



Commonwealth of Virginia
Virginia Information Technologies Agency

INFORMATION TECHNOLOGY HARDWARE, SOFTWARE & SERVICES
Optional Use

Date: February 2, 2011

Contract #: VA-090202-PCMG

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: PC Mall Gov
7421 Gateway Court
Manassas, VA 20109

FIN: 33-0964088

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Term: February 2, 2011 – February 1, 2012

Payment: Net 30 days

For Additional Contract Information, Please Contact:

Virginia Information Technologies Agency
Supply Chain Management

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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 #1
TO
CONTRACT NUMBER VA-090202-PCMG
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
PC MALL GOV, 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 PC MALL GOV, 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-PCMG (the Agreement), as modified.

Supplier agrees to support VITA's policy and procedure regarding removal of data from hard drives required per COV ITRM Standard SEC514-03 for all Authorized User Product being returned and/or replaced, by not accepting any returned Product until the Authorized User validates to the Supplier that one of the following actions has been taken:

- a.) If the hard drive malfunctions and data can be removed in accordance with the requirements in COV ITRM Standard SEC514-03 the drive may be returned to the Supplier for replacement under warranty or maintenance.
- b.) Hard drives that are inoperable and do not allow data to be removed in accordance with the requirements in COV ITRM Standard SEC514-03 shall be physically destroyed using a method previously outlined.
- c.) Hard drives returned due to non-acceptance after installation and acceptance testing or as a result of any Termination action, Infringement consequence or any other action shall have data removed or hard drives destroyed by the same methods prescribed in a) and b) above.

When Product is returned or destroyed due to Termination for Breach or Default by the Supplier, or as a result of Supplier's infringement of any third party's rights, the Supplier is responsible for and will bear all costs for Authorized User performing the required action in accordance with COV ITRM Standard SEC514-03. When Product is returned as a result of any warranty or maintenance-related remedy, the Authorized User is responsible for and will bear all costs for performing the required action in accordance with COV ITRM Standard SEC514-03.

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-PCMG 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.

PC MALL GOV, INC.

BY: _____

NAME: Cathy Boleyn

TITLE: Vice President, Operations

DATE: January 19, 2011

COMMONWEALTH OF VIRGINIA

BY: _____

NAME: SAMUEL A. NIXON JR

TITLE: CIO OF THE COMMONWEALTH

DATE: 1/31/11



Hardware and Maintenance Contract

between

The Virginia Information Technologies Agency

on behalf of

The Commonwealth of Virginia

and

PC Mall Gov, Inc.

**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 PC Mall Gov, Inc. ("Supplier"), a Delaware corporation headquartered at 7421 Gateway Court, Manassas, VA 20109-7311, 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 approved manufacturers Product, and to provide various Services to the Authorized Users.

2. DEFINITIONS

A. Acceptance

Acceptance shall take the form of completed and successful acceptance testing in conformance with the Requirements as determined by the Authorized User.

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

The parameters of Maintenance Services, including the times during which and time-frames in which Supplier shall respond to a request for Maintenance Services. The available Maintenance Levels shall be as defined in Exhibit D hereto. The actual Maintenance Level for a unit of Product shall be set forth in the executed order for Maintenance of that Product referencing this Contract.

E. Maintenance Coverage Period (MCP)

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

F. Maintenance Services (or Maintenance)

Those Services, preventive and remedial, performed by Supplier at Authorized User's request in order to ensure continued operation of the Product. Maintenance Services shall include support services.

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.

K. Requirements

The functional, performance, operational, compatibility, Acceptance testing criteria 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, including certain Maintenance Services or other services for the Product 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 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 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. If an Authorized User deems the Supplier to be in breach and/or default of an order, 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, 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, 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.

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 Acceptance.

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

If delivery of all products is not completed by the time specified the Commonwealth may cancel the agreement or any individual order without further obligation. The Commonwealth may postpone delivery date by notifying the Contractor at least 7 days prior to the delivery date.

Supplier understands that the default delivery schedule for this contract is thirty (30) days from date of order however; alternate delivery schedules may be negotiated at the time of order. For any product that requires a delivery schedule beyond thirty (30) days, Supplier will notify the Authorized End User in advance of the order and provide a date for delivery. That delivery date will be identified in the subsequent Delivery Order. In some cases, Authorized End User may require delivery earlier than thirty (30) days. Should the Supplier commit to an earlier delivery schedule as proposed by the Authorized End User, the revised delivery schedule will be incorporated into the Delivery Order. Supplier hereby acknowledges and agrees that failure to deliver the Product ordered in strict accordance with the agreed upon delivery schedule determined in accordance with this Section shall constitute a material breach of this Contract resulting in possible damages to the ordering Authorized User, the total sum of which would be impracticable or difficult to ascertain as of the Effective Date of this Contract. If the delay lasts longer than thirty (30) days, the Authorized User may immediately cancel the order. Any credit due the Authorized User will be applied to the next periodic invoice.

In addition, 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 give Supplier oral or written notice of breach. 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. Once the Authorized User has effected a

purchase from an alternate source (in accordance with the Virginia Public Procurement Act, §§ 2.2-4300 et seq. of the Code of Virginia), the Authorized User may charge-back Supplier, in which case Supplier agrees to reimburse the Authorized User for any difference in cost between the original contract price and the Authorized User's cost to cover from the alternate 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 breach. 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 Product at no additional charge. Installation shall include: unpacking, removal of all shipping/packing materials, positioning, connecting to internal utility services, testing, related necessary services to allow for Acceptance by the Authorized User.

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

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 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, 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

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

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, Supplier shall, for each Authorized User who purchased the discontinued Product, continue to meet such Authorized User's needs for the

discontinued Product for not less than twelve (12) months. 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 maintenance 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. In addition, Supplier agrees to provide, for a period of five (5) years from the date of the last purchase, 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 and 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 all Safety Changes and Performance Changes within thirty (30) days after issuance of the engineering change order by the Product 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

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 and Maintenance Support

Supplier agrees to make available new/certifiable as new spare parts and the Maintenance Services identified in the Maintenance Services section herein and Exhibit D hereto for each Product type ordered by an Authorized User, for five (5) years from the expiration of the initial Warranty Period of the last unit of any given Product type provided by Supplier to such Authorized User. Thereafter, Supplier shall advise such Authorized User of its intent to

discontinue either certain parts or maintenance services for any Product type ordered by the Authorized User.

Supplier shall notify the Authorized User 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, including full maintenance and repair by the Authorized User or its designated third-party maintenance provider within thirty (30) days prior to the discontinuance date or 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.

E. Inventory Record

Supplier shall maintain, at no additional cost, a record of all units of Product covered under warranty/maintenance by type, quantity and location, including the end date for each unit's Warranty Period or maintenance term ("Inventory Record"). Product quantities and types may vary as Product 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 warranty or maintenance service 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 or maintenance 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.

Furthermore, Supplier shall, 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 or maintenance 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 shall be at the hourly rate specified in Exhibit C and shall be inclusive of all expenses. Warranty or maintenance 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, regulation, copyright, patent, trade secret or other proprietary right of any third-party. 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

Supplier warrants that each Product provided hereunder is, and shall continue to be, data, program, and upward compatible with any other Product available or to be available from Supplier within the same family of Products so that data files created for each Product can be utilized without adaptation of the other Products, and so that programs written for the Product shall operate on the next generation of Products, and not result in the need for alteration, emulation, or other loss of efficiency for a period of not less than five (5) years.

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;
- iii). Upon delivery, the Product shall be new and in Operating Condition and shall have all released engineering changes released to date already installed;
- iv). Each Product delivered hereunder shall function in conformance with the Requirements;
- v). 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;
- vi). Upon delivery, all System Software shall be at the current release level unless otherwise requested by the ordering Authorized User; and
- vii). The System Software shall not contain any embedded device or code (e.g., time bomb) that is intended to obstruct or prevent any Authorized User's use of the System Software, nor shall Supplier disable any Authorized User's use of such System Software through remote access or otherwise. If the 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

For a period of five (5) years following acceptance of the Product by an Authorized User, Supplier warrants that the Product's performance standards and Mean Time Between Failure (MTBF) standards, calculated based upon such Authorized User's installed base of Supplier Product, shall be at least as good as the standards set forth in Exhibit B. If the Product fails to satisfy (i) the MTBF standards or (ii) the performance standards for that Product type as set forth herein, Supplier shall pay for any and all additional repairs, parts and labor required to bring Product to the appropriate level set forth in Exhibit B, including the cost to retrofit the entire installed Product base. If Supplier fails to so modify or replace the Product so as to achieve the MTBF standards within thirty (30) days, the Authorized User may, at its option, return such Product and receive a full refund during the Product warranty period, or if the warranty has expired, receive a straight line pro-rated refund, by year thereafter for the five (5) year period following installation of the Product.

G. Warranty Services

During the warranty period of one year (1) year, or as specified in the applicable order, Supplier warrants that the Product shall meet or exceed the Requirements. Supplier shall provide warranty services (including unlimited telephonic support and all necessary travel and labor) during the Warranty Period at the prices identified in Exhibit C. 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 Product to meet 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.

If multiple warranty levels are available, an Authorized User may elect, at any time, an alternative warranty 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.

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

1. Product Covered

Exhibit C lists all Product types covered under warranty.

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. One-year Depot Warranty

Supplier's depot warranty offerings and responsibilities are described in Exhibit D.

8. On-site Warranty

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

9. System Software Warranty

As part of the standard warranty offering, for a period of not less than twelve (12) months beginning on the date of Acceptance, Supplier shall provide the following warranty 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.

c) Response and Restore Times

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

d) Software Evolution

Should Supplier or Software Publisher merge or splinter the System Software previously provided to any Authorized User, such action on the part of Supplier or Software Publisher shall not in any way result in any Authorized User being charged additional license or support 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 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) replace the non-conforming Product or (ii) accept return of the non-conforming Product and return all monies paid by such Authorized User for the returned 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.

12. Product Maintenance Services and Renewal Options

At least sixty (60) days prior to the expiration of the Warranty Period, Supplier shall notify the Authorized User, and the Authorized User, at its sole discretion, may order from Supplier Maintenance Services, including System Software Maintenance for a period of one (1) year (Maintenance Coverage Period) and for the annual fee identified in Exhibit C. Supplier warrants that it shall make Maintenance Services available for all the Product, including System Software, listed in Exhibit C, or which are components of Products listed in Exhibit C, for a period of at least five (5) years from the expiration of the initial Warranty Period of any Product provided to an Authorized User pursuant to this Contract. 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.

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

7. MAINTENANCE SERVICES

Supplier shall provide Maintenance Services (including unlimited telephonic support and all necessary travel and labor) during the Maintenance 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 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.

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

Any Authorized User may use the Product, and any software licensed in connection with such Product, on a worldwide basis for the benefit of itself and its agents. Supplier further authorizes use of the Product by third parties who are under contract with an Authorized User to provide outsourcing services, including but not limited to providing application development services, data processing or facilities or infrastructure management services for the benefit of such Authorized User. For Products to which the Commonwealth or an Authorized User takes title, and any System Software which is integral to such Products, under the terms of this Contract, there are no restrictions on subsequent resale or distribution thereof by the Commonwealth or such Authorized User.

9. SOFTWARE LICENSE

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, the license shall be held by the Commonwealth. If Authorized User is a locality, municipality, school, school system, college, university, local board, local commission, or local quasi-political entity, the license shall be held by that public body.

System Software licensed directly by Supplier

A. License Grant

Supplier hereby grants to the Commonwealth and all Authorized Users a fully paid, perpetual, worldwide, nonexclusive, transferable, irrevocable license to use, and to permit any agent of the Commonwealth or such Authorized User to use, System Software for each Product. Each license granted under this Contract authorizes the Commonwealth or such Authorized User and any agent of the Commonwealth or such Authorized User to use Supplier-licensed programs in machine readable form on any system without limitation. It is expressly understood that “perpetual” license rights shall commence upon delivery of the System Software to the Authorized User and shall exist in perpetuity unless otherwise terminated in accordance with the applicable provisions of the Contract. The System Software is the property of Supplier, and no title or ownership of the System Software or any of its parts, including documentation, is transferred to the Commonwealth or the Authorized User.

B. Limitations on Copying and Disclosure

The Commonwealth, an Authorized User, or any agent of the Commonwealth or such Authorized User may make a reasonable number of backup, archival, and disaster recovery copies of the System Software. Any copies of the software or documentation made by the Commonwealth or an Authorized User pursuant to this Contract shall bear all copyright, trademark and other proprietary notices included therein by Supplier and, except as expressly authorized, neither the Commonwealth nor the Authorized User shall distribute same to any third-party without Supplier's prior written consent. The Commonwealth may distribute the System Software and documentation if such distribution is incidental to transfer of Product to which it has taken title. Neither the Commonwealth nor any Authorized User may resell the System Software except if such resale is incidental to the resale of Product to which the Commonwealth or such Authorized User has taken title.

C. Business Continuity and Recovery

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

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.

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

D. Authorized User Compliance

Compliance with the terms and conditions of any license granted pursuant to this Contract is solely the responsibility of the Authorized User which purchased such license and not the responsibility of VITA, unless VITA purchased such license on its own behalf.

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

Notwithstanding any other provision or other unilateral license terms which may be issued by Supplier after the Effective Date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of an order for System Software licensed under this Contract, or the fact that such other agreement may be affixed to or accompany System Software upon delivery (“shrink wrap”), the terms and conditions set forth herein shall supersede and govern licensing and delivery of all products and services hereunder.

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

Supplier is required to accept any order placed by an Authorized User through the eVA electronic procurement website portal ([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:

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

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 for warranty services and Maintenance Services, and the appropriate Commonwealth discounts. Prices for Product shall not increase and 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. Supplier shall demonstrate the added value for any requested price increase. Any change in price 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 against the CPI-U, as defined above, for the expenditure category "Information technology, hardware and services", and the prices in Exhibit C shall be appropriately reduced to ensure continued price competitiveness, 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. Payment for Maintenance Services shall be annually in arrears unless otherwise stated herein. No invoice shall include any costs other than those identified in the executed order, which costs shall be in accordance with Exhibit C. 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 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

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- 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 accepted. Charges for Product or Services accepted more than ninety (90) days prior to receipt of a valid invoice may not be paid. 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.

Product shipped without the applicable Documentation may not meet Acceptance criteria, 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 Acceptance.

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.

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 under like size, terms and conditions. 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, 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

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.

14. INDEMNIFICATION AND LIABILITY

A. Indemnification

Supplier agrees to indemnify, defend and hold harmless the Commonwealth, VITA, 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 (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 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. Liability

Supplier shall have unlimited liability with respect to (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) claims for bodily injury, including death, and real and tangible property damage, (iv) Supplier's indemnification obligations, (v) Supplier's confidentiality obligations, and (vi) Supplier's security compliance obligations. Supplier agrees that it is fully responsible for all acts and omissions of its employees, agents, and subcontractors, including their gross negligence or willful misconduct.

FOR ALL OTHER CONTRACTUAL CLAIMS, IN NO EVENT WILL ANY PARTY BE LIABLE TO ANY OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING (WITHOUT LIMITATION) LOSS OF PROFIT, INCOME OR SAVINGS, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, EXCEPT WHEN SUCH DAMAGES ARE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE PARTY, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS.

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 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 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 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. 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 Software License, 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 Maintenance provisions herein, shall continue in effect through termination of the Maintenance Services ordered pursuant to the Maintenance 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, 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

During the first twelve (12) months of the Contract, should Supplier hire an employee of VITA 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. 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.

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 and Maintenance 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 C.

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

By: _____



(Signature)

Name: Cathy Boleyn

(Print)

Title: Vice President, Business Operations

Date: _____

1/26/09

VITA

By: _____



(Signature)

Name: James T. Roberts

(Print)

Title: Director Finance & Administration

Date: _____

2-02-09

Address for Notice:

PC Mall Gov, Inc.

7421 Gateway Court

Manassas, VA 20109-7311

Attention: Contracts Manager

Address for Notice:

Attention: Contract Administrator

EXHIBIT A

Section 5. Functional and Technical Requirements

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>	<p>Yes</p>	<p>PCMG is headquartered in Manassas, Virginia and focuses on public sector and education customers. We offer a dedicated team of specially trained and talented individuals to manage and support our customers' requirements. PCMG currently accepts inquiries including requests for quote and orders via e-mail, fax and the eVa procurement portal. We can sell and ship to all locations in the entire Commonwealth of Virginia.</p> <p>PCMG provides this response with the assumption that suppliers including distributors and manufacturer partners who provide products are not classified as traditional "subcontractors." With that assumption, PCMG does not anticipate the opportunity to use subcontractors in fulfilling hardware equipment requirements resulting from an award from this RFP. The expansive nature of our product offering as well as the depth of our technical support staff will afford us the expertise required to meet the requirements of this solicitation.</p> <p>PCMG may, on an "as needed" basis, subcontract professional services to a partner. As service requirements arise, PCMG will review the requirements and map these requirements to our current database of partners with whom we have established and documented agreements. These would include both our sister organizations and our external partners. All subcontracting partnerships will be announced to VITA in advance of performance. VITA will have the ability to disprove the use of particular subcontractors.</p> <p>As committed in our corporate Small Business Subcontracting Plan, PCMG seeks, whenever possible, to utilize the services of small, small disadvantaged, woman-owned, service disabled or hub zone businesses. We have established utilization goals for our corporation that are reviewed and assessed on an annual basis. We are required, by</p>

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			virtue of several of our state and federal contracts, to report our utilization rate with some regularity. Our performance against the goals of the individual contract is rated in direct proportion to the attainment of our subcontracting goals.
2.	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.	Yes	PCMG along with our sister organizations, employ over 2500 people spanning 5 subsidiary companies who specialize in providing a solution to a customer's needs and moving that solution into the customer's hands. PCMG, can provide service to all locations in the entire Commonwealth of Virginia through our internal engineering staff and our network of service partners.
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: http://www.eva.virginia.gov/vendors/pages/catalogcreation.htm Please provide either screen shots or a link to serve as an example.	Yes	<p>As an incumbent contractor, PCMG has an active catalog punch-out website currently in place that interfaces with eVA. Screen shots are provided Appendices Section.</p> <p>PCMG Inc., is an industry leader in online shopping to government customers. Our customized, password protected Customer Access Pages, or CAP sites, allow users to order directly from the web, track their orders and maintain a history of their ordering activity.</p> <p><u>CAP Features:</u></p> <ul style="list-style-type: none"> • Order Status and History: Place and track orders at your convenience • Fast and Easy Requisition/Quotes: Product requests easily convert to orders • Secure Log-In: Increased security protection at the log-in level • Customized Pricing: Maximize the volume of savings for your business • Custom Access Management: Automate purchasing authority levels • Frequently Purchased Products: No need to search for standard products • Dedicated support: Easy access to your dedicated support team • Serial # Tracking: Simplify tracking of business assets and purchases <p>These sites will contain the contract's discounted</p>

EXHIBIT A

			<p>price lists and instructions on how to place orders through the contract will be detailed within the site. A listing of support team members will be available with all contact information including name, email address, telephone and fax numbers. Product information will be listed as well as links to manufacturer web pages. All pricing will be updated in accordance with the contract's terms and conditions and modifications. Product information updates will be posted as they become available.</p> <p>PCMG's Account Executives can assist the Commonwealth of Virginia customers with the set up and usage of the CAP site. PCMG can also present a web based training seminar for all interested users. This seminar will provide an overview of the CAP site and how to get started. Account Executives are available during normal business hours to handle any questions on usage of the CAP site.</p>
4.	Can your firm have a catalog website up, functioning and interfacing with eVA within 30 days of contract award?	Yes	<p>PCMG commits to the implementation of the catalog website within 30 business days of contract award. PCMG is experienced posting both static catalogs as well as punch-outs and has numerous successful Arriba implementations in use presently, including for eVA. Our process has been streamlined to the point that we are able to complete an implementation in as short as 10 business days. The timeframe to implement is largely dependent upon the degree of customization required by the customer.</p>
5.	Will your firm have a dedicated account management team on this contract? Please provide details.	Yes	<p>Since the award of our first VITA contracts (Microsoft in 2003 and Miscellaneous Computers Products and Accessories in 2004), PCMG has staffed a Program team dedicated to supporting the Commonwealth of Virginia. Our team of sales managers, account executives and product specialists to respond to customer inquiries, provide guidance, and ensure overall customer satisfaction by monitoring the accurate fulfillment of orders.</p> <p>PCMG will continue provide the Commonwealth of Virginia an expert Program team which will managed at our headquarters location in Manassas, Va. The support organizations available in the Manassas</p>

EXHIBIT A

			<p>location include: Account Management; Pre and Post Sales Engineering; Accounting; Contracts Management; Customer Service and Executive Management.</p> <p>PCMG will ensure that a dedicated Account Executive is available for VITA support at the Manassas location as well as a regional account manager in Richmond, Va. Additionally, PCMG will dedicate Inside Sales support in Torrance, California and Montreal. This will ensure that VITA end users have telephone support for inquiries from 8 a.m. – 8 p.m. EST.</p> <p>An extensive PCMG contact information list will be made available to the VITA Program Office including telephone numbers, e-mail addresses and the PCMG 800 Customer Service Center number.</p>
6.	<p>Will your firm have more than one field account executive on this contract? Please provide details.</p>	?	<p>PCMG's designated Program Manager will team with Account Management to ensure that customers throughout the state of Virginia provided with immediate access to comprehensive customer support. An Account Executive will reside in the Manassas, Va. Office and have interaction with the support organizations. In addition, another Account Executive will reside in the Richmond area. Commonwealth of Virginia customers will be identified by geography and the Account Executives will divide up the state to effectively service the greatest number of end users.</p> <p>PCMG's Program Management office and senior management, located in Manassas, are immediately available to address issues or to coordinate specific needs as required.</p>
7.	<p>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.</p>	Yes	<p>Promoting the Contract</p> <p>PCMG is prepared to use its proven expertise to promote the contract to all eligible users during the life of the contract. Our approach will incorporate strategic and tactical elements to ensure maximum awareness of the vehicle as well as ongoing promotion of products. A combination of the following elements will form the foundation of</p>

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		<p>promotional success:</p> <ul style="list-style-type: none"> • Effective data mining to clearly target customers • Education of Sales Force • Effective implementation of marketing vehicles • Compelling messaging • Product availability • Tracking of customer activity • Customer Feedback/Satisfaction Surveys <p>PC Mall Gov will use an integrated program of these proven approaches to promote the contract:</p> <p>PC Mall Gov.com— PC Mall considers itself a leader in Internet e-commerce innovation and will continue enhancing its leadership position on the Internet. The PCMallGov.com site serves as a premier destination for the government market to gather pertinent information on quality products and services offered at PCMG. This site includes home pages applicable to the federal, state, local, and education markets, <i>with a complete listing of contracts</i>. Additional features of the site include tradeshow calendars, product availability, online purchasing, and order tracking.</p> <p>CAP Sites—PCMG maintains and operates an extranet for its corporate and government customers, called “Corporate Access Pages” or CAP sites. From the PCMallGov.com web site, government users will be able to access a personalized CAP site. This CAP site will provide users with contract-specific product pricing, availability, and same-day order processing, with next-day delivery of products. This CAP site will feature a “Configurator”, which will allow a government user to identify different configurations under consideration and verify compatibility of configuration components. Users must provide valid accounts or government purchase cards to submit orders.</p> <p>Mailing Lists—PC Mall maintains a proprietary list of approximately 7.7 million names of previous and potential customers. This database is continually</p>
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		<p>analyzed to target customer types and increase response and purchase rates. PCMG is prepared to use these existing mailing list management approaches to establish a mailing list, and send e-mail newsletters (if the government allows), applicable to the VITA contract.</p> <p>Catalogs— PCMG delivers top quality products through its distinctive full-color direct response catalogs (PC Mall, PC Mall Gov, and Mac Mall). Key vendors have agreements to provide market development funds to PCMG, whereby those vendors fund portions of the cost of catalog publication and distribution based upon the amount of coverage given in the catalogs for their products. Again, PCMG keeps its internal costs low. As desired by VITA, PCMG will provide tailored catalogs of the contract product offerings to those persons on the Commonwealth mailing list. Please refer to the sample catalog submitted with this proposal.</p> <p>Sales Force—PCMG offers dedicated account executives. Currently, PCMG has a team of account executives dedicated to the Commonwealth of Virginia. This team is located in Manassas, Virginia, Torrance, California and Montreal, Canada. These account executives undergo an initial three-month training program focusing on use of PC Mall’s systems, product offerings, and networking solutions, sales techniques, phone etiquette, and customer service. Sales executives also attend frequent training sessions to stay current on new products. PCMG account executives are supported by in-house customer service and technical support personnel.</p> <p>Brown Bag Product Webinars/ Technology Refresher Information Sessions- Using in-house technical expertise as well as our manufacturer partners’ resources, PCMG offers a variety of content rich information sessions. These sessions are designed to provide updates to customers on specific contract issues/changes, new product launches, as well as customer education on information technology topics such as server consolidation, distributed print management, energy conservation, Continuity of Operations, and Network security to</p>
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		<p>name a few. The sessions are online conferences/webinars and last from 30 – 60 minutes and are typically scheduled as Lunch time learning sessions, thus the “brown bag” concept of bring your lunch & learn!</p> <p><i>Shows & Events</i> – regional and in-agency tabletops and tradeshow play an important role in contract promotion. PCMG participates in a variety of these events to develop customer relationships, promote contract vehicles and merchandise our products and services.</p> <p>The VITA Contract Marketing Plan</p> <p>PCMG, as the contract holder, would provide the following marketing in support of this contract:</p> <p><u>Contract Launch Announcement Webinar Conference</u> Upon award of the contract PCMG will set up a Contract Launch Webinar and invite all eligible VITA Contract customers to attend via Conference Call/Webinar. The objective of the call would be to inform and education potential contract users on the award, the products and the important Points of contact.</p> <p><u>Knowledge is Power Campaign</u></p> <p>1. <u>“Making an Informed Decision: A Program Information Tool Kit from PC Mall Gov -- Comprehensive Program/Product information guide to promote an informed purchase decision.</u> This kit would include:</p> <ul style="list-style-type: none"> • Description of the contract and the products awarded as well as the manufacturers included. • Why using the VITA Contract benefits their organization over other procurement options • Information on placing orders in accordance with the required process. <p>The kit would include complete information on the specific products available. Development of the materials would be done in partnership with PCMG’s</p>
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		<p>Category Marketing Team, our awarded manufacturers and with input from VITA. The kit would address requirements for decision making for a range product types and eligible user environments from the individual classroom or school all the way up to the district, system or statewide agency requirements. We would make the kit available in both hardcopy and electronic format for convenient distribution either by direct mail, email or on the internet.</p> <p>2. <u>VITA Contract Knowledge eNewsletter</u> - Contract specific email marketing, with double opt-in from subscribers, will be done on a regular schedule to communicate product updates, contract information as well as upcoming events. These electronic broadcasts will service as a strong element of awareness and information dissemination for the contract.</p> <p>3. <u>Quarterly Product/Application Brown Bag "Webinars."</u> Promoted via e-newsletter and on our website, these sessions would be hosted by PCMG and designed to be a real world "in the classroom" instructional session on using specific contract products in VITA customer environments. The intent of these sessions would be to offer methods for integrating the technology into the organization. Subject matter experts from Manufacturers, the educational community, State & Local Associations/ Agencies or industry would be presenting the material in an on-line conference/distance learning setting. Further, presentation/materials would be provided to VITA for posting, should it be desired, on their web.</p> <p>4. <u>New Product Introduction Events: "VIRTUAL VITA UPDATES"</u> PCMG and our awarded manufacturers would join together to set up online conference sessions for VITA Contract users to be introduced to new products as they are announced. Additionally PCMG would partner with VITA to structure an early order/new product promotion to members who participate in these sessions, if desired.</p> <p>5. <u>Participation in Virginia IT shows and events:</u></p>
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		<p>tabletop and IT showcase events will be coordinated, in conjunction with our key manufacturers, in a series of select locations throughout the state. Throughout the months following the award, PCMG will participate in shows and events, as available, such as the Virginia Association of Governmental Purchaser’s (VAGP) spring and fall events, Virginia Community College System (VCCS) events, and the Commonwealth of Virginia Information Technology Showcase (COVITS) to promote the contract, our partnership with VITA and the VITA mission in general.</p> <p>6. <u>Contract Landing Page</u> - A unique VITA Contract landing page will be available upon Contract award and will feature contract information, ordering instructions, and a “what’s new” section to announce new product introductions. Additionally this Virginia Contract portal will also display an upcoming events section to communicate shows we will be participating in, our Quarterly Brown Bag Product Webinars and Virtual VITA Updates Technology Refresher Information sessions.</p> <p>7. <u>Ongoing support and promotion of VITA Mission and our contract</u> through advertising in government and educational publications, newsletters and professional organizations that target eligible VITA Contract users. Offers of product specials, quality classroom instructional materials, “tips & tricks for using contract products,” and other informational content such as white papers for posting on websites are just a few examples of what might be provided.</p> <p><i>Other Marketing</i></p> <p>PC Mall Gov is an industry leader in direct marketing of IT products to government and education. In addition to the “Knowledge is Power Campaign” outlined above, we are willing to capitalize on the processes and resources already in place to help promote the contract throughout Virginia. We have an assigned Business Development Director State, Local and Education whose responsibilities are to support and promote the contract and ensure that our sales team has the resources needed to meet the needs of</p>
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EXHIBIT A

			<p>the contract’s eligible users. The SLED Business Development Manager and (PCMG) VITA Program Manager will work closely with the VITA Contract’s team to keep the contract up to date with current products as well as implement activities that will maximize utilization of the vehicle. We view our relationship with VITA as a working partnership. We are committed to continuing to carry forward the VITA mission and serving VITA’s user community.</p> <p>Customer feedback and responsiveness are important to success and PCMG takes both very seriously. Over the term of the contract, PCMG will conduct focus groups as well as surveys to solicit feedback on our performance from customers. Additionally, a customer satisfaction survey will be sent as a follow-up to every order to ensure that there is a mechanism for communication. All responses will be reviewed in a timely manner and reported issues will be responded to immediately by a member of our management team.</p> <p>In an industry that can be known for its volatility, PCMG has established a history of stability marked by growth and innovation in direct marketing and electronic commerce. Using its marketing resources and the approaches described above, PCMG will make eligible VITA customers aware of this procurement vehicle, the available products and services, and assist customers in creating timely and accurate purchase orders.</p>
8.	<p>Will your proposed product line be compatible with the following operating systems, Microsoft Windows 98, 2000, NT, 2003 Server, XP and Vista?</p>	<p><i>Yes</i></p>	
9.	<p>Does your firm offer an employee, teacher or student purchase program? Please provide details.</p>	<p><i>Yes</i></p>	<p>The pricing PCMG is offering to the Commonwealth of Virginia is based off manufacturer Pro-grams for government and educational customers. In many cases these prices are only available if purchased by a government entity or educational institution. Therefore we would not be able to offer the same</p>

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			<p>discount levels to employees of the Commonwealth of Virginia.</p> <p>We do have an employee purchase program for our largest customers that we would like to offer the Commonwealth of Virginia employees. The program offers Commonwealth customers discounts from our standard web pricing when they purchase through online CAP Sites. The employee/customer will be responsible for all applicable shipping and handling charges.</p> <p>PCMG Employee Purchase Program</p> <p>PCMG is able to offer our full assortment of PC and Mac hardware, including Desktops, notebooks, printers, displays and a complete assortment of software titles to all employees of our Government customers at discounted pricing through our enhanced Employee Purchase Programs (EPPs).</p> <p>As an employer and a participant in the PCMG EPP program your benefits include:</p> <ul style="list-style-type: none"> • Increased worker productivity • Extended relationship with PCMG • Improved employee morale and technical skills • Easy Set up and Maintenance • Dedicated program support • 24 Hour Shopping for Employees
10.	<p>Does your firm offer any product incentives, credits and or rebate programs? Please provide details.</p>	<p>Yes</p>	<p>PCMG participates in manufacturer sponsored customer promotions where applicable to our customers to the extent that these promotions can be made available through our system and the customer's purchase is eligible. Volume purchases and aggregation of orders, which allow us to negotiate on behalf of the customer for improved cost, is available on certain products if the quantities and the terms and conditions of the purchase meet specific requirements.</p>

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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.	<i>Yes</i>	<p>PCMG can provide many different types of reports for purchasing departments on a monthly or quarterly basis. These reports may have a very detailed format such as when the order was placed, purchase order number, sales order number, shipment date, manufacturer part number, product description, quantity, unit price, extended price, bill to and ship to information, order shipment status etc.</p> <p>PCMG provides similar reporting on several of our large federal IDIQ contracts as well as many state and local contracts. The information provided is pulled directly from our business systems. This integration of systems ensures that our quotes match our orders; that our invoices match customer purchase orders and packing slips; and that shipping information is accurate.</p> <p>Examples of reports are included in the Appendices section.</p>
2.	Does your firm maintain an electronic service log that is available to users on specific computer hardware? Please provide examples.	<i>No</i>	<p>As a reseller of OEM products, PCMG does not always provide maintenance and warranty support directly through our technical support staff. While we do customize maintenance programs for our customers and aggregate their maintenance calls, many of our customers prefer to have OEM-provided maintenance programs. In cases where customers are calling the OEM 800 number direct, service logs would be maintained by the OEM and not PCMG. PCM's Technical Support team will assist our customer's by coordinating with manufacturers to provide detailed information for hardware that is serviced and/or repaired.</p>
3.	Does your firm provide any additional reports that would be an added value to the Commonwealth? Please describe and provide examples.	<i>Yes</i>	<p>PCMG is able to provide email reports that include a list of equipment ordered, shipped and dollars spent. Examples of such reports are:</p> <ul style="list-style-type: none"> • Detailed purchasing history • Detailed asset tag reports

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			<ul style="list-style-type: none">• Detailed serial number reports• Detailed reports on models and quantities purchased <p>For customers that utilize the customized, secure Corporate Access Pages or <i>CAP Sites</i> via the web, PCMG provides real-time order status with the ability to check on order status by tracking number. Purchases can be managed through customizable order status and history reporting tools. Customers can search on any criteria or download information to analyze in different formats.</p>
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EXHIBIT A

C. Related Services

	Requirements	A	B
1.	<p>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.</p>	<p>Yes</p>	<p>The PCMG Marketing staff located in the Manassas office will be responsible are available on an "as needed" basis to assist with Table Top Shows; Trade Shows and Marketing Blitz for the VITA contract. More specific details on how PCMG will update Commonwealth of Virginia customers are discussed in the Marketing Plan described section A.7 above.</p> <p>The PCMG Marketing Staff includes Business Development Managers and Product Specialists for our large OEM partners as well as technology areas. These Business Development Managers are dedicated to specific OEMs and work closely with their counterparts to forecast sales; ensure product availability; announce special promotions; and highlight upcoming new product releases.</p> <p>Engineers from across the PCMG organization coordinate closely with our partner OEM engineers as well as the Program Manager to ensure that our Commonwealth of Virginia customers have full access to technology changes and enhancements as well as life-cycle support. This close coordination of Business Manager to Business Manager and engineer to engineer ensures that technology road maps are readily available to PCMG, many times well in advance of public release. Many of our agreements with OEM partners include programs to purchase demonstration units well in advance of commercial availability. The express purpose of these programs is to provide end users with a "Try It Before You Buy It" experience that will encourage them to explore interoperability with their current systems. This demonstration gear is also available to PCMG through our distributor partners and, depending on the system, can be made available to VITA end users within days of request for trial periods.</p> <p>PCMG engineers are available daily to coordinate with VITA end users regarding technology briefings; requirements analysis and configuration support.</p>

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<p>2.</p>	<p>Does your firm provide installation services? Please provide details.</p>	<p>Yes</p>	<p>PCMG or, if required, our OEM partners, will offer installation service for any equipment provided through PCMG. PCMG's Engineering team maintains manufacturer-level certifications with Sun Microsystems, IBM, HP, Apple, Dell as well as a host of niche manufacturers. The PCMG Program Manger and Customer Support team will coordinate the installation work with the Commonwealth of Virginia customer and its facility support organizations to determine specific deployment objectives to create a deployment plan. This will ensure minimal disruption to daily business and operations. PCMG can assist the customer in defining start/end dates, deployment sequencing dependencies, potential risks and related impact, staffing and training plans, communication plans and the quality management plan. The PCMG Customer Support team can also conduct a follow-up with the customer to verify the installation was completed to satisfaction.</p>
<p>3.</p>	<p>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.</p>		<p>PCMG is able to accommodate a wide variety of coverage and response options. Coverage hours can range from regular business hours to 7 x 24 hour coverage. Response times may include 2 hour, 4 hour, 8 hour, Next Business Day, Second Day, etc..</p> <p>In general, all service requests are routed through our Technical Support team. Upon receipt of the service request, the Analyst will attempt to resolve the problem. If dispatch is required, the Analyst will dispatch to the proper support personnel and monitor the call through completion. As part of the monitoring process, the Analyst will escalate as needed to ensure contract and service level compliance.</p> <p>PCMG's Technical Support team has found that many customers purchasing extended warranty and maintenance packages desire to speak directly with a manufacturer when executing a call for warranty service. Conversely, many customers, particularly those with an install base that covers multiple manufacturers, require a trusted contractor to act as first call when warranty service is required. Based on individual end users desires, PCMG will offer the option that the manufacturers Technical Support</p>

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			<p>800 number be first call or the PCMG Technical Service Center toll-free number and email address will be offered as a single point-of-contact for our Commonwealth of Virginia customers to report warranty or maintenance issues.</p> <p>The PCMG Technical Support team will provide our Commonwealth of Virginia customers with assistance on any warranty fulfillment questions to ensure a seamless integration of all warranty-related activities.</p>
<p>4.</p>	<p>Is your firm willing to commit to service-level agreements? If so please refer to Appendix C and fill in the yellow shaded areas.</p>	<p>Yes</p>	<p>PCMG manages programs in excess of \$12B value over the combined programs periods of performance. These programs are administered by both federal, state and local agencies who have critical need for adherence to schedule and contract deliverables. PCMG has developed our business systems based on an understanding of contracting in the public sector. Our ISO 9001:2000 approved processes are audited regularly against metrics that were developed based on the scope of our business. We manage several programs currently that have monetary penalties for non-performance and have, to date, suffered -0- performance violations.</p> <p>PCMG will manage a resulting VITA program with the same attention to performance utilizing the tools we have developed and the processes in place. Because of our past experiences with VITA and our success with the current Peripherals contract, PCMG has staff in place with an understanding of the culture and procurement processes within the Commonwealth of Virginia. The existing Account team as well as any new additions to the team will be thoroughly educated on the requirements of the program including delivery, reporting and invoicing requirements. The Program Manager will monitor performance and will communicate to the team, as well as the management team at PCMG, the potential impact of non-performance and the adverse affect</p>

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			<p>on the corporation.</p> <p>If awarded, PCMG is willing to commit to negotiated service-level agreements.</p>
5.	<p>Does your firm offer 8am to 5pm EST hardware and software support? Please provide details.</p>	<p>Yes</p>	<p>PCMG offers technical support between the hours of 8:00 AM (EST) – 8:00 PM (EST). PCMG's team of technical professionals and knowledgeable account executives are prepared to handle all questions about product compatibility, suitability, and specifications for the various hardware and software products offered.</p> <ul style="list-style-type: none"> • Receive assistance with setup and use, troubleshooting and diagnostic of key components and software applications, plus basic network troubleshooting. • All services performed by highly trained technical support staff.
6.	<p>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.</p>	<p>Yes</p>	<p>Our customer support team will handle all warranty-related issues and will facilitate the interaction between manufacturer and end user to the end user's satisfaction. PCMG's relationships with manufacturers and suppliers will allow us the ability to respond quickly to defective merchandise issues by cross-shipping replacement units as soon as we are notified by the customer.</p>
7.	<p>Does your firm provide custom imaging? Please provide details.</p>		<p>PCMG will utilize the resources of the PC Mall Memphis, TN warehouse to inventory product; stage and configure; asset tag; load images, or meet any special requirements prior to shipment. Our configuration and distribution facilities enable us to stage inventory for rollouts and strategic initiatives and to offer advanced logistics services including server configuration, custom imaging, asset tagging, and reporting.</p>
8.	<p>Does your firm provide in-house quality assurance and testing processes for all hardware? Please provide details.</p>		<p>When PCMG performs an installation we will test and perform standard "quality-assurance" procedures prior to requesting customer acceptance.</p> <p>PCMG relies on our manufacturer partners and their internal quality assurance measurements</p>

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			<p>prior to shipment. PCMG does not ship open box and/or refurbished equipment unless specifically requested and so noted. We do not open new equipment and do not void the manufacturer's warranty by testing.</p>
9.	<p>Does your firm provide service and repair for warranty and non-warranty maintenance for hardware? Please provide details and time frames.</p>	<p>Yes</p>	<p>The timeframes for return to service for both warranty and non-warranty products are dependent upon the manufacturer's warranty policies and the extended maintenance contract SLAs.</p> <p>The level of service provided to maintain equipment is directly proportionate to the level of service requested at time of purchase, i.e., 8x5 with two days to repair; 7x24 with 2 hour onsite support, depot repair, etc.</p> <p>PCMG in Manassas, Va. has a technical support staff of seven and accepts both onsite maintenance calls and depot warranty repairs mailed back to the Manassas facility.</p>
10.	<p>Do your service and maintenance technicians have and maintain current industry certifications? Please provide details and types of certifications.</p>		<p>PCMG employees hold over 3500 technical certifications in software & licensing; servers & storage; systems & peripherals; networking & security and power & infrastructure. PCMG engineers hold certifications in most UNIX platforms as well as HP Intel, Cisco, Apple and a variety of niche product lines. Certifications include:</p> <p>Cisco Gold Partner SSPA SCP Support Center Practices Certified Help Desk Institute Certified Security Practice – CISSP & National Security Agency Certified Microsoft LAR Microsoft Gold Certified Partner HP Platinum Partner HP Storage Elite Partner HP SVIP Print Elite Partner HP Service Elite HP Authorized solution sales (ASSP) and business solution partner (ABSP) HP Authorized service delivery partner (ASDP) Lenovo Premier Partner Lenovo Prime Services Subcontractor</p>

EXHIBIT A

			<p>IBM Premier Partner and FVAR IBM Authorized Warranty provider Lexmark Premier Reseller Lexmark Authorized Warranty Repair SAMSUNG Power Partner Samsung Authorized Warranty service provider Symantec Platinum Technology Partner Reseller McAfee AntiVirus Premier Partner OKI Select Elite Partner Toshiba Platinum Preferred Partner ViewSonic Platinum Reseller Citrix Silver Solutions Provider VMWare VIP Certified Partner Certified System Admin Solaris 10 Certified Network Admin Solaris 10 Data Center Elite – Sun Hitachi 9900V Certified</p>
11.	Does your firm provide onsite and/or depot warranty and repair? Please provide details.	Yes	<p>PCMG provides either customized support contracts for end users or provides the direct-OEM provided maintenance support contracts.</p> <p>Customized support programs would include</p> <ul style="list-style-type: none"> - Call Center only to aggregate a customer’s service calls by providing them with one number to call as opposed to many different OEM 800 numbers. - PCMG –performed support programs including both onsite and depot repairs. PCMG would provide an 800 number along with a customized program to meet the SLAs for performance desired by the end user. <p>OEM-direct maintenance support contracts are likewise provided through PCMG. PCMG would act as contract manager and facilitate contractual changes including the addition and/or deletion of serial numbers; contract extension or termination, consolidation of multiple OEM maintenance requirements.</p>
12.	Does your firm offer the use of spare parts/loaner equipment on both warranty and out of warranty parts? Please provide details.	Yes	<p>On an individual basis depending on the availability of loaner equipment from our demo pool and/or the demo inventory of our distributor partners. We can, as the circumstances dictate, utilize the funds described in C1. Above to provide loaner equipment.</p>

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13.	Does your firm provide asset management and equipment tracking services? Please provide details.	Yes	PCMG utilizes the resources of the PC Mall Memphis, TN warehouse to inventory product; stage and configure; asset tag; load images, or meet any special requirements prior to shipment. This configuration and distribution facility enables us to stage inventory for rollouts and strategic initiatives and to offer advanced logistics services including server configuration, custom imaging, asset tagging, and reporting.
14.	Does your firm ship all in stock orders same day? Please list all shipping timelines and include caveats for delay, etc..	Yes	PCMG accepts orders as late as 10 p.m. EST, for same-day shipping and ships over 99% of in-stock orders the same day. Our Memphis warehouse features best-in-class, rapid response distribution of \$10 billion in hardware and software inventory from multiple distribution centers, including real-time online connections to Ingram Micro, Tech Data, SYNEX & other leading distributors.
15.	Does your firm have an in-house order tracking system that can be accessed 24 x7 by a user? Please provide details.	Yes	
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.	Yes	PC Mall maintains a 225,000 square foot warehouse/distribution center strategically located next to the Federal Express hub in Memphis, Tennessee. That distribution center is supported by electronic (EDI) links with over 30 regional distributors and manufacturers that act as our Virtual Warehouses and provide daily access to over \$10 billion in inventory. PCMG accepts orders as late as 10 p.m. EST, for same-day shipping and ships over 99% of in-stock orders the same day. PC Malls Distribution Center also houses a Configuration Center utilized for staging of equipment in addition to services. Shipments that must be palletized and staged for delivery to multiple locations will come through the Memphis warehouse to ensure accuracy and completeness of shipments. Depending on the quantities ordered, PCMG will work with the customer to define

EXHIBIT A

			<p>schedules that are agreeable. As equipment becomes available, PCMG will schedule with the Memphis warehouse personnel to stage shipments. Shipments can be staggered for delivery over time or held until shipments in full can be scheduled.</p>
<p>17.</p>	<p>Does your firm have a return policy? Please provide details?</p>	<p>Yes</p>	<p>PCMG Official Return Policy and Procedures:</p> <p>PCMG offers a 30-day return policy based on manufacturer return policies. Some products may come with a manufacturer's Money Back Guarantee (MBG) and are subject to Manufacturer warranty. In these instances, PCMG will assist customers in directly contacting the manufacturer.</p> <p>Procedures</p> <ol style="list-style-type: none"> 1. Please call (800) 555-6255 to obtain a Return Authorization (RA) number before shipping your product. NO returns of any type will be accepted without a RA number. RA numbers are valid for 10 business days after issue and must be received in our warehouse within 30 days from the date of the invoice. Any returns will be refunded the lower of either the purchase price or current product price. 2. For faster service, please have the following information on hand when calling for an RA number: customer name, invoice/order number, Item number and serial number (if applicable), and nature of the problem. 3. Your RA number(s) must appear clearly on the shipping label on the outside of the return shipment. An RA label has been provided on the back of your order for your convenience. Fill it out and tape it on the box you are returning. Please do not mark the box itself in any other way. 4. We are not responsible for lost or stolen packages. All authorized returns must include a shipment tracking number. Subsequent to an approval authorization, a credit to an account or issuance of a check may take up to 30 days. 5. Returns must be 100% complete, in original and resalable condition, with all original boxes and packing materials, have original UPC codes on the manufacturer boxes, contain all manuals,

EXHIBIT A

		<p>registration card(s), software, cabling and accessories. We reserve the right to refuse a return on any product that does not meet these requirements.</p> <p>6. The Customer is responsible for shipping charges on all returned items. Incorrect shipments and vendor errors are excluded.</p> <p>7. PC Mall Gov strongly recommends that you fully insure your return shipment in case it is lost or damaged and use a carrier that can provide you with proof of delivery for your protection.</p> <p>Restocking Charge</p> <p>Any returned products must be complete in manufacturer’s packaging with all accessories and UPC codes. If an incomplete product is returned, PCMG reserves the right at its discretion to assess a minimum 15% restocking fee in addition to any charge imposed prior to the return. Missing UPC codes will result in a restocking fee that may match any existing manufacturer rebates on the product requiring UPC codes.</p> <p>Defective products</p> <p>Defective products will be accepted for credit, replacement, exchange or repair, at our discretion, within 30 days from the invoice date. Our technical support department prior to issuing a return authorization must deem a product defective. Manufacturer restrictions may apply. Terms of the manufacturer's warranty apply from day one.</p> <p>Non-defective products will be issued a return authorization within 30 days from the invoice date at PCMG’s discretion. All non-defective returns are subject to 15 percent restocking fee. Shipping, handling and processing charges are not refundable. We cannot accept unauthorized shipments billed to the recipient.</p> <p>If you accept a damaged package, make sure it is noted on the carrier’s delivery record in order for PCMG to file a damage claim. Save the merchandise</p>
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EXHIBIT A

			<p>in the original box and packing it arrived in. Notify PC Mall immediately to arrange for a carrier inspection and pick up of damaged merchandise. If you do not notify PCMG of damaged goods within the first 15 days of arrival, our regular return policy will override any claim of damage, and will fall under all current manufacturer restrictions. Call (800) 555-6255 to arrange for carrier inspection and a pick-up of damaged merchandise.</p> <p>A minimum restock fee of 15% may be applied to products returned as defective that test to be operational upon return.</p> <p>The manufacturer can repair defective merchandise according to terms of the product warranty at an authorized service center in your area or PCMG at our discretion.</p> <p>This return policy is subject to change dependent upon manufacturer's policies and procedures.</p>
18.	Does your firm charge a restocking fee on returned equipment? Please provide details.	Yes	<p>Any returned products must be complete in manufacturer's packaging with all accessories and UPC codes. If an incomplete product is returned, PCMG reserves the right at its discretion to assess a minimum 15% restocking fee in addition to any charge imposed prior to the return. Missing UPC codes will result in a restocking fee that may match any existing manufacturer rebates on the product requiring UPC codes.</p>
19.	Does your firm offer IT equipment disposal and recycling services? Please provide details.		<p>PCMG offers a variety of options for IT asset disposal and recycling services. These services are provided through partnership with third party Asset and Lifecycle Management Experts. Our Partnerships can provide anything from trade-in credits for purchases of new equipment, basic to advanced asset disposition services, including data sanitization and destruction services, as well as donation and remarketing management.</p>
20.	Does your firm adhere to Energy Star 4.0 energy efficiency standards for computer hardware	Yes	<p>As a reseller, PCMG offers a variety of products that meet Energy Star compliance requirements. PCMG maintains information on a product's compliance as reported to us by the product manufacturer.</p>

EXHIBIT A

	products? Please provide list of qualified products.		Further, we are incorporating this information in our website product detail pages through recently available data feeds from cNet and our major distribution partner.
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EXHIBIT C

PCMG

Category 5 - Peripherals

Computers, Peripherals, COTS Software, Services
RFP 2008-19
26 August 2008

Peripherals

Minimum Configurations

A. Flash Drives	Mfg.	Description	Part Number	Unit Price	Discount %	Unit Discounted Price	Link To Publically Available Price List
2 GB	AXIOM	2GB Flash Drive	USBFD2/2GB-AX	\$12.99	25.00%	\$9.74	www.pcmallgov.com
2 GB	EDGE	2GB Flash Drive	PE196530	\$11.99	25.00%	\$8.99	www.pcmallgov.com
2 GB	KINGSTON	KINGSTON DATA TRAVELER2GB Flash Drive	DTI/2GB	\$10.00	25.00%	\$7.50	www.pcmallgov.com
4 GB	IMATION	4 GB Flash Drive	26309	\$33.99	25.00%	\$25.49	www.pcmallgov.com
4 GB	AXIOM	4 GB Flash Drive	USBFD2/4GB-AX	\$20.00	25.00%	\$15.00	www.pcmallgov.com
4 GB	KINGSTON	KINGSTON DATA TRAVELER 4 GB Flash Drive	DTI/4GB	\$16.99	25.00%	\$12.74	www.pcmallgov.com
8 GB	SANDISK	8 GB Flash Drive	SDCZ7-8192-A11	\$59.99	25.00%	\$44.99	www.pcmallgov.com
8 GB	CORSAIR	8 GB Flash Drive	CMFUSB2.0-8GB	\$41.99	25.00%	\$31.49	www.pcmallgov.com
8 GB	KINGSTON	KINGSTON DATA TRAVELER 8GB Flash Drive	DTI/8GB	\$29.99	25.00%	\$22.49	www.pcmallgov.com
B. Monitors (wide aspect)				Unit Price	Discount %	Unit Discounted Price	Link To Publically Available Price List
17" LCD	Lenovo	ThinkVision L171p 17" LCD Monitor	9417HC2	\$239.99	16.00%	\$201.59	www.pcmallgov.com
17" LCD	Lenovo	ThinkVision L174 17" LCD Monitor	9227AE1	\$229.99	17.00%	\$190.89	www.pcmallgov.com
17" LCD	HP	L1750 17" LCD Monitor - Analog/Digital	GF904AA#ABA	\$269.99	14.00%	\$232.19	www.pcmallgov.com
17" LCD	HP	w1707 17-inch Widescreen Flat Panel Monitor	KB744AA#ABA	\$210.00	17.00%	\$174.30	www.pcmallgov.com
17" LCD	NEC	ASLCD73VX-BK 17IN LCD-12X10 700:1 5MS	ASLCD73VX-BK	\$247.99	17.00%	\$205.83	www.pcmallgov.com
17" LCD	HP	L1745 17" TFT Flat Panel Display - Analog/Digital	GE178A8#ABA	\$239.99	17.00%	\$199.11	www.pcmallgov.com
17" LCD	HP	HP w1707 17-inch Widescreen Flat Panel Monitor	KB744AA#ABA	\$210.00	17.00%	\$174.30	www.pcmallgov.com
17" LCD	Planar	PL1700 17" Monitor, Black	997-2795-00	\$205.00	17.00%	\$170.15	www.pcmallgov.com
17" LCD	Planar	PL1711M 17" Flat Panel LCD Dual-Input Monitor	997-3111-00	\$239.99	14.00%	\$206.39	www.pcmallgov.com
17" LCD	Viewsonic	Optquest 17" LCD with super-fast 5ms video response	Q72B	\$245.00	17.00%	\$203.35	www.pcmallgov.com
17" LCD	Samsung	17" LCD Monitor	743BX	\$269.00	17.00%	\$223.27	www.pcmallgov.com
17" LCD	AOC	17" LCD Monitor	718SWAG-1	\$175.99	17.00%	\$146.07	WWW.PCMALL.COM
17" LCD	HP	17" LCD Monitor	GV537A8#ABA	\$169.00	11.00%	\$150.41	WWW.PCMALL.COM
17" LCD	ACER	17" LCD Monitor	ET.BX3WP.002	\$161.99	11.00%	\$144.17	WWW.PCMALL.COM
19" LCD	HP	L1950 19" Flat Panel LCD Monitor	GG458AA#ABA	\$319.00	14.00%	\$274.34	www.pcmallgov.com
19" LCD	HP	W1907 19" Widescreen Flat Panel LCD Monitor	RK283AA#ABA	\$239.99	17.00%	\$199.19	www.pcmallgov.com
19" LCD	Planar	PL1900 19" Flat Panel LCD Monitor	997-3095-00	\$239.99	14.00%	\$206.39	www.pcmallgov.com
19" LCD	Planar	PL1911M 19" Flat Panel LCD Dual-Input Monitor	997-3113-00	\$279.99	14.00%	\$240.79	www.pcmallgov.com
19" LCD	Planar	PL2010M 20" Flat Panel LCD Display	997-2827-00	\$399.00	17.00%	\$331.17	www.pcmallgov.com

Category 5 - Peripherals

19" LCD	Viewsonic	19" Widescreen LCD Monitor	VX1962WM	\$299.00	17.00%	\$248.17	www.pcmallgov.com
19" LCD	Viewsonic	20" Value Series Widescreen LCD Display	VA2026W	\$325.00	17.00%	\$269.75	www.pcmallgov.com
19" LCD	Samsung	943N 19" LCD Monitor	943N	\$319.00	17.00%	\$264.77	www.pcmallgov.com
19" LCD	Samsung	SyncMaster 920NW 19" Superior Quality LCD Monitor	920NW	\$259.00	17.00%	\$214.97	www.pcmallgov.com
19" LCD	Samsung	2032NW 20" Wide Screen LCD Monitor	2032NW	\$259.99	16.00%	\$217.56	www.pcmallgov.com
19" LCD	AOC	19" Widescreen LCD Monitor	919SW-1	\$193.99	17.00%	\$161.11	WWW.PCMALL.COM
19" LCD	ACER	19" Widescreen LCD Monitor	ET.1916B.WDA	\$179.99	9.00%	\$163.79	WWW.PCMALL.COM
19" LCD	SAMSUNG	19" Widescreen LCD Monitor	920NW	\$259.00	17.00%	\$214.97	WWW.PCMALL.COM
21" LCD	Lenovo	ThinkVision L200p Wide 20.1" LCD Monitor	4438HB6	\$289.99	14.00%	\$249.39	www.pcmallgov.com
21" LCD	Lenovo	ThinkVision L220x Wide 22" LCD Monitor	4433HB2	\$499.00	15.00%	\$424.15	www.pcmallgov.com
21" LCD	HP	L2245w 22-inch Widescreen LCD Monitor	GX008AA#ABA	\$349.00	12.00%	\$307.12	www.pcmallgov.com
21" LCD	HP	L2208w 22-inch Widescreen LCD Monitor	GX007AA#ABA	\$329.00	12.00%	\$289.52	www.pcmallgov.com
21" LCD	Princeton	Princeton 20.1" Widescreen LCD Display - Black	LCD2008W	\$399.99	12.00%	\$351.99	www.pcmallgov.com
21" LCD	HP	HP Pavilion w2207h 22" LCD Monitor	GM757AA#ABA	\$329.99	12.00%	\$290.39	www.pcmallgov.com
21" LCD	HP	LP2275w 22" Widescreen LCD Monitor	KE289A4#ABA	\$459.99	10.00%	\$413.99	www.pcmallgov.com
21" LCD	Planar	PX2210MW 22" Widescreen DVI LCD Monitor Black with Built-In Speakers	997-3372-00	\$308.99	9.00%	\$281.18	www.pcmallgov.com
21" LCD	Planar	PL2210MW 22" Widescreen LCD Monitor	997-5265-00	\$265.99	14.00%	\$228.75	www.pcmallgov.com
21" LCD	Viewsonic	VX2235wm 22" X Series Widescreen LCD Monitor	VX2235WM	\$378.00	15.00%	\$321.30	www.pcmallgov.com
21" LCD	Samsung	Samsung 2253BW 22" Widescreen LCD Display	2253bw	\$288.99	12.00%	\$254.31	www.pcmallgov.com
21" LCD	HYUNDAI	22" Monitor	X224W	\$253.99	15.00%	\$215.89	www.pcmallgov.com
21" LCD	AOC	22" Monitor	2216SW	\$223.99	15.00%	\$190.39	www.pcmallgov.com
21" LCD	ACER	22" Monitor	ET.2216B.0D0	\$222.99	4.00%	\$214.07	www.pcmallgov.com
24" LCD	HP	HP-w2408h Vivid Color 24" Widescreen Flat Panel Monitor	GM712AA#ABA	\$474.99	15.00%	\$403.74	www.pcmallgov.com
24" LCD	HP	HP DreamColor LP2480zx 24" Professional LCD Display	GV546A4#ABA	\$3,499.00	15.00%	\$2,974.15	www.pcmallgov.com
24" LCD	Planar	PX2411W 24" Widescreen LCD Monitor	997-3374-00	\$479.00	15.00%	\$407.15	www.pcmallgov.com
24" LCD	Viewsonic	24" Optiquest Widescreen LCD Display	Q241WB	\$499.00	15.00%	\$424.15	www.pcmallgov.com
24" LCD	Samsung	SyncMaster 24" LCD Monitor - Black	245BW	\$739.00	15.00%	\$628.15	www.pcmallgov.com
C. Docking Station				Unit Price	Discount %	Unit Discounted Price	Link To Publically Available Price List
Ethernet- RJ45							
Audio Line In/Out							
Video- 15 Pin High Density							
Keyboard USB							
Mouse USB							
	Fujitsu	Fujitsu USB Docking station	FPCPR74	\$129.00	20.00%	\$103.20	www.pcmallgov.com
	Toshiba	dynadock USB Docking Station with DVI port	PA3541U-2PRP	\$147.99	20.00%	\$118.39	www.pcmallgov.com
	HP	SmartBuy Docking Station with 120W Smart Adapter	EN488UT#ABA	\$159.00	20.00%	\$127.20	www.pcmallgov.com

Category 5 - Peripherals

D. Port Replicator				Unit Price	Discount %	Unit Discounted Price	Link To Publicly Available Price List
Audio Headphone							
Audio RCA Digital Coax							
Ethernet- RJ45							
Video- S-Video							
Video- RCA Composite							
Serial- 9 Pin D-Shell							
Serial- RJ 11 Mod							
	Fujitsu	Fujitsu Port Replicator	FPCPR63AR	\$208.99	20.00%	\$167.19	www.pcmallgov.com
	Toshiba	Toshiba Express Port Replicator w/90W AC Adapter	PA3508U-1PRP	\$199.99	20.00%	\$159.99	www.pcmallgov.com

E. External USB Floppy Drive				Unit Price	Discount %	Unit Discounted Price	Link To Publicly Available Price List
1.44MB							
	Q-see	Q-see Q-stor External USB Floppy Drive	QFDTU14	\$23.99	12.00%	\$21.11	www.pcmallgov.com
	LaCie	LaCie Pocket Floppy Disk Drive	706018	\$28.99	12.00%	\$25.51	www.pcmallgov.com
	sMARTdISK	SmartDisk FDUSBTM2 Floppy Drive	FDUSB-TM2	\$34.99	12.00%	\$30.79	www.pcmallgov.com

F. Network Interface Cards				Unit Price	Discount %	Unit Discounted Price	Link To Publicly Available Price List
10/100/1000 BASE-T (RJ 45)							
	Belkin	BELKIN Gigabit Desktop Network PCI Card	F5D5005	\$28.99	10.00%	\$26.09	www.pcmallgov.com
	SMC	SMC	SMC9452TX-1	\$18.99	10.00%	\$17.09	www.pcmallgov.com

G. Mouse				Unit Price	Discount %	Unit Discounted Price	Link To Publicly Available Price List
Optical Scroll Mouse- PS/2	Logitech	Logitech Labtec Wheel Mouse	910-000210	\$5.99	17.00%	\$4.97	www.pcmallgov.com
Optical Scroll Mouse- PS/2	Logitech	Logitech SBF-90 Value Optical Mouse	953817-2403	\$7.99	17.00%	\$6.63	www.pcmallgov.com
Optical Scroll Mouse- PS/2	Logitech	Logitech SBF-96 Optical Wheel Mouse	953688-1403	\$8.99	17.00%	\$7.46	www.pcmallgov.com
Optical Scroll Mouse- USB	Labtech	LABTECH 800 PS2 USB BLACK/ SILVER OPTICAL SCROLL MOUSE PC	931734-0403	\$7.99	17.00%	\$6.63	www.pcmallgov.com
Optical Scroll Mouse- USB	Logitech	Logitech SBF-96 Optical Wheel Mouse	931637-0403	\$7.44	17.00%	\$6.17	www.pcmallgov.com
Optical Scroll Mouse- USB	Microsoft	Microsoft Basic Optical Mouse	P58-00001	\$14.95	17.00%	\$12.40	www.pcmallgov.com

H. Keyboard				Unit Price	Discount %	Unit Discounted Price	Link To Publicly Available Price List
Standard Keyboard- PS/2	Keytronic	Keytronic E05366P1 Keyboard	E05366P1	\$7.99	12.00%	\$7.03	www.pcmallgov.com
Standard Keyboard- PS/2	HP	HP PS/2 Standard Keyboard	RV647AV#ABA	\$11.99	15.00%	\$10.19	www.pcmallgov.com
Standard Keyboard- PS/2	Logitech	Logitech Deluxe 250 Desktop	967973-0403	\$12.63	15.00%	\$10.74	www.pcmallgov.com
Standard Keyboard- USB	Logitech	Logitech Deluxe 250 USB Keyboard	967738-0403	\$7.99	15.00%	\$6.79	www.pcmallgov.com
Standard Keyboard- USB	Adesso	Adesso AKB-130PS Multimedia Keyboard	AKB-130PS	\$13.99	15.00%	\$11.89	www.pcmallgov.com
Standard Keyboard- USB	Cherry	Cherry J82-16001 Business K-1 Keyboard	J8216001LUNEU2	\$9.99	15.00%	\$8.49	www.pcmallgov.com

Category 5 - Peripherals

I. Battery Back Up Unit				Unit Price	Discount %	Unit Discounted Price	Link To Publicly Available Price List
Outout Capacity- 865Watts/ 1440VA Nominal Output/Input Voltage- 120V Output Connection Type- (6) NEMA 5-15R Half Load Run Time- 20 minutes Full Load Run Time- 7 minutes Rackmount/Tower				\$358.25	7.00%	\$333.17	www.pcmallgov.com
	APC		SC1500	\$358.25	7.00%	\$333.17	www.pcmallgov.com

Warranty is manufacturer's warranty

Units above are base offerings.

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

EXHIBIT E: 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: **Cathy Boleyn, VP, Business Operations**

Organization: **PC Mall Gov, Inc.**

Date: 1/26/09

EXHIBIT G

AWARDED CATEGORIES

- PERIPHERALS
- COTS



Software License Contract

between

The Virginia Information Technologies Agency

on behalf of

The Commonwealth of Virginia

and

PC Mall Gov, Inc.

**SOFTWARE LICENSE CONTRACT
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SOFTWARE LICENSE CONTRACT

THIS SOFTWARE LICENSE 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 PC Mall Gov. Inc. ("Supplier"), a Delaware corporation headquartered 7421 Gateway Court, Manassas, VA 20109, to be effective as of February 2, 2009 ("Effective Date").

1. PURPOSE AND SCOPE

This Contract sets forth the terms and conditions under which Supplier agrees to grant a license to use certain Software, and to provide various Services to the Authorized Users.

2. DEFINITIONS

A. Acceptance

Acceptance shall take the form of successful delivery or completed and successful Acceptance testing in conformance with the Requirements as determined by the Authorized User in the applicable order.

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. Computer Virus

Any malicious code, program, or other internal component (e.g., computer virus, computer worm, computer time bomb, or similar component), which could damage, destroy, alter or disrupt any computer program, firmware, or hardware or which could, in any manner, reveal, damage, destroy, alter or disrupt any data or other information accessed through or processed by such software in any manner.

E. 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.

F. Documentation

Those materials detailing the information and instructions needed in order to allow any Authorized User and its Agents to install, implement, and make productive use of the Software.

G. Electronic Self-Help

Any use of electronic means to exercise Supplier's license termination rights, if available pursuant to the Software License section of this Contract, upon breach or cancellation, termination or expiration of this Contract or any order issued hereunder.

H. Maintenance Level

The parameters of Maintenance Services, including the times during which and time-frames in which Supplier shall respond to a request for Maintenance Services. The available Maintenance

Levels shall be as defined in Exhibit C hereto. The actual Maintenance Level for a unit of Software shall be set forth in the executed order for Maintenance of that Software referencing this Contract.

I. Maintenance Period

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

J. Maintenance Services (or Maintenance)

Those Services, preventive and remedial, provided by Supplier at Authorized User's request in order to ensure continued operation of the Software. Maintenance Services shall include support services.

K. Party

Supplier, VITA, or any Authorized User.

L. Requirements

The functional, performance, operational, compatibility, Acceptance testing criteria 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 VITA and Supplier or the Parties to an order issued hereunder. [Note: In case of conflict, see the Entire Contract clause for order of precedence.]

M. Services

Any services, including installation, Software configuration, maintenance, support and training provided by Supplier under this Contract.

N. Software

The programs and code, and any subsequent releases, provided by Supplier under this Contract as set forth in Exhibit A or as described on Supplier's US and International price lists in effect at time of order placement.

O. Software Publisher

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

P. 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).

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. Warranty on or Maintenance Services for any Software 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 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 issued hereunder, in whole or in part, or an Authorized User may terminate 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.

If an Authorized User deems the Supplier to be in breach and/or default of an order, 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, 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 Nonprocurement 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 prompt 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, the Commonwealth shall have no future liability except for Software accepted or Services rendered by Supplier prior to the termination date.

In the event of a Termination for Breach or Termination for Default, Supplier shall accept return of any Software or Services that were not accepted by the Authorized User(s), and Supplier shall refund any monies paid by any Authorized User for such Software or Services, and all costs of de-installation and return of such Software or Services 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 Software-related services. This obligation may extend beyond expiration or termination of the Contract for a period not to exceed six (6) months. In the event of a termination for breach and/or default of Supplier, Supplier shall provide such assistance at no charge or fee to VITA or any Authorized User; otherwise, Supplier shall provide such assistance at a reasonable hourly rate or a charge agreed upon by Supplier and VITA or an Authorized User.

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. SOFTWARE LICENSE

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, the license shall be held by the Commonwealth. If Authorized User is a locality, municipality, school, school system, college, university, local board, local commission, or local quasi-political entity, the license shall be held by that public body.

A. License Grant

Software licensed by Supplier

- i). Supplier grants to the Commonwealth and all Authorized Users a fully paid, perpetual, worldwide, nonexclusive, transferable, irrevocable object code license to use, copy, modify, transmit and distribute the Software and Documentation including any subsequent revisions, in accordance with the terms and conditions set forth herein and subject only to the limitations and/or restrictions explicitly set forth in this Contract. It is expressly understood that "perpetual" license rights shall commence upon delivery of the Software to the Authorized User and shall exist in perpetuity unless otherwise terminated in accordance with the applicable provisions of the Contract. The Software is the property of Supplier and/or its licensors, and no title or ownership of the Software or any of its parts, including Documentation, shall transfer to the Commonwealth or any Authorized User.
- ii). The Commonwealth and all Authorized Users shall have the right to use, copy, modify, transmit and distribute the Software for their benefit, for government use and purposes, and for the benefit of their Agents, including internal and third-party information processing.

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- iii). The Commonwealth is further granted the right to sublicense and distribute the Software or to contract with third parties to market and distribute on behalf of the Commonwealth subject to and under similar licensing terms and restrictions contained in this Contract.
 - iv). The Commonwealth and any Authorized User may allow access to the Software by third party vendors who are under contract with an Authorized User to provide services to or on behalf of such Authorized User, or by other entities as required for conducting the business of government. Access includes loading or executing the Software on behalf of such Authorized User or its Agents.
 - v). The license fee includes a test system copy, which consists of the right to use the Software for non-production test purposes, including but not limited to, problem/defect identification, remediation, and resolution, debugging, new version evaluation, Software interface testing, and disaster recovery technique analysis and implementation.
 - vi). In the event that all of an Authorized User's copies of the Software, including all backup copies, are destroyed, irreparably damaged or otherwise lost due to fire, explosion, sabotage, flood or other disaster, Supplier shall provide to such Authorized User, at no additional cost, replacement copies of the Software and Documentation. Nothing contained in this Section shall obligate Supplier to replace or assist in the recovery of data lost concurrent with the loss of the Software.
 - vii). An Authorized User may make a reasonable number of copies of the Software and Documentation for use in training, support, demonstrations, backup, archiving, disaster recovery and development and may run the Software concurrently at a back-up site for no additional license fees or costs. Such Authorized User agrees that any copies of the Software or Documentation that it makes under this Contract shall bear all copyright, trademark and other proprietary notices included therein by Supplier.
 - viii). Except as expressly authorized, an Authorized User shall not distribute the Software to any third party without Supplier's prior written consent.
 - ix). Except as provided or allowed by law, no Party shall reverse engineer, decompile, disassemble, or otherwise attempt to derive source code or other trade secrets from any software or other intellectual property of any other Party.

Software licensed by Software Publisher Supplier shall provide Software which is licensed directly from the Software Publisher through the end user licensing agreement (EULA) attached hereto as Exhibit D. If the EULA provides for a "perpetual" license, it is expressly understood that "perpetual" license rights shall commence upon delivery of the Software and shall exist in perpetuity unless otherwise terminated in accordance with the applicable provisions of the Contract.

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

Compliance with the terms and conditions of any license granted pursuant to this Contract is solely the responsibility of the Authorized User which purchased such license and not the responsibility of VITA, unless VITA purchased such license on its own behalf.

B. License Type

All licenses granted, regardless of the type, include all uses set forth above. License type may vary by Software product and shall be set forth in Exhibit B and identified on any order issued pursuant to this Contract. [Note: The license types defined herein are examples and are not intended to limit the type of license offered by Supplier or requested by VITA.]

Designated CPU License

The license(s) granted under this Section authorizes use of the Software only on the number of CPU(s) listed on Exhibit B. An Authorized User may transfer the Software to a different machine to the extent that the license price for such new CPU(s) is equivalent to the CPU(s) initially licensed. If the licensed CPU is inoperative because of (i) malfunction, (ii) performance of maintenance, or (iii) modification to the licensed CPU, or (iv) because the Software is being transferred to another CPU, such Authorized User may use the Software on a replacement CPU as long as required by the mentioned conditions.

Concurrent Use license

The license(s) granted under this Section authorizes use of the Software on any system based on the total number of Concurrent Users. The number of "Concurrent Users" is defined as the maximum number of concurrent Sessions connected at a given point in time. A "Session" is defined as an active user executing the Software. The Authorized User shall specify an initial number of Concurrent User licenses in its initial order pursuant to this Contract. An Authorized User may increase the number of Concurrent User licenses upon issuing an order for additional Concurrent User licenses. The license fee for additional Concurrent User licenses and payment of the license fee is set forth on Exhibit B.

Site License

The license(s) granted under this Section authorizes use of the Software on any system located at the "Site" as such term is defined in the applicable order.

Project Specific License

The Project Specific License authorizes use of the Software on any CPU, on any system, and by any user, without limitation as to quantity or location.

Enterprise Wide License

The Enterprise Wide License authorizes use of the Software on any CPU, on any system, and by any user within the "Enterprise", as such term is defined in the applicable order, without limitation as to the quantity or location or project.

C. No Subsequent, Unilateral Modification of Terms by Supplier ("Shrink Wrap")

Notwithstanding any other provision or other unilateral license terms which may be issued by Supplier after the Effective Date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of an order for Software licensed under this Contract, or the fact that such other agreement may be affixed to or accompany Software upon delivery ("shrink wrap"), the terms and conditions set forth herein shall supersede and govern licensing and delivery of all products and services hereunder.

5. DELIVERY AND INSTALLATION

A. Scheduling

Supplier shall deliver Software and perform the Services according to the delivery dates set forth on the appropriate order.

B. Installation of Software

1. Supplier Installation of Software

The Software license fee includes initial installation. Supplier is required to install the Software in accordance with the installation schedule set forth on the order. Supplier shall conduct its standard appropriate diagnostic evaluation at the Authorized User's user site to determine that the Software is properly installed and fully ready for productive use, and shall supply the Authorized User with a copy of the results of the diagnostic evaluation promptly after completion of installation.

Supplier agrees that failure to install the Software in accordance with the delivery schedule in the applicable order shall constitute a material breach of this Contract resulting in damages to the Authorized User. As an estimate of the damages such Authorized User shall suffer, Supplier agrees to credit such Authorized User an amount equal to one percent (1%) of the total license fee, for each day of undelivered or delivered but non-operational Software for a period of thirty (30) days following the agreed upon delivery date. If the delay lasts longer than thirty (30) days, such Authorized User may immediately cancel the order and collect the damages for that period of late delivery. Such Authorized User reserves any and all other remedies available at law or in equity for delays lasting longer than thirty (30) days or for non-delivery.

2. Authorized User Installation of Software

If an Authorized User elects to install the Software itself or to contract with a third party to perform installation services, the Software shall be deemed to be installed when all programs, program libraries and user interfaces are copied to and initialized on the appropriate equipment as executable by having the ordering Authorized User, its Agent, or its third party installer invoke the primary function of each major component of the Software or when Acceptance criteria have been met. Authorized User shall provide to Supplier written notice of Acceptance upon completion of installation and successful Acceptance testing.

C. Documentation of Software Configuration

If the Services include configuration of Software by Supplier, Supplier shall provide to the appropriate Authorized User documentation containing a description of the configuration. Such documentation shall be sufficiently detailed such that any appropriately trained employee or Agent of any Authorized User may reconstruct the configuration of the Software.

6. ACCEPTANCE AND CURE PERIOD

A. Acceptance

Software shall be deemed accepted when the Authorized User determines that such Software successfully operates in accordance with the Requirements. Such Authorized User agrees to commence Acceptance testing within fifteen(15) days after receipt of the Software, or within such other period as set forth in the applicable order, after receipt of the Software. 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 the first instance of each product type set forth in Exhibit B. Supplier agrees to provide to such Authorized User such assistance and advice as such Authorized User may reasonably require, at no additional cost, during such Acceptance testing, other than travel expenses pre-approved by the Authorized User 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, or a successor URL(s)). Authorized User shall provide to Supplier written notice of Acceptance upon completion of 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 Software shall be deemed Accepted.

B. Cure Period

Supplier shall correct any non-conformities identified during Acceptance testing and re-submit such non-conforming Software 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 order. Should Supplier fail to cure the non-conformity or deliver Software which meets the Requirements, such Authorized User may, in its sole discretion: (i) reject the Software in its entirety and recover amounts previously paid hereunder; (ii) issue a "partial Acceptance" of the Software with an equitable adjustment in the price to account for such deficiency; or (iii) conditionally accept the applicable Software while reserving its right to revoke Acceptance if timely correction is not forthcoming. Failure of the Software 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, in whole or in part, for the Software and Services to be provided thereunder by Supplier.

7. WARRANTY SERVICES

At any time during the Warranty Period of one(1) year after Acceptance, Supplier shall provide the following warranty services (including unlimited telephonic support and all necessary travel and labor) without additional charge to any Authorized User to maintain the Software in accordance with the Requirements:

A. Known Defects

Promptly notify all Authorized Users of any defects or malfunctions in the Software or Documentation of which it learns from any source other than an Authorized User and provide to all Authorized Users a correction of any such defects or malfunctions, or a work around until a correction is available, within five (5) days of Supplier's knowledge of such defect or malfunction.

B. Coverage

Monday through Friday, 8 a.m. to 5 p.m., excluding Commonwealth holidays, provide to any Authorized Users all reasonably necessary telephone or written consultation requested by such Authorized Users in connection with use, problems and operation of the Software.

C. Service Levels

Respond to problems with the Software identified by an Authorized User in no more than two (2) hours after notification. Resolve all problems according to the following:

- i). Priority 1 (Software inoperable) within six (6) hours
- ii). Priority 2 (certain processing interrupted or malfunctioning but Software able to process) within twenty four (24) hours
- iii). Priority 3 (minor intermittent malfunctioning, Software able to process data) within three (3) days.

The level of severity (e.g., 1, 2, 3), shall be defined by such Authorized User.

D. Remedies

If Supplier is unable to make the Software conform, in all material respects, to the Requirements within thirty (30) days following written notification by an Authorized User, Supplier shall, at such Authorized User's request, cancel the license to such Software, accept return of such Software and Documentation, if applicable, rendered unusable, and return all monies paid by such Authorized User for the non-conforming Software and Documentation and such other related Service(s) rendered unusable.

8. MAINTENANCE SERVICES

Supplier shall provide Maintenance Services during the Maintenance Period at the prices identified in Exhibit B without additional charge to maintain the Software in accordance with the Requirements and to provide upgrades, updates, and new releases as they are made generally available.

The prices identified in Exhibit B are inclusive of all necessary labor and, unless otherwise provided therein, all necessary travel. Should travel not be included in the prices identified in Exhibit B, any travel expense must be pre-approved by the Authorized User and shall be reimbursed in accordance with the then-current per diem rates established by the Virginia Department of Accounts ([http://www.doa.virginia.gov/Admin_Services/CAPP/CAPP_Topics/20335_Meals_Lodging_102007.p](http://www.doa.virginia.gov/Admin_Services/CAPP/CAPP_Topics/20335_Meals_Lodging_102007.pdf)[df](#), or a successor URL(s)).

In addition to the minimum Maintenance Services described in this section, Exhibit C provides detailed descriptions of Supplier's additional maintenance offerings, if any, and Supplier's associated

responsibilities as well as remedies available to the Authorized User in the event Supplier fails to perform its maintenance obligations. Any monetary remedies shall be paid to the Authorized User on a quarterly basis. Exhibit C defines coverage periods, response times, and restore times.

A. Ordering

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

Software product and number of units for which Maintenance Services shall be provided,
Maintenance Level to be provided, and
Maintenance Period for Software Maintenance.

Authorized User may elect, at any time, an alternate 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 by the Authorized User and Supplier, the Maintenance Period for a unit of Software shall be one (1) year from the effective date of any executed order for Maintenance on such Software product.

B. Renewal

Not less than sixty (60) days prior to the expiration of the Maintenance Period for each unit of Software, 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 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 Fees and Charges section, in effect at the time, whichever is less. Termination of this Contract or cancellation of Maintenance Services by an Authorized User shall not affect this Contract or the grant of any license.

C. Services

At a minimum, Maintenance Services shall include the following:

1. Known Defects

Supplier's offerings and responsibilities related to known defects in the Software are described in Exhibit C.

2. New Releases

Supplier's offerings and responsibilities related to new releases of the Software are described in Exhibit C.

3. Coverage

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

4. Service Levels

Supplier's offerings and responsibilities related to response and restore times for any problems with the Software identified by an Authorized User, and any associated remedies are described in Exhibit C.

5. Additional Maintenance Services

Supplier's additional Maintenance Service offerings are described in Exhibit C.

D. Software Evolution

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

If Supplier or Software Publisher reduces or replaces functionality contained in a licensed Software product and provides the same or substantially similar functionality as or within a separate or renamed Software product, then the Commonwealth or the Authorized User shall be entitled to license such 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 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 Software product, then Supplier shall offer the Commonwealth or the Authorized User the option to exchange licenses for such replacement Software product or function at no additional charge.

E. Escalation Procedures

F. Remedies

In addition to any remedies described in Exhibit C, if Supplier is unable to make the 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, accept cancellation of the license to such non-conforming software and (i) return all monies paid by such Authorized User for the cancelled license, pro-rated using the straight-line method for an estimated software life cycle of five (5) years, or, if a term license, shall return the prorated license fee for the remainder of the license term; and (ii) return the prorated maintenance charge for the remainder of the maintenance term. The prorated amount due an Authorized User shall be calculated from the date on which the Software ceased operating in accordance with the Requirements.

9. GENERAL WARRANTY

Supplier warrants and represents to VITA the Software described in Exhibit A as follows:

A. Ownership

Supplier is the owner of the Software or otherwise has the right to grant the license to use the Software granted hereunder without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party.

B. Software and Documentation

Supplier warrants the following with respect to the Software:

- i). The Software is pursuant to a particular Request for Proposal ("RFP"), and therefore, such Software shall be fit for the particular purposes specified by VITA, and Supplier is possessed of superior knowledge with respect to the Software and is aware that all Authorized Users are relying on Supplier's skill and judgment in providing the Software;
- ii). If the RFP specified or Exhibit A specifies the hardware equipment an Authorized User shall use to run the Software, then Supplier warrants the Software, and any subsequent release, is compatible with and shall perform as stated with such hardware for a period of five (5) years of the Effective Date. However Supplier will in no event be liable for the failure of Software if such failure is due to changes in the hardware or use of third party software by an Authorized User.
- iii). If an order issued by an Authorized User pursuant to this Contract specified the hardware equipment such Authorized User shall use to run the Software, then Supplier warrants the

Software, and any subsequent release, is compatible with and shall perform as stated with such hardware for a period of five (5) years of the date of such order. However Supplier will in no event be liable for the failure of Software if such failure is due to changes in the hardware or use of third party software by such Authorized User.

- iv). The Software provided hereunder is at the current release level unless an Authorized User specifies an older version in its order, in which case item (iii) shall not apply and the older version of the Software, and any subsequent release, is compatible with and shall perform as stated with any hardware specified in the applicable order for a period of five(5) years of the date of such order;
- v). No corrections, work-arounds or future Software releases provided by Supplier under the warranty provisions or under maintenance or support services shall degrade the Software, cause any other warranty to be breached, or require an Authorized User to acquire additional hardware equipment or software;
- vi). Supplier warrants that the Documentation and all modifications or amendments thereto which Supplier is required to provide under this Contract shall be sufficient in detail and content to allow an Authorized User to load/use/operate the Software without reference to any other materials or information.

C. Limited Warranty

During the warranty period of one (1) year, or as specified in the applicable order, Supplier warrants that the Software 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 Software to meet the Requirements.

D. Malicious Code

Supplier has used its best efforts through quality assurance procedures to ensure that there are no Computer Viruses or undocumented features in the Software at the time of delivery to an Authorized User. Supplier warrants that the Software does 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 Software. Notwithstanding any rights granted under this Contract or at law, Supplier hereby waives under any and all circumstances any right it may have or may hereafter have to exercise Electronic Self-Help. Supplier agrees an Authorized User may pursue all remedies provided under law in the event of a breach or threatened breach of this Section, including injunctive or other equitable relief.

E. Open Source

Supplier will notify all Authorized Users if the Software contains any Open Source code and identify the specific Open Source License that applies to any embedded code dependent on Open Source code, provided by Supplier under this contract.

F. 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 a 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.

G. Supplier's Past Experience

Supplier warrants that the Software has been installed and is operating in a production environment in a non-related third party's facility without significant problems due to the Software or Supplier.

THE OBLIGATIONS OF SUPPLIER UNDER THIS GENERAL WARRANTY SECTION ARE MATERIAL. SUPPLIER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT

LIMITATION ANY CONCERNING MERCHANTABILITY OR FITNESS FOR ANY OTHER PARTICULAR PURPOSE.

10. TRAINING AND DOCUMENTATION

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

Supplier shall deliver to the Authorized User, complete hard copies or electronic media of Documentation, as requested by such Authorized User. Authorized User shall have the right, as part of the license granted herein, to make as many additional copies of the Documentation, in whole or in part, for its own use as required. This Documentation shall include, but not be limited to, overview descriptions of all major functions, detailed step-by-step installation and operating procedures for each screen and activity, and technical reference manuals. Authorized User shall have the right, as part of the license granted herein, at its own discretion, to take all or portions of the Documentation, modify or completely customize it in support of the authorized use of the Software and may duplicate such Documentation and include it in an Authorized User document or platform. Authorized User shall continue to include Supplier's copyright notice.

11. FEES, ORDERING AND PAYMENT PROCEDURE

A. Fees and Charges

As consideration for the Software license(s) and Services provided herein, an Authorized User shall pay Supplier the fee(s) set forth on Exhibit B, which lists any and all fees and charges. The fees and any associated discounts shall be applicable throughout the term of this Contract; provided, however, that in the event the fees or discounts apply for any period less than the entire term, Supplier agrees that it shall not increase the fees more than once during any twelve (12) month period, commencing at the end of year one (1). 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.

B. Reproduction Rights

At an Authorized User's request, Supplier shall provide the Authorized User with a reproducible media if requested. Such Authorized User shall be responsible for making copies and distributing the Software as required. Within thirty (30) days of the end of each calendar quarter, such Authorized User shall provide to Supplier a report of the net number of additional copies of the Software deployed during the quarter. Supplier shall invoice such Authorized User for the net number of new licenses reported as deployed.

C. Evaluation Copy of Software

Supplier shall make available to any Authorized User Software for evaluation purposes at no charge. The evaluation period will be determined by the complexity of testing but will be a period not less than thirty (30) days. Each new project is entitled to an evaluation copy regardless of whether an Authorized User has previously purchased the Software.

D. Ordering

Notwithstanding all Authorized User's rights to purchase or license Supplier's products or services under this Contract, an Authorized User is under no obligation to purchase or license from Supplier any of Supplier's products or services. This Contract is optional use and

non-exclusive and all Authorized Users may, at their sole discretion, purchase, license or otherwise receive benefits from third party suppliers of products and services similar to, or in competition with, the products and services provided by Supplier.

Supplier is required to accept any order placed by an Authorized User through the eVA electronic procurement website portal ([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 Software and Services available under this Contract. Under no circumstances shall any Authorized User have the authority to modify this Contract. An order from an Authorized User may contain additional terms and conditions; however, to the extent that the terms and conditions of the Authorized User's order are inconsistent with the terms and conditions of this Contract, the terms of this Contract shall supersede.

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

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

E. Invoice Procedures

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

- i). Software or Service type and description
- ii). Quantity, charge and extended pricing for each Software and/or Service item
- iii). Applicable order 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.

F. Purchase Payment Terms

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

In the event Software is shipped without the applicable Documentation, payment shall not be due until 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 Acceptance.

G. Alternate Channel Participation (Resellers/Distributors)

It is the intention of VITA to allow Resellers (including Value Added Resellers (VARs), distributors and dealers) to participate as alternate distribution sources for Supplier under the following conditions:

- i). Supplier shall provide to VITA the names and applicable contact information of its authorized Resellers. VITA may, at its sole discretion, issue a solicitation in accordance with the Virginia Public Procurement Act (VPPA), §§ 2.2-4300 et seq. of the Code of Virginia, for the participation of such Resellers as alternate distribution sources for Supplier.
- ii). Once a Reseller is issued a contract in accordance with the VPPA, an Authorized User may issue an order directly to such Reseller, in accordance with the VPPA and/or other applicable statutes or regulations. Reseller shall ship and bill Authorized Users directly in accordance with the terms of its contract with VITA, on behalf of the Commonwealth of Virginia.
- iii). Orders placed with Resellers pursuant to a contract awarded in accordance with items (i) and (ii) above may contain only Software previously approved for license under this Contract.
- iv). Reseller may invoice and will be paid in accordance with the terms of its contract with VITA.
- v). Supplier agrees that all licenses for the Software acquired by Authorized User through a Reseller shall be governed by the terms and conditions of this Contract in lieu of VITA's execution of a sublicense agreement with Reseller, regardless of whether such Authorized User referenced this Contract in its order.
- vi). As to all Software acquired through Resellers, Supplier warrants and represents that all warranties and indemnities set forth in the Contract will be honored by Supplier as to such Software, regardless of whether the ordering Authorized User referenced this Contract in its order.

12. 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). 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.

Subject to the information and materials listed on Attachment A of the Escrow Agreement being released to the Commonwealth pursuant to the terms of the Escrow Agreement, which is an agreement supplementary hereto, Supplier hereby grants to the Commonwealth a royalty-free, perpetual, irrevocable license, that permits disclosure to a third party support-vendor of a complete and accurate copy of then-current source code for the Software licensed hereunder, along with all related documentation.

Any Authorized User which is not 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 may require Supplier to execute an additional escrow agreement subject to the same requirements and binding Supplier to the same obligations as described above but naming such Authorized User as the beneficiary of the escrow agreement. Subject to the information and materials listed in such escrow agreement being released to such Authorized User, Supplier hereby grants to such Authorized User a royalty-free, perpetual, irrevocable license, that permits disclosure to a third party support-vendor of a complete and accurate copy of then-current source code for the Software licensed to such Authorized User, along with all related documentation.

13. 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 similar commercial or government customer of Supplier under like terms and conditions. If Supplier enters into any arrangements 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.

14. 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

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.

15. INDEMNIFICATION AND LIABILITY

A. Indemnification

Supplier agrees to indemnify, defend and hold harmless the Commonwealth, VITA, 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 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 Software or the Services, or (v) any actual or alleged infringement or misappropriation of any third party’s intellectual property rights by any of the Software 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 Software 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 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 Software 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 Software or Services, or any component thereof; or (b) replace or modify such infringing Software 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 Software 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 Software. 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 Software 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. Liability

Supplier shall have unlimited liability with respect to (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) claims for bodily injury, including death, and real and tangible property damage, (iv) Supplier's indemnification obligations, (v) Supplier's confidentiality obligations, and (vi) Supplier's security compliance obligations. Supplier agrees that it is fully responsible for all acts and omissions of its employees, agents, and subcontractors, including their gross negligence or willful misconduct

FOR ALL OTHER CONTRACTUAL CLAIMS, IN NO EVENT WILL ANY PARTY BE LIABLE TO ANY OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING (WITHOUT LIMITATION) LOSS OF PROFIT, INCOME OR SAVINGS, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, EXCEPT WHEN SUCH DAMAGES ARE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE PARTY, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS.

16. 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 obligations pursuant to this Section.

17. BANKRUPTCY

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

18. GENERAL PROVISIONS

A. Relationship between VITA, 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, 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 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 such 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 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 Software License, Warranty, Escrow, 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 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 Software 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:

- i). Three (3) years from Software delivery or 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.

In no event shall Supplier 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:

- a). Exhibit A Software Functional Requirements
- b). Exhibit B Software Product List, Software License Fee, Service Charges and Payment Schedule
- c). Exhibit C Software Maintenance Services description
- d). Exhibit D End User Licensing Agreement (for reference only)
- e). Exhibit E Escrow Agreement
- f). Exhibit F 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 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 order, Exhibit D.

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 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: Cathy Boleyn
(Signature)

Name: Cathy Boleyn
(Print)

Title: Vice President, Business Operations

Date: 1/26/09

VITA

By: James T. Roberts
(Signature)

Name: James T. Roberts
(Print)

Title: Director Finance & Administration

Date: 2-02-09

Address for Notice:

PC Mall Gov, Inc.
7421 Gateway Court
Manassas, VA 20109-7311
Attention: Contracts Manager

Address for Notice:

Attention: Contract Administrator

COTS Software Exhibit B

COTS Software is considered to be commercially available software read to run without customization,

Gov't Pricing

Enter discount for publisher (This will be the lowest discount that you will offer during the term of the contract)

COTS	Discount %
Adobe	10.00%
Autodesk	10.00%
Citrix	10.00%
Corel	10.00%
DoubleTake	10.00%
Intuit	10.00%
McAfee	10.00%
Novell	10.00%
Nuance	10.00%
Quark Software	10.00%
Quest Software	10.00%
Riverdeep	10.00%
Symantec	10.00%
Trend Micro	10.00%
VMWare	10.00%
WebSense	10.00%
Alcatel - Lucent	8.00%
Allround Automation	8.00%
Aspen	10.00%
ATI	8.00%
Avotus	10.00%
BEA	11.00%
BMC	9.00%
Business Objects	10.00%
Chicago Soft	8.00%
Computer Associates	8.00%
Compuware	8.00%
CYME	10.00%
DameWare	8.00%
DataSplice	8.00%
Delorme	12.00%
Doble	8.00%
Dual Systems	8.00%
Edge Information Group	10.00%
ElseWare	10.00%
Enoserve	8.00%
ERDAS	8.00%
ESRI	8.00%

Academic Pricing

Enter discount for publisher (This will be the lowest discount that you will offer during the term of the contract)

COTS	Discount %
Adobe	12.00%
Autodesk	12.00%
Citrix	12.00%
Corel	12.00%
DoubleTake	12.00%
Intuit	12.00%
McAfee	12.00%
Novell	12.00%
Nuance	12.00%
Quark Software	12.00%
Quest Software	12.00%
Riverdeep	12.00%
Symantec	12.00%
Trend Micro	12.00%
VMWare	12.00%
WebSense	12.00%
Ableton	8.00%
ACD Systems	8.00%
Avanquest	8.00%
Avid	8.00%
Cakewalk	10.00%
Certiport	8.00%
Dataviz	10.00%
Business Objects	12.00%
Chicago Soft	10.00%
Computer Associates	10.00%
Daz 3D	8.00%
Design Science	10.00%
Final Draft	10.00%
Honestech Inc.	10.00%
Delorme	12.00%
HMHLT	8.00%
IMSI	8.00%
Inspiration	8.00%
IRIS Technologies	8.00%
Knowledge Adventure	10.00%
Lynda.com	10.00%
M-Audio	10.00%

Gov't Pricing

Title	Price
Adobe Acrobat Professional Version 9 Windows	\$ 206.80
Adobe Photoshop CS4 Windows	\$ 601.03
Autodesk Sketchbook 2009 Pro	\$ 155.75
McAfee Active Virus Defense	\$ 17.59
Symantec Norton Antivirus 2009	\$ 33.43
Symantec Backup Exec 12.5 for Windows Servers	\$ 522.71

PRICE FOR ABOVE TITLES SHOULD BE

QUOTED FOR PURCHASE OF ONE (1) COPY

* Price above reflects price for 1 license only

* Price above does not include media

* Media price for all titles above is \$23.00 each

Academic Pricing

Title	Price
Adobe Acrobat Professional Version 9 Windows	\$ 126.41
**Adobe Photoshop CS4 Windows	\$ 242.51
Autodesk Sketchbook 2009 Pro	\$ 152.21
McAfee Active Virus Defense	\$ 17.19
Symantec Norton Antivirus 2009	\$ 24.07
Symantec Backup Exec 12.5 for Windows Servers	\$ 510.83

PRICE FOR ABOVE TITLES SHOULD BE

QUOTED FOR PURCHASE OF ONE (1) COPY

* Price above reflects price for 1 license only

* Price above does not include media

* Media price for all titles above is \$23.00 each

**** Photoshop Extended CS 4 quoted, as**

Photoshop CS4 not available for Academic

COTS	Discount %	COTS	Discount %
Fenestrae	10.00%	MacSpeech	8.00%
Filemaker	8.00%	MakeMusic	8.00%
ForeScout	8.00%	Maplesoft	10.00%
GE Fanuc	8.00%	Mindjet	10.00%
Golden State	8.00%	Nero Inc 1	8.00%
Google Software	8.00%	Google Software	10.00%
Hyperion	8.00%	Nova Development	10.00%
IBM	8.00%	IBM	10.00%
IBM/Rico InfoPrint	8.00%	Nuance Communications	8.00%
Infor	8.00%	Panda Software	8.00%
Infragistics	8.00%	Paralles Licensing	8.00%
Innovation Data Processing	8.00%	Pearson Education	8.00%
Insight	8.00%	Pinnacle	8.00%
Instaknow	10.00%	Sibelius	8.00%
Intergraph	8.00%	Smith Micro	8.00%
Iron Speed	8.00%	Sony Media Software	8.00%
KY Pipe	8.00%	Stop Motion Pro	10.00%
MacKinney Systems	8.00%	Sunburst Technology	10.00%
MapTech	8.00%	TechSmith	8.00%
Mathworks	8.00%	Thomson Reuters	8.00%
Micro Focus	8.00%	Total Training	10.00%
MWH Soft	8.00%	Wolfrem Resarch	10.00%
Navigant	8.00%	White Brothers	8.00%
Nayak	8.00%		
nCircle	8.00%		
NetApp	7.00%	NetApp	9.00%
NetManage	8.00%		
NetScout	10.00%		
Network General	8.00%		
Nexant	8.00%		
OPNET	8.00%		
Packet Design	8.00%		
Paragon	8.00%		
Perkins Elmer	10.00%		
PGP	8.00%		
Pitney Bowes	8.00%		
Power Plan	6.00%		
Primavera	8.00%		
Psynch Software	7.00%		
PTC	7.00%		
Rand McNally	8.00%	Rand McNally	10.00%
Red Hat	11.00%	Red Hat	11.00%
RS Means	8.00%		

EXHIBIT E: 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: **Cathy Boleyn, VP, Business Operations**

Organization: **PC Mall Gov, Inc.**

Date: 1/26/09

EXHIBIT G

AWARDED CATEGORIES

- PERIPHERALS
- COTS