



Commonwealth of Virginia  
Virginia Information Technologies Agency

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

Date: February 2, 2011

Contract #: VA-090202-SHI

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: SHI International Corporation  
33 Knightsbridge Road  
Piscataway, NJ 08854

FIN: 22-3009648

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Term: February 2, 2011 – February 1, 2012

Payment: Net 30 days

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Virginia Information Technologies Agency  
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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-SHI  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
SHI INTERNATIONAL CORP.**

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 Software House International, 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-SHI (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-DALY 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.**

SHI INTERNATIONAL CORP.

BY: Natalie Castagno

NAME: Natalie Castagno

TITLE: Contract Specialist

DATE: 1/13/11

COMMONWEALTH OF VIRGINIA

BY: Samuel A. Nixon, Jr.

NAME: SAMUEL A. NIXON, JR.

TITLE: CIO OF THE COMMONWEALTH

DATE: 1/31/11



# **Hardware and Maintenance Reseller Contract**

between

**The Virginia Information Technologies Agency**

on behalf of

**The Commonwealth of Virginia**

and

**SHI**

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**HARDWARE AND MAINTENANCE CONTRACT  
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## **HARDWARE AND MAINTENANCE CONTRACT**

THIS HARDWARE AND MAINTENANCE CONTRACT ("Contract") is entered into by and between the Virginia Information Technologies Agency (hereinafter referred to as "VITA"), pursuant to §2.2-2012 of the Code of Virginia and on behalf of the Commonwealth of Virginia, and Software House International, Inc. ("Supplier"), a corporation headquartered at [33 Knightsbridge Road, Piscataway, NJ 08854 , to be effective as of February 2, 2009 ("Effective Date").

### **1. PURPOSE**

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

### **2. DEFINITIONS**

#### **A. Acceptance**

Acceptance 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.

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**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.

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**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

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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. 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**

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 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. Product Trade-in and Upgrade

(To be determined prior to contract execution)

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**C. Product Acceptance**

.Product and/or Deliverables shall be considered accepted by Authorized User upon delivery, unless notice of rejection is provided to Supplier's authorized representative within 5 days after such delivery.

**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 pass-through from the OEM 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 pass-through from the OEM the documentation and training necessary to allow any Authorized User to self-maintain to the subcomponent level.

**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 if provided by the OEM at no charge, 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. Parts and Maintenance Support**

When provided by the OEM, 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 OEM's intent when notified by the OEM, to discontinue either certain parts or maintenance services for any Product type ordered by the Authorized User.

**6. WARRANTY AND REMEDY**

**A. Supplier**

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

**B. 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.

**C. Product**

Supplier warrants the following with respect to the Product:

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

#### Warranty of Product

- vi). Supplier is a value added reseller ("VAR") of Product, not the OEM and therefore disclaims any warranty responsibility regarding Product provided under this Agreement. Supplier shall forward the warranties to VITA which are provided to Supplier from the OEM of the Product, and to the extent granted by the OEM, VITA shall be the beneficiary of the OEM's warranties with respect to the Product. Supplier is not a party to any such terms between VITA and OEM and VITA agrees to look solely to the OEM for satisfaction of any and all warranty claims related to that OEM's Product.
- vii). VITA has made and will make its own selection of the Product to be ordered hereunder based on its own evaluation of the character of such Product and its use needs.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT AND/OR ANY ORDER ISSUED HEREUNDER, NO EXPRESS OR IMPLIED WARRANTY IS MADE WITH RESPECT TO THE SERVICES, PRODUCT OR DELIVERABLES TO BE PROVIDED BY SUPPLIER HEREUNDER, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE.

viii).

#### 1. Escalation Procedures

TBD based on Supplier proposal.

**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. 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

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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:

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

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

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 manufacturer offered warranty services and Maintenance Services, and the appropriate Commonwealth discounts. The discounts offered shall not decrease for a

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period of not less than two (2) years from the Effective Date of this Contract. Thereafter, any decrease in discount from list 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 or the manufacturer program change that resulted in the price discount change. Any change in discount offered 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 discounts in Exhibit C shall be appropriately changed 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
- 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

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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.

### **8. 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.

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**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.

**9. 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.

**10. 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"),

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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 Services, or (v) any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Services. Selection and approval of counsel and approval of any settlement shall be accomplished in accordance with all applicable laws, rules and regulations For state agencies the applicable laws include §§ 2.2-510 and 2.2-514 of the Code of Virginia. In all cases the selection and approval of counsel and approval of any settlement shall be satisfactory to VITA or the 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 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 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 Services, or any component thereof; or (b) replace or modify such infringing Services, or any component thereof, with non-infringing Services satisfactory to VITA. If Supplier cannot accomplish any of the foregoing within a reasonable time and at commercially reasonable rates, then Supplier shall refund the price paid to Supplier for such Services.

#### **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.

**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.**

#### **11. 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

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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.

## **12. 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.

## **13. 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.

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The then-current terms and conditions in documents posted to the aforementioned 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,

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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:

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- 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 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 SHI Return Policy
- Exhibit H Awarded Categories

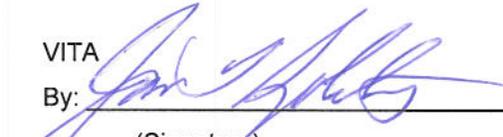
This Contract, its Exhibits, and any prior non-disclosure agreement constitute the entire agreement between VITA and Supplier and supersedes any and all previous representations, understandings, discussions or agreements between VITA and Supplier as to the subject matter hereof. Any and all terms and 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 G, Exhibit E

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

VITA and Supplier each acknowledge that it has had the opportunity to review this Contract and to obtain appropriate legal review if it so chose.

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

SHI International Corp.  
By:   
(Signature)  
Name: Thomas Nestor  
(Print)  
Title: Contract Manager  
Date: \_\_\_\_\_

VITA  
By:   
(Signature)  
Name: James T. Roberts  
(Print)  
Title: Director Finance & Administration  
Date: 2-02-09

Address for Notice:  
SHI International Corp.  
33 Knightsbridge Rd  
Piscataway, NJ 08854  
Attention: Thomas Nestor

Address for Notice:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: Contract Administrator

# EXHIBIT A

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## 5. FUNCTIONAL AND TECHNICAL REQUIREMENTS

Suppliers are required to indicate their capability of fulfilling each specific requirement below. Each Supplier's responses will be reviewed and compared across suppliers within each service type in order to determine the best solution for the Commonwealth.

Detailed requirements are presented in questionnaire format to facilitate direct responses and establish accountability regarding delivery of Solution by the Supplier. To respond to each requirement, Supplier is asked to enter, in the space provided in Column A, a code that best corresponds to its intended response for the requirement listed.

The acceptable codes for Column A are as follows:

**Y** - "Yes" - Supplier can fully meet the requirement as documented with its current application or proposed solution. If applicable, Supplier is to provide in Column B an explanation of how it will fulfill the requirement. This may include use of alliances with other suppliers. Supplier may also use Column B to cross-reference a detailed explanation included in an attachment of its proposal.

**F** - "Yes, Future" - Supplier will be able to fully meet this requirement in the near future (not longer than six months). Supplier is to provide a proposed start date and cross-reference any attached documentation in Column B.

**N** - "No" - Supplier cannot meet the requirement and has no firm plans to be in the position to meet this need within six months.

A blank or "NA" in any box in Column A will be interpreted by VITA as an "N".

VITA has posed some open-ended questions. In those instances, Supplier is to provide adequate information to allow VITA to properly evaluate its proposal.

### A. General

	Requirements	A	B
1.	Can you 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.	Yes	Yes, SHI can sell to all locations of all public bodies in the entire Commonwealth of Virginia. SHI will not be using subcontract actors to sell any of the products required.
2.	Can you 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	Configuration is done at SHI configuration service center located in NJ. While SHI is able to provide a wide variety of technical support services using our own personnel, we may need to subcontract some service requirements. Each opportunity will be evaluated on a case-by-case basis and SHI would notify the State in advance of engaging a subcontractor.
3.	VITA strongly encourages Suppliers to develop a catalog website that <i>interfaces</i> with eVA. Can your company produce a punch-out catalog website?  Refer to:  <a href="http://www.eva.virginia.gov/vendors/pages/catalogcreation.htm">http://www.eva.virginia.gov/vendors/pages/catalogcreation.htm</a>  Please provide either screen shots or a link to	Yes	Our experience with customers that have established an E-Commerce solution like Ariba has shown us that customers are looking to expand on the capabilities that these platforms offer. Our customers' vendor base is dispersed and they have limited resources to integrate all of these suppliers. Some customers and suppliers have punch out

	<p>serve as an example.</p>		<p>capabilities, but this still requires integration skills. There are a relatively small number of "Ariba Ready" suppliers, as well as potentially hundreds of suppliers whose transaction volumes do not warrant allocating resources to E-commerce initiatives.</p> <p>We have several engagements currently where SHI is providing Procurement Outsourcing Services. SHI processes all transactions with the customer through the customer-chosen procurement platform. On the back-end, SHI processes the transactions with the supplier according the supplier's capabilities.</p> 
<p>4.</p>	<p>Can your firm have a catalog website up, functioning and interfacing with eVA within 30 days of contract award?</p>	<p>Yes</p>	<p>SHI builds custom catalogs for each individual customer based on the contents in SHI's master catalog. Using internal tools, your Account Executive will easily customize a catalog for VITA within 30 days of contract award. The catalog will only include those items that SHI is contracted to sell within the State of VA.</p>
<p>5.</p>	<p>Will your firm have a dedicated account management team on this contract? Please provide details.</p>	<p>Yes</p>	<p>SHI has established the Dedicated Account Team approach as core in executing an effective customer service strategy. SHI customizes the team structure to meet the individual needs of each of our customers. The following positions would be included in direct support for the State:</p> <p><b>Account Executive</b>—Erik Schroeder—Direct sales related position with a mission of developing relationships with the appropriate representatives within the State. Responsibilities include establishing a customized service and support plan, resolving licensing issues, and constructing a pricing strategy and other topics critical to account</p>

			<p>development.</p> <p><b>Inside Sales Representative—</b> Emily Legendre—Maintains direct relationships with the customers and has the responsibility of ensuring customer satisfaction. Functional areas such as pricing, availability, order entry, tracking, returns, product information and expedites are an integral part of his daily activities. He executes the plan established by the Account Executive for a customer.</p>
6.	Will your firm have more than one field account executive on this contract? Please provide details.	No	<p>Based on our experience supporting States of similar size and requirements to Virginia, SHI is proposing the account team structure described above. The Account Executive provides outbound sales support to the customer and the Inside Sales Representative is responsible for the daily customer service operations. In addition to the ISR currently assigned, SHI also dedicated a back-up Inside Sales Representative who is fully trained on all aspects of support of a customer.</p> <p>SHI commits to providing the resources needed to effectively and efficiently support a customer. If business warrants, and depending upon the size of the award and resulting increase in business, SHI will evaluate the Account Team structure to determine if additional resources are needed to maintain the required service levels</p>
7.	Does your firm have the marketing ability and resources to promote this contract to schools, universities, local and state agencies? Please provide marketing plan and examples of marketing tools.	Yes	<p>SHI will utilize our Website, E-Mail and direct Phone and in person contact to promote this contract. Upon award, SHI will reach out to our current customer base to make them aware of the contract and their ability to use it. SHI will also promote the contract via our Virginia Websites and begin making calls and customer visits to promote the contract as well. SHI will look for opportunities to partner up with the Manufacturers on the contract to schedule one to many events in the Commonwealth such as Trade Shows or Vendor Sponsored events.</p>

8.	Will your proposed product line be compatible with the following operating systems, Microsoft Windows 98, 2000, NT, 2003 Server, XP and Vista?	Yes	
9.	Does your firm offer an employee, teacher or student purchase program? Please provide details.	Yes	SHI extends VITA's pricing to the employees, teachers and students of VITA provided the manufacturer allows for employee purchase at VITA's price, SHI provides the employee with the same prices and terms as are established for the organization. If the manufacturer does not allow for employee purchase at VITA's rates, for example in the case of Volume License Agreements, SHI will procure the product at our normal cost and mark up the price by the same percentage at which we mark up products to VITA. We are fully capable of processing orders with Master Card, Visa, American Express, certified check, or C.O.D.
10.	Does your firm offer any product incentives, credits and or rebate programs? Please provide details.	Yes	With respect to rebate programs offered by the manufacturer, SHI participates in a wide range of incentive programs. Some of these rebate programs are customer specific and those are applied to the delivered price to the customer, such as HP Big Deal. Others are directed to SHI in the form of overall company programs. While for the programs directed to SHI it is impossible to predict the amount of incentives that will be made available or SHI's ability to meet the criteria, these incentives/rewards are a consideration when we determine a cost structure for the state. SHI commits to our proposed cost structure regardless of our performance of the established goals required to earn those additional incentives/awards. The volume opportunity presented by the State and its affiliates are significant and it is a consideration in our determination of the proposed cost structure.

**B. Reports**

	<b>Requirements</b>	<b>A</b>	<b>B</b>
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<p>1.</p>	<p>Can your firm provide reports on request to users detailing products that have been placed in any of their locations? Please provide examples.</p>	<p>Yes</p>	<p>SHI prides itself on its reporting excellence and flexibility. We have developed standard reports that meet the needs of most of our customers. If the State has additional reporting requirements, SHI will develop custom reports, as we have for some of our largest customers. For example, many customers require reporting based on more detailed information than would normally be captured in order entry, such as organizational code or business unit. Therefore, SHI has customized our order entry system to capture custom data on a customer-by-customer basis. Once the information is captured within the order entry system, it is available for inclusion on your reports. SHI never charges for the reports we provide, both standard and custom.</p> <p><i>Sales History Reports</i>                  These standard reports provide an overview of your purchases from SHI. As mentioned above, our system allows for the tracking of Customer Specific Fields, therefore we are able to generate these reports in many ways. SHI will provide these reports in any time frame that you require, and in one of three formats: <i>detail</i> of all transactions, <i>summary</i> by part number, or <i>summary</i> by manufacturer name.</p> <ul style="list-style-type: none"> <li>⇒ <i>Spend by Manufacturer</i> – summary of total dollars spent in period with one specific manufacturer, all manufacturers or a sub-set thereof.</li> <li>⇒ <i>Spend by Product</i> – summary of total dollars spent in period for one specific product, all products, or sub-set thereof.</li> <li>⇒ <i>Spend by Product Type</i> – summary of total dollars spent in period for software vs. hardware, or dollars spent in period on laptops vs. desktops, etc.</li> <li>⇒ <i>Spend by Organization, Enterprise, Conglomerate</i> – again, each of the above reports can be pulled based on a specific organization, enterprise or conglomerate</li> </ul> <p><i>Software Licensing Reports</i>                  SHI has established itself as the most effective License provider based on its reporting excellence. Our capabilities will relieve the State of the burdensome requirements of these agreements.</p>
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			<p>These reports can consolidate all of your license agreements, or focus on a single program.</p> <ul style="list-style-type: none"> <li>⇒ <i>Global Summary</i> - Perfect for the Contract Administrator, the Global Summary report summarizes all of the purchases under a particular agreement(s) or enrollment(s).</li> <li>⇒ <i>Organizational Program Summary</i> - This report provides part number purchase summary based upon business unit, location or other customer defined entity.</li> <li>⇒ <i>VPA Milestone</i>—provides a summary of your purchases per licensing program for contract milestone comparisons—by point value, quantity, or dollar value, depending upon your contract terms.</li> <li>⇒ <i>Maintenance Renewal</i>—provides advance notice when maintenance purchases are expiring. This report is available in any timeframe that you request (i.e. 30 days or 60 days in advance), to provide you with enough time to budget your renewals, evaluate which renewals are necessary and which are no longer in effect, and to place the renewal order with SHI.</li> </ul> <p><i>Hardware Asset Reports</i></p> <p>SHI captures detailed information about the hardware assets that we configure within our configuration center. We can combine the asset information with the end user information the customer provides and generate asset tracking reports, which can be used as they are or can be loaded into your internal asset management databases. The information that we may capture includes, but is not limited to:</p> <ul style="list-style-type: none"> <li>⇒ Serial Number</li> <li>⇒ Asset Tag Number</li> <li>⇒ End User Name</li> <li>⇒ Department, cost center, etc.</li> <li>⇒ Warranty length</li> <li>⇒ Other information as required by the State</li> </ul>
2.	Does your firm maintain an electronic service log that is available to users on specific computer hardware? Please provide examples.	yes	<p><i>EquipmentTracker</i>—Equipment Tracker is a web-based application designed to assist our customers in the overwhelming task of tracking and accounting for computer equipment purchased through SHI. In conjunction with our Configuration Center, we can</p>

		<p>assist the customer with initial data entry information upon implementation. The customer can add additional end user information post shipment. For example, SHI can customize EquipmentTracker to register the serial number of the PC, type of software installed, type of image installed, etc. Additional features of EquipmentTracker include password-based security to prevent unauthorized usage plus the ability to customize and schedule reports.</p> <p>We offer a lot of flexibility here. Each type of asset (software license, desktop computer, monitor, printer, notebook, etc.) can have its own set of defined attributes (manufacturer, model, serial number, location, etc.). Some of these attributes can be selected from drop down lists, to speed data entry and insure accurate recording of information. Any information recorded into ET can be retrieved via reports. ET reports are delivered as email attachments using the web based reporting tool, ReportFactory. Reports can be delivered in a variety of formats, including Excel worksheets, tab delimited text files, fixed width text files, and HTML tables. In addition, reports can be scheduled to run automatically on a daily, weekly, or monthly basis. We can create report subscriptions to send the State formatted text files containing asset information contained in our ET database. The formatted text files can be used to update the the State legacy database with the most current asset information from ET.</p> <p>Also, since ET has a browser interface, information can be entered and retrieved from any desktop that supports Netscape IE browsers. This enables personnel from remote locations to maintain the information in the ET database. ET is available 24 hours a day, seven days a week.</p> <p><i>Warranty Tracking</i>— Within our order processing system, SHI can track warranty start and end dates. This allows us to provide you with reports that detail those products whose warranties are soon to expire. At this time, the customer may choose to purchase</p>
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			warranty extensions from the manufacturer or third party warranty contracts. SHI is available to provide you information about all of your options and to assist you with choosing the option that meets your business requirements.
3.	Does your firm provide any additional reports that would be an added value to the Commonwealth? Please describe and provide examples.	yes	SHI's metrics reports provide data regarding the speed and accuracy with which each task is performed. The metric reports are run on a monthly basis and given to the SHI Director of Quality. The Director of Quality analyzes the data and provides an overview of each area of measurement. The information is formatted to allow the analysis of month-to-month trends. If the Director of Quality identifies a particular area that was not performed well, she can review the details behind the data to identify the root cause and assign a corrective action request to the appropriate department manager. The Director of Quality will present her results to the Top Managers and Mid-Level Managers during the Quarterly Management Review Meetings. These reports can be available to view upon request.

**C. Related Services**

	Requirements	A	B
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<p>1.</p>	<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>SHI has always used an empowered dedicated team to support its customers. Under this customer structure, all of VITA's requirements will be managed by a defined team, not a "hotline" or "pool" structure. The members of your Dedicated Account Team are fully trained on all of your business requirements and understand your purchasing procedures. They will be able to assist your employees with more than just pricing and order status. Because the Account Team members understand your procedures, they will be able to guide your employees through those procedures.</p> <p>SHI has empowered the members of your Dedicated Account Team to further the efficiency of our support and increase the level of customer service. The members of your Dedicated Account team provide the customer with pricing quotes, even for products that are not currently in SHI's catalog. In many companies all new price quotes must pass through the purchasing department for approval, resulting in increased turn-around and decreased customer satisfaction. Furthermore, the members of your Account Team may authorize returns that fall outside of SHI's normal return policy. SHI understands that customers want information readily available to them and do not want to wait for "management approval". Your dedicated account team will provide, and SHI guarantees, immediate turn around on all of your requests.</p> <p>SHI understands how important it is to ensure that our customers have the information they need to manage their IT Procurement effectively. We have established several communication methods to provide updates to technology, licensing, and product information:</p> <p>News &amp; Announcements—posted to SHI.COM. SHI provides both industry-wide/standard news articles, as well as articles that are customized for you and created by your Account Executive.</p> <p>Webinars—designed to provide the customers with the knowledge they need to manage their licensing agreements, remain updated on technology changes and product releases, and to understand the direction of the industry.</p>
<p>2.</p>	<p>Does your firm provide installation services? Please provide details.</p>	<p>Yes</p>	<p>SHI assists organizations in all aspects of the technology deployment process. This includes the development of comprehensive project policies, deployment planning through communication preparation, distribution and installation. Throughout each phase of the technology deployment process, SHI works with the client to ensure all aspects are handled appropriately and successfully. We regularly provide these services for common infrastructure components such as cabling, router and server installations to user-based equipment like workstations, POS devices, kiosks and printers.</p> <p>The key to any technology rollout is effective pre-</p>

			<p>implementation planning. SHI partners with the client to ensure that complete testing, rollout planning, and script development are expertly accomplished well in advance of the physical deployment. This allows SHI and the client to collectively focus on logistics, working the project plan, communication and customer satisfaction during the physical deployment. Because of SHI's broad national coverage, SHI deployments can result in considerable savings to Commonwealth of Virginia, especially for large scale, multi-site deployments.</p> <p>SHI provides support to Commonwealth of Virginia for the entire lifecycle of desktop technology assets. Whether dealing with desktop technical support, or more involved hardware modifications incorporating installations, moves, adds, and changes, our flexible delivery model focuses on the unique needs of each client. SHI's support spans multiple environments, from local dispatch within campus settings, to remote dispatch for scattered site resources, to combinations of both. In short, Commonwealth of Virginia's needs are our goals.</p>
3.	Is your firm able to respond to a user request for service within eight (8) business hours? Please provide detail on how this will be accomplished.	no	.
4.	Is your firm willing to commit to service-level agreements? If so please refer to Appendix C and fill in the yellow shaded areas.	no	
5.	Does your firm offer 8am to 5pm EST hardware and software support? Please provide details.	Yes	SHI, your dedicated account team is available for support from 8 am to 5pm. Hardware Warranty is the standard Toshiba 3 Year Return to Depot. The software warranty will be passed on to VITA from the Manufacturer.
6.	For security reasons, will your firm allow the user to keep a failed hard drive while receiving a new hard drive that is covered under warranty? Please provide details.	no	
7.	Does your firm provide custom imaging? Please provide details.	yes	<p>SHI provides for testing of images with regard to system and application functionality, file and directory structure, conflict resolution and so forth. Commonwealth of Virginia's Technical staff will perform actual certification of any images.</p> <p>There are no restrictions on the number of images SHI is able to manage for any of our clients. All customer images are supplied with an SHI proprietary part number to ensure they are deployed to the correct client. Each image is subject to a first article build process. This entails loading of the image onto the desired platform, sending to a customer designated contact for approval, receiving a written sign off to validate the image works as</p>

			<p>it was intended to, and loading the image into production.</p> <p>It should be noted that if the image does not pass the first article inspection process, joint trouble shooting between SHI and Commonwealth of Virginia would take place until the image has been validated. All production images are loaded onto our build servers if applicable, and backed up onto 1 or more back up build servers. Hard copy media is also catalogued in a secure location, should the need arise to duplicate it or load it in another location. Images that are deemed to be no longer valid are archived to an archive server, and backed up onto tape, then placed into archive storage.</p> <p>As applications are added and removed from existing images, each revision will be subject to the same certification process as previously outlined. SHI will continue to support the images in house, however, it may become necessary to enlist the assistance of the OEM during certain situations.</p> <p>SHI utilizes our in house developers to support our customers in their image management needs. SHI technicians can assist in the creation of your particular software image, or port an existing image to a new platform. Because we have the availability and flexibility to work with our customers and various manufacturers we can support them in their goal to create images to support their environment.</p>
8.	Does your firm provide in-house quality assurance and testing processes for all hardware? Please provide details.	yes	<p>SHI maintains a less than 1% DOA rate for all equipment that leaves our configuration facility. Our standard process is the verify that the PC has not been damage and boots up properly. The unit is then tested again after image is applied or hardware is upgraded. Both SHI's warehouse and Configuration center is under ISO9001 certification.</p> <p><b>Configuration:</b> SHI has been providing this service since 1995. With over 500 network attached build stations, and 48 stand alone work stations, the configuration center is able to build and ship up to 2500 units in a 12 hour time period. At our Configuration Center in Somerset, NJ we offer our customers a wide variety of pre-shipment product configuration services – everything from JIT inventory management, asset tagging and serial number capture to software image creation and loading – that can substantially reduce on-site installation time and field personnel costs. The Center is staffed by highly skilled technicians and equipped with everything needed to provide a secure</p>

			production and testing environment that can handle the largest and most complex configuration jobs
9.	Does your firm provide service and repair for warranty and non-warranty maintenance for hardware? Please provide details and time frames.	yes	SHI offers extended warranty options from the Manufacturer at an additional cost. SHI also offers non-warranty maintenance on a time and material Basis depending on specific requests. SHI will be glad to discuss in further detail as the need arises.
10.	Do your service and maintenance technicians have and maintain current industry certifications? Please provide details and types of certifications.	yes	<p>All SHI technicians are certified in their specific areas of expertise. The technicians hold a variety of certifications including A+, Network+, Cisco CCNA, MCP, MCSE, as well as a variety of authorizations from manufacturers such as Microsoft, VMWare, SUN, Compaq, HP, Dell, Lenovo and IBM. If the need arises for certification in particular areas, SHI will assign the responsibility of obtaining the necessary credentials to the best-qualified technician.</p> <p>There are 3 main areas SHI categorizes to address internal training and education for our technical staff.</p> <ol style="list-style-type: none"> <li>1. Self study – Before a technician gets an opportunity to begin on-the-job training with an experienced administrator or engineer, they must acquire an acceptable level of technical knowledge through self-study and pass vendor certification exams proving basic understanding.</li> <li>2. On-the-job Training – Eligible technicians who have demonstrated competence are trained by experienced personnel on SHI specific systems administration and operations procedures and are given tasks appropriate for their level of competence and experience.</li> <li>3. Product web-based or classroom training – When necessary, technicians are sent to formal training to assure competence in their job related duties.</li> </ol>
11.	Does your firm provide onsite and/or depot warranty and repair? Please provide details.	yes	<p>SHI is able to offer a range of depot-based repair programs.</p> <p><b>Depot-based Repair:</b> If the client is unwilling to fund a sparing pool, SHI can provide a depot-based repair program for field devices. With this program, SHI ships out empty packaging to the end-user, who then uses that packaging to ship the failed device back to SHI. SHI receives the device, repairs it (possibly reviewing repair estimates with the client for approval, as required), and then ships the unit back to the end-user.</p>

			<p>This program represents a reduced turnaround time to the end-user, but a reduced investment by the client, as a sparing pool is not required (however, it is often advantageous to have a small supply of frequently-failing parts on-hand at SHI). At times, it can also be the simplest program for the end-user, as it does not require data restoration or in-field repair.</p> <p>All the programs described above are supported by SHI's helpdesk, available to help users diagnose problems before determining if a depot call is required as well as help users become productive with the repaired device. Service requests can be initiated via the helpdesk or online via Web-based service requests (hosted either by SHI or the client), as well as interconnectivity between the client helpdesk system and SHI's service management system. All service-related information (activity volume, asset swap information, etc) can be provided via web-based reports or integrated into client-specific data feeds.</p>
12.	<p>Does your firm offer the use of spare parts/loaner equipment on both warranty and out of warranty parts? Please provide details.</p>	yes	<p>SHI is able to offer a range of spare parts programs.</p> <p><b>Advance Exchange:</b> When a user contacts SHI with a failed device, SHI immediately ships out a replacement device. Upon receipt, the user removes the replacement device and ships the return unit back to SHI. Once received, SHI repairs the device and returns the unit back to the sparing inventory. The client is provided with regular reports describing asset exchanges, including end user information and asset information (make, model, serial number, asset tag) to allow for asset management updates by the client.</p> <p>This program represents the fastest turnaround time to the end-user, but requires a sparing pool of approximately 5% of the supported base.</p> <p><b>Advance Part Replacement:</b> In those instances where a failed component can be repaired in the field by an end-user (often the case for laptop hard drives and batteries), SHI can immediately ship the replacement part, including information and support numbers for in-field replacement of the failed device. If warranty exchange is required, the user would then ship the failed component back to SHI (using the packaging provided) for warranty exchange.</p> <p>This program represents a fast turnaround time to the end-user with the slight inconvenience of an in-field repair, but requires a smaller investment in a sparing pool.</p>

13.	Does your firm provide asset management and equipment tracking services? Please provide details.	yes	<p><i>EquipmentTracker</i>—Equipment Tracker is a web-based application designed to assist our customers in the overwhelming task of tracking and accounting for computer equipment purchased through SHI. In conjunction with our Configuration Center, we can assist the customer with initial data entry information upon implementation. The customer can add additional end user information post shipment. For example, SHI can customize EquipmentTracker to register the serial number of the PC, type of software installed, type of image installed, etc. Additional features of EquipmentTracker include password-based security to prevent unauthorized usage plus the ability to customize and schedule reports.</p> <p>We offer a lot of flexibility here. Each type of asset (software license, desktop computer, monitor, printer, notebook, etc.) can have its own set of defined attributes (manufacturer, model, serial number, location, etc.). Some of these attributes can be selected from drop down lists, to speed data entry and insure accurate recording of information. Any information recorded into ET can be retrieved via reports. ET reports are delivered as email attachments using the web based reporting tool, ReportFactory. Reports can be delivered in a variety of formats, including Excel worksheets, tab delimited text files, fixed width text files, and HTML tables. In addition, reports can be scheduled to run automatically on a daily, weekly, or monthly basis. We can create report subscriptions to send Commonwealth of Virginia formatted text files containing asset information contained in our ET database. The formatted text files can be used to update the Commonwealth of Virginia legacy database with the most current asset information from ET.</p> <p>Also, since ET has a browser interface, information can be entered and retrieved from any desktop that supports Netscape IE browsers. This enables personnel from remote locations to maintain the information in the ET database. ET is available 24 hours a day, seven days a week.</p> <p><i>Warranty Tracking</i>— Within our order processing system, SHI can track warranty start and end dates. This allows us to provide you with reports that detail those products whose warranties are soon to expire. At this time, the customer may choose to purchase warranty extensions from the manufacturer or third party warranty contracts. SHI is available to provide you information about all of your options and to assist you with choosing the option that meets your business requirements.</p>

14.	Does your firm ship all in stock orders same day? Please list all shipping timelines and include caveats for delay, etc..	Yes	In stock "Pick and Ship" orders (those not requiring configuration in SHI's integration center) will ship within the same business day, providing SHI receives the customer's order by 4:00 PM ET. If an order requires configuration prior to shipment, SHI cannot guarantee same day shipment; however, we will look at each order on a case-by-case basis to provide the customer with a true ETA date.
15.	Does your firm have an in-house order tracking system that can be accessed 24 x7 by a user? Please provide details.	Yes	Your Home provides you with the tracking numbers for your orders. SHI receives tracking information for most of the orders we process. When this information is available to us, we in turn make it available to you while you are checking the status of your orders via the web. We also provide links to the carrier's web page for automated shipment tracking.
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	SHI has experience supporting this requirement for other customers. The members of your Account Team will work with the customer to understand the required deployment schedule and to ensure that we have adequate inventory to meet the timeline. SHI would create multiple orders within our order entry system, ensuring proper shipment to the end use addresses. All of these orders would reference the same customer PO number. Your Account Manager would also work with the State to ensure correct invoicing and to consolidate the invoice, as needed.
17.	Does your firm have a return policy? Please provide details?	Yes	<p>A. Definitions</p> <p>"OEM" means the original equipment manufacturer, or in the case of software, the software publisher/licensor.</p> <p>"Order" means the form of purchase order or other document used for the purpose of ordering Product and. Order shall include a phone order placed by Customer employee to Reseller utilizing Customer's corporate procurement card or Customer's written or electronic form of purchase requisition.</p> <p>"Product" means third party software, computer peripherals, and computer hardware, collectively, which are resold by the Reseller.</p> <p>"Reseller" means Software House International, Inc.</p> <p>B. General</p> <p>Generally, a Product can be returned if in resale condition (all original materials enclosed and the seal on disks intact), provided the returned Product is received within thirty days, subject to the conditions of this policy. Reseller will notify Customer, prior to Order fulfillment, of any case where these general return rights are not available.</p>

		<p>Where the Product OEM or distributor prohibits returns or charges a restocking fee, Reseller will so notify Customer prior to Order placement. In the event that a return is necessary due to Customer error, any related restocking fees will be passed onto Customer.</p> <p>C. Non Conforming Product</p> <p>If Customer determines in its reasonable discretion that Products are not in conformance with the Agreement or the applicable Order, Customer may, at its option, either:</p> <p>request that Reseller replace the non-conforming Product within fifteen (15) days after receipt of the Product by the Customer (or such other period of time as mutually agreed upon in writing between the parties) at no cost to Customer, or</p> <p>terminate the non-conforming portion of the applicable Order, in which case Reseller shall (in addition to any and all other remedies that may be available to Customer), upon return of the Product at no cost to Customer, promptly refund to Customer any payments made to Reseller for the terminated portion of the Order, provided that the request for such return was made within 30 days of receipt of Product by the end user.</p> <p>The terms of this section B. shall prevail over all other terms of this policy, except sections F. and G., below.</p> <p>D. Software</p> <p>If the software Product is a special order item or not in resale condition, Reseller will accept the return only if the OEM will accept the return from Reseller. Shipping shall be at Customer's cost.</p> <p>Reseller will accept returns of defective software Products and will ship a replacement at no additional shipping cost to Customer.</p> <p>If return is due to Reseller's shipping error, and the return request is made within thirty days of receipt of Product, Reseller will accept the return at no additional shipping cost to Customer. Reseller will provide a refund of price paid within thirty (days) of return.</p> <p>E. Licenses</p> <p>The OEM's return policy will govern license returns.</p> <p>F. Hardware</p> <p>If Reseller made an error in shipping a hardware Product to Customer, provided the request for return was made within 30 days of receipt of</p>
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18.	Does your firm charge a re-stocking fee on returned equipment? Please provide details.	No	No, SHI does not charge a re-stocking fee on returned equipment. Where the Product OEM or distributor prohibits returns or charges a restocking fee, Reseller will so notify Customer prior to Order placement. In the event that a return is necessary due to Customer error, any related restocking fees will be passed onto Customer.
19.	Does your firm offer IT equipment disposal and recycling services? Please provide details.	yes	<p><b>Services Overview</b></p> <p>SHI is proud of the asset recovery services it has developed in partnership with a number of customers over the past several years. These recovery services span asset de-install, removal, assess and wipe, return, resale, and recycle and are designed to respond to the unique needs of each of our clients.</p> <p>The SHI delivery model is unique in the industry, leveraging geographically distributed partner processors, all integrated onto a single processing platform, provided</p>

		<p>by SHI. With this model, SHI is able to keep freight costs to a minimum while continuing to provide a single, consolidated view of service progress, metrics, and reporting. Regardless of where an asset is processed, it is included within a consolidated service view.</p> <p><b>DEP/EPA Approved Recycling</b>                  SHI and its network of certified partners assist with the disposal of equipment by following EPA (Environment Protection Agency) guidelines, and an EPA certificate is provided to the customer for all recycled assets. Our joint philosophy for the disposal of electronic assets is to exceed the standards set forth in the United States Federal EPA guidelines governing the disposal of solid waste, as well as the new EPA Plug-In to eCycling Guidelines for Materials Management. SHI also follows those guidelines contained in the Resource Conservation and Recovery Act of 1976 (RCRA). It should be noted that whenever possible items are recycled, including those which contain hazardous materials, such as CRT's, lead, mercury, and more.</p> <p>Any asset that fails testing or does not meet minimum hardware specifications, as determined by SHI, is environmentally recycled or disposed of according to prevailing EPA guidelines. SHI will indemnify your company from any of the risks associated with the disposal by providing a Document of Liability Transfer with a serialized report outlining all assets environmentally disposed of by SHI.</p> <p><b>Equipment Pick-up and Consolidation</b>                  SHI employs a Logistics provider experienced in handling the pick-up and delivery of asset disposal items. SHI can pick-up equipment at various locations across the U.S, Canada and other international locations. Equipment is pick-up from a centralized location in the office building. Equipment is palletized and shrink-wrapped to ensure secure shipment to closest partner processing facility. Padded pick-up service is also available.</p> <p><b>Asset Evaluation</b>                  Once equipment is delivered to the SHI partner facility, the equipment will be received into the asset disposal management system. SHI will test each Asset for functionality, capture information for reporting, assess for resale value or disposal pathway and appropriate processing based on condition for each asset. Other information recorded for each asset includes equipment class, model, and quantity. SHI will provide detailed reporting for each service request and the associated Assets, Serial Number, disposition status and other Customer required information within 30 days of service request receipt at reclamation facility. SHI will determine whether items have resale value or can be repaired/refurbished to resalable value and will attempt to sell those items through the wholesale channel. SHI will report on resale value when items are sold.</p> <p><b>Disposal</b>                  If equipment received by SHI does not meet the specifications for resale it is identified for recycling. All</p>
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		<p>internal components that have a resale value are removed, tested and then sold; the remaining shells are then shredded for recycling. All assets are broken down for materials (plastics, metals, lead, glass, copper, etc.) and remanufactured whenever possible. A certificate of destruction is provided on all equipment recycled. If hard drives cannot be scrubbed due to malfunction or damage to drive, they are removed and then shredded.</p> <p><b>Remarket</b> If equipment has passed testing, SHI will resell the currently-owned equipment on the resale market. This includes properly refurbishing items so they are fit to sell on the open market. A percentage of the proceeds are paid to the client. SHI can apply a credit towards future or past asset disposal services or can cut a check payable to the client.</p> <p><b>Donation</b> For donated equipment, SHI can consolidate, clean, and prep equipment for distribution to charitable organizations identified by the client. Prior to shipment, all asset hard drives are wiped and all serial numbers recorded in SHI's Asset Recovery System. Fair market values are assessed (using a number of market valuation tools) and can be incorporated into the asset record for reporting purposes. All donations are tracked, including shipping information, and can be made available to the client via standard or custom reports.</p> <p><b>Redeployment</b> Assets identified for redeployment are cleaned and assessed. If necessary, assets can be upgraded to meet technical specifications before a client-provided software image is applied. Assets are stored at a SHI disposal facility, pending order placement by the client. Assets can be incorporated into SHI's standard equipment catalog, allowing procurement of re-deployable assets to be incorporated into standard procurement policies. All assets are recorded within SHI's Asset Recovery System, allowing for extensive reporting and analysis.</p> <p><b>Lease Return</b> Assets identified for lease return are cleaned and assessed. Assets are stored at a SHI disposal facility until client requests that the assets are returned to the leasing company. Assets will be packaged according to the lease return guidelines provided by the leasing company. All assets are recorded within SHI's Asset Recover System, allowing for extensive reporting and analysis.</p> <p><b>Certificates of Destruction</b> SHI will indemnify your company from any of the risks associated with the disposal by providing an EPA authorized Certificate of Destruction with a serialized report outlining all assets environmentally disposed of by SHI.</p> <p><b>Data Destruction</b> All data from each hard drive will be scrubbed using a Department of Defense approved (5222.22M compliant) patented data overwrite technology designed to completely eliminate all data from a computer's hard</p>
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		<p>drive. Hard drives that cannot be overwritten will be degaussed or shredded. Data destruction is typically performed in each processing facility, but on-site data destruction is also available.</p> <p><b>Removal of Identifying Information</b>                  All identifying tags, labels or other identifying information including client logos will be removed from the equipment at SHI partner facilities prior to remarket or disposal. Identifying information is removed using industrial strength non-toxic cleansers.</p> <p><b>Notifications to Client</b>                  Confirmation emails are automatically sent to the site contact once a pick up request is submitted on the SHI Asset Recovery website. Notifications are also sent to the contact once a pick-up has been scheduled. SHI can set up a main point of contact who will receive an email notification each time a pick up is requested. SHI can also designate a client employee to have approval rights of each pick up request. Once a request is submitted, an email notification is sent to the approver and SHI will not take action on the request until it has been authorized.</p> <p><b>Chain of Custody</b>                  SHI will maintain a database tracking the equipment from initiated date through closed date. Asset removal requests are tracked throughout the process and uploaded onto the SHI Asset Recovery website. This information is also available through reporting. Status updates include: Initiated Date, Scheduled Date, Pick Up Date, Delivered Date, Received Date, Screened Date, Audited Dated and Closed Date. The following data will be collected for each piece of equipment during testing: asset type, manufacturer, model, asset tag, serial number, configuration, description, location, method and means of disposal.</p> <p><b>Reports</b>                  Once all identifying information is collected for each asset, it will be immediately available on-line on the SHI Asset Recovery website. Clients may access real time reporting which will provide immediate access to all information relating to an asset, an individual asset disposal order or all disposal orders. SHI reports are sent electronically. Reports can be created using many formats including: Excel, HTML, XML and Text File. Report subscriptions are available which can be used to send a specific report electronically to designated client employees at a specific day and time or on a daily, weekly, bi-weekly or monthly basis.</p>
20.	Does your firm adhere to Energy Star 4.0 energy efficiency standards for computer hardware products? Please provide list of qualified products.	This is an OEM-directed question and will depend upon the technology that the State selects.

**EXHIBIT C  
Notebook**

Intel/ AMD Based

Toshiba Tecra M9 - PTM91U-0US010	Unit Price	Discount %	Unit Discounted Price
<b>A. Standard Notebook Offering**</b>	<b>\$1,349.00</b>	<b>12%</b>	<b>\$1,187.12</b>
nVIDIA® Quadro® NVS 130M with 128MB DDR SDRAM			
Integrated Intel PRO/Wireless 4965AGN (802.11a/b/g/n)			
Intel® Centrino® Pro Technology			
Intel 1Gbps LAN with AMT 2.5			
Intel® Core™ 2 Duo T8100 (2.1GHz, 3MB L2, 800MHz FSB)			
1024MB = 1024MBx1 DDR2 667MHz			
Vista Basic Logo			
Genuine Windows Vista® Business SP1 (32-Bit) with Genuine Windows XP Professional SP2 Recovery Media			
80GB (5400 RPM) S-ATA			
14.1" WXGA (1280x800)			
8x DVD SuperMulti (Double Layer) with WinDVD Creator			
Bluetooth Version 2.0 +EDR			
Microsoft® Office Suite Ready 2007			
No Microsoft Works			
Toshiba DualPoint™ pointing device			
3 Years Standard Limited Warranty - Depot			
6-cell Li-Ion Battery			

Toshiba Tecra M9 - PTM91U-0VQ010	Unit Price	Discount %	Unit Discounted Price
<b>B. Premium Notebook Offering**</b>	<b>\$1,474.00</b>	<b>15.25%</b>	<b>\$1,249.22</b>
nVIDIA® Quadro® NVS 130M with 128MB DDR SDRAM			
Integrated Intel PRO/Wireless 4965AGN (802.11a/b/g/n)			
Intel® Centrino® Pro Technology			
Intel 1Gbps LAN with AMT 2.5			
Intel® Core™ 2 Duo T8300 (2.4GHz, 3MB L2, 800MHz FSB)			
2048MB = 1024MBx2 DDR2 667MHz			
Vista Premium Logo			
Genuine Windows Vista® Business SP1 (32-Bit) with Genuine Windows XP Professional SP2 Recovery Media			
120GB (5400 RPM) S-ATA			
14.1" WXGA (1280x800)			
8x DVD SuperMulti (Double Layer) with WinDVD Creator			
Bluetooth Version 2.0 +EDR			
Microsoft® Office Suite Ready 2007			
No Microsoft Works			
Toshiba DualPoint™ pointing device			
3 Years Standard Limited Warranty - Depot			
6-cell Li-Ion Battery			

**Tablet**

Intel/ AMD Based

Toshiba Portege M700 - PPM70U-12501E	Unit Price	Discount %	Unit Discounted Price
<b>C. Tablet Offering**</b>	<b>\$1,624.00</b>	<b>12%</b>	<b>\$1,429.12</b>
Integrated Intel Graphics Media Accelerator X3100			
Intel® Core™ 2 Duo T8100 (2.1GHz, 3MB L2, 800MHz FSB)			
2048MB = 1024MBx2 DDR2 667MHz			
Vista Premium Logo			
Genuine Windows Vista® Business Edition 32-Bit with Windows XP Tablet Edition 2005 Recovery Media			
80GB (5400 RPM) S-ATA			
12.1" WXGA (1280x800) Wide View Backlit LED Display			
Intel Wireless Link 4965AGN (802.11 a/b/g/n)			
8x DVD SuperMulti (Double Layer)			
No Bluetooth			
Microsoft® Office® 2007 Suite Ready			
No Microsoft Works			
3 Years Standard Limited Warranty - Depot			
No Integrated Intel® Turbo Memory			
Active Digitizer with Pen Input			
Integrated 1.3M Webcam and Microphone			
6-Cell Battery			
No Emergency Pen			

**\*\*Units above are the offerings for this Bid. Discount applies to these units only and not to entire Toshiba line.  
Additional Options and/or Services are not included in this pricing as these are set configurations.  
Pricing includes Ground Shipping to agency location.**

*\*Please reference the Log In information to view the Pricelist at [www.shi.com/yourhome.asp](http://www.shi.com/yourhome.asp)\**

**Academic - See "News" Section**

User ID: [vitauseracad](#)

Password: [va808vitae](#)

**Government - See "News" Section**

User ID: [vitausergov](#)

Password: [va808vitag](#)

**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:

Thomas M. Nestor

Organization:

SHI International Corp.

Date:

January 27, 2009

## SHI International Corp. Return Policy

### EXHIBIT G

#### A. Definitions

1. "OEM" means the original equipment manufacturer, or in the case of software, the software publisher/licensor.
2. "Order" means the form of purchase order or other document used for the purpose of ordering Product and Order shall include a phone order placed by Customer employee to Reseller utilizing Customer's corporate procurement card or Customer's written or electronic form of purchase requisition.
3. "Product" means third party software, computer peripherals, and computer hardware, collectively, which are resold by the Reseller.
4. "Reseller" means SHI International Corp.

#### B. General

1. For a Product to be eligible for return, it must be in resale condition (all original materials enclosed and the seal on disks intact), and received within the time periods described in this policy.
2. Where the Product OEM or distributor prohibits returns or charges a restocking fee, Reseller will so notify Customer prior to Order placement. In the event that a return is necessary due to Customer error, any related restocking fees will be passed onto Customer.
3. Reseller will notify Customer, prior to Order fulfillment, of any case where these general return rights are not available.

#### C. Non Conforming Product

1. If Customer determines in its reasonable discretion that Products are not in conformance with the Agreement or the applicable Order, Customer may, at its option, either:
  - a. request that Reseller replace the non-conforming Product within fifteen days after receipt of the Product by the Customer (or such other period of time as mutually agreed upon in writing between the parties) at no cost to Customer, or
  - b. terminate the non-conforming portion of the applicable Order, in which case Reseller shall (in addition to any and all other remedies that may be available to Customer), upon return of the Product at no cost to Customer, promptly refund to Customer any payments made to Reseller for the terminated portion of the Order, provided that the request for such return was made within thirty days of receipt of Product by the Customer.
2. The terms of this section 1. shall prevail over all other terms of this policy, except sections F. and G., below.

#### D. Software

1. If the software Product is a special order item or not in resale condition, Reseller will accept the return only if the OEM will accept the return from Reseller. Shipping shall be at Customer's cost.
2. Reseller will accept returns of defective software Products and will ship a replacement at no additional shipping cost to Customer.
3. If return is due to Reseller's shipping error, and the return request is made within thirty days of receipt of Product, Reseller will accept the return at no additional shipping cost to Customer. Reseller will provide a refund of price paid within thirty days of return.

#### 4. Licenses

## **SHI International Corp. Return Policy**

### **EXHIBIT G**

The OEM's return policy will govern license returns.

#### **E. Hardware**

1. If Reseller made an error in shipping a hardware Product to Customer, provided the request for return was made within thirty days of receipt of Product, Reseller will accept the return at no additional shipping cost to Customer.
2. If Customer ordered the incorrect Product or has decided that it no longer wants the Product, Reseller will accept the return from Customer, provided the OEM will accept the return from Reseller. OEM charges, if any, will pass to Customer. Shipping is at Customer's cost.
3. If the product has concealed damage (i.e. there is no evident damage to external packaging), is defective, or dead on arrival (DOA), Reseller will accept the return from Customer, provided the OEM will accept the return from Reseller; the OEM's policies will apply. Reseller will provide a replacement unit within fifteen business days of notice of damage, defect or DOA.

#### **F. Shipping Damage**

In the event that Customer finds evidence of damage incurred during transit, Customer may either hold the Product and notify Reseller within five calendar days from the date of delivery (and Reseller will arrange for a claim for shipping damage to be processed) or refuse the shipment from the carrier. Notification of such claim to Reseller after five calendar days will void Customer's right to Product return, replacement or refund.

#### **G. RMA**

In order for Reseller to accept any returns, Customer must first obtain an RMA number from Reseller. If a Product is shipped directly to the OEM or to Reseller without an RMA, Reseller is not responsible for accepting such return, Product replacement or refund, and such return may void any Customer claims on the Product.

## **EXHIBIT H**

### **AWARDED CATEGORIES**

- NOTEBOOK (TOSHIBA)
- PERIPHERALS
- COTS



# **Software License Reseller Contract**

between

The Virginia Information Technologies Agency

on behalf of

The Commonwealth of Virginia

and

Software House International, Inc.

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**SOFTWARE LICENSE CONTRACT  
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## **SOFTWARE LICENSE CONTRACT**

THIS SOFTWARE LICENSE Reseller 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 Software House International, Inc. ("Supplier"), a corporation headquartered at [33 Knightsbridge Rd, Piscataway, NJ 08854 address, 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

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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 Maintenance Period

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

**I. 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.

**J. Party**

Supplier, VITA, or any Authorized User.

**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 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.]

**L. Services**

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

**M. 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.

**N. Software Publisher**

The licensor of the 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).

**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.

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**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.

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**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 LICENSE**

- a. Software resold under this Agreement, as well as related maintenance or support services, will be governed by the Software Publisher's standard license and support agreements, which Supplier shall forward to Authorized User at the time of delivery of the Software. Supplier is not a party to any such licenses between Authorized User and Software Publisher and will not be liable for any and all claims or obligations related to that Software Publisher's Software, licensing and/or services.
- b. VITA agrees that Supplier is not a publisher or OEM of the Software. Authorized Users will make their own selection of the Software and licenses to be ordered hereunder based on their own evaluation of the character of such Software and use needs.

[Option 2—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

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shall exist in perpetuity unless otherwise terminated in accordance with the applicable provisions of the Contract. [end Option 2]

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

### 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.

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## 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

Supplier may be requested 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\\_10200\\_7.pdf](http://www.doa.virginia.gov/Admin_Services/CAPP/CAPP_Topics/20335_Meals_Lodging_10200_7.pdf), or a successor URL(s)). Authorized User shall provide to Supplier written notice of

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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**

Supplier hereby represents and warrants that for the term of this Agreement:

Supplier shall perform the services in a professional and workmanlike manner and in all material respects in conformance with the specifications, performance standards and criteria set forth in the Order, with the degree of skill and care that is required by customarily accepted good and sound professional practices and procedures of the industry.

Supplier will maintain all necessary local, state, and federal licenses and certifications that may be required in order to legally deliver the License and Deliverables described in the order(s). Supplier understands and acknowledges that Supplier is wholly responsible for ensuring compliance with all federal, state, and local laws associated with the delivery of all Services associated with this Agreement and associated order(s).

Supplier has all rights, approvals, and/or authorizations necessary to perform the services hereunder, and provide the License and/or deliverables.

Supplier is authorized to execute this Agreement, is qualified to perform the services, and has good title to the materials, supplies and equipment constituting the services, free from all liens, encumbrances and claims of others.

**Remedy**

If a defect occurs or appears in the Software or services provided hereunder, it shall be presumed that Supplier failed to meet such standards, and Supplier shall promptly and at its own expense, correct or re-perform any such services which fail to meet such standards within a reasonable time frame acceptable to VITA at no additional cost.

**Warranty of License**

Supplier is a value added reseller ("VAR") of License, not the OEM or licensor, and therefore disclaims any warranty responsibility regarding License provided under this Agreement. Supplier shall forward the warranties to Authorized User which are provided to Supplier from the OEM of the License, and to the extent granted by the OEM, Authorized User

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shall be the beneficiary of the OEM's warranties with respect to the License. Supplier is not a party to any such terms between Authorized User and OEM and Authorized User agrees to look solely to the OEM for satisfaction of any and all warranty claims related to that OEM's License.

VITA has made and will make its own selection of the License to be ordered hereunder based on its own evaluation of the character of such License and its use needs.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT AND/OR ANY ORDER ISSUED HEREUNDER, NO EXPRESS OR IMPLIED WARRANTY IS MADE WITH RESPECT TO THE SERVICES, LICENSE OR DELIVERABLES TO BE PROVIDED BY SUPPLIER HEREUNDER, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE.

## **8. MAINTENANCE SERVICES**

Software Products resold under this Agreement will be governed by the maintenance agreement between Authorized User and the OEM or, if no such agreement exists, the OEM's standard maintenance and support agreements, which Supplier shall forward to Authorized User at the time of delivery of the Products, when provided to Supplier by the manufacturer. Supplier is not a party to any such terms between Authorized User and manufacturer and Authorized User agrees to look solely to the OEM for satisfaction of any and support claims or obligations related to that OEM's Product.

### **A. Ordering**

When Publisher offers such services, 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.

### **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.

## **9. GENERAL WARRANTY**

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

### **C. 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 conform to the description in the purchase order as specified by VITA. The Software provided hereunder is at the current release level unless an Authorized User specifies an older version in its order. Malicious Code

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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.

**D. 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.

**E. 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.

**F. 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;

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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.

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**

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**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.

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- 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](mailto: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

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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. 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.

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## 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, 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 Services, or (v) any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Services. Selection and approval of counsel and approval of any settlement shall be accomplished in accordance with all applicable laws, rules and regulations. For state agencies the applicable laws include §§ 2.2-510 and 2.2-514 of the Code of Virginia. In all cases the selection and approval of counsel and approval of any settlement shall be satisfactory to VITA or the 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 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 Services, or any component thereof; or (b) replace or modify such infringing Services, or any component thereof, with non-infringing services satisfactory to VITA. If Supplier cannot accomplish any of the foregoing within a reasonable time and at commercially reasonable rates, then Supplier shall refund the price paid to Supplier for such Services.

### 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

**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**

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**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 obligations pursuant to this Section.

**16. 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.

**17. 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

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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.

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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

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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 F            Certification Regarding Lobbying
- f). Exhibit G            SHI Return Policy

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.

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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.

SHI International Corp.

By:   
(Signature)

Name: Thomas Nestor

(Print)

Title: Contract Manager

Date: January 27, 2009

VITA

By:   
(Signature)

Name: James T. Roberts

(Print)

Title: Director Finance & Administration

Date: 2-02-09

Address for Notice:

33 Knightsbridge Rd

Piscataway, NJ 08854

Attention: Thomas Nestor

Address for Notice:

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

Attention: Contract Administrator

**COTS Software EXHIBIT B**

**Discount reflects lowest discount that will be offered for each publisher. When SHI can find and offer a greater discount, we will.**

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

**\*\*Discount is for SHI catalog Items only and not entire publisher line**

**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 from List %
Adobe	6%
Autodesk	14%
Citrix	19%
Corel	16%
DoubleTake	16%
Intuit	14%
McAfee	22%
Novell	21%
Nuance	9%
Quark Software	6%
Quest Software	7%
Riverdeep	N/A
Symantec	16%
Trend Micro	17%
VMWare	6%
WebSense	25%
Computer Associates	7%
Business Objects	9%
Filemaker	2%
NetIQ	2%
RedHat	5%
Borland	0%

**Academic Pricing\*\***

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

COTS	Discount from List %
Adobe	10.5%
Autodesk	15%
Citrix	19%
Corel	19%
DoubleTake	16%
Intuit	14%
McAfee	22%
Novell	21%
Nuance	9%
Quark Software	6%
Quest Software	7%
Riverdeep	24%
Symantec	16%
Trend Micro	17%
VMWare	6%
WebSense	25%
Computer Associates	7%
Business Objects	9%
Filemaker	4%
NetIQ	2%
RedHat	5%
Inspiration/Kidspiration	13%

**\*\*Discount is for SHI catalog Items only and not entire publisher line - Part Numbers Provided Below for Offerings**

**Gov't Pricing\*\***

Title	Price
Adobe Acrobat Professional Version 9 Windows - 54026356HS Lic - 22020688DG Media	\$ 235.10
Adobe Photoshop CS4 Windows - 65015047HS Lic - 65014849DG Media	\$ 648.57
Autodesk Sketchbook 2009 Pro - 732A2-059111-1001 (Quoting version 2009.1)	\$ 82.08
McAfee Active Virus Defense - VSF09EMB1RAA (Complete Package 1 User - Quoting Virusscan Plus)	\$ 30.32
Symantec Norton Antivirus 2009 - 14131314 (Complete Package 1 User)	\$ 32.71
Symantec Backup Exec 12.5 for Windows Servers - 14348072 Lic - 14173720 Media	\$ 480.01

PRICE FOR ABOVE TITLES SHOULD BE QUOTED FOR PURCHASE

**\*\*Discount is for SHI catalog Items only and not entire publisher line - Part Numbers Provided Below for Offerings**

**Academic Pricing\*\***

Title	Price
Adobe Acrobat Professional Version 9 Windows - 54026356ER Lic - 22020688DE Media	\$ 153.64
Adobe Photoshop CS4 Windows - 65015280ER Lic - 65015015DE Media (Quoting Photoshop CS4 Extended)	\$ 278.40
Autodesk Sketchbook 2009 Pro - 732A2-059111-1001 (Quoting Version 2009.1)	\$ 82.08
McAfee Active Virus Defense - VSF09EMB1RAA (Complete Package 1 User - Quoting Virusscan Plus)	\$ 30.32
Symantec Norton Antivirus 2009 - 14131314 (Complete Package 1 User)	\$ 32.71
Symantec Backup Exec 12.5 for Windows Servers - 14348069 Lic - 14173720 Media	\$ 480.01

PRICE FOR ABOVE TITLES SHOULD BE QUOTED FOR PURCHASE



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Warranty is software publisher's warranty

***For purposes of evaluation VITA will create a market basket.***

***\*Please reference the Log In information to view the catalog at [www.shi.com/yourhome.asp](http://www.shi.com/yourhome.asp)\****

**Academic**

User ID: vituseracad

Password: va808vitae

**Government**

User ID: vitusergov

Password: va808vitag

**\*\*Please note that there are minimum Qty requirements from certain manufacturers**

**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:

Thomas M. Nestor

Organization:

SHI International Corp.

Date:

January 27, 2009

## SHI International Corp. Return Policy

### EXHIBIT G

#### A. Definitions

1. "OEM" means the original equipment manufacturer, or in the case of software, the software publisher/licensor.
2. "Order" means the form of purchase order or other document used for the purpose of ordering Product and Order shall include a phone order placed by Customer employee to Reseller utilizing Customer's corporate procurement card or Customer's written or electronic form of purchase requisition.
3. "Product" means third party software, computer peripherals, and computer hardware, collectively, which are resold by the Reseller.
4. "Reseller" means SHI International Corp.

#### B. General

1. For a Product to be eligible for return, it must be in resale condition (all original materials enclosed and the seal on disks intact), and received within the time periods described in this policy.
2. Where the Product OEM or distributor prohibits returns or charges a restocking fee, Reseller will so notify Customer prior to Order placement. In the event that a return is necessary due to Customer error, any related restocking fees will be passed onto Customer.
3. Reseller will notify Customer, prior to Order fulfillment, of any case where these general return rights are not available.

#### C. Non Conforming Product

1. If Customer determines in its reasonable discretion that Products are not in conformance with the Agreement or the applicable Order, Customer may, at its option, either:
  - a. request that Reseller replace the non-conforming Product within fifteen days after receipt of the Product by the Customer (or such other period of time as mutually agreed upon in writing between the parties) at no cost to Customer, or
  - b. terminate the non-conforming portion of the applicable Order, in which case Reseller shall (in addition to any and all other remedies that may be available to Customer), upon return of the Product at no cost to Customer, promptly refund to Customer any payments made to Reseller for the terminated portion of the Order, provided that the request for such return was made within thirty days of receipt of Product by the Customer.
2. The terms of this section 1. shall prevail over all other terms of this policy, except sections F. and G., below.

#### D. Software

1. If the software Product is a special order item or not in resale condition, Reseller will accept the return only if the OEM will accept the return from Reseller. Shipping shall be at Customer's cost.
2. Reseller will accept returns of defective software Products and will ship a replacement at no additional shipping cost to Customer.
3. If return is due to Reseller's shipping error, and the return request is made within thirty days of receipt of Product, Reseller will accept the return at no additional shipping cost to Customer. Reseller will provide a refund of price paid within thirty days of return.

#### 4. Licenses

## **SHI International Corp. Return Policy**

### **EXHIBIT G**

The OEM's return policy will govern license returns.

#### **E. Hardware**

1. If Reseller made an error in shipping a hardware Product to Customer, provided the request for return was made within thirty days of receipt of Product, Reseller will accept the return at no additional shipping cost to Customer.
2. If Customer ordered the incorrect Product or has decided that it no longer wants the Product, Reseller will accept the return from Customer, provided the OEM will accept the return from Reseller. OEM charges, if any, will pass to Customer. Shipping is at Customer's cost.
3. If the product has concealed damage (i.e. there is no evident damage to external packaging), is defective, or dead on arrival (DOA), Reseller will accept the return from Customer, provided the OEM will accept the return from Reseller; the OEM's policies will apply. Reseller will provide a replacement unit within fifteen business days of notice of damage, defect or DOA.

#### **F. Shipping Damage**

In the event that Customer finds evidence of damage incurred during transit, Customer may either hold the Product and notify Reseller within five calendar days from the date of delivery (and Reseller will arrange for a claim for shipping damage to be processed) or refuse the shipment from the carrier. Notification of such claim to Reseller after five calendar days will void Customer's right to Product return, replacement or refund.

#### **G. RMA**

In order for Reseller to accept any returns, Customer must first obtain an RMA number from Reseller. If a Product is shipped directly to the OEM or to Reseller without an RMA, Reseller is not responsible for accepting such return, Product replacement or refund, and such return may void any Customer claims on the Product.