdiction to be in violation of or to have violated 31 USC 1352 or if Supplier becomes a party excluded from Federal Procurement and Non-procurement Programs, VITA may immediately terminate this Contract, in whole or in part, for breach. VITA shall provide written notice to

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Supplier of such termination and Supplier shall provide written notice to VITA if Supplier is charged with violation of 31 USC 1352 or if federal debarment proceedings are instituted against Supplier.

**D. Termination for Non-Appropriation of Funds**

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 any order, in whole or in part, or an Authorized User may terminate its 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.

**E. Effect of Termination**

Upon termination, neither the Commonwealth, nor VITA, nor any Authorized User shall have any future liability except for Products or certain Maintenance or other Services accepted by the Authorized User prior to the termination date.

In the event of a Termination for Breach or Termination for Default, Supplier shall accept return of any Products or services that were not accepted by the Authorized User(s), and Supplier shall refund any monies paid by any Authorized User for such Product or services, including certain Maintenance Services, and all costs of de-installation and return of the Products shall be borne by Supplier.

**F. 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 Product-related 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 the hourly rate or a charge agreed upon by Supplier and VITA or an Authorized User.

**G. Contract Kick-Off Meeting**

Within 30 days of Contract award, Supplier may be required to attend a contract orientation meeting, along with the VITA contract manager/administrator, the VITA and/or other CoVa Agency project manager(s) or authorized representative(s), technical leads, VITA representatives for SWaM and Sales/IFA reporting, as applicable, and any other significant stakeholders who have a part in the successful performance of this Contract. The purpose of this meeting will be to review all contractual obligations for both parties, all administrative and reporting requirements, and to discuss any other relationship, responsibility, communication and performance criteria set forth in the Contract. The Supplier may be required to have its assigned account manager as specified in Section 6.0 and a representative from its contracts department in attendance. The time and location of this meeting will be coordinated with Supplier and other meeting participants by the VITA contract manager.

**H. Contract Closeout**

Prior to the contract's expiration date, Supplier may be provided contract close out documentation and shall complete, sign and return to VITA Supply Chain Management within 30 days of receipt. This documentation may include, but not be limited to: Patent/Royalty Certificate, Tangible Property/Asset Certificate, Escrow Certificate, SWaM Reports Completion Certificate, Sales Reports/IFA Payments Completion Certificate, and Final Payment Certificate. Supplier is required to process these as requested to ensure completion of close-out administration and to maintain a positive performance reputation with the Commonwealth of Virginia. Any closeout documentation not received within 30 days of Supplier's receipt of our request will be documented in the contract file as Supplier non-compliance. Supplier's non-compliance may affect any pending payments due the Supplier, including final payment, until the documentation is returned.

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

##### **A. Delivery Procedure**

Supplier shall deliver all Product F.O.B. destination, with such destination being the "ship to" address specified in the applicable order. For orders for which Supplier is to provide installation of the Product, Supplier shall bear all risk of loss of or damage to the Product until Receipt/Acceptance by the Authorized User. For orders for which Supplier is not to provide installation of the Product, Supplier shall bear all risk of loss or damage to the Product until Receipt. In all cases, Supplier shall arrange and pay for all transportation and insurance sufficient to fully protect the Product while in transit. Each shipment shall include a packing slip indicating this Contract number, the Authorized User's order number, the part number, a description of the Product shipped and the quantity shipped. Each package in any shipment shall be numbered, shall have stenciled on one end and one side a description of the quantity of Product contained therein by part number and description, and shall conspicuously display the number of the package in that shipment which contains the packing slip. If required by the Authorized User, Supplier shall bar code all packages shipped. If any loss to, or damage of, the Product occurs prior to Acceptance by the Authorized User, Supplier shall immediately provide a replacement item. Title to Product, excluding System Software, shall pass upon shipment.

Supplier shall make available all appropriate and/or related user documentation at the time of delivery of the first unit of each different Product type. Product delivered without the appropriate and required documentation shall be considered "shipped short" until the applicable documentation has been received.

##### **B. Late Delivery**

In the event the Supplier fails for any reason to deliver within thirty (30) days of the agreed upon delivery date set forth in the order/schedule, the ordering Authorized User, at its own discretion, may cancel the order. Once notice by such Authorized User is sent or given, the Authorized User may immediately procure the undelivered items, or items similar thereto, from another source. In no event shall any 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 such Authorized User's notice of order cancellation. Notwithstanding the foregoing, the Authorized User reserves any and all other remedies available at law or in equity.

##### **C. Product Trade-in and Upgrade**

(To be determined prior to contract execution)

##### **D. Product Installation**

Unless otherwise agreed, Supplier shall provide the initial installation of all Products at the agreed upon pricing within the parameters defined under a mutually agreed upon Services Statement of Work (SOW). Installation may 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.

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.

##### **E. Product Acceptance**

Products will be deemed accepted in accordance with Section 2(A) of the Contract.

Product shall be deemed accepted when the ordering Authorized User determines that such Product successfully operates in accordance with the Requirements. Such Authorized User shall commence Acceptance testing within fifteen (15) days, or within such other period as set forth in the applicable order, after Receipt/installation of the Product. Acceptance testing will be no longer than fifteen (15) days, or such longer period as may be agreed in writing between Authorized User and Supplier. 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 Acceptance testing, 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. Any such travel expenses must be pre-approved by the Authorized

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User and shall be reimbursable by such Authorized User at the then-current per diem amounts as published by the Virginia Department of Accounts ([http://www.doa.virginia.gov/Admin\\_Services/CAPP/CAPP\\_Topics/20335\\_Meals\\_Lodging\\_102007.pdf](http://www.doa.virginia.gov/Admin_Services/CAPP/CAPP_Topics/20335_Meals_Lodging_102007.pdf), or a successor URL(s)). Authorized User shall provide to Supplier written notice of Acceptance upon successful Acceptance testing. Should Authorized User fail to provide Supplier written notice of successful or unsuccessful Acceptance testing within five (5) days following the Acceptance testing period, the Product(s) shall be deemed Accepted.

**F. Cure Period**

**G. Product Discontinuation**

During the term of this Contract, if any Product listed on Exhibit C is discontinued and Supplier does not offer a substitute acceptable to VITA, acceptability approval shall not be unreasonably denied, Supplier shall, for each Authorized User who unknowingly purchased the discontinued Product, continue to meet such Authorized User's warranty needs for the discontinued Product for not less than the warranty term covering the product. Additionally, Supplier shall make available to the Authorized User maintenance parts for discontinued Product for five (5) years from the date of such discontinuation. In every event, Supplier will provide any Authorized User with 120 days advance written notice of its intent to discontinue any Product type previously ordered by such Authorized User.

**5. PRODUCT SUPPORT AND ADDITIONAL SERVICES**

**A. Authorized User or Third Party Support**

**1. Documentation and Support Availability**

In the event that VITA terminates this Contract, Supplier shall provide all the necessary user and installation documentation and repair training reasonably required to enable any Authorized User to maintain and repair the Product itself or to obtain support and maintenance services from a third-party. Supplier shall also provide the documentation and training necessary to allow any Authorized User to self-maintain to the subcomponent level if the user is approved under the warranty self maintenance program provided by the vendor.. In addition, Supplier agrees to provide, for a period of five (5) years from the date of the last purchase, warranty repair spare parts and components at the cost set forth in Exhibit C, including those solely sourced by Supplier, to enable any Authorized User or its designated third-party maintenance provider to provide full maintenance and repair of the Product.

**2. Timeliness and Price**

Supplier agrees to make the above-referenced documentation, training for warranty repair if self maintenance program agreement completed and warranty repair spare parts and components available within fifteen (15) days following receipt of a written request, and at a price set forth in Exhibit C, such price not to exceed Supplier's published price list, or the fair market value, but in no event at prices above the lowest price paid by any other customer of Supplier. In addition, Supplier agrees to sell Product, as set forth in Exhibit C attached hereto, to any Authorized User's third-party maintenance provider under contract with such Authorized User, at the prices as set forth in Exhibit C, for the sole purpose of supporting the Authorized User's installed inventory. Supplier agrees to document and provide to all Authorized Users in a timely manner any and all revisions to information and parts and components lists as they are developed or supplied by Supplier.

**B. Engineering Changes and Product Modification**

For each Authorized User that purchased Product, Supplier agrees to document and provide to such Authorized User any and all planned engineering changes to the Product ninety (90) days prior to incorporation. All engineering changes which affect the safety of the Product ("Safety Changes") or the ability of the Product to meet the published specifications ("Performance Changes"), shall be made at no cost to the Authorized User. Supplier shall install or provide the means for the user to install all Safety Changes and Performance Changes as commercially reasonable within thirty (30) days after issuance of the engineering change order by the Product

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manufacturer. If such engineering changes affect Product processing or operating capability, they shall be scheduled at the Authorized User's request as to time and at the Authorized User's option. The Authorized User shall have the option to waive/pre-approve all other engineering changes planned by Supplier on the Product delivered or planned for delivery to the Authorized User.

### **C. Training**

The Product purchase price includes all costs for the training of one trainer at the ordering Authorized User's designated location on the use and operation of the Product, including instruction in any necessary conversion of such Authorized User's data for such use. Pursuant to a mutually agreed upon schedule, Supplier shall provide sufficient personnel experienced and qualified to conduct such training. Available optional training, and applicable pricing and discounts, are described in Exhibit C.

### **D. Parts**

Supplier agrees to make available new/certifiable as new spare parts for each Product type ordered by an Authorized User, for five (5) years from the withdrawal of marketing of the Product type provided by Supplier to such Authorized User. Thereafter, Supplier shall advise such Authorized User of its intent to discontinue either certain parts for any Product type ordered by the Authorized User.

Supplier shall notify the Authorized User up to one (1) year prior to the effective date of any such discontinuance, and shall provide to the Authorized User the opportunity to purchase spare parts in a quantity adequate to support its installed base. Should Supplier advise the Authorized User of its intent to discontinue certain parts 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, including source code, required to ensure ongoing support, within thirty (30) days prior to the discontinuance date or to replace the unsupported Product with a supported Product at a cost to the Authorized User of no more than the cost delta between the supported Product and the unsupported Product based upon the agreed upon pricing methodology within this agreement.

### **E. Inventory Record**

Supplier shall maintain, at no additional cost, a record of all units of Product covered under warranty by type, quantity and location, including the end date for each unit's Warranty Period ("Inventory Record"). Product quantities and types may vary as Equipment is added or deleted from coverage, and Authorized User shall notify Supplier in writing of any Product relocated, added, or removed from service. Upon such notification, Supplier shall amend the Inventory Record to reflect such relocation, addition, or deletion of Product. Supplier shall provide, at no additional cost, a copy of the most current Inventory Record to any Authorized User upon request.

### **F. Product Service Record**

Supplier shall maintain, at no additional cost, a Product Service Record for each unit of Product covered under warranty or maintenance. The Product Service Record shall record the following for such unit of Product: (i) installation/ relocation/ removal/ modifications; (ii) remedial actions; (iii) preventive actions; (iv) any additional services not covered by warranty or maintenance. Upon request by the Authorized User, Supplier shall provide, at no additional cost, a copy of the Product Service Record.

### **G. Additional Services**

In addition to any on-site or depot as selected by the user, warranty obligations, Supplier shall, upon request of an Authorized User by means of an order issued in accordance with the ordering provisions of this Contract, provide additional on-site services which may include: (i) relocation of previously installed hardware; (ii) assistance to Authorized User's communications department in mutually acceptable duties related to the warranty services provided under this Contract; and (iii) cabling, if applicable. The Authorized User shall compensate Supplier for such additional on-site services in accordance with the prices identified in Exhibit C.

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Furthermore, Supplier may, upon request of an Authorized User by means of an order issued in accordance with the ordering provisions of this Contract, provide the following services beyond those identified as warranty service offerings: (i) service on equipment not covered by this Contract, (ii) repair of damage or replacement of parts of hardware resulting from changes in the hardware environment, extraordinary use of the hardware, or interconnected devices, or (iii) service outside the applicable hours of service specified in an executed order referencing this Contract. The charge for such services as available from the Vendor shall be at the hourly rate specified in Exhibit C and shall be inclusive of all expenses. Warranty services requested for a unit of hardware within the forty-eight (48) hour period immediately following Remedial Maintenance performed on the same unit of hardware for the same problem shall not be considered an additional service and shall be provided at no charge. Requests for additional services shall only be approved for payment by the Authorized User when a Product Service Record is included with the applicable invoice.

## **6. WARRANTY AND REMEDY**

### **A. Supplier**

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

### **B. Ownership**

Supplier is the owner of the Product or otherwise has the right to grant to the Commonwealth or any Authorized User title to or the right to use the Product provided hereunder without violating or infringing any law, rule, or regulation. Upon receipt of payment, the Commonwealth or the ordering Authorized User, as applicable, 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. Supplier Viability**

Supplier warrants that it has the financial capacity to perform and continue to perform its obligations under this Contract, that no legal proceedings have been threatened or 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.

### **D. Compatibility**

### **E. Product**

Supplier warrants the following with respect to the Product:

- i). Product pursuant to a particular Request for Proposal (RFP), quote, or Request for Quote (RFQ), shall be fit for the particular purposes specified by VITA in the RFP and in this Contract and, if applicable, by the authorized User requesting such quote or issuing such RFQ, and Supplier is possessed of superior knowledge with respect to the Product and is aware that Authorized Users are relying on Supplier's skill and judgment in providing the Product;
- ii). The Product shall be free of defects in material, design and workmanship under normal use during the warranty period;
- iii). The Products warranty shall not apply to Products which have been subjected to misuse, accident, unauthorized modifications; operation in an unsuitable physical or operating environment, natural disasters, power surges or unauthorized maintenance; to any third party products; loss of or damage to data; or to Software whether provided with Products or installed subsequently. This warranty does not include any service or technical support, such as assistance with "how-to" questions and those regarding Products set-up and installation. This warranty shall be voided by the removal or alteration of identification labels on the Products or its parts. In no event shall this warranty include liability for uninterrupted or error-free operation of the Products or any loss or damage to data on the Products.

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- iv). Upon delivery, the Product shall be new and in Operating Condition and shall have all released engineering changes released to date already installed;
  - v). Each Product delivered hereunder shall function in conformance with the Requirements;
  - vi). No engineering change made to the Product or System Software revisions shall degrade the performance of the Product to a level below that defined in the applicable Request for Proposal, and in the Product manufacturer's published specifications;
  - vii). Upon delivery, all System Software shall be at the current release level unless otherwise requested by the ordering Authorized User; and
  - viii). The Lenovo Branded 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 Lenovo Branded System Software, nor shall Supplier disable any Authorized User's use of such Lenovo Branded System Software through remote access or otherwise. If the Lenovo Branded System Software contains authorization codes allowing access to a data base or other software, Supplier warrants that such codes shall be perpetual and non-expiring.

**F. Performance Standards and Mean Time Between Failure**

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**G. Warranty Services**

**7. MAINTENANCE SERVICES**

Supplier shall provide Warranty Services (including unlimited telephonic support and all necessary travel and labor) during the Warranty Coverage Period (MCP) at the prices identified in Exhibit C without additional charge to maintain the Product in accordance with the Requirements.

Exhibit D provides detailed descriptions of the Supplier's warranty and maintenance offerings and responsibilities as well as remedies available to the Authorized User in the event Supplier fails to perform its warranty and maintenance obligations. Any remedies shall be paid to the Authorized User on a quarterly basis. Exhibit D defines coverage periods, response times, and restore times.

Authorized User's designated control organization shall have the exclusive authority to request 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.

**A. Ordering**

An Authorized User may order Maintenance Services for any Product at any time during the term of the Contract, irrespective of whether such Product is covered under warranty or maintenance at the time the order is issued to Supplier. Each order shall identify:

Product and, if applicable, serial number, for which Maintenance Services shall be provided, Maintenance Level to be provided, and MCP for the Product Maintenance.

Authorized User may elect, at any time, an alternative Maintenance Level offered by Supplier. Such amendment shall take effect within thirty (30) days following Supplier's receipt of Authorized User's written notice, in the form of a modification to an order.

Unless otherwise agreed to by the Authorized User and Supplier, the MCP for a unit of Product shall be one (1) year from the effective date of any executed order for Maintenance on such Product.

Co-termination of MCP, TBD based on Supplier proposal.

**B. Renewal**

At least sixty (60) days prior to the expiration of the MCP for each unit of Product, Supplier shall notify the Authorized User of such expiration, and the Authorized User, at its sole discretion, may issue an order to Supplier to renew Maintenance Services, including System Software

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Maintenance Services, for an additional one (1) year period. The annual fee for Maintenance Services shall not exceed the fee charged for the preceding year's Maintenance Services by more than three percent (3%), or the annual change in CPI, as defined in the Purchase Price and Price Protection section, in effect at the time, whichever is less. Termination of this Contract or cancellation of Maintenance Services, including System Software Maintenance Services if provided as a separate offering from Supplier, by an Authorized User shall not affect this Contract or the grant of any license pursuant thereto.

### **C. Services**

Maintenance Services shall be as follows:

#### **1. Product Covered**

Exhibit C lists all Product types for which Supplier offers Maintenance Services. No Authorized User is obligated to continue Maintenance Services on Product that has been removed from service, provided Supplier has been notified in writing of such removal.

#### **2. Preventive Maintenance**

Supplier's Preventive Maintenance offerings and responsibilities, and the Authorized User's associated remedies, are described in Exhibit D.

#### **3. Remedial Maintenance**

Supplier's Remedial Maintenance offerings and responsibilities, and the Authorized User's associated remedies, are described in Exhibit D.

#### **4. Replacement Parts**

Supplier's offerings and responsibilities related to Replacement Parts, and the Authorized User's associated remedies, are described in Exhibit D.

#### **5. Spares**

Supplier's offerings and responsibilities related to Spares, and the Authorized User's associated remedies, are described in Exhibit D.

#### **6. Notification and Correction of Defects**

Supplier's offerings and responsibilities related to notification and correction of defects, and the Authorized User's associated remedies, are described in Exhibit D.

#### **7. Advanced Replacement Services**

Supplier's advanced replacement service offerings and responsibilities are described in Exhibit D.

#### **8. On-site Maintenance Services**

Supplier's on-site maintenance service offerings and responsibilities are described in Exhibit D.

#### **9. System Software Maintenance**

During the MCP and as part of the standard Maintenance Services offering, Supplier shall provide the following Maintenance Services (including unlimited telephonic support and all necessary travel and labor) without additional charge to any Authorized User to maintain the System Software in accordance with the Requirements:

##### **a) New Releases**

Supplier's responsibilities related to new releases of System Software and Documentation are described in Exhibit D.

##### **b) Coverage**

Supplier's offerings and responsibilities related to coverage for telephonic and written consultation in connection with use, problems, and operation of the System Software are described in Exhibit D.

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c) **Response and Restore Times**

Supplier's response and restore times related to use, problems, and operation of the System Software, and any associated remedies, are described in Exhibit D.

d) **Software Evolution**

Should Supplier merge or splinter the System Software previously provided to any Authorized User, such action on the part of Supplier shall not in any way result in any Authorized User being charged additional license or Maintenance fees in order to receive enhancements, releases, upgrades or support for the System Software.

If Supplier or Software Publisher reduces or replaces functionality contained in a licensed System Software product and provides the same or substantially similar functionality as or within a separate or renamed System Software product, then the Commonwealth or the Authorized User shall be entitled to license such System Software product at no additional license or maintenance fee, and subject to the terms and conditions herein.

If Supplier or Software Publisher releases an option, future System Software product or other release that has substantially the same functionality as the Software products provided under this Contract, and Software Publisher and/or Supplier ceases to provide maintenance for the older System Software product, then Supplier shall offer the Commonwealth or the Authorized User the option to exchange licenses for such replacement System Software product or function at no additional charge.

**10. Escalation Procedures**

TBD based on Supplier proposal.

**11. Remedies**

In addition to any remedies described in Exhibit D, if Supplier is unable to make the Product, including the System Software, conform, in all material respects, to the Requirements within thirty (30) days following notification by an Authorized User, Supplier shall, at such Authorized User's request, either (i) provide a replacement Product at no additional cost to the Authorized User, or (ii) accept return of the Product and return all monies paid by such Authorized User (a) for Maintenance Services for the returned Product, including System Software, pro-rated on a monthly basis as of the date the Authorized User reported the non-conformity and (b) for the Product, including System Software, pro-rated on a monthly basis as of the date the Authorized User reported the non-conformity and based on the average life of the Product.

Notwithstanding anything to the contrary in this Contract or in any exhibit hereto, VITA and any Authorized User retain all rights and remedies available at law or in equity.

**8. SCOPE OF USE**

**9. SOFTWARE LICENSE**

(LENOVO COMMENT to VITA: Outside of the Operating System contained within the system and Lenovo's no charge TCO tools, Lenovo is not proposing Software within this response.)

System Software licensed directly by Supplier

**A. License Grant**

**B. Limitations on Copying and Disclosure**

**C. Business Continuity and Recovery**

System Software licensed by Software Publisher] Supplier shall provide System Software for Product. Such System Software is licensed directly from the Software Publisher through the end user licensing agreement (EULA), as amended, attached hereto as Exhibit E. [end Option 2]

The following provisions apply to both Option 1 and Option 2.

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**D. Authorized User Compliance**

**E. No Subsequent, Unilateral Modification of Terms by Supplier (“Shrink Wrap”)**

**10. ORDERS AND COMPENSATION**

**A. Supplier Quote and Request for Quote**

Should an Authorized User determine that a competitive process is required to ensure it receives the best value, such Authorized User may, at its sole discretion, on a case-by-case basis and upon approval by VITA, use a Request for Quote (RFQ) process to obtain product identical or similar to that provided by Supplier pursuant to this Contract. The RFQ process is typically used when an Authorized User requires a complete solution that may be fulfilled by Products and Services herein, but whose complexity or size may result in economies that could not be passed on to the Authorized User within the confines of the established contract catalog discount pricing. When an RFQ is used, the project timing and requirements will be clearly outlined in the RFQ document. In some situations, the Authorized User may not identify the exact specifications required. If that is the case, the RFQ respondents will be given the opportunity to identify and propose their recommended specifications.

In cases where the RFQ process is invoked, the Authorized User will issue an RFQ describing its requirements to potential suppliers, and suppliers will provide, at their discretion, within the timeframe specified in the RFQ, a detailed Statement of Work (SOW)-based quote. Any quote submitted to the Authorized User as a result of this process shall include (a) a detailed description of each item proposed, at the Exhibit C line item level, (b) the quantity of each such item, (c) the contract price, (d) any additional percentage discount offered, and (e) an extended/total price.

Generally, the Authorized User will select the supplier offering the lowest total cost proposal. However, non-price factors may be included in the evaluation criteria for a given RFQ. Any purchase from Supplier that is a result of the RFQ process shall be subject to the terms and conditions specified and outlined in this Contract and any subsequent modifications. Additional terms and conditions may be requested or mandated within the RFQ document. To the extent that any terms and conditions of the Authorized User are inconsistent with the terms and conditions of this Contract, the terms and conditions of this Contract shall supersede.

**B. Orders**

Notwithstanding all Authorized User’s rights to 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.

By issuing an order, VITA or any Authorized User agrees to be bound by the terms of this Contract. Each order will constitute a separate agreement between Supplier and VITA or any Authorized User that issues the order. Supplier is required to accept any order placed by an Authorized User through the eVA electronic procurement website portal ([eVA Home Page](#)). eVA is the Commonwealth of Virginia’s e-procurement system. State 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:

- ix). Purchase Order (PO): An official PO form issued by an Authorized User.
- x). 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 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.

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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 Non-procurement 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 SUCH AUTHORIZED USER IS VITA.

**C. Purchase Price and Price Protection**

Exhibit C sets forth the prices by Product type (including whole units and repairable major components thereof) and the appropriate Commonwealth discounts. The discounts shall not decrease for a period of not less than two (2) years from the Effective Date of this Contract. Thereafter, any increase in price shall be limited to once per twelve (12) month period and shall not exceed the lesser of three percent (3%) or the annual increase in the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, for the expenditure category "Information technology, hardware and services" as published by the Bureau of Labor Statistics of the Department of Labor (<http://www.bls.gov/>), for the effective date of the increase compared with the same index one (1) year prior. The Supplier shall demonstrate the added value for any requested discount decrease. Any discount decrease shall be submitted in writing in accordance with the above and shall not become effective for sixty (60) days thereafter. Semi-annually, VITA may check the prices for Product and ensure that such prices are offered at the agreed upon discounted for the expenditure category "Information technology, hardware and services", and the prices in Exhibit C shall be appropriately reduced to ensure continued pricing methodology integrity, if required. Supplier agrees to offer Product price reductions to ensure compliance with the Competitive Pricing Section.

**D. Supplier-Sponsored Product Promotions**

The Supplier, at its discretion, may sponsor Product and Service promotions during the Contract term or any extensions thereof. Should Supplier choose to sponsor such a promotion, Supplier shall provide in writing to VITA, at least five (5) days prior to the promotion, the following information: (i) the dates of the promotion or the duration of the promotion to include the commencement date and the ending date; (ii) the exact Products or Services covered in the promotion; and (iii) the pricing or percentage discount offered during the promotion. VITA shall communicate to Supplier in writing its agreement to the promotion.

The Supplier shall be in breach of the Contract in the absence of a written agreement regarding the promotion. In any event wherein the Supplier proposes prices that are different than the Contract prices to any Authorized User without first obtaining VITA's agreement, the Supplier shall be in breach of the Contract, and VITA shall have all remedies available under Contract and law and in equity.

All Supplier-sponsored Product or Service promotions shall be available to all Authorized Users. Should the Supplier request a promotion that would be limiting, either through product configuration or quantities of Products and Services, VITA, at its sole discretion, may not provide a written agreement. VITA and Supplier agree that promotions shall not target any one Authorized User, or a few Authorized Users.

VITA and Authorized Users, at their discretion, may assist in advertising the promotion. This assistance may consist of advertising space on Authorized User web sites, or other assistance at an Authorized User's discretion.

**E. 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. VITA or Authorized User agrees to pay as specified by Supplier in an invoice or supplemental document, including any applicable sales, use or similar taxes, fees or duties (unless VITA or Authorized User supply exemption documentation), and any late payment fee. Without limiting the foregoing, all shipping costs are the Supplier's responsibility except to the extent such charges are identified in Exhibit C, or as noted in any

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executed order referencing this Contract. 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). Applicable order date
- v). Ship date
- vi). Ship-to location contact name
- vii). This Contract number and the applicable order number
- viii). Supplier's Federal Employer Identification Number (FEIN).

Supplier shall submit separate invoices for the Maintenance charges (detailing the Product types and quantities by Authorized User site), for billable additional services, and for any installation services, including the appropriate Product Service Record or other agreed upon written instrument. Additional invoices may be required by Authorized User from time to time detailing charges for Product at affiliate locations by corporate department.

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

#### **F. Purchase Payment Terms**

Supplier is responsible for the accuracy of its billing information. Supplier agrees not to issue invoices hereunder until Product has been shipped. Charges for Product or Services accepted more than ninety (90) days prior to receipt of a valid invoice may not be paid.

Product shipped without the applicable Documentation may be deemed incomplete, and payment shall not be due until after the required Documentation is provided.

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 receipt of invoice. For invoices that are not paid within such time period, a late payment fee of 2% per month of the unpaid balance may be assessed against each correct invoice that remains unpaid, or the maximum percentage allowable by local law, whichever is greater.

#### **G. Universal Service Fund**

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

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## 11. REPORTING

### A. 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 and contact information for submission is available at

<http://www.vita.virginia.gov/uploadedFiles/SCM/SupplierReportofSalesTemplate.xls>. The report shall be submitted via electronic mail to the VITA IFA Coordinator and shall report total sales (defined for purposes of this report as all invoiced payments received by Supplier from all Authorized Users) for this Contract during the preceding month. Supplier shall be responsible for submitting the monthly report of sales even if Supplier has had no sales (i.e., a \$0.00 total sales value) for the reporting period.

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 after submitting the "Supplier Monthly Report of Sales". The IFA payment is equal to two percent (2%) of total sales reported during the relevant month.

The IFA payment shall be submitted to VITA, Attention VITA Controller in the form of a check or electronic payment, made payable to the Treasurer of Virginia. The IFA payment shall reference this Contract number, "report amounts", and "report period" and shall be accompanied by a copy of the relevant "Supplier Monthly Report of Sales". Contact information for submission of IFA payments is available at

<http://www.vita.virginia.gov/uploadedFiles/SCM/SupplierReportofSalesTemplate.xls>.

Failure to comply with reporting, payment and distribution requirements of this section may result in default of the Contract.

### B. Small Business Participation

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 Businesses as subcontractors and second-tier suppliers under this Contract.

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

In addition, by the 10th day of every month, Supplier shall submit to VITA the Small Business Subcontracting Monthly Report (template to be provided). The report should specify the amount of such spend provided to small businesses. Supplier shall submit the report to

[SWaM@vita.virginia.gov](mailto:SWaM@vita.virginia.gov).

## 12. COMPETITIVE PRICING

Supplier warrants and agrees that each of the charges, economic or product terms or warranties granted pursuant to this Contract are comparable to or better than the equivalent charge, economic or product term or warranty offered to any commercial or government customer of Supplier. If Supplier enters into any arrangement with another customer of Supplier or with an Authorized User to provide Software or Services under more favorable prices, as the prices may be indicated on Supplier's current U.S. and International price list or comparable document, then this Contract shall be deemed amended as of the date of such other arrangements to incorporate those more favorable prices, and Supplier shall immediately notify VITA of such change.

## 13. 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, the receiving Party may disclose the Confidential Information as delivered by the disclosing Party to subcontractors, contractors or agents of such receiving Party that are bound by non-disclosure contracts with such Authorized

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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).

The confidentiality obligations of each Party shall remain in effect for a period of two (2) years following the date of termination or expiration of this Contract

#### **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**

Authorized User, Supplier shall, upon the termination or expiration of this Contract, (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 disclosing Party's Confidential Information, whether in tangible or intangible form with the exception of data contained on a hard drive returned to Lenovo during a warranty replacement. Hard drive data protection is considered the responsibility of the user.

VITA or the Authorized User shall retain and dispose of Supplier's Confidential Information in accordance with the Commonwealth of Virginia's records retention policies.

### **14. INDEMNIFICATION AND LIABILITY**

#### **A. Indemnification**

Supplier agrees to indemnify, defend and hold harmless the Commonwealth, VITA, or any Authorized User, (collectively, "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, assessments, fines (whether criminal or civil), 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, agent, or subcontractor of Supplier, (ii) any act or omission of any employee, agent, or subcontractor of Supplier (iii) breach of any representation, warranty or covenant of Supplier contained herein, (iv) any defect in the Product or Services, or (v) 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 use of the Product or any Product component or 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

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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, 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.

#### **B. Limitations of Liability**

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR (A) LOSS OF PROFITS, BUSINESS, REVENUE, GOODWILL OR ANTICIPATED SAVINGS; (B) LOSS OF OR DAMAGES TO DATA; OR (D) ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND, HOWSOEVER CAUSED; WHETHER THE LIABILITY IS BASED ON CONTRACT, NEGLIGENCE, TORT OR OTHERWISE AND REGARDLESS OF WHETHER A PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES.

Notwithstanding any language to the contrary in this Contract or any order issued hereunder, the maximum cumulative liability of Supplier to Commonwealth, VITA, and all Authorized Users for all actions arising out of or related to this Contract and all orders issued hereunder for each twelve (12) month period during the term of this Contract shall not exceed the amount paid by Commonwealth, VITA, and all Authorized User for Equipment during such period.

### **15. 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/library/default.aspx?id=537#securityPSGs>) or a successor URL(s), as are pertinent to Supplier's operation, except Appendix B to the policy entitled "Removal of Commonwealth Data from Surplus Computer Hard Drives and Electronic Media Standard" shall not apply.. 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 Authorized User 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 Authorized User 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.

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Supplier shall indemnify, defend, and hold the Commonwealth, VITA, the 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 the Commonwealth, VITA, the Authorized User, their officers, directors, agents or employees, on account of the failure of Supplier to perform its obligations pursuant to this Section.

## **16. BANKRUPTCY**

If Supplier becomes insolvent, takes any step leading to its cessation as a going concern, or ceases business operations for any reason and other than assignment as allowed by this Contract, 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 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 right of VITA or any Authorized User to pursue or enforce any of its rights under this Contract or otherwise.

## **17. GENERAL PROVISIONS**

### **A. Relationship Between VITA and Authorized User 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 any Authorized User, shall be reimbursed by Supplier upon demand by VITA or such Authorized User.

### **B. Incorporated Contractual Provisions**

The then-current contractual provisions at the following URL are mandatory contractual provisions, required by law or by VITA, and that are hereby incorporated by reference: <http://www.vita.virginia.gov/uploadedFiles/SCM/StatutorilyMandatedTsandCs.pdf>

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

The then-current terms and conditions in documents posted to the aforereferenced URLs are subject to change pursuant to action by the legislature of the Commonwealth of Virginia, change in VITA policy, or the adoption of revised eVA business requirements. 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 URLs periodically.

### **C. Compliance with the Federal Lobbying Act.**

Supplier's signed certification of compliance with 31 USC 1352 (entitled "Limitation on use of appropriated funds to influence certain Federal Contracting and financial transactions") or by the

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regulations issued from time to time thereunder (together, the "Lobbying Act") is incorporated as Exhibit F hereto.

**D. 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.

**E. 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. Supplier may invoke such public body's ADR procedures, if any, 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.

**F. 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.

**G. 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 U.S. mails, postage prepaid, for mailing by registered, certified mail, or overnight courier service addressed to, in the case of the Supplier, the Vice President and Deputy General Counsel, at the addresses shown on the signature page. VITA or Supplier may change its address for notice purposes by giving the other notice of such change in accordance with this Section.

**H. No Waiver**

Any failure to enforce any terms of this Contract shall not constitute a waiver.

**I. Assignment**

This Contract shall be binding upon and shall inure to the benefit of the permitted successors and assigns of VITA and Supplier. Neither Party may assign, or otherwise convey this Contract, or any of its rights and obligations hereunder, to any entity without the prior written consent of the other Party, which consent shall not be unreasonably withheld, and any such attempted

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assignment, 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.

**J. Captions**

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

**K. 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.

**L. Survival**

The provisions of this Contract regarding Lenovo Branded Software Licenses, Warranty, Confidentiality, Liability and Indemnification, and the General Provisions shall survive the expiration or termination of this Contract. In addition, the provisions of this Contract necessary for the use and operation of the Warranty provisions herein, shall continue in effect through termination of the Warranty Services ordered pursuant to the Warranty provisions herein.

**M. 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.

**N. Remedies**

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

**O. Right to Audit**

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

- ix). Three (3) years from Service performance date;
- x). Performed at Supplier's premises, at reasonable intervals not exceeding once per year and with prior written notice of not less than thirty (30) days, during normal business hours at mutually agreed upon times; and
- xi). Excludes access to Supplier cost information.

In no event shall the Supplier have the right to audit, or require to have audited, VITA or any Authorized User.

**P. Offers of Employment**

**Q. Contract Administration**

Supplier agrees that at all times during the term of this Contract an account executive, at Supplier's senior management level, shall be assigned and available to VITA. Roles and responsibilities of the account executive are TBD based on Supplier proposal. Supplier reserves the right to change such account executive upon reasonable advance written notice to VITA.

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**R. Entire Contract**

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

- Exhibit A Request for Proposal
- Exhibit B N/A
- Exhibit C Prices, Fees, Service Charges and Payment Schedule
- Exhibit D Warranty Descriptions
- Exhibit E Software Publisher's EULA, as amended (for reference only)
- Exhibit F Certification Regarding Lobbying
- Exhibit G Awarded Categories

This Contract, its Exhibits, and any prior non-disclosure agreement constitute the entire agreement between VITA and Supplier and supersedes 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, or referenced by the Supplier's proposal shall be deemed invalid. The provisions of the Virginia Department of General Services, Division of Purchases and Supply Vendor's Manual shall not apply to this Contract or any order issued hereunder. 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 C, Exhibit A, Exhibit D, Exhibit E

An Authorized User and Supplier may enter into an ordering agreement pursuant to this Contract. To the extent that such ordering agreement, or order issued hereunder, include any terms and conditions inconsistent with the terms and conditions of this Contract, such terms and conditions shall be of no force and effect.

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.

Executed as of the last date set forth below by the undersigned authorized representatives of VITA and Supplier.

Supplier

VITA

By:   
(Signature)

By:   
(Signature)

Name: Jason Mooneyham  
(Print)

Name: James T. Roberts  
(Print)

Title: Director of Sales

Title: Director Finance & Administration

Date: January 26, 2009

Date: 2-02-09

Address for Notice:

1009 Think Place  
Morrisville, NC 27560

Address for Notice:

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\_\_\_\_\_  
\_\_\_\_\_

Attention: Kathleen A. O'Neil

Attention: Contract Administrator

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# EXHIBIT A

# Detailed Description of Proposed Solution(s)

## A. General

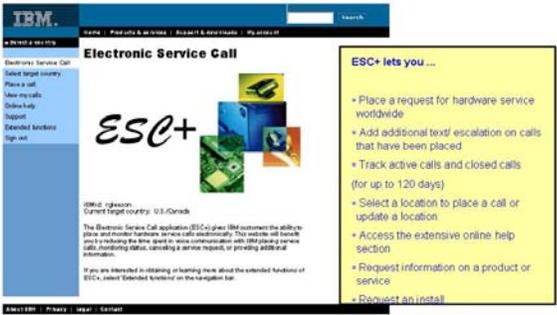
	Requirements	A	B
1.	<p>Can you can sell to all locations of all public bodies in the entire Commonwealth of Virginia? Will you be incorporating subcontractors or alliances? Please provide the details of your plan.</p>	Y	<p>Lenovo has been selling in the Commonwealth to Public Sector bodies for the past 15 years. We are able to reach all entities of the Commonwealth through our web capabilities, expansive support team and through our experienced account team that includes both local representatives and telesales.</p> <p>Lenovo may utilize subcontractors to fulfill parts of this agreement in the following manners:</p> <ul style="list-style-type: none"> <li>• SWaM partners like Attronica, to perform warranty break fix, or onsite installation.</li> <li>• Local resellers as agents of Lenovo who have a value proposition to offer the Public Sector bodies of the Commonwealth that are unique to that reseller, e.g. collaborative Educational tool vendors</li> </ul> <p>Lenovo will work with VITA to select subcontractors to perform services that make sense for your local constituents.</p>
2.	<p>Can you can provide service to all locations of all public bodies in the entire Commonwealth of Virginia? Will you be incorporating subcontractors or alliances? Please provide the details of your plan.</p>	Y	<p>Lenovo will continue to provide service to all locations within the Commonwealth and even beyond its borders for employees that travel outside of Virginia, or even the US.</p> <p>International Warranty Service (IWS) is an included service offering that enables VITA Public Sector bodies' employees who travel with or relocate any Lenovo product to receive warranty service in any of the over 60 countries where their product is sold and serviced.</p> <p>Through Lenovo's best of Breed services network, Lenovo has 2,700 global service employees around the world. Through our strategic services partnerships, Lenovo has 22,000 certified technicians globally to service our customers.</p> <p>The following chart demonstrates the depth of Lenovo's services bench:</p> <div data-bbox="711 1415 1429 1921"> <p><b>Best-in-Class Global Service Delivery</b></p> <p><b>Services Coverage</b>            2,700 direct employees            22,000 certified technicians            170 countries            17 languages</p> <p><b>Awards:</b>            TBR #1 Service &amp; Support OEM March 2008            PC MAGAZINE #1 Ranking for Service &amp; Repairs 2007            LAPTOP EDITOR'S CHOICE Editor's Choice, Service Support 2006</p> <p><b>Global Locations:</b> Toronto, Windsor, Montreal, Chicago, St. Louis, Boulder, Monterey, Atlanta, Rochester, Whitsett, Charlotte, Atlanta, Greenock, Erfurt, Brno, Sucharest, Montpellier, Madrid, Poland, Bangalore, Taipei, Singapore, Kuala Lumpur, Beijing, Seoul, Fujisawa, Tokyo, Shenzhen, Hong Kong, Brisbane, Sydney, Ballarat, Sao Paulo, Buenos Aires, Johannesburg, Guadalajara.</p> <p><small>lenovo NEW WORLD NEW THINKING   Lenovo Confidential   © 2008 Lenovo</small></p> <p><small>● Factory and configuration centers            ● Technical support and call centers</small></p> </div>

	Requirements	A	B
			Large national partners will perform warranty service, such as the IBM Corporation. Lenovo will work with VITA to select subcontractors to perform services that make sense for your local constituents.
3.	VITA strongly encourages Suppliers to develop a catalog website that <i>interfaces</i> with eVA. Can your company produce a punch-out catalog website? Refer to: <a href="http://www.eva.virginia.gov/vendors/pages/catalogcreation.htm">http://www.eva.virginia.gov/vendors/pages/catalogcreation.htm</a> Please provide either screen shots or a link to serve as an example.	Y	Lenovo has an active punch out catalog website in place for VITA at: <a href="https://www.directlenovo.com/public/index.cfm?vcid=%27%29%3ESAWLD%21QP%20%20%0A&amp;maxid=virginia&amp;establish_cookie=true">https://www.directlenovo.com/public/index.cfm?vcid=%27%29%3ESAWLD%21QP%20%20%0A&amp;maxid=virginia&amp;establish_cookie=true</a>  This website allows users to review the product standards and pricing, place or track orders, and then do a large variety of custom report capabilities from the site. Lenovo can provide punch out catalog capability through our site. Lenovo has included sample screen shots in Appendix H, Lenovo Direct Web Capabilities.
4.	Can your firm have a catalog website up, functioning and interfacing with eVA within 30 days of contract award?	Y	Lenovo's website is already up and running and interfacing with eVA today.
5.	Will your firm have a dedicated account management team on this contract? Please provide details.	Y	Lenovo already has an experienced and committed account team led by Steve Schoen, who is in place today. This group includes an Inside Sales Representative team led by Kechia Brustmeyer, a Regional Sales Director who can manage escalations, (Jason Mooneyham) a Field Technical Sales Support contact (Charles Hooks), and a Lenovo Direct team led by Colin Call.
6.	Will your firm have more than one field account executive on this contract? Please provide details.	Y	Lenovo has Steve Schoen, Lenovo Account Manager and Jason Mooneyham, Lenovo Regional Sales Director who are both responsible for the success of this partnership and meeting and exceeding VITA's business requirements.
7.	Does your firm have the marketing ability and resources to promote this contract to schools, universities, local and state agencies? Please provide marketing plan and examples of marketing tools.	Y	Lenovo performs this responsibility for a number of its customers, including the State of North Carolina. Lenovo creates a variety of marketing collateral items, including e-flyers and web link resources, and we have technology days at key events elected by the State. We attend a variety of education customer and government conferences where we discuss the contract and what it offers and we carry information on Lenovo's custom website for VITA. Lenovo is very willing engage with VITA on any co-marketing strategies that you believe will be of value to your organization and participants.
8.	Will your proposed product line be compatible with the following operating systems, Microsoft Windows 98, 2000, NT, 2003 Server, XP and Vista?	Y	All the Lenovo systems proposed within this response are compatible with Microsoft Windows 98, 2000, NT, 2003 Server, XP and Vista. It should be noted that some of the operating systems mentioned above are not currently available for sale by Microsoft, but nonetheless are still compatible with Lenovo's systems.

	Requirements	A	B
9.	Does your firm offer an employee, teacher or student purchase program? Please provide details.	Y	<p>Absolutely. Lenovo offers a comprehensive program specifically designed for the needs of teachers, faculty, and students. Lenovo will offer the teachers PC systems at the same pricing as the VITA standards. However, Lenovo's years of experience have taught us that individual purchasers like professors and teachers, are often looking for systems suited to their particular needs, as they may require education software or media capabilities etc. Therefore, Lenovo suggests a purchase program that opens our full catalog to the teachers/students/faculty in the Commonwealth. This program offers systems, peripherals, software and warranties at significant discounts from Lenovo's web price. <b>**Moreover, Lenovo can provide the marketing collateral to be distributed or can distribute the information ourselves through a VITA approved distribution list to make the teachers, students and faculty members aware of the product promotions, special offers and ordering methods**</b></p> <p><i>**VITA would select either program, they are not concurrent. Also, for individual purchases, the terms and conditions that pertain to VITA Public Body customers, like payment terms for instance, do not apply to the teacher/faculty purchase programs.</i></p>
10.	Does your firm offer any product incentives, credits and or rebate programs? Please provide details.	Y	<p>Lenovo can offer a rebate back to VITA if you want to be the launch site and run co-marketing with Lenovo on the Teacher/Student Purchase Program discussed in Lenovo's response to question nine (9).</p> <p>Lenovo often runs product and service promotions through our website, like "double your memory" or no cost shipping on specific systems.</p> <p>Lenovo is willing to discuss other financial incentives with VITA; however, our proposal response is designed to offer value through attractive pricing, services and TCO to all of your participants.</p>

## B. Reports

	Requirements	A	B
1.	Can your firm provide reports on request to users detailing products that have been placed in any of their locations? Please provide examples.	Y	<p>Lenovo has comprehensive online reporting capabilities that provide a limitless combination of data reports. Here are a few general types:</p> <ul style="list-style-type: none"> <li>• Performance reports</li> <li>• Order Status - Lists all items ordered with current part status</li> <li>• Asset Tracking - Displays serial numbers of shipped products</li> <li>• Purchase Report - Lists purchase prices of all shipped items</li> <li>• Cycle Time - Reports elapsed time from Order Receipt Date to Order Ship Date, or to Delivery Date</li> <li>• Backlog - Lists line items that have not yet shipped</li> </ul>

	Requirements	A	B
2.	Does your firm maintain an electronic service log that is available to users on specific computer hardware? Please provide examples.	Y	<p>Lenovo has a tool which is called PUGH accessible via Lenovo's support site, (<a href="http://www.lenovo.com/support">www.lenovo.com/support</a>) which allows a user to enter their machine type and model number and track entitlement on the warranty of the system. Through this same tool, Lenovo's warranty technicians record service calls as trouble tickets, do problem determination and update the trouble ticket with resolution status. The user can review the ticket notes by contacting the Lenovo Contact center and providing the same phone number that was used to generate the trouble ticket.</p> <p>At an organizational level, there are ways to get service reports, such as through ESC + (Electronic Service Call) which offers a variety of means to enter and track your service requests</p> <p><b>ESC+</b></p>  <p>Additionally, should any VITA participant wish to perform their own warranty repairs, they can enroll and take training through the Lenovo Warranty Self Maintainer Program. Through this tool Lenovo offers access to an online tool called e-claim which provides access to online warranty part ordering, placing service reimbursement claims to Lenovo and also tracking service incidents.</p>
3.	Does your firm provide any additional reports that would be an added value to the Commonwealth? Please describe and provide examples.	Y	<p>Yes, Lenovo has a variety of reports that will be of value to the public sector bodies of VITA. The reports are no additional charge and available from Lenovo's online website. Here is more information on the advantages of using Lenovo's web:</p> <p><b>Web</b></p> <p>Lenovo provides VITA customers with a private, personalized web site, giving access to Lenovo product information and service and support transactions, including customized product catalogs, your negotiated pricing, product comparisons and targeted promotional offers. Lenovo's web tool provides 24x7 access and self-service to Lenovo products and services through your own customized portal. Specific highlights include:</p>

	<b>Requirements</b>	<b>A</b>	<b>B</b>
			 <p>Personalized company welcome page and customized order authorization levels</p> <ul style="list-style-type: none"> <li>• Solution selection <ul style="list-style-type: none"> <li>○ Customized product catalog</li> <li>○ Your company-specific prices</li> <li>○ Products that can be browsed by category with comparison capability</li> <li>○ Fast path to the most-frequently purchased solutions</li> <li>○ On-line configuration tool for selection of future products</li> </ul> </li> <li>• Order direct and track in real time - Order over the Web or telephone <ul style="list-style-type: none"> <li>○ Shipping and pay preferences in local currency</li> <li>○ Order tracking online</li> </ul> </li> <li>• Performance reports <ul style="list-style-type: none"> <li>○ Order Status - Lists all items ordered with current part status</li> <li>○ Asset Tracking - Displays serial numbers of shipped products</li> <li>○ Purchase Report - Lists purchase prices of all shipped items <ul style="list-style-type: none"> <li>- Cycle Time - Reports elapsed time from Order Receipt Date to Order Ship Date, or to Delivery Date</li> <li>- Backlog - Lists line items that have not yet shipped</li> </ul> </li> <li>○ Easy access to assistance <ul style="list-style-type: none"> <li>- Interactive help</li> <li>- Contacts associated with account</li> <li>- Self-service support tools</li> <li>- 24 x 7 Help Desk in 21 languages globally</li> </ul> </li> </ul> </li> </ul>

**C. Related Services**

	<b>Requirements</b>	<b>A</b>	<b>B</b>
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	Requirements	A	B
1.	Does your firm have a customer support program? Please describe your firm's ability to keep users informed of new products, changes in technology, advanced specification documentation and other market information.	Y	<p>Lenovo has multiple means to communicate with our specific customers under VITA. First and foremost, Lenovo establishes relationships with the organizations we support under the agreement. We have interlock meetings on a regular business to discuss current product status, emerging products and technology trends. Lenovo has a Customer Transition Planning Document which contains complete information on changes to our entire product line. This document serves as Lenovo's notification in writing of our planned changes. The objectives of our product transition plan process are to:</p> <ul style="list-style-type: none"> <li>• Communicate our future product directions and engineering changes 60 days in advance</li> <li>• Document roadmaps to show 3 month production overlap to ease the transition from current platforms to future products</li> </ul> <p>This monthly document provides detailed product roadmaps, including planned transitions six months into the future, with product trends nine months out. The documents include product compatibility information, new product highlights, preloads and alliances. Lenovo maintains component consistency for 12 months on global workhorse models, which means no changes to your images. The Lenovo ThinkCentre desktop and ThinkPad families now have an</p>
2.	Does your firm provide installation services? Please provide details.	Y	<p>Lenovo has a full suite of offerings under Lenovo's umbrella when it comes to installation. We can customize a Statement of Work specific to the needs of the organization. Lenovo has included a variety of services capabilities for both installation and Asset Recovery Services in the Appendices for your reference. Here are some of the types of services we can offer:</p> <ul style="list-style-type: none"> <li>• Logistics management and product storage</li> <li>• Special packaging and documentation</li> <li>• Just in time shipments to meet rollout schedules</li> <li>• Image loading, asset tagging, configuration, staging</li> <li>• Simple un-pack, inspect, plug and place the product</li> <li>• Out of box testing, connection to the network</li> <li>• Installation of printers and peripherals</li> <li>• Software installation and configuration</li> <li>• Data and setting migration</li> <li>• Secure Data Disposal</li> <li>• Disposal of existing hardware</li> <li>• Removal of packaging materials.</li> </ul> <p>Within the proposal we have offered installation as defined in the pricing file in order to give a representative starting price.</p>
3.	Is your firm able to respond to a user request for service within eight (8) business hours? Please provide detail on how this will be accomplished.	Y	<p>Through Lenovo's Contact Center which is staffed 24X7X365, any user can call and speak immediately with a Lenovo technical service representative (TSR). Lenovo's TSR will troubleshoot and potentially run diagnostics with the user to try to resolve the service issue. If further service is required, depending on the base level of warranty ordered, Lenovo may schedule an onsite technician to engage with the user if onsite warranty is a part of the solution or schedule a pickup</p>

	Requirements	A	B
			box to be sent to the user if the base warranty is depot coverage. Lenovo has included a service flow chart in <i>Appendix E-Lenovo Service Call Process</i> .
4.	Is your firm willing to commit to service-level agreements? If so please refer to Appendix B and fill in the turquoise shaded areas.	Y	Lenovo is willing to entertain services levels for VITA at a public sector body level. Lenovo has found that matching service level agreements to the requirements of the specific organization makes the service level more meaningful and compelling to the public sector body. Some of the areas where Lenovo will consider service levels pertain to product delivery, invoice accuracy, telephone support and product quality.
5.	Does your firm offer 8am to 5pm EST hardware and software support? Please provide details.	Y	Lenovo's Onsite warranty objective is 8X5, parts and labor, next business day.  Lenovo will register our designated public sector customers under VITA with licenses for Lenovo's Enhanced Support Services (ESS). ESS provides immediate telephone access to a dedicated team of Lenovo Level 2 hardware and LAN experts. These Level 2 Specialists at the Lenovo Customer Contact Center will provide assistance in configuring PC hardware, network operating systems, network interface cards, and third party options. Lenovo's ESS customers receive top priority in the queue.
6.	For security reasons, will your firm allow the user to keep a failed hard drive while receiving a new hard drive that is covered under warranty? Please provide details.	Y	Lenovo has a hard drive retention program that allows the purchaser the option to select a line item for "hard drive retention". This specific part number 40Y9174, allows the user to keep the failed hard drive in the case of a warranty replacement in order to protect any sensitive data that may be on the failed drive. This program does come at a small additional price as identified in the pricing portion of the response.
7.	Does your firm provide custom imaging? Please provide details.	Y	Lenovo has depth of services experience: The Imaging Technology Center (ITC) was formed to assist customers with compatibility testing and software integration. The ITC was introduced in 1996 and has served hundreds of customers worldwide. ITC facilities are located in Research Triangle Park, NC, U.S.A.; Greenock, Scotland; and Yamato Japan. Work can be completed quickly and reliably due to a specialized testing environment, industry certified professionals and engineering resources. This offering can help you with your initial product introduction and the subsequent transitions to newer models. There are a variety of services that the ITC can perform for you. The most common services are listed below. Imaging Service Fees are made available either as one-time fees, or on a per machine basis. Available Imaging Services are as follows: <b>1. Image Check/Packaging for Manufacturing, No Testing</b> Includes: Customer delivers image, ITC packages image for manufacturing using Drive Image and boots image to ensure hardware compatibility. Create recovery method as specified. Timeframe: 1-3 Business Days for hardware setup, Image validation/packaging and delivery to manufacturing. <b>2. Functional Verification of Individual Customer</b>

	Requirements	A	B
			<p><b>Configurations</b> Includes: Customer supplies image, Test plan developed by ITC and sent to customer for approval prior to testing, ITC completes functional testing and packages image for manufacturing. Create recovery method as specified. Timeframe: 3-5 business days once ITC receives test plan approval from customer.</p> <p><b>3. Image Migration from any Hardware Platform to a new Lenovo Platform</b> Includes: Customer supplies image, test plan developed by ITC sent to customer for approval prior to testing, ITC updates video, audio, modem, and network drivers as needed, eliminate resource conflicts, ITC completes functional testing and packages image for manufacturing. Create recovery method as specified. Timeframe: 5-7 Business days once ITC receives test plan approval from customer. Image will be shipped to customer for testing and approval, prior to release to manufacturing.</p> <p><b>4. Build Custom Image from Customer Requirements</b> Includes: Customer supplies build specifications, test plan developed by ITC and sent to customer for approval prior to testing, ITC creates image and completes functional testing, ITC delivers image to customer for testing and approval and packages image for manufacturing. Create recovery method as specified. Timeframe: 6-8 Business days once ITC receives test plan approval from customer. Image will be shipped to customer for testing and approval, prior to release to manufacturing.</p> <p><b>5. ImageUltra</b> In addition, Lenovo has a technology for image consolidation and transition technology which we call ImageUltra. Lenovo ImageUltra provides a single software image that works across multiple hardware platforms and operating systems, and contains all application loads within the enterprise or a subset of those applications. ImageUltra Services through the use of hardware independent imaging technology (HIIT), dynamic operating environment (DOE), and Software Delivery Assistant (SDA) technologies significantly reduces the complexity, frustration, and resources required to create, update, and deploy images enterprise wide.</p>
8.	Does your firm provide in-house quality assurance and testing processes for all hardware? Please provide details.	Y	<p>Lenovo has a <b>committed</b> and active quality program which equates to reduced product failures and lower costs and frustration to VITA members. Lenovo includes our “third party validation of this statement” within this response.</p> <p>Here is an overview of Lenovo’s process for your reference. Leveraging more than 20 years computing experience, Lenovo is dedicated to providing VITA with hardware that delivers innovative design, quality and dependability, coupled with comprehensive customer support to help meet your unique business needs. Lenovo recognizes the key to customer satisfaction is an efficient, effective quality management system. A comprehensive quality assurance program helps ensure more reliable products, resulting in a better customer experience. By adopting an end-to-end view of quality—from planning and design through manufacturing and distribution of Lenovo computers—Lenovo has</p>

	Requirements	A	B
			<p>developed one of the strongest quality control programs in the technology industry. The Lenovo Quality Management System has evolved into a comprehensive worldwide management system that is supported by all functions, with internal and external measurements for feedback and control, and aggressive targets. It is designed to drive proactive, reactive, and preemptive action plan development and execution, and uses causal analysis through closed loop processes. The development and application of a sound Quality Management System to measure, direct, and provide focus on process control and product quality and reliability improvement requires a sound base to build upon. Lessons learned on current products are feedback to the appropriate design groups to prevent repeat problems on future products. All primary quality functions are involved and all have their internal management systems to review data and drive actions for their responsible missions. These areas work closely with each other as part of the worldwide Lenovo Quality Management System.</p> <p>The following letter from Lenovo's CEO demonstrates our commitment to building and supporting the industries "Best Engineered PCs"</p> <p><b>Lenovo Quality</b></p> <p><b>Lenovo Quality Policy</b></p> <ul style="list-style-type: none"> <li>• Lenovo has an overriding worldwide commitment to the quality of the products, solutions and services we provide to our customers. Quality is recognized as a fundamental component of the value customers receive from Lenovo. Lenovo is committed to customer satisfaction by delivering products that are of superior quality to comparable offerings from our competitors.</li> <li>• Lenovo is committed to the goals of achieving customer satisfaction, delivering superior products, solutions, services and ensuring we meet customer requirements. Recognizing that the marketplace is the driving force behind everything we do, Lenovo implements effective business processes that support value creation for our customers and our stakeholders.</li> <li>• Lenovo leaders are responsible for establishing objectives and using measurements to drive continual improvement in quality and customer satisfaction. All Lenovo employees are expected to contribute to continual improvement as an integral part of our Quality Management System.</li> </ul>  <p>Bill Amelio Lenovo President and CEO</p>
9.	Does your firm provide service and repair for warranty and non-warranty maintenance for hardware? Please provide details and time frames.		<p>Yes, Lenovo has warranty coverage for both warranty and non-warranty maintenance.</p> <p>Here is a synopsis of the warranty coverage for your reference:</p>

Requirements	A	B												
		<p><b>Lenovo warranty coverage on proposed systems</b></p> <p>The ThinkCentre PCs proposed have a three (3)-year onsite Next Business Day parts and labor warranty. The ThinkPads proposed carry a three (3) year depot warranty and Lenovo has included an onsite upgrade cost for your reference. The ThinkVision monitors included have a three (3)-year Exchange warranty. All Systems have an international warranty. Our International Warranty Service offering enables VITA employees who travel with or relocate any ThinkPad or ThinkCentre system to receive warranty service in any country where that product is sold and serviced.</p> <p>Base warranties for systems can also vary based on VITA's preference or selected refresh cycles.</p> <p>You have the option of not only the length of time in years that you have your systems warranted but also the level of response time like Next Business Day or 4 hour response can be selected by VITA as well.* Lenovo has included the pricing to modify your base warranty below:</p> <table border="1" data-bbox="721 783 1409 999"> <thead> <tr> <th data-bbox="721 783 943 846">Lenovo Product</th> <th data-bbox="943 783 1409 846">Standard Warranty*</th> </tr> </thead> <tbody> <tr> <td data-bbox="721 846 943 999">ThinkCentre M57e/A61</td> <td data-bbox="943 846 1409 999">Standard level of service is three (3) years parts and labor On-Site Warranty, Next Business Day Response, 8 a.m. - 5 p.m. (in the local time zone), Monday thru Friday.</td> </tr> </tbody> </table> <table border="1" data-bbox="721 1047 1409 1663"> <thead> <tr> <th data-bbox="721 1047 943 1110">Lenovo Product</th> <th data-bbox="943 1047 1409 1110">Standard Warranty*</th> </tr> </thead> <tbody> <tr> <td data-bbox="721 1110 943 1327">ThinkPad R, T, and Tablet (on-site)</td> <td data-bbox="943 1110 1409 1327">Standard level of service is three (3) years parts and labor On-Site Warranty, Next Business Day Response, 8 a.m. - 5 p.m., Monday thru Friday (in the local time zone), excluding holidays. Batteries are a 1 year carry in warranty.</td> </tr> <tr> <td data-bbox="721 1327 943 1543">ThinkPad R, T, and Tablet Notebooks (Depot)</td> <td data-bbox="943 1327 1409 1543">Downgraded level of service is three (3) year depot coverage. A mail in box is send and you send the system to Lenovo's depot centre for repair. Batteries are a 1 year carry in warranty. (Savings are provided in the pricing response)</td> </tr> <tr> <td data-bbox="721 1543 943 1663">ThinkVision Monitors</td> <td data-bbox="943 1543 1409 1663">Standard level of service is (3) three-year, Customer Carry-in or Mail-in Exchange. All shipping costs are paid for valid warranty claims.</td> </tr> </tbody> </table> <p><b>Onsite Warranty Service</b></p> <ul style="list-style-type: none"> <li>Once an end user places a call to the HelpCenter, the caller is immediately turned over to Level 2 Support as appropriate for action. This is where initial problem determination and remote diagnostics begin. If the problem is not resolved at this stage, Level 2 Support will electronically dispatch a service specialist to the site. The services specialist will arrive on-site the same day or next day, depending</li> </ul>	Lenovo Product	Standard Warranty*	ThinkCentre M57e/A61	Standard level of service is three (3) years parts and labor On-Site Warranty, Next Business Day Response, 8 a.m. - 5 p.m. (in the local time zone), Monday thru Friday.	Lenovo Product	Standard Warranty*	ThinkPad R, T, and Tablet (on-site)	Standard level of service is three (3) years parts and labor On-Site Warranty, Next Business Day Response, 8 a.m. - 5 p.m., Monday thru Friday (in the local time zone), excluding holidays. Batteries are a 1 year carry in warranty.	ThinkPad R, T, and Tablet Notebooks (Depot)	Downgraded level of service is three (3) year depot coverage. A mail in box is send and you send the system to Lenovo's depot centre for repair. Batteries are a 1 year carry in warranty. (Savings are provided in the pricing response)	ThinkVision Monitors	Standard level of service is (3) three-year, Customer Carry-in or Mail-in Exchange. All shipping costs are paid for valid warranty claims.
Lenovo Product	Standard Warranty*													
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ThinkPad R, T, and Tablet Notebooks (Depot)	Downgraded level of service is three (3) year depot coverage. A mail in box is send and you send the system to Lenovo's depot centre for repair. Batteries are a 1 year carry in warranty. (Savings are provided in the pricing response)													
ThinkVision Monitors	Standard level of service is (3) three-year, Customer Carry-in or Mail-in Exchange. All shipping costs are paid for valid warranty claims.													

	Requirements	A	B
			<p>on the maintenance options selected. The specialist will arrive with the right skills and training, the right parts, and an action plan to resolve the problem.</p> <p><b>EasyServ Exchange Depot</b></p> <ul style="list-style-type: none"> <li>• This option is available should VITA request as an alternative to Onsite for ThinkPads or for ThinkVision monitors or in those very limited locations where onsite warranty service is not available globally.</li> <li>• A replacement will be shipped the same day the service call was received and schedule next day delivery to you. If the service call is received after 8 p.m. (EST), the replacement will be shipped the following business day. Removal of the failed product and installation of the replacement is your responsibility. Replacement packaging will include shipping instructions on how to return the failed product using the same carton that contained the replacement.</li> </ul> <p><b>Out of Warranty Hardware</b></p> <p>For out of warranty product coverage, Lenovo can create a custom maintenance offering that would be specific to the products that the VITA constituent needs to have covered, the term and the service level.</p>
10.	Do your service and maintenance technicians have and maintain current industry certifications? Please provide details and types of certifications.	Y	All Lenovo onsite Field Technicians are A+ certified which is an industry standard level of competence. Beyond this certification, the technicians are highly trained in Lenovo's product lines so that they can optimize the repair experience.
11.	Does your firm provide onsite and/or depot warranty and repair? Please provide details.	Y	While Lenovo has proposed onsite service for the systems proposed as per the bidder's conference stated requirement, Lenovo can provide depot coverage on its systems as well. The levels of coverage are described in Lenovo's response to question nine (9) above.
12.	Does your firm offer the use of spare parts/loaner equipment on both warranty and out of warranty parts? Please provide details.	Y	<p>Lenovo can provide evaluation equipment on all current technology from our Lenovo Loaner Program. This equipment is available upon request to your Lenovo account team who will ship the systems to the validated contact at the VITA specific organization. This loaner is available at no charge for up to 30 days with extensions on a case by case basis. Lenovo handles both shipping to and from the VITA participant's location. In some cases, Lenovo may provide parts as a part of a specific financial offering to a participant to meet a specific requirement and that would be addressed in the pricing level with that VITA participant.</p> <p><b>Warranty Parts stocking</b></p> <p>Lenovo has 119 parts distribution centers in the US. In terms of parts, Lenovo stocks parts for warranty repair for up to five (5) years from the product's withdrawal from marketing which can equate to as much as eight (8) years in parts.</p>
13.	Does your firm provide asset management and equipment tracking services? Please provide details.	Y	Lenovo has a variety of solution partners that we can provide that offer asset management. Since Asset Management is a broad statement of capabilities, different vendors might be engaged to deliver the specific solution needed by either VITA or your participants. As an example, Lenovo has a

	Requirements	A	B
			strategic partnership with LANDesk who has an industry leading fully integrated single console for asset management and client updates. Lenovo's ThinkVantage technologies (TCO tools) are designed to integrate with LANDesk and provide a robust management solution. More information is provided on both LANDesk and Lenovo's TCO tools in the case study of savings synopsis section.
14.	Does your firm ship all in stock orders same day? Please list all shipping timelines and include caveats for delay, etc.	Y	Lenovo agrees to offer a ten (10) business day order to ship service level for all standard orders placed through a valid order.
15.	Does your firm have an in-house order tracking system that can be accessed 24 x7 by a user? Please provide details.	Y	Through Lenovo's online website for VITA participants, orders can be accessed, placed, tracked and reported on 24X7X365.
16.	Does your firm have the ability to deliver large quantities of equipment to multiple locations? Please describe your firm's process and experience including delivery time and scheduling procedures.	Y	Lenovo has been shipping product to its customers both in the US and globally in all size order quantities for over 20 years. Lenovo can ship single orders in the case of students or faculty or can ship large orders for the entire institution. For example, for the University of North Carolina-Chapel Hill, Lenovo ships consolidated orders to a variety of campus locations with very customized delivery requirements such as inside delivery through complex classroom and buildings. At the same time, we ship thousands of notebooks all over the country for student orders every year. At the State of California, Lenovo ships product to very remote Correctional facilities and Health and Human Resource sites.  Lenovo can provide a variety of custom logistics like palletizing large orders, over-packing options in with a notebook, Bulk packaging multiple systems into a single box as a "green" solution or arranging special delivery terms with our shipping carriers, such as inside delivery. Lenovo has found that we can better optimize our customer's delivery experiences by having advance notice of orders in order to review the specific requirements for logistics that often accompany sizable orders.
17.	Does your firm have a return policy? Please provide details?	Y	Lenovo will accept returns for product in the case where Lenovo makes an error such as shipping the wrong system or the wrong quantity. Lenovo might also accept returns in the case of a DOA system, (DOA is a system that does not boot up) if the orderer and Lenovo's helpdesk can not repair the system within 30 days of shipment.  Lenovo will also offer a return policy for off the shelf systems that have not been configured for 21 days from the date of shipment. VITA participants would be responsible for return shipping and potentially a re-stocking fee.
18.	Does your firm charge a re-stocking fee on returned equipment? Please provide details.	Y	We reserve the right to charge a restocking fee of up to 15% in the case where the return is at your prerogative. In the case where Lenovo has made an error or where the system is DOA then a restocking fee would not be applied.

	<b>Requirements</b>	<b>A</b>	<b>B</b>
19.	Does your firm offer IT equipment disposal and recycling services? Please provide details.	Y	Lenovo has the ability to offer through our services team, asset disposition services. Lenovo will arrange a disposition offering that makes sense for your user either by disposing of the equipment in an environmentally sensitive way, providing you a certificate of destruction or by recycling the equipment into another function. Lenovo can coordinate the logistics of pick up and return or can pick up upon your call.
20.	Does your firm adhere to Energy Star 4.0 energy efficiency standards for computer hardware products? Please provide list of qualified products.	Y	All the products proposed in ThinkPad, ThinkCentre and ThinkVision monitors are Energy Star 4.0. In addition, Lenovo is rated EPEAT sliver on the ThinkPad, and ThinkCentres proposed and Gold on the 17", (L171), the 19" L194) and the 20" (L200P) monitors.  Lenovo has included our Energy Star 4.0 product list in Appendix J

EXHIBIT C

PC

Intel or AMD Based

Specifications in bold font exceed the requested specification.

Minimum Configurations	Unit Price	Discount %	Unit Discounted Price	Lenovo Response - Option #1	Unit Price	Discount %	Unit Discounted Price	Lenovo Response - Option #2
	\$1,068	38%	\$663	<b>ThinkCentre M57e, Part Number 9181CTO</b>	\$858	38%	\$530.00	<b>ThinkCentre A61, Part Number 9169CTO</b>
2.4 Ghz Core 2 Duo E6600/ 2 Ghz Athlon 64 X2 3800+ or equivalent				2.66 GHz Intel Core 2 Duo E6750 Processor (2.33GHz/Intel Core 2 Duo E6550 Processor (2.33GHz- Save \$20 if VITA selects E6550)				<b>AMD Athlon 64 X2 4000+ AM2 Processor (2.1Ghz)</b>
Graphics Media Accelerator (256mb RAM minimum)				Intel Graphics Media Accelerator 3100 (GMA 3100)				Integrated Video AMD 690G
2GB RAM or greater				2GB RAM				2GB RAM
80GB SATA drive or greater				<b>160GB SATA drive</b>				80GB Hard Disk Drive- 7200RPM Serial ATA
CDRW/DVD+/-RW Combo Drive				DVD Recordable SATA for VISTA				DVD Recordable SATA for Vista
Microsoft Vista Business Capable				Vista Business				Genuine Windows Vista Business
Two Front Facing USB Ports or greater				Two Front Facing USB Ports				Two Front Facing USB Ports
17" LCD Monitor (minimum)				17" LCD Monitor, Part number 9227AE1				17" LCD Monitor, Part number 9227AE1
Two button optical mouse with scroll wheel				Two button optical mouse with scroll wheel				Two button optical mouse with scroll wheel
Keyboard with 103 keys				Keyboard with 103 keys				Keyboard with 103 keys
10/100/1000 RJ-45				10/100/1000 RJ-45				10/100/1000 RJ-45

Warranty is three years on-site. Additionally, you may offer depot.

\$683

Warranty is three years next business day parts and labor on-site.  
Price with eVa and VITA fees added (3%)  
**See Lenovo Pricing Assumptions in row 41, Column E.**

\$546

Warranty is three years next business day parts and labor on-site.  
Price with eVa and COVa fees added (3%)  
**See Lenovo Pricing Assumptions in row 41, Column E.**

	Unit Price	Discount %	Unit Discounted Price	Lenovo Response - Option #1	Unit Price	Discount %	Unit Discounted Price	Lenovo Response - Option #2
	\$1,272.00	38%	\$788.00	<b>ThinkCentre M57e, Part Number 9181CTO</b>	\$1,320.00	38%	\$818.00	<b>ThinkCentre A62, Part Number 9169CTO</b>
3-GHz Core 2 Duo E6850 or equivalent				<b>Core 2 Duo E8400 Processor 3.0GHz 1333MHz</b>				<b>AMD Athlon 64X2 5200+ AM2 Processor (2.7GHz)</b>
Discrete Graphics Media Accelerator (256mb RAM minimum)				Discrete-ATI Radeon HD 2400 XT 256M LP with				Discrete-ATI Radeon HD 2400 XT 256M LP with DMS59
2GB RAM or greater				2GB RAM				2GB RAM
120GB SATA drive or greater				<b>160GB SATA drive</b>				<b>160GB Hard Disk Drive- 7200RPM Serial ATA</b>
CDRW/ DVD+/-RW Combo Drive				DVD Recordable SATA for VISTA				DVD Recordable SATA for Vista
Microsoft Vista Business Capable				Vista Business				Genuine Windows Vista Business
Two Front Facing USB Ports or greater				Two Front Facing USB Ports				Two Front Facing USB Ports
21" LCD Monitor				20" LCD monitor part number 4434HB6, optional upgrade to 22" LCD in peripherals tab (Addl \$40)				20" LCD monitor part number 4434HB6, optional upgrade to 22" LCD in peripherals tab (addl \$40)
Two button optical mouse with scroll wheel				Two button optical mouse with scroll wheel				Lenovo Optical Wheel Mouse - USB Primax 4
Keyboard with 103 keys				Keyboard with 103 keys				Keyboard with 103 keys
10/100/1000 RJ-45				10/100/1000 RJ-45				10/100/1000 RJ-45

Warranty is three years on-site. Additionally, you may offer depot.

\$812

Warranty is three years next business day parts and labor on-site.  
Price with eVa and VITA fees added (3%)  
**See Lenovo Pricing Assumptions in Row 41, Column E.**

\$845

Warranty is three years next business day parts and labor on-site.  
Price with eVa and COVa fees added (3%)  
**See Lenovo Pricing Assumptions in Row 41, Column E.**

Units above are base offerings.

**Lenovo Pricing assumptions:**  
Pricing quoted is in USD.  
Any applicable taxes or fees that a required to be paid by a VITA organization are not included in the pricing quoted.  
- Ground shipping within the US is included in the pricing and discount level provided. For your reference, ThinkCentre Ground shipping is \$25. Additionally since the monitor is included in the bundle, US monitor ground shipping is also included at \$15  
-The eVa fees and VITA fees are included in the final Unit discount price after the discount was applied.  
-The 38% discount will be held for the contract term. At time of product transition, 38% will be applied to the Lenovo List price in effect on the date the model is proposed to VITA as the new Lenovo VITA "Standard" model. (1 base and 1 premium PC).

AMD processors must be at least equivalent to listed Intel processors

*\*Please provide link to publicly available price list.*

[www.lenovo.com/products](http://www.lenovo.com/products)



**Rugged Notebooks**

Intel/ AMD Based

Specifications in bold font exceed the requested specification.

Partial Mil Spec 810.F (shock, vibration, etc)

Minimum Configurations	Unit Price	Discount %	Unit Discounted Price	Lenovo Response
<b>A. Standard Rugged Notebook Offering</b>	<b>\$1,228</b>	<b>35%</b>	<b>\$798</b>	<b>ThinkPad R400, Part Number 7440 CTO</b>
2 GHz Core 2 Duo T7300 or equivalent				<b>Intel Core 2 Duo P8400 2.26 Ghz w/1033 MHZ FSB</b>
Integrated Graphics Media Accelerator (256mb RAM min)				Intel integrated <b>GMA 4500 MHD</b> (Up to 256 mb RAM)
1GB RAM or greater				<b>1GB 1033 MHZ DDR3 RAM</b>
80GB SATA hard drive or greater				<b>80GB 5400 RPM SATA hard drive</b>
CDRW/DVD+/-RW Combo Drive				CD/DVD +/- Recordable SATA for VISTA
Microsoft Vista Business Capable				Microsoft Vista Business
Integrated fingerprint reader (optional)				<b>Fingerprint reader included</b>
802.11a/b/g/draft-n intergrated wireless				Intel 5100 802.11a/b/g/n integrated wireless
12 inch screen or greater				<b>14.1 inch WXGA 1280 X 800 Anti-glare</b>
10/100/1000 RJ45				10/100/1000 RJ45
56K RJ-11				56K RJ-11
Warranty is three years on-site. Additionally, you may offer depot.				Warranty - <b>Three years on-site NBD 9-5, Included in price</b>
				Warranty-remove 3 year onsite warranty and have 3 year depot warranty standard (Save \$20)
				8 military spec claims, low pressure, humidity, vibration, high temperature, temperature shock, low pressure (15000ft) SSD, low temperature with SSD, Dust .....SSD drives are available at an additional price.
# of Rugged Mil specs met			\$822.00	Price with eVa and VITA fees added (3%) <b>See Lenovo Pricing Assumptions in Row 49, Column E.</b>

	Unit Price	Discount %	Unit Discounted Price	Lenovo Response
<b>B. Premium Rugged Notebook Offering</b>	<b>\$1,618.00</b>	<b>35%</b>	<b>\$1,050</b>	<b>ThinkPad T400 Model Part Number 2767 CTO</b>
2.4 GHz Core 2 Duo T7700 or equivalent				<b>Intel Core 2 Duo P8600 2.4 Ghz, 6Mb L2, 1033 MHZ FSB</b>
Discreet Graphics Media Accelerator (256mb RAM min)				ATI™ Mobility Radeon™ HD 3470 Discrete Graphics Media Accelerator w/256 Mb RAM ( <b>Hot switchable to built in GMA 4500 graphics to save battery</b> )
2GB RAM or greater				<b>2GB 1033 MHZ DDR3 RAM</b>
120GB SATA hard drive or greater				<b>160GB 5400 RPM SATA hard drive</b>
CDRW/DVD+/-RW Combo Drive				CD/DVD +/- Recordable SATA for VISTA
Microsoft Vista Business Capable				Microsoft Vista Business
Integrated fingerprint reader (Optional)				<b>Fingerprint reader included</b>
802.11a/b/g/draft-n intergrated wireless				Intel 5100 802.11a/b/g/n integrated wireless
14 inch screen or greater				<b>14.1 inch WXGA+ 1440 X 900 Anti-glare</b>
10/100/1000 RJ-45				10/100/1000 RJ45
56K RJ-11				56K RJ-11
Warranty is three years on-site. Additionally, you may offer depot.				Warranty - <b>Three years on-site NBD 9-5, Included in price</b>
				Warranty-remove 3 year onsite warranty and have 3 year depot warranty standard (Save \$20)
				8 military spec claims, low pressure, humidity, vibration, high temperature, temperature shock, low pressure (15000ft) SSD, low temperature with SSD, Dust. Solid State Drives (SSD) are available at an additional price.
# of Rugged Mil specs met			\$1,082.00	Price with eVa and VITA fees added (3%) <b>See Lenovo Pricing Assumptions in Row 49, Column E.</b>

Units above are base offerings.

AMD processors must be at least equivalent to listed Intel processors

**Lenovo Pricing assumptions:** -Pricing quoted is in USD.  
 -Any applicable taxes or fees that a required to be paid by a VITA organization are not included in the pricing quoted. - Ground shipping within the US is included in the pricing and discount level provided. For your reference, ThinkPad Ground shipping is \$15  
 -The eVa fees and VITA fees are included in the final Unit discount price after the discount was applied. -The 35% discount will be held for the contract term. At time of product transition, 35% will be applied to the Lenovo List price in effect on the date the model is proposed to VITA as the new Lenovo VITA "Standard" model. (1 base and 1 premium rugged series Notebook).  
[www.lenovo.com/products](http://www.lenovo.com/products)

**\*Please provide link to publicly available price list.**

## Services

In the fields below, enter any services you chose to offer, as well as pricing

**Lenovo Service Level**

**Lenovo Charge** **Lenovo increment**

### Lenovo Installation Services:

**\$35** Flat rate

#### Installation price quoted includes

Unpack  
Deliver to desktop  
Connect to network

#### Assumptions:

one site  
minimum install 16 systems  
normal buusiness hours

one tech can install 2 systems per hour (16 in an 8 hour day)

### Lenovo Asset Recovery Services

**\$25** Flat rate

### Warranty and Accidental Damage Damage Protection

Lenovo Notebook 3 year onsite warranty upgrade from 3 Yea Depot Base warranty with 3 year Accidental Damage Protector

**\$108** Flat rate

### Lenovo Image load

Image load of VITA public sector body "certified" and createc image loaded at manufacturing by Lenovo.

**\$10** Flat rate

### Lenovo Simple Asset tag

The asset tag fee is for a Lenovo basic asset tag. A simple tag contains the following fields (ID Barcode, fixed text, custome provided graphic, Machine type, model number, and serial number)

**\$7** Flat rate

### Lenovo Enhanced Asset Tag

a Complex tag contains the following fields (ID Barcode, fixe text, customer provided graphic, Machine type, model number, serial number, MAC address, PO number, an asset number of 6-14 characters, lease start and end date, warranty end dates)

**\$10** Flat rate

### Keep you Hard Drive during warranty repair

**\$10** Flat rate at time of order

This service allows a VITA customer to purchase a line item which will allow the user to keep the hard drive in the system during a warranty repair process. A replacement drive will be provided without the requirement to return the failed drive.

### Lenovo After Hours onsite support

Onsite Support must be scheduled in advance and must be for a duration of 4 hours or more.

**\$85** Per Hour

## EXHIBIT F: 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: Jason Mooneyham

Organization: Lenovo (United States), Inc.

Date: January 26, 2009

**EXHIBIT G**  
**AWARDED CATEGORIES**

- DESKTOP
- NOTEBOOK
- RUGGED



# **Information Technology Services Contract**

Between

**The Virginia Information Technologies Agency**

on behalf of

**The Commonwealth of Virginia**

and

**Lenovo (United States) Inc.**

**INFORMATION TECHNOLOGY SERVICES CONTRACT  
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## INFORMATION TECHNOLOGY SERVICES CONTRACT

THIS INFORMATION TECHNOLOGY SERVICES CONTRACT ("Contract") is entered into by and between the Virginia Information Technologies Agency (VITA) pursuant to §2.2-2012 of the Code of Virginia and on behalf of the Commonwealth of Virginia (hereinafter referred to as "VITA"), and Lenovo (United States) Inc. ("Supplier"), a corporation headquartered at 1009 Think Place, Morrisville, NC 27560 to be effective as of January 30,2009 ("Effective Date").

### 1. PURPOSE AND SCOPE

This Contract sets forth the terms and conditions under which Supplier shall provide services ("Services") to the Authorized Users.

### 2. DEFINITIONS

#### A. Acceptance

Successful performance of the Services at the location designated in the applicable Statement of Work, or completed and successful Acceptance testing in conformance with the Requirements as determined by the Authorized User in the applicable Statement of Work.

#### B. Agent

Any third party independent agent of any Authorized User.

#### C. Authorized Users

All public bodies, including VITA, 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 or SOW 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. Deliverable

The tangible embodiment of the Services, including the development or creation of Work Product, performed or provided by Supplier as identified in the applicable Statement of Work.

#### F. Party

Supplier, VITA, or any Authorized User.

#### G. Requirements

The functional, performance, operational, compatibility, Acceptance testing criteria and other parameters and characteristics of the Service(s) and Deliverables as set forth in Exhibit A and the applicable Statement of Work and such other parameters, characteristics, or performance standards that may be agreed upon in writing by the Parties.

#### H. Service

Any work performed or service provided, including provision to the Authorized User of any Deliverable, by Supplier under this Contract. Service includes the discovery, creation, or development of Work Product, if any.

#### I. Statement of Work (SOW)

Any document in substantially the form of Exhibit B (describing the deliverables, due dates, assignment duration and payment obligations for a specific project, engagement, or assignment for which Supplier shall be providing Services to an Authorized User), which, upon signing by both Parties, shall be deemed a part of this Contract.

**J. Supplier**

Means the Supplier and any of its Affiliates (i.e., an entity that controls, is controlled by, or is under common control with Supplier).

**K. Work Product**

Inventions, combinations, machines, methods, formulae, techniques, processes, improvements, software designs, computer programs, strategies, specific computer-related know-how, data and original works of authorship (collectively, the "Work Product") discovered, created, or developed by Supplier, or jointly by Supplier and an Authorized User(s) in the performance of this Contract. Work Product shall not include configuration of software.

**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 two (2) years. VITA, in its sole discretion, may extend this Contract for up to three (3) additional one (1) year periods after the expiration of the initial two (2) 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. Performance of an order or SOW issued during the term of this Contract may survive the expiration of the term of this Contract, in which case all terms and conditions required for the operation of such order or SOW shall remain in full force and effect until Services pursuant to such order or SOW have met the final Acceptance criteria of the applicable Authorized User.

**B. Termination for Convenience**

VITA may terminate this Contract, in whole or in part, or any order or SOW issued hereunder, in whole or in part, or an Authorized User may terminate an order or SOW, in whole or in part, upon not less than thirty (30) days prior written notice at any time for any reason.

**C. Termination for Breach or Default**

VITA shall have the right to terminate this Contract, in whole or in part, or any order or SOW issued hereunder, in whole or in part, or an Authorized User may terminate an order or SOW, in whole or in part, for breach and/or default of Supplier. 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 or SOW issued hereunder.

If VITA deems the Supplier to be in breach and/or default, VITA shall provide Supplier with notice of breach and/or default and allow Supplier fifteen (15) days to cure the breach and/or default. If Supplier fails to cure the breach as noted, VITA may immediately terminate this Contract or any order or SOW issued hereunder, in whole or in part. If an Authorized User deems the Supplier to be in breach and/or default of an order or SOW, such Authorized User shall provide Supplier with notice of breach and/or default and allow Supplier fifteen (15) days to cure the breach and/or default. If Supplier fails to cure the breach and/or default as noted, such Authorized User may immediately terminate its order or SOW, in whole or in part. Any such termination shall be deemed a Termination for Breach or a Termination for Default. In addition, if Supplier is found by a court of competent jurisdiction to be in violation of or to have violated 31 USC 1352 or if Supplier becomes a party excluded from Federal Procurement and Non-procurement Programs, VITA may immediately terminate this Contract, in whole or in part, for breach. VITA shall provide written notice to Supplier of such termination and Supplier shall provide written notice to VITA if Supplier is charged with violation of 31 USC 1352 or if federal debarment proceedings are instituted against Supplier.

**D. Termination for Non-Appropriation of Funds**

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 any order or SOW, in whole or in part, or an Authorized User may terminate its order or SOW, 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.

**E. Effect of Termination**

Upon termination, neither the Commonwealth, nor VITA, nor any Authorized User shall have any future liability except for Deliverables accepted by the Authorized User or Services rendered by Supplier and accepted by the Authorized User prior to the termination date.

In the event of a Termination for Breach or Termination for Default, Supplier shall accept return of any Deliverable that was not accepted by the Authorized User(s), and Supplier shall refund any monies paid by any Authorized User for such Deliverable, and all costs of de-installation and return of Deliverables shall be borne by Supplier.

**F. 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 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 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 the hourly rate or a charge agreed upon by Supplier and VITA or an Authorized User.

**G. Contract Kick-Off Meeting**

Within 30 days of Contract award, Supplier may be required to attend a contract orientation meeting, along with the VITA contract manager/administrator, the VITA and/or other CoVa Agency project manager(s) or authorized representative(s), technical leads, VITA representatives for SWaM and Sales/IFA reporting, as applicable, and any other significant stakeholders who have a part in the successful performance of this Contract. The purpose of this meeting will be to review all contractual obligations for both parties, all administrative and reporting requirements, and to discuss any other relationship, responsibility, communication and performance criteria set forth in the Contract. The Supplier may be required to have its assigned account manager as specified in Section 6.0 and a representative from its contracts department in attendance. The time and location of this meeting will be coordinated with Supplier and other meeting participants by the VITA contract manager.

**H. Contract Closeout**

Prior to the contract's expiration date, Supplier may be provided contract close out documentation and shall complete, sign and return to VITA Supply Chain Management within 30 days of receipt. This documentation may include, but not be limited to: Patent/Royalty Certificate, Tangible Property/Asset Certificate, Escrow Certificate, SWaM Reports Completion Certificate, Sales Reports/IFA Payments Completion Certificate, and Final Payment Certificate. Supplier is required to process these as requested to ensure completion of close-out administration and to maintain a positive performance reputation with the Commonwealth of Virginia. Any closeout documentation not received within 30 days of Supplier's receipt of our request will be documented in the contract file as Supplier non-compliance. Supplier's non-compliance may affect any pending payments due the Supplier, including final payment, until the documentation is returned.

**4. SERVICES**

**A. Nature of Services and Engagement**

This Contract is optional use and non-exclusive and all Authorized Users may, at their sole discretion, receive benefits from third party suppliers of services similar to, or in competition with, services provided by Supplier.

By operation of this Contract, any SOW resulting in a commitment of any individual employee or contractor of Supplier, whether employed by Supplier or a contractor or subcontractor of Supplier, for more than one thousand (1,000) hours of work during any six (6) month period or of any such individual employee or contractor for more than eight (8) months in any twelve (12) month period shall be voidable by VITA, in its sole discretion. If an SOW is voided by VITA, such SOW shall no longer be binding on either Party and all obligations with respect to such SOW shall expire.

**B. Statement of Work (SOW)**

All Services shall be performed at the times and locations set forth in the applicable SOW and at the rates set forth in Exhibit D herein. Unless VITA issues a written authorization for a time and materials type SOW, any SOW shall be of a fixed price type but may, with the written approval of VITA, contain a cost-reimbursable line item(s) for pre-approved travel expenses. For time and materials type SOWs, Supplier personnel shall maintain daily time records of hours and tasks performed, which shall be submitted or made available for inspection by the Authorized User upon forty-eight (48) hours advance written notice.

**C. Change Orders**

All changes to the Services to be provided pursuant to any given SOW must be described in a written change request (template provided as Exhibit C), which includes any appropriate adjustments to the SOW. Either Party to an SOW may issue a change request that will be subject to written approval of the other Party before it becomes part of this Contract. In no event shall any SOW or any modification thereto require the Supplier to perform any work beyond the scope of this Contract as such scope is defined in Exhibit A hereto.

**D. Acceptance**

Service(s) shall be deemed accepted when the Authorized User determines that such Service(s) meets the Requirements set forth in the applicable SOW. If applicable, Supplier shall be responsible for ensuring that any individual Deliverable functions properly with any other Deliverable provided pursuant to the SOW. Should a previously Accepted Deliverable require further modification in order to work properly with any other Deliverable, Supplier shall be responsible for all costs associated with such modification.

Authorized User shall commence Acceptance testing within fifteen (15) days, or within such other period as set forth in the applicable SOW, after receipt of the Service. Acceptance testing will be no longer than fifteen (15) days, or such longer period as may be agreed in writing between Authorized User and Supplier, for each Deliverable or for the first instance of each Service type set forth in Exhibit B. 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 Acceptance testing. Authorized User shall provide to Supplier written notice of Acceptance upon completion of installation and successful Acceptance testing. Should Authorized User fail to provide Supplier written notice of successful or unsuccessful Acceptance testing within five (5) days following the Acceptance testing period, the Service shall be deemed Accepted.

**E. Cure Period**

Supplier shall correct any non-conformities identified during Acceptance testing and re-submit such non-conforming Service for re-testing within seven (7) days of the appropriate Authorized User's written notice of non-conformance, or as otherwise agreed between such Authorized User and Supplier in the applicable SOW. Should Supplier fail to cure the non-conformity or deliver a Service which meets the Requirements, the Authorized User may, in its sole discretion: (i) reject the Service in its entirety, and any Service rendered unusable due to the non-conforming Service, and recover amounts previously paid hereunder for all such Services; (ii) issue a "partial Acceptance" of the Service with an equitable adjustment in the price to account for such deficiency; or (iii) conditionally accept the applicable Service while reserving its right to revoke Acceptance if timely correction is not forthcoming. Failure of a Service to meet, in all material respects, the Requirements after the second set of acceptance tests may constitute a default by Supplier. In the event of such default, the Authorized User may, at its sole discretion, terminate its order or SOW, in whole or in part, for the Services to be provided thereunder by Supplier.

## **5. RIGHTS TO WORK PRODUCT**

If Authorized User is a state agency, board, commission, or other quasi-political entity of the Commonwealth of Virginia or other body referenced in Title 2.2 of the Code of Virginia, any license to pre-existing work shall be held by, and all rights in, title to, and ownership of Work Product shall vest with the Commonwealth. If Authorized User is a locality, municipality, school, school system, college, university, local board, local commission, or local quasi-political entity, any license to pre-existing work shall be held by, and all rights in, title to, and ownership of Work Product shall vest with that public body.

### **A. Work Product**

VITA and Supplier each acknowledge that performance of this Contract may result in Work Product. The Parties shall document all Work Product specifications and such specifications shall be made an incorporated exhibit to this Contract. Supplier agrees that it shall promptly and fully disclose to the Commonwealth or the Authorized User any and all Work Product generated, conceived, reduced to practice or learned by Supplier or any of its employees, either solely or jointly with others, during the term or performance of this Contract, which in any way relates to the business of the Commonwealth, VITA, or any Authorized User. Supplier further agrees that neither Supplier nor any of Supplier's employees, contractors, agents or subcontractors, nor any party claiming through Supplier or Supplier's employees, shall, other than in the performance of this Contract, make use of or disclose to others any proprietary information relating to the Work Product. All Services performed hereunder shall include delivery of all Work Product source code, object code, executables, and documentation. Supplier shall at no time deny access to the Work Product, regardless of form, by the Commonwealth or the Authorized User.

### **B. Ownership**

Supplier agrees that, whether or not the Services are considered "works made for hire" or an employment to invent, all Work Product discovered, created or developed under this Contract shall be and shall remain the sole and exclusive property of the Commonwealth of Virginia and its assigns or the Authorized User and its assigns. Except as specifically set forth in writing and signed by both VITA and Supplier, or Authorized User and Supplier, Supplier agrees that the Commonwealth or the Authorized User shall have all rights with respect to any Work Product discovered, created or developed under this Contract without regard to the origin of the Work Product.

If and to the extent that Supplier may, under applicable law, be entitled to claim any ownership interest in the Work Product, Supplier hereby irrevocably transfers, grants, conveys, assigns and relinquishes exclusively to the Commonwealth or the Authorized User any and all right, title and interest it now has or may hereafter acquire in and to the Work Product under patent, copyright, trade secret and trademark law in perpetuity or for the longest period otherwise permitted by law. If any moral rights are created, Supplier waives such rights in the Work Product. Supplier further agrees as to the Work Product to assist the Commonwealth or the Authorized User in every reasonable way to obtain and, from time to time, enforce patents, copyrights, and other rights and protection, and in protecting trade secrets, with respect to such Work Product, and to that end, Supplier and its employees shall execute all documents for use in applying for and obtaining such patents, copyrights, and other rights and protection with respect to such Work Product, as the Commonwealth or the Authorized User may reasonably request, together with any assignments thereof to the Commonwealth or the Authorized User or entities designated by the Commonwealth or the Authorized User.

### **C. Pre-existing Work**

If and to the extent that any pre-existing rights are embodied or reflected in the Service Deliverables, Supplier hereby grants to the Commonwealth or the Authorized User an irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to (i) use, modify, transmit, execute, reproduce, display, perform, distribute copies of and prepare derivative works based upon such pre-existing rights and any derivative works thereof, and (ii) authorize others to do any or all of the foregoing. It is expressly understood that "perpetual" license rights shall commence upon delivery of the Service Deliverables and shall exist in perpetuity unless otherwise terminated in accordance with the applicable provisions of the Contract.

**D. Return of Materials**

Upon termination of this Contract, Supplier shall immediately return to VITA or the appropriate Authorized User all copies, in whatever form, of any and all Confidential Information, Work Product and other properties provided by VITA or such Authorized User, which are in Supplier's possession, custody or control.

**6. SUPPLIER PERSONNEL**

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

Supplier shall take such steps as may be necessary to ensure that all Supplier personnel performing Services under this Contract are competent and knowledgeable of the contractual arrangements and the applicable SOW between Authorized User and Supplier. 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 and subcontractors comply with the appropriate Authorized User's site security, information security and personnel conduct rules, as well as applicable federal, state and local laws, including export regulations. Authorized User reserves the right to require the immediate removal from such Authorized User's premises of any employee, subcontractor or agent of Supplier whom such Authorized User 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.

**C. Key Personnel**

An SOW may designate certain of Supplier's personnel as Key Personnel or Project Managers. Supplier's obligations with respect to Key Personnel and Project Managers shall be described in the applicable SOW. Failure of Supplier to perform in accordance with such obligations may be deemed a default of this Contract or of the applicable SOW.

**D. Subcontractors**

Supplier shall not use subcontractors to perform the Services unless specifically authorized in writing to do so by the Authorized User. If an order or SOW issued pursuant to this Contract is supported in whole or in part with federal funds, Supplier shall not subcontract any Services pursuant to such order or SOW to any subcontractor that is a party excluded from Federal Procurement and Non-procurement Programs. In no event shall Supplier subcontract any Services to any subcontractor which is debarred by the Commonwealth of Virginia or which owes back taxes to the Commonwealth and has not made arrangements with the Commonwealth for payment of such back taxes.

**7. 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, including Deliverables, without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party.

**B. 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.

### **C. 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.

### **D. Performance**

- i). All Services shall be performed with care, skill and diligence, consistent with or above applicable professional standards currently recognized in its profession, and Supplier shall be responsible for the professional quality, technical accuracy, completeness and coordination of all plans, information, specifications, Deliverables and Services furnished under this Contract;
- ii). Services pursuant to a particular Request for Proposal ("RFP"), quote, or Request for Quote (RFQ), and any associated Deliverables shall be fit for the particular purposes specified by VITA in the RFP and in this Contract and, if applicable, by the Authorized User requesting such quote or issuing such RFQ, and Supplier is possessed of superior knowledge with respect to the Services and Deliverables and is aware that all Authorized Users are relying on Supplier's skill and judgment in providing the Services and Deliverables;
- iii). The Services and Deliverables shall meet or exceed the Requirements;
- iv). The documentation which Supplier is required to provide under this Contract shall be sufficient in detail and content to allow a user/programmer to understand and fully utilize the Deliverables without reference to any other materials or information.

### **E. Malicious Code**

Supplier has used its best efforts through quality assurance procedures to ensure that there are no computer viruses or undocumented features in any of the media or means used to deliver the Services. Supplier has used the best available means to scan any media on which Deliverables are provided to the Authorized User.

### **F. Limited Warranty Period and Remedy**

During the warranty period of one (1) year, or as specified in the applicable SOW, Supplier warrants that the Services shall meet or exceed the Requirements. Supplier shall correct, at no additional cost to any Authorized User, all errors identified during the warranty period that result in a failure of the Services to meet the Requirements. If Supplier is unable to make the Service/Deliverable conform, in all material respects, to the Requirements within ten (10) days following written notification by an Authorized User, Supplier shall, at such Authorized User's request, accept return of such Deliverable and any other related Deliverable(s) rendered unusable, and return all monies paid by such Authorized User for the non-conforming Services and Deliverable and such other related Deliverable(s) rendered unusable.

**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.**

## **8. TRAINING AND DOCUMENTATION**

Any training or documentation necessary for an Authorized User to have full benefit of the Service shall be deemed included in the scope of the applicable SOW unless expressly excluded.

## **9. ORDERS AND COMPENSATION**

### **A. Request for Quote**

Authorized Users of this Contract, depending on the complexity of services required and/or each supplier's available resources have the option to select one or more suppliers to provide type of services. In addition, an Authorized User may determine that a competitive process is required to ensure it receives the best value. In either or both of such circumstances, the Authorized User may, at its sole discretion, use a Request for Quote (RFQ) process to obtain services identical or similar to those provided by Supplier pursuant to this Contract.

Supplier shall respond to the RFQ by providing a quote, including an estimated total price, and, if requested by the Authorized User, a proposal and documentation of the qualifications of the individual(s) proposed for providing services to the Authorized User. In no event shall Supplier's quote exceed Supplier's Contract pricing. Should Supplier be unable to respond to the RFQ due, for example, to resource constraints, Supplier shall notify Authorized User in writing of its inability to perform the work requested by such Authorized User, and provide the reasons for such inability to perform, prior to the due date for the submission of quotes in response to the RFQ. Supplier's repeated failure to provide a quote in response to an RFQ may be grounds for termination of this Contract.

#### **B. Order**

Supplier is required to accept any order placed by an Authorized User through the eVA electronic procurement website portal ([eVA Home Page](#)). eVA is the Commonwealth of Virginia's e-procurement system. State 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 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 Non-procurement 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 SUCH AUTHORIZED USER IS VITA.

#### **C. Purchase Price and Price Protection**

Exhibit D sets forth the fees and the appropriate Commonwealth discounts. Fees shall not increase and discounts shall not decrease for a period of not less than two (2) years from the Effective Date. No such increase shall exceed the lesser of three percent (3%) or the annual increase in the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, All Items, not seasonally adjusted, as published by the Bureau of Labor Statistics of the Department of Labor (<http://www.bls.gov/cpi/home.htm>), for the effective date of the increase compared with the same index one (1) year prior. Any such change in price shall be submitted in writing in accordance with the above and shall not become effective for sixty (60) days thereafter. Supplier agrees to offer price reductions to ensure compliance with the Competitive Pricing Section.

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

For an order with a period of performance not expected to exceed one (1) month, Supplier shall remit each invoice to the "bill-to" address provided with the order promptly after all Deliverables or Services have been accepted and in accordance with the milestone payment schedule, if any, in the applicable order. For a time and materials type SOW with a period of performance expected to exceed one (1) month, Supplier shall submit invoices to the ordering Authorized User monthly in arrears, unless otherwise specified in such SOW. For a fixed price type SOW, Supplier shall invoice in accordance with the milestone payment schedule, if any, in the applicable SOW; if such SOW does not include a milestone payment schedule, Supplier shall invoice after all Deliverables or Services have been accepted by the ordering Authorized User. No invoice shall include any costs other than those identified in the executed order or SOW, which costs shall be in

accordance with Exhibit D. Without limiting the foregoing, all shipping costs are the Supplier's responsibility except to the extent such charges are identified in Exhibit D, or as noted in any executed order or SOW referencing this Contract. Any cost reimbursable work performed or expenses incurred by Supplier prior to the effective date of the order shall not be billed to or reimbursed by the Authorized User. Invoices issued by the Supplier shall identify at a minimum:

- i). Deliverable or Service type, or project milestone, and description
- ii). Quantity, charge and extended pricing for each Deliverable and/or Service item or milestone; or, for a time and materials type order or SOW, the name(s) of the assigned employee(s), the hourly rate(s), and the number of hours worked;
- iii). Applicable order date or SOW date
- iv). This Contract number and the applicable order number
- v). Supplier's Federal Employer Identification Number (FEIN).

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. Purchase Payment Terms**

Supplier is responsible for the accuracy of its billing information. Supplier agrees not to issue invoices hereunder until Services have been performed or milestones have met Acceptance criteria. Charges for Services accepted more than ninety (90) days prior to receipt of a valid invoice may not be paid, except in accordance with a milestone payment schedule. Should Supplier repeatedly over bill Authorized User, Authorized User may assess a one percent (1%) charge for the amount over billed for each month that such over billing continues.

If there are any disputed items, 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 it does not concur with such Authorized User, provide such 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.

#### **F. Reimbursement of Expenses**

If allowable pursuant to an Authorized User's SOW, such Authorized User shall pay, or reimburse Supplier, for all reasonable and actual travel-related expenses for greater than thirty (30) miles from portal to portal incurred by Supplier during the relevant period; provided, however, that such Authorized User shall only be liable to pay for Supplier's travel-related expenses, including transportation, meals, lodging and incidental expenses, that have been authorized by such Authorized User in advance and which will be reimbursable by such Authorized User at the then-current per diem amounts as published by the Virginia Department of Accounts ([http://www.doa.virginia.gov/Admin\\_Services/CAPP/CAPP\\_Topics/20335\\_Meals\\_Lodging\\_102007.pdf](http://www.doa.virginia.gov/Admin_Services/CAPP/CAPP_Topics/20335_Meals_Lodging_102007.pdf), or a successor URL(s)).

All reimbursed expenses will be billed to the Authorized User on a pass-through basis without any markup by Supplier. At Authorized User's request, Supplier shall provide copies of receipts for all travel expenses over US\$30.00.

### **10. REPORTING**

#### **A. 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 and contact information for submission is available at [VITA:Supplier / Vendor Reporting Requirements](#). The report shall be submitted via electronic mail to the VITA IFA Coordinator and shall report total sales (defined for purposes of this report as all invoiced payments received by Supplier from all Authorized Users) for this Contract during the preceding month. Supplier shall be responsible for submitting the

monthly report of sales even if Supplier has had no sales (i.e., a \$0.00 total sales value) for the reporting period.

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 after submitting the "Supplier Monthly Report of Sales". The IFA payment is equal to two percent (2%) of total sales reported during the relevant month.

The IFA payment shall be submitted to VITA, Attention VITA Controller in the form of a check or electronic payment, made payable to the Treasurer of Virginia. The IFA payment shall reference this Contract number, "report amounts", and "report period" and shall be accompanied by a copy of the relevant "Supplier Monthly Report of Sales". Contact information for submission of IFA payments is available at [VITA:Supplier / Vendor Reporting Requirements](#).

Failure to comply with reporting, payment and distribution requirements of this section may result in default of the Contract.

#### **B. Small Business Participation**

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 Businesses as subcontractors and second-tier suppliers under this Contract.

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

In addition, by the 10th day of every month, Supplier shall submit to VITA the Small Business Subcontracting Monthly Report (template to be provided). 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 small businesses. Supplier shall submit the report to [SWaM@vita.virginia.gov](mailto:SWaM@vita.virginia.gov).

### **11. STEERING COMMITTEE**

In order to facilitate mutually beneficial contractual relationships with suppliers, VITA has procedures for establishing a steering committee ("Steering Committee"), consisting of senior management personnel, including personnel involved in the contractual relationship, from VITA and Supplier.

Roles of the Steering Committee include but are not limited to a) identifying potential issues which may arise during the performance of a contract, b) discussing and assigning roles and responsibilities, c) establishing methods for quickly resolving potential disputes, d) setting rules for communication and decision making, e) monitoring and measuring the business relationship between the parties, and f) acting as a final decision board for escalated problems.

A meeting of the Steering Committee is intended to be a forum for brainstorming and sharing ideas, emphasizing respect, cooperation, and access, with the end goal of developing relationships to avoid conflict. A facilitator may, but is not required to, conduct a meeting of the Steering Committee.

A Steering Committee for this Contract will be formed at VITA's option. Meetings may be held at any time during the Contract term, should VITA, at its sole discretion, determine that a meeting(s) would be beneficial to the contractual relationship, and Supplier agrees to participate in such meeting(s). In addition, Supplier may at any time submit a written request to VITA for a meeting of the Steering Committee, which VITA will not unreasonably deny.

Supplier shall ensure the availability of the appropriate personnel to meet with the VITA contract management team. Additional Steering Committee meetings involving representatives from VITA, the Supplier, and an Authorized User may be required prior to or during performance on any specific Statement of Work issued pursuant to this Contract.

### **12. COMPETITIVE PRICING**

Supplier warrants and agrees that each of the charges, economic or product terms or warranties granted pursuant to this Contract are comparable to or better than the equivalent charge, economic or product term or warranty being offered to any commercial or government customer of Supplier. If

Supplier enters into any arrangements with another customer of Supplier to provide Services under more favorable prices, as the prices may be indicated on Supplier's current U.S. and International price list or comparable document, then this Contract shall be deemed amended as of the date of such other arrangements to incorporate those more favorable prices, and Supplier shall immediately notify VITA of such change.

### **13. 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, an Authorized User may disclose the Confidential Information as delivered by Supplier to subcontractors, contractors or agents of such Authorized User that are bound by non-disclosure contracts with 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 Authorized User, Supplier shall (i) at its own expense, (a) promptly return to the disclosing Authorized User all tangible Confidential Information (and all copies thereof except the record required by law) of the disclosing Authorized User, or (b) upon written request from the disclosing Authorized User, destroy such Confidential Information and provide the disclosing Authorized User with written certification of such destruction, and (ii) cease all further use of the Authorized User's Confidential Information, whether in tangible or intangible form.

VITA or the Authorized User shall retain and dispose of Supplier's Confidential Information in accordance with the Commonwealth of Virginia's records retention policies or, if Authorized User is not subject to such policies, in accordance with such Authorized User's own records retention policies.

#### **D. Confidentiality Statement**

All Supplier personnel, contractors, agents, and subcontractors performing Services pursuant to this Contract shall be required to sign a confidentiality statement or non-disclosure agreement. Any violation of such statement or agreement shall be deemed a breach of this Contract and may result in termination of the Contract or any order or SOW issued hereunder.

### **14. INDEMNIFICATION AND LIABILITY**

#### **A. Indemnification**

Supplier agrees to indemnify, defend and hold harmless the Commonwealth, VITA, or any Authorized User, their officers, directors, agents and employees (collectively, "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, assessments, fines, penalties (whether

criminal or civil), 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 misconduct or negligence of any employee, agent, or subcontractor of Supplier, (ii) any act or omission of any employee, agent, or subcontractor of Supplier, (iii) breach of any representation, warranty or covenant of Supplier contained herein, (iv) any defect in the Services or Deliverables 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 or Deliverables. 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.

## **B. Liability**

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR (A) LOSS OF PROFITS, BUSINESS, REVENUE, GOODWILL OR ANTICIPATED SAVINGS; (B) LOSS OF OR DAMAGES TO DATA; OR (D) ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND, HOWSOEVER CAUSED; WHETHER THE LIABILITY IS BASED ON CONTRACT, NEGLIGENCE, TORT OR OTHERWISE AND REGARDLESS OF WHETHER A PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES.

Notwithstanding any language to the contrary in this Contract or any order issued hereunder, the maximum cumulative liability of Supplier to Commonwealth, VITA, and all Authorized Users for all actions arising out of or related to this Contract and all orders issued hereunder for each twelve (12) month period during the term of this Contract shall not exceed the amount paid by Commonwealth, VITA, and all Authorized User for Equipment during such period.

## **15. 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/library/default.aspx?id=537#securityPSGs>) 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 Authorized User 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 Authorized User 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 the Commonwealth, VITA, the 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 the Commonwealth, VITA, the Authorized User, their officers, directors, agents or employees, on account of the failure of Supplier to perform its obligations pursuant this Section.

## 16. IMPORT/EXPORT

In addition to compliance by Supplier with all export laws and regulations, VITA requires that any data deemed "restricted" or "sensitive" by either federal or state authorities, must only be collected, developed, analyzed, or otherwise used or obtained by persons or entities working within the boundaries of the United States.

## 17. GENERAL PROVISIONS

### A. Relationship Between VITA and Authorized User and Supplier

Supplier has no authority to contract for VITA or any Authorized User or in any way to bind, 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 any Authorized User, shall be reimbursed by Supplier upon demand by VITA or such Authorized User.

### B. Incorporated Contractual Provisions

The then-current contractual provisions at the following URL are mandatory contractual provisions, required by law or by VITA, and that are hereby incorporated by reference: <http://www.vita.virginia.gov/uploadedFiles/SCM/StatutorilyMandatedTsandCs.pdf>

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

The then-current terms and conditions in documents posted to the aforereferenced URLs are subject to change pursuant to action by the legislature of the Commonwealth of Virginia, change in VITA policy, or the adoption of revised eVA business requirements. 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 URLs periodically.

### C. Compliance with the Federal Lobbying Act

Supplier's signed certification of compliance with 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") is incorporated as Exhibit E hereto.

### D. 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.

### E. 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.

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

Supplier shall not use the name of VITA or any Authorized User's name 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.

**G. 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.

**H. No Waiver**

Any failure to enforce any terms of this Contract shall not constitute a waiver.

**I. 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.

**J. Captions**

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

**K. 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.

**L. Survival**

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

**M. 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 or SOW affected by such postponement or delay.

**N. Remedies**

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

**O. 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.

**P. Offers of Employment**

During the first twelve (12) months of the Contract, should Supplier hire an employee of an Authorized User who has substantially worked on any project covered by this Contract without prior written consent, the Supplier shall be billed for fifty percent (50%) of the employee's annual salary in effect at the time of termination.

**Q. Contract Administration**

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

**R. Entire Contract**

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

- i). Exhibit A Service Requirements
- ii). Exhibit B Statement of Work (SOW) Template
- iii). Exhibit C Change Order Template
- iv). Exhibit D Service Fees
- v). Exhibit E Certification Regarding Lobbying

This Contract, 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, or referenced by the Supplier's Proposal shall be deemed invalid. The provisions of the Virginia Department of

General Services, Division of Purchases and Supply Vendor's Manual shall not apply to this Contract or any order or SOW issued hereunder. 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, any individual SOW, Exhibit D.

Any modification to an SOW that extends the period of performance beyond one (1) year or increases the value of such SOW above US\$100,000 shall, absent the prior written approval of VITA, be voidable by VITA, in its sole discretion. If an SOW is voided by VITA, such SOW shall no longer be binding on either Party and all obligations with respect to such SOW shall expire.

[Note: period of performance may be shorter than one (1) year, but not greater, and dollar values may be lower than \$100,000 but not greater.]

An Authorized User and Supplier may enter into an ordering agreement pursuant to this Contract. To the extent that such ordering agreement, or any order or SOW issued hereunder, include any terms and conditions inconsistent with the terms and conditions of this Contract, such terms and conditions shall be of no force and effect.

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.

Executed as of the last date set forth below by the undersigned authorized representatives of VITA and Supplier.

Supplier  
By:   
(Signature)

Name: Jamie Royster  
(Print)

Title: Regional Sales Exe

Date: January 30, 2009-01-30

Address for Notice:

1009 Think Place

Morrisville, NC 27560

Jason Mooneyham

VITA  
By:   
(Signature)

Name: James T. Roberts  
(Print)

Title: Director Finance & Administration

Date: 2-02-09

Address for Notice:

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\_\_\_\_\_  
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