



Commonwealth of Virginia
Virginia Information Technologies Agency

MICROSOFT ENTERPRISE SOFTWARE PRODUCTS

Optional Use Contract

Date: July 10, 2007

Contract #: VA-020409-DELL

Authorized User: State Agencies and Public Bodies

Contractor: Dell Marketing, L.P.
One Dell Way
Plaza 35A, Box 7007
Round Rock, TX 78682

FIN: 74-2616805

Contact Person: (for quotes and ordering)
See pages 3 – 5 for appropriate sales representatives for State & Local Government, K-12 & Higher Education, and their contact information.

Discount: 18.7% off Estimated Retail Price List

Term: August 1, 2007 – September 30, 2007

For Additional Information, Please Contact:

Virginia Information Technologies Agency
Supply Chain Management

Doug Crenshaw
Strategic Sourcing Manager
Phone: 804-371-5993
Email: doug.crenshaw@vita.virginia.gov
Fax: 804-371-5969

Greg Searce
Strategic Sourcing Specialist
Phone: 804-371-5919
Email: Gregory.searce@vita.virginia.gov

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.

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MICROSOFT ENTERPRISE – STATE AND LOCAL GOVERNMENT V6.0 ENROLLMENT AGREEMENT

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DELL MARKETING L.P. CONTRACT #VA-020409-DELL

MICROSOFT LICENSING UPDATE

- BackOffice CAL (Client Access License): To obtain BackOffice CAL, a new Enterprise Enrollment Agreement must be signed and submitted to Dell Marketing by June 17th in order to meet Microsoft's deadline of June 30, 2002 . After this time, Microsoft Core Client Access License (Windows CAL, Exchange CAL, SharePoint CAL and SMS CAL) will be available.

- Upgrade Advantage (for non-current licenses) – available to purchase only through 7/31/02
- Stand-alone Software Assurance (for current licenses) available to purchase as stand-alone only through 7/31/02, thereafter, Software Assurance is only available for purchase with new user licenses (bundled)
- August 1, 2002 license options will be:
 - Brand new user license (L)
 - Brand new user license bundled with Software Assurance (LSA)
 - Windows desktop OS upgrade licenses (UPG)
 - Windows desktop OS upgrade licenses bundled with Software Assurance (USA)

CONTRACTOR DATA SHEET

STATE AND LOCAL

GOVERNMENT AND ENTERPRISE

CONTRACTOR

NAME: Dell Marketing L.P.
ADDRESS: One Dell Way
CITY, STATE, ZIP: Round Rock, Texas 78682

CONTRACTORS CONTRACT ADMINISTRATOR

NAME: Chad Rives
TITLE: Microsoft Select Contract Administrator
FIRM NAME: Dell Marketing L.P.
ADDRESS: One Dell Way
RR2C, Box 8109
CITY, STATE, ZIP: Round Rock, TX 78682
PHONE: (800) 981-3355 ext. 82737
FAX: (512) 283-9092
EMAIL: Chad_Rives@dell.com

SALES INFORMATION GOVERNMENT - STATE AND LOCAL
(Quotes/Ordering)

CONTACT: Tanya Davis
PHONE: (800) 981-3355 x88021
FAX: (800) 433-9527
EMAIL: tanya_davis@dell.com

MAIL OR FAX GOVERNMENT ORDERS TO:

DELL MARKETING L.P.
Attn: Tanya Davis
MS Select Sales
P. O. Box 149254
Austin, TX 78714-9254
FAX: (800) 433-9257

SALES INFORMATION**ENTERPRISE – STATE AND LOCAL**

(Quotes/Ordering)

CONTACT: Fritzi Mulkey
PHONE: (800) 981-3355 x34848
FAX: (512) 283-9287
EMAIL: fritzi_mulkey@dell.com

MAIL OR FAX ENTERPRISE ORDERS TO:

DELL MARKETING L.P.
Attn: Fritzi Mulkey
One Dell Way, Box 8109
Round Rock, TX 78682

TO ACCESS DELL'S WEBSITE (to obtain product and pricing information)

<http://www.dell.com>

- Select "PUBLIC/State and Local Government"
- Select "PURCHASING TOOLS/Select a State"
- Select "Virginia"
- Select "PURCHASING TOOLS/MS Select Contract for Virginia"
- Select "CUSTOM LINKS"
- Select either:
 - 1) Old Contract or New Contract Pricing: Gov MS Select License and Docs & Disks Price List [Dell's discounted pricing, (ERP – 17.7%)]
 - 2) Old Contract or New Contract Pricing: Academic Select License and Docs and Disks Price List [Dell's discounted pricing (ERP – 17.7%)]
 - 3) Old Contract or New Contract Pricing: Government ERP (Estimated Retail Price - Microsoft's)
 - 4) Old Contract or New Contract Pricing: Academic ERP (Estimated Retail Price – Microsoft's)
 - 5) Old Contract or New Contract Pricing: Disks and Docs ERP (Estimated Retail Price – Microsoft's)

MAIL PAYMENTS TO:Standard check:

Dell USA LP
Box 371964
Pittsburg, PA 15250-7964

Overnight check:

Dell USA LP
Mellon Financial Services
Attn: 371964
500 Ross St 154-0470
Pittsburg, PA 15250

Wire Transfer/EFT:

Mellon client service center rom1300
500 Ross St
Pittsburg, PA 15262-0001
Account# 032-7492
ABA 043000261

CONTRACTOR DATA SHEET

STATE AND LOCAL

K-12 ACADEMIC

CONTRACTORS CONTRACT ACADEMIC ADMINISTRATOR

NAME: Stan Parish
TITLE: Microsoft Select Licensing Account Manager
FIRM NAME: Dell Marketing L.P.
ADDRESS: One Dell Way
RR2C, Box 8109
CITY, STATE, ZIP: Round Rock, TX 78682
PHONE: (800) 274-3355 x81713
FAX: (512) 283-9287
EMAIL: stan_parish@dell.com

SALES INFORMATION: K-12 EDUCATION (Quotes/Ordering)

CONTACT: Jason Warner
PHONE: (888) 977-3355 x62098
FAX: (888) 820-7454
EMAIL: jason_warner@dell.com

CONTACT: Jeff Wagner
PHONE: (888) 977-3355 x68963
FAX: (888) 820-7454
EMAIL: jeff_wagner@dell.com

FIELD ACCOUNT EXECUTIVE

CONTACT: Scott Willett
PHONE: (757) 430-0565
EMAIL: scott_willett@dell.com

MAIL OR FAX ORDERS TO: Dell Marketing L.P.
Attn: (Choose either Jason Warner or Jeff Wagner)
K-12 Sales
P.O. Box 149252
Austin, TX 78714-9252

TO ACCESS DELL'S WEBSITE (to obtain product and pricing information)

<http://www.dell.com>

- Select "PUBLIC/State and Local Government"
- Select "PURCHASING TOOLS/Select a State"
- Select "Virginia"

- Select “PURCHASING TOOLS/MS Select Contract for Virginia
- Select “CUSTOM LINKS”
- Select either:
 - 6) Old Contract or New Contract Pricing: Gov MS Select License and Docs & Disks Price List [Dell’s discounted pricing, (ERP – 17.7%)]
 - 7) Old Contract or New Contract Pricing: Academic Select License and Docs and Disks Price List [Dell’s discounted pricing (ERP – 17.7%)]
 - 8) Old Contract or New Contract Pricing: Government ERP (Estimated Retail Price - Microsoft’s)
 - 9) Old Contract or New Contract Pricing: Academic ERP (Estimated Retail Price – Microsoft’s)
 - 10) Old Contract or New Contract Pricing: Disks and Docs ERP (Estimated Retail Price – Microsoft’s)

MAIL PAYMENTS TO:

Standard check:

Dell USA LP
 Box 371964
 Pittsburg, PA 15250-7964

Overnight check:

Dell USA LP
 Mellon Financial Services
 Attn: 371964
 500 Ross St 154-0470
 Pittsburg, PA 15250

Wire Transfer/EFT:

Mellon Client Service Center Rom 1300
 500 Ross St
 Pittsburg, PA 15262-0001
 Account# 032-7492
 ABA 043000261

CONTRACTOR DATA SHEET

STATE AND LOCAL

HIGHER EDUCATION

CONTRACTORS CONTRACT ADMINISTRATOR

NAME: Stan Parish
TITLE: Microsoft Select Licensing Account Manager
FIRM NAME: Dell Marketing L.P.
ADDRESS: One Dell Way
RR2C, Box 8109
CITY, STATE, ZIP: Round Rock, TX 78682
PHONE: (800)274-3355 x81713
FAX: (512) 283-9287
EMAIL: stan_parish@dell.com

SALES INFORMATION

HIGHER EDUCATION (Quotes/Ordering)

NAME: David Barron
PHONE: (800) 274-7799 x61150
FAX: (800) 365-5329
EMAIL: david_barron@dell.com

NAME: Ryan Stephens
PHONE: (800) 274-7799 x68236
FAX: (800) 365-5329
EMAIL: ryan_stephens@dell.com

FIELD ACCOUNT EXECUTIVE

NAME: Champe Burnley
PHONE: (804) 358-5801
EMAIL: champe_burnley@dell.com

MAIL OR FAX ORDERS TO: Dell Marketing L.P.
Attn: (Choose either David Barron or Ryan Stephens)
Higher Education
P.O. Box 149252
Austin, TX 78714-9252

TO ACCESS DELL'S WEBSITE (to obtain product and pricing information)

<http://www.dell.com>

- Select "PUBLIC/State and Local Government"
- Select "PURCHASING TOOLS/Select a State"

- Select “Virginia”
- Select “PURCHASING TOOLS/MS Select Contract for Virginia
- Select “CUSTOM LINKS”
- Select either:
 - 11)Old Contract or New Contract Pricing: Gov MS Select License and Docs & Disks Price List [Dell’s discounted pricing, (ERP – 17.7%)]
 - 12)Old Contract or New Contract Pricing: Academic Select License and Docs and Disks Price List [Dell’s discounted pricing (ERP – 17.7%)]
 - 13)Old Contract or New Contract Pricing: Government ERP (Estimated Retail Price - Microsoft’s)
 - 14)Old Contract or New Contract Pricing: Academic ERP (Estimated Retail Price – Microsoft’s)
 - 15)Old Contract or New Contract Pricing: Disks and Docs ERP (Estimated Retail Price – Microsoft’s)

MAIL PAYMENTS TO:

Standard check:

Dell USA LP
 Box 371964
 Pittsburg, PA 15250-7964

Overnight check:

Dell USA LP
 Mellon Financial Services
 Attn: 371964
 500 Ross St 154-0470
 Pittsburg, PA 15250

Wire Transfer/EFT:

Mellon client service center rom1300
 500 Ross St
 Pittsburg, PA 15262-0001
 Account# 032-7492
 ABA 043000261

1. BACKGROUND

The Commonwealth of Virginia, through its Department of Information Technology, and MSLI, GP, a Microsoft affiliate, has successfully negotiated three separate customized Microsoft Select Agreements entitled:

- Microsoft State and Local Government Select v5.1, Microsoft Master Agreement # 01S56760, State Contract Number **VA-020409-MSG**
- Microsoft Academic Select v5.1, Microsoft Master Agreement #01S56764, State Contract Number **VA-020409-MSA**
- Microsoft State and Local v.6.0 Enterprise, Microsoft Master Agreement # 01E60387, State Contract Number **VA-020409-MSE**

Entities wishing to purchase Microsoft Products and participate in the referenced Microsoft Agreements must review the terms and conditions of the specific Agreement(s) prior to enrolling and placing an order.

2. CONTRACT OVERVIEW

Microsoft Select is a simple, volume software licensing program designed to help reduce your total cost of software ownership while making it easier to acquire licenses for Microsoft products on an ongoing basis. The Select software products are pooled into three groups: Applications, Systems, and Servers. Select software product licenses may be acquired from any product pool. Licenses and media (CDs and documentation kits) may be purchased from the Large Account Reseller (LAR), Dell Marketing L.P.

In addition to this contract overview, the above referenced Microsoft Select Agreements and associated documents (enrollments forms, Product List and Product Use Rights) should be downloaded, printed and thoroughly reviewed prior to enrolling for eligibility to use this contract. State agencies, institutions and other public bodies are responsible to adhere to all contract provisions.

3. CONTRACTOR

Dell Marketing L.P. is the Large Account Reseller (LAR) for all Microsoft products purchased under this contract.

Dell Marketing L.P.
One Dell Way
Round Rock, Texas 78682

4. CONTRACT ENROLLMENT

Each entity that chooses to participate in the Select program must complete and submit the appropriate Select Enrollment Agreement form (Microsoft State and Local **Government** Select, **Academic** Select and/or **Enterprise**-State and Local) to the appropriate Dell Marketing L.P Contract Administrator (Melinda Galindo for Government or Enterprise OR Stan Parish for Academic) prior to placement of any order. **Two** original Enrollment forms (Dell will sign the reseller/last page)

must be completed with original signatures (no copies) and mailed (or over night via express delivery service for quickest processing) to the following address:

Dell Marketing L.P.
Attn: (Either Melinda Galindo -Government and EA or Stan Parish - Academic)
One Dell Way, Box 8109
Round Rock, TX 78682

NOTE: There are two types of Enrollment Agreement forms for the Microsoft State and Local **Government** Select Agreement.

- 1) Entities that expect to acquire licenses equivalent to at least 500 points during the term of the enrollment will complete the Microsoft State and Local Government Select Enrollment (1 of 5 pages). Point values are assigned to all Select software products by Microsoft. Point values differ between products, so the point values will not always equal the number of licenses you acquire. Refer to Dell's Select price list to view associated point value with s/w license product. For those entities completing this Enrollment form, once Microsoft approves the Enrollment and assigns a unique Enrollment Number, the entity will receive, a one-time complimentary CD-ROM welcome kit, as well as periodic additional CD-ROM subscriptions, until the Master contract expires. Entities may duplicate these CDs for distribution to their users. They may also be placed on a server to download to the appropriate PCs within the organization.
- 2) Entities that do not expect to acquire licenses equivalent to 500 points during the term of the enrollment will complete the Amended Microsoft State And Local Government Select Enrollment (1 of 3 pages). Entities completing this Enrollment form will not receive free CD ROMs. If CD kits and updates are required, they may be ordered through Dell Marketing L.P. for a fee. Contact the appropriate Dell Marketing L.P. Representative for associated cost.

Upon Microsoft's acceptance of the Enrollment, the "Enrolled Customer" will receive a letter, by fax or email, confirming the enrollment and the unique Enrollment Number. The unique Enrollment Number must be placed on all contract purchase orders and other related correspondence issued to Dell Marketing L.P.

5. SELECT LEVEL/PERCENTAGE OF DISCOUNT

The Commonwealth has obtained a Level “D” Discount off of Microsoft’s Estimated Retail Price (ERP) Lists for the Microsoft State And Local Government Select and Enterprise Agreements. The Commonwealth has obtained a Level “A” Discount (EducA) for the Microsoft Academic Select Agreement. Contract prices are determined by applying the contracted percentage discount of **17.7%** to the specified Microsoft ERP List for all products (systems, servers, applications and media). The percentage of discount is applied to the ERP list price as shown on Dell’s website at the time of order placement.

6. PRICE QUOTES

Pricing is available from the appropriate Dell Select Sales Representatives or pricing may be obtained online (www.Dell.com, see Contractor Data Sheet for instructions to access Select pricing). Price quotes may be obtained by telephone, fax or email. Dell will provide written and/or oral contract quotations which include at a minimum:

- Product Number
- Product Name
- Quantity
- ERP
- Discount Price

7. “ORDER” PLACEMENT

License and media orders are placed through Dell Marketing L.P. “Orders” may be placed for Microsoft Select products by one of the following methods:

- Purchase Order
- Charge Card (must not exceed \$5,000 and all required information must be provided)
- Delivery Order
- Orders processed through eVA

All Purchase Orders, Charge Card, Delivery Orders and eVA Orders **must** include the following information:

- The contract number (VA-020409-Dell)
- The Contractor’s Federal Employer Identification (FEI) number (74-2616805)
- The Commonwealth’s Master License Agreement Number
 - 1) Microsoft State And Local Government Select Agreement **#01S56760**
 - 2) Microsoft Academic Select Agreement **#01S56764**
 - 3) Microsoft Enterprise Agreement – State and Local **#01E60387**

- The assigned unique Enrollment Number
- The Purchasing Contact Name and Telephone Number
- The Microsoft Product Number and Description
- The Quantity Ordered
- The Contract (discounted) Unit Price
- The Extended Line Item Amount
- The Purchase Order Total Amount

Any "Orders" not referencing the above information will be returned to the user.

By virtue of your Select Enrollment Agreement, you have a temporary license to copy and use Microsoft software programs pending issuance of your Order and receipt of a Microsoft License Confirmation. All Orders for software licenses must be submitted to Dell at the end of each calendar month in which the software is first used.

8. DELIVERY/F.O.B.

After receipt of "Order" by Dell Marketing L.P., delivery of all requested Contract items shall be made within seven (7) calendar days. All items shall be F.O.B. destination and delivered to any point within the Commonwealth of Virginia. The Contract price shall include all applicable freight, handling and inside delivery charges. No extra charges are allowed.

9. DELL MARKETING WEBSITE ADDRESS

<http://www.dell.com>

Users may independently access Dell's website to obtain product information (refer to Contractor Data Sheet for access instructions) to include at a minimum: product number, product name, ERP, percentage of discount, discount price, and quantity. Pricing information maintained on the Dell Internet website shall include the applicable Microsoft ERP and the discounted price with appropriate headers to discern the ERP and the discount pricing.

10. MICROSOFT ERP LIST

Dell will provide updated, Microsoft ERP Lists (Level D) on their web page on or before the first day of the month following its release by Microsoft. The updated price list shall not be implemented by Dell until it is published on their web page for the Commonwealth and is in effect at the time the order is placed.

11. SELECT PRODUCT KEY

Users with a valid Select Enrollment may obtain their Select Product Key (SPK) codes by contacting their License Agreement Administrator (Melinda Galindo or Stan Parish) or System Administrator. If they do not have the Select Product Key, contact the Microsoft Customer Service Center at (888) 352-7140. Select Product Keys will not be issued without a valid Select Enrollment Agreement number.

Products that need Select Product Keys are:

- Office 2000, Stand-alone products and suites
- Office XP Suites & 2002 Stand-alone products
- Vision 2002
- Windows XP Pro

12. LICENSE CONFIRMATIONS

Microsoft will provide license confirmations to the designated contact indicated on the entity's Select Enrollment Agreement. The license confirmation will provide the enrolling entity with a monthly overview of their ordering activity. The license confirmation acts as the Enrolling Entity's primary proof of purchase for all licenses acquired within the specified time period. License confirmations are provided approximately every thirty (30) days and will be one (1) month in arrears. An entity's invoice will serve as proof of purchase until the confirmation arrives.

13. ORDER CONFIRMATION REPORTS

Dell shall generate and issue an electronic and paper copy "Order Confirmation Report" for each software product ordered by an entity. The report shall be issued for purchases, including those orders that may be aggregated on a single "Order" document and provided to the entity within fifteen (15) days after request. The report should include at a minimum:

- The name of ordering entity
- Entity's "Order" number
- Dell's purchase order number as provided to Microsoft
- Microsoft Master Agreement number
- Entity's Enrollment number
- Microsoft product number and quantity ordered
- Microsoft product description (s/w language and/or version number)
- Term of coverage for Microsoft Upgrade Advantage (UA) or Software Assurance (SA)

14. RECONCILIATION OF ORDERS

Dell Marketing L.P. shall provide assistance to entities with the reconciliation of actual processed orders which correspond with the Microsoft License Confirmation List. Assistance shall be provided within 15 days after receipt of the Microsoft License Confirmation List. Dell shall additionally provide a Reconciliation Report, upon an entities' request. The Reconciliation Report includes the entity's "Order" number that corresponds to the confirmed licenses.

15. MAKING COPIES OF SOFTWARE

Each enrolled entity may make as many copies of the products licensed under its enrollment as necessary to distribute the products to its users. All copies must be true and complete copies (including copyright and trademark notices) and be made from CD-ROMs, disk sets or a network source acquired from or made available by a Microsoft approved fulfillment source.

Each enrolled entity may also have a third party make and distribute or pre-install copies on computer hardware in its place, but the enrolled entity is responsible for third party actions to the same extent it would be if the third party were its employee.

In addition, each enrolled entity has the right to 1) run up to 20 copies of any product in a dedicated training facility on its premises; 2) run up to 10 copies of any product for a 60-day evaluation period; and 3) make and retain one copy of any licensed product for back-up or archival purposes for each of its distinct geographic locations.

16. WARRANTY

Dell Marketing L.P. does not provide a warranty, however, Microsoft warrants each version of a software product for 90 days from the date an entity first runs a copy of the software version. Each version of a software product is warranted to perform substantially in accordance with Microsoft's documentation. If an entity notifies Microsoft through Dell that a product does not meet this warranty, Microsoft may either 1) return the price paid for the product or 2) repair or replace the product.

17. AUDIT

Each enrolled entity is responsible to adhere to all provisions of the Microsoft Master Agreements which includes "Verifying Compliance."

The Microsoft Master Software License Agreements provide Microsoft with the right to verify software compliance issues such as software reproduction, distribution and use of Select Software Products. In order to conform to the requirements of the Master Agreements audit provision, entities should keep the following complete and accurate records:

- Master Media Utilization Log: Assign the specific responsibility for safekeeping of the all Microsoft Select Media and updates. The individual that is assigned this responsibility should maintain a complete a written record of the utilization of the Select media. The written record should include a cross reference to the internal “Order” number to the Microsoft License Confirmation Number.
- Microsoft License Confirmations: Microsoft License Confirmations should be maintained in a centralized file. All backup license reconciliation documentation (order copies, Dell order confirmations, etc.) should be filed with the Microsoft License Confirmation.

18. CREDITS

Any credits due the Commonwealth under the terms of this Contract may be applied against Contractor’s invoices with appropriate information attached.

19. SPECIAL OR EDUCATIONAL DISCOUNT

- a. During the Contract period if Microsoft or Dell Marketing L.P. offers promotional discounts as a general practice or offers educational discounts to schools and institutions of higher education for items available under this Contract with the result that those prices are lower than the prices available under this Contract, then the promotional discounts shall be made available to all “Authorized Users” under this Contract, or in the case of educational discount, they shall be made available to schools and institutions of higher education eligible to place “Orders” against this Contract.
- b. The effective date for price changes/discounts will be the date on or before the first of the month following receipt of the ERP list or the promotional offer.
- c. If the Contractor does not sell to “Authorized Users” eligible to place “Orders” against this state Contract at the lower prices/discounts required by subsection a. above, it shall owe a rebate to each affected purchaser which is equal to the amount of the overcharge. Said rebate shall be made within 30 days after the Contractor becomes aware of the overcharge or within 30 days after the “Authorized User” requests the rebate, whichever comes first.

CONTRACT NO. VA-020409-DELL

MICROSOFT STATE AND LOCAL SELECT GOVERNMENT V5.1 ENROLLMENT AGREEMENT

Entities must complete **two (2) original** Microsoft State and Local Government enrollment Agreement forms prior to using the referenced State Contract. The Enrollment Agreement should be sent to the following address (overnight via express delivery service for fastest processing time):

**DELL MARKETING L.P.
ATTN: MELINDA GALINDO
RR2C, BOX 8109
ROUND ROCK, TX 78682**

FAXED FORMS WILL NOT BE PROCESSED

After Microsoft processes the enrollment form, in approximately one week, a Letter of Acceptance will be provided by Microsoft to the entity via fax or email. This letter will confirm your agency enrollment in the Select program and will contain your unique Enrollment Number. No "Orders" may be placed with Dell until an entity has received their Enrollment Number. The Enrollment Number must be provided on every "Order" submitted to Dell.

"Orders" are due at the end of each month to Dell Marketing for any software deployed during the month. Dell will invoice the entity accordingly. The Dell invoice will serve as proof of purchase for licenses; the License Confirmations are sent directly by Microsoft to the entity contact as confirmation of your license purchases from Dell Marketing L.P. These records should be permanently maintained and safeguarded.

CONTRACT NO. VA-020409-DELL

**MICROSOFT STATE AND LOCAL SELECT GOVERNMENT
V5.1 ENROLLMENT AGREEMENT**

**IF YOU DO NOT EXPECT TO ACQUIRE LICENSES TO EQUAL 500
POINTS**

Entities must complete **two (2) original** Microsoft State and Local Government enrollment Agreement forms prior to using the referenced State Contract. The Enrollment Agreement should be sent to the following address (overnight via express delivery service for fastest processing time):

**DELL MARKETING L.P.
ATTN: MELINDA GALINDO
RR2C, BOX 8109
ROUND ROCK, TX 78682**

FAXED FORMS WILL NOT BE PROCESSED

After Microsoft processes the enrollment form, in approximately one week, a Letter of Acceptance will be provided by Microsoft to the entity via fax or email. This letter will confirm your agency enrollment in the Select program and will contain your unique Enrollment Number. No "Orders" may be placed with Dell until an entity has received their Enrollment Number. The Enrollment Number must be provided on every "Order" submitted to Dell.

“Orders” are due at the end of each month to Dell Marketing for any software deployed during the month. Dell will invoice the entity accordingly. The Dell invoice will serve as proof of purchase for licenses; the License Confirmations are sent directly by Microsoft to the entity contact as confirmation of your license purchases from Dell Marketing L.P. These records should be permanently maintained and safeguarded.

CONTRACT NO. VA-020409-DELL

**MICROSOFT ENTERPRISE
STATE AND LOCAL V6.0 ENROLLMENT AGREEMENT**

**OPEN ENROLLMENT PERIOD
MAY 1, 2002 THROUGH MARCH 31, 2003**

A minimum of 250 qualified desktops is required to participate and enroll in the Microsoft Enterprise Agreement. The Commonwealth has obtained a **Level “D”** discount off Microsoft’s Estimated Retail Price (ERP) List during the Open Enrollment Period. For those Entities that sign a Platform Enrollment (Windows, Office, CAL) during the Open Enrollment, an additional 15% discount off Microsoft’s ERP List is permitted. After the Enrollment Period, the aggregate of desktops per Product Pool will determine the discount Level of years 2 and 3.

Entities that wish to participate in the Microsoft Enterprise Agreement must complete **two (2) original** Microsoft Enterprise - State and Local Government Enrollment Agreement forms and an **original** corresponding “Order”. The Enrollment forms and the “Order” should be sent to the address indicated below. The Enrollment Agreements may be sent overnight (via express delivery service) for fastest processing time.

**DELL MARKETING L.P.
ATTN: FRITZI MULKEY
ONE DELL WAY
BOX 8109
ROUND ROCK, TX 78682**

The Dell Contact information for quotes/questions pertaining to the Enterprise Agreement are directed to:

**Fritzi Mulke
PH: # (800) 981-3355 x34848
FAX: # (512) 283-9287
EMAIL: fritzi_mulkey@dell.com**

FAXED FORMS WILL NOT BE PROCESSED

After Microsoft processes the enrollment form, a Letter of Acceptance will be provided by Microsoft to the entity via fax or email. This letter will confirm your agency enrollment in the Select program and will contain your Enrollment Number.

Dell will invoice the entity accordingly. Entering into an enrollment under the Enterprise Agreement establishes a payment obligation for Enterprise products and additional products ordered pursuant to the initial purchase order; the ordering Entity is obligated to make all installments for such products according to the applicable installment payment schedule, subject to the appropriation of funds for such installments.

The Dell invoice(s) will serve as proof of installment payment purchases for licenses; the License Confirmations are sent directly by Microsoft to the entity contact as confirmation of your license purchases from Dell Marketing L.P. at the end of the three (3) year term. These records should be permanently maintained and safeguarded.

1. **MICROSOFT ENTERPRISE AGREEMENT – STATE AND LOCAL:** The Microsoft Enterprise Agreement number is VA-020409-MSE. It may be viewed at the DIT/ASD website: <http://asd.state.va.us>

It is the responsibility of every entity that desires to participate in the Microsoft Select Agreements (Government, Academic and/or Enterprise) to carefully review the terms and conditions that govern the use of all Microsoft Products prior to completing an Enrollment Agreement.

2. **ADDITIONAL SELECT SOFTWARE PRODUCTS:** To order additional Select Software products other than the Enterprise products, they may now be ordered under the Enterprise Agreement at the same price as Select Government, however, the software products must be submitted on the initial "Order" at the same time as the enrollment Agreement form. The additional products price will be established at the time of enrollment for the remaining payment installments for the three-year period. Additional products may be ordered after the initial Enterprise Enrollment Agreement and "Order" are submitted, however, those products will be priced at the then current ERP pricing.

3. **MICROSOFT LEVEL DISCOUNT:** Should the Commonwealth not reach a total enrollment amount of 15,000 desktops in each Product Pool (Applications, Systems and Servers) by March 31, 2003, the Level "D" discount will not be retained in the associated Product Pool and the Commonwealth will be re-leveled to the appropriate discount level (A, B, C) for the specific Product Pool(s) making the second and third year installment payments reflective of the appropriate discount level.

Example: Given the Level D discount, the ERP cost per desktop is $\$326.00 \times 17.7\% = \268.30 per desktop. $250 \text{ desktops} \times 268.30 = \$67,075$, the first year installment payment.

If the enrollment is a Platform Enrollment (Office, Windows and CAL) and is signed during the Open Enrollment period, an additional 15% discount may be taken. $\$326 \times 15\% = 277.10 \times 17.7\% = \$228.05 \times 250 = \$57,012.50$

After the first eleven months, if the Commonwealth achieves less than 15,000 enrolled desktops per Product Pool, Microsoft will re-leveled to the appropriate discount Level (A, B, C or D) for the specific Product Pool(s). If the

Commonwealth was hypothetically releveled to a level C discount for all Product Pools and the per desktop cost hypothetically was \$340.00, the following example reflects how installment payments for years 2 and 3 will be determined.

Example: Given the Level C discount, the ERP cost per desktop is $\$340.00 \times 17.7\% = \$279.82 \times 250 \text{ desktops} = 69,955.00$. If year one was paid at the level D discount ($\$277.10 \times 250 = \$69,275.00$), then the difference between Level D discount and Level C would equal $(\$69,955 - \$69,275) \$680 \times 3 \text{ yrs} = \$2,040 / 2 \text{ remaining yrs} = \$1,020$. Then \$1,020 would be added to years two (2) and three (3) for a total installment payment $(\$69,275 + \$1,020)$ equal to \$70,295 to be paid for years 2 and 3.

4. **NEW ENROLLMENTS:** For New Enterprise Enrollments signed during the Open Enrollment period, in addition to Dell's 17.7% discount off Microsoft's Level D ERP List, the Commonwealth may take an additional 15% discount if such enrollment is a "Platform Enrollment" which consists of all desktops enrolled for all three Microsoft Programs (Office, Windows and CAL).
5. **RENEWAL ENROLLMENTS:** For Enterprise Renewal Enrollments and in addition to Dell's 17.7% discount off Microsoft's Level D ERP List, the Commonwealth will receive an additional 5% discount if such enrollment is a "Platform Enrollment" (Office, Windows and CAL)
6. **OPEN ENROLLMENT:** There will be one (1) open enrollment period for the Enterprise Agreement, May 1, 2002 through March 31, 2003. The pre-deadline volume level achieved at the end of the first eleven (11) months will determine the price level discount for each Product Pool (Applications, Systems, Servers) for which the Commonwealth has qualified for the entire three-year term of the Agreement. The Commonwealth will begin the Enterprise Agreement with a **Level "D"** discount from Microsoft's Estimated Retail Price (ERP) List. The Commonwealth will continue to be at the Level D discount throughout the term of the Agreement if an aggregated total of 15,000 qualified desktops are enrolled in each Product Pool by the pre-deadline date (March 31, 2003).
7. **PRE-DEADLINE VOLUME LEVEL:** The Pre-Deadline period is defined as the open Enrollment period between May 1, 2002 through March 31, 2003. The Commonwealth has achieved a Level D Discount for the first year of the Enterprise Agreement.
8. **POST-DEADLINE VOLUME LEVEL:** After March 31, 2003, the total number of desktops enrolled in each Product Family (Applications, Systems and Servers) will be aggregated in total to determine the appropriate Level of Discount (A, B, C or D) for the Commonwealth for the remaining second and third years of the Enterprise Agreement.
9. **ENTERPRISE/ENROLLMENT TERM:** The Enterprise Agreement (EA) is a 36 month Agreement and regardless of when the Enterprise Agreement expires, each Enterprise Enrollment will have a term of 36 full calendar months from the date the enrollment was signed by an entity.

10. **ANNIVERSARY DATE:** The Enrollment begins on the date the Enrollment is signed and submitted to Dell. The “Annual Payment” is submitted at the same time the Enrollment is submitted. The “Anniversary Date” is the date that the Enrollment was signed. Subsequent “Annual” and “True-Up” Payments are submitted to Dell on the entity’s “Anniversary Date.”

CONTRACT NO. VA-020409-DELL

**MICROSOFT ACADEMIC SELECT
V5.1 ENROLLMENT AGREEMENT**

The Commonwealth has achieved a Level “A” Discount (EducA) for all Product Pools for the Microsoft Academic Select Agreement. Entities must complete **two (2) original** Microsoft Academic Select Enrollment Agreement forms prior to using the referenced State Contract. The Enrollment Agreement should be sent to the following address (overnight via express delivery service for fastest processing time):

**DELL MARKETING L.P.
ATTN: STAN PARISH
RR2C, BOX 8109
ROUND ROCK, TX 78682**

FAXED FORMS WILL NOT BE PROCESSED

After Microsoft processes the enrollment form, in approximately one week, a Letter of Acceptance will be provided by Microsoft to the entity via fax or email. This letter will confirm your agency enrollment in the Select program and will contain your unique Enrollment Number. No “Orders” may be placed with Dell until an entity has received their Enrollment Number. The Enrollment Number must be provided on every “Order” submitted to Dell.

“Orders” are due at the end of each month to Dell Marketing for any software deployed during the month. Dell will invoice the entity accordingly. The Dell invoice will serve as proof of purchase for licenses; the License Confirmations are sent directly by Microsoft to the entity contact as confirmation of your license purchases from Dell Marketing L.P. These records should be permanently maintained and safeguarded.

**MICROSOFT STATE AND LOCAL GOVERNMENT
SELECT OUTSOURCER ENROLLMENT**

An “Outsourcer” is an entity which is party to an Outsourcer Enrollment under the Microsoft State and Local Government Select Agreement, such party may be engaged by an Entity to make and distribute or pre-install copies on computer hardware in its place.

Any Entity wishing to “Outsource” the acquisition management of Microsoft Products under the Dell Marketing L.P. Agreement must have the “Outsourcer” complete **two (2) original** Microsoft State and Local Government enrollment Agreement forms prior to using the referenced State Contract. The Enrollment Agreement should be sent to the following address (overnight via express delivery service for fastest processing time):

**DELL MARKETING L.P.
ATTN: MELINDA GALINDO
RR2C, BOX 8109
ROUND ROCK, TX 78682**

FAXED FORMS WILL NOT BE PROCESSED

“Outsourcers” are responsible for compliance with the terms and conditions of the Microsoft State and Local Government Select Agreement (VA-020409-MSG) and the compliance of the enrolled Entity’s respective sublicenses.

After Microsoft processes the enrollment form, in approximately one week, a Letter of Acceptance will be provided by Microsoft to the “Outsourcer” via fax or email. This letter will confirm the “Outsourcer” Enrollment in the Select program and will contain the unique Enrollment Number. No “Orders” may be placed with Dell until an “Outsourcer” has received their Enrollment Number.

All “Orders” must include the following information to be processed:

- Outsourcer Enrollment Number
- Microsoft Master Agreement number (#01S56760)
- Contractor’s (Dell Marketing) Federal Employer Identification number (74-2616805)
- State Contract number (VA-020409-MSG)
- Purchasing Contact Name and Telephone Number
- The Microsoft Product Number and Description
- The Quantity Ordered
- The Contract (discounted) Unit Price
- The Extended Line Item Amount
- The Order Total Amount

**MODIFICATION #9
TO
CONTRACT NUMBER VA-020409-DELL
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
DELL MARKETING, L.P.**

This MODIFICATION #9 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and Dell Marketing L.P., hereinafter referred to as "Contractor" relating to the modification of the above Contract. This Modification #9 is hereby incorporated into and made an integral part of Contract VA-020409-DELL (the Agreement), as modified.

The purpose of this Modification #9 is to extend the term of the Contract to provide Microsoft Enterprise licenses to Virginia governmental entities for an additional two (2) month period.

Both parties agree to the following:

The Contract VA-020409-DELL is hereby extended for an additional two (2) month period. The two (2) month period will extend the contract from August 1, 2007 through September 30, 2007, under the original terms and conditions of the contract.

The percentage discount off the Microsoft Estimated Retail Price shall remain at 18.7%

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-020409-DELL 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.

DELL MARKETING, L.P.

BY: Lauren D. McCosham

NAME: Lauren D. McCosham

TITLE: Contract Manager

DATE: July 2, 2007

COMMONWEALTH OF VIRGINIA

BY: Gregory Scarce

NAME: GREGORY SCARCE

TITLE: STRATEGIC SOURCING SPECIALIST

DATE: 7-06-07

**MODIFICATION #8
TO
CONTRACT NUMBER VA-020409-DELL
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
DELL MARKETING, L.P.**

This MODIFICATION #8 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and Dell Marketing L.P., hereinafter referred to as "Contractor" relating to the modification of the above Contract. This Modification #7 is hereby incorporated into and made an integral part of Contract VA-020409-DELL (the Agreement), as modified.

The purpose of this Modification #8 is to extend the term of the Contract to provide Microsoft Enterprise licenses to Virginia governmental entities for an additional three (3) month period.

Both parties agree to the following:

The Contract VA-020409-DELL is hereby extended for an additional three (3) month period. The three (3) month period will extend the contract from April 30, 2007 through July 31, 2007, under the original terms and conditions of the contract.

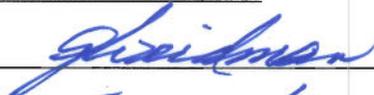
The percentage discount off the Microsoft Estimated Retail Price shall remain at 18.7%

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-020409-DELL 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.

DELL MARKETING, L.P.

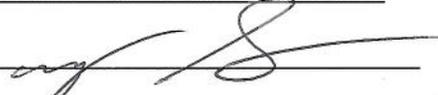
BY: 

NAME: GEORGE WEIDMAN

TITLE: Contracts Mgr.

DATE: 2/28/07

COMMONWEALTH OF VIRGINIA

BY: 

NAME: GREGORY SCARCIE

TITLE: STRATEGIC SOURCING SPECIALIST

DATE: 3-2-07

**MODIFICATION #7
TO
CONTRACT NUMBER VA-020409-DELL
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
DELL MARKETING L.P.**

This MODIFICATION #7 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and DELL Marketing L.P., hereinafter referred to as "Contractor" relating to the modification of the above Contract. This Modification #7 is hereby incorporated into and made an integral part of Contract VA-020409-DELL (the Agreement), as modified.

The purpose of this Modification #7 is to allow for an extension to the above referenced Contract:

Both parties agree to the following:

The contract VA-020409-DELL is hereby extended for an additional six month period from the expiration date of October 31, 2006. The six month period will extend the contract from October 31, 2006 through April 30, 2007 under the original terms and conditions of the contract.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-020409-DELL 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.

DELL MARKETING L.P.

BY: 
NAME: GEORGE WEIDMAN
TITLE: Contracts Mgr.
DATE: 10/5/06

COMMONWEALTH OF VIRGINIA

BY: 
NAME: GREGORY SEARLE
TITLE: STRATEGIC SOURCING SPECIALIST
DATE: 10-16-06

**MODIFICATION #6
TO
CONTRACT NUMBER VA-020409-DELL
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
DELL MARKETING L. P.**

This MODIFICATION #6 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and Dell Marketing L. P., hereinafter referred to as "Contractor" relating to the modification of the above Contract. This Modification #6 is hereby incorporated into and made an integral part of Contract VA-020409-DELL (the Agreement), as modified.

The purpose of this Modification #6 is to extend the term of the Contract to provide Microsoft Enterprise licenses to Virginia governmental entities for and additional one year period.

Both parties agree to the following:

The Contract VA-020409-DELL is hereby extended for an additional one year period. The one year period will extend the contract from October 31, 2005 through October 31, 2006, under the original terms and conditions of the contract.

The percentage discount off the Microsoft Estimated Retail Price shall remain at 18.7%

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-020409-DELL 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.

DELL MARKETING L. P.

BY: 

NAME: Mark W. Oberkumser

TITLE: Public Contracts Mgr

DATE: 09/28/05

COMMONWEALTH OF VIRGINIA

BY: 

NAME: Doug Crenshaw

TITLE: Strategic Sourcing Manager

DATE: 9/30/05

**MODIFICATION #5
CONTRACT NUMBER #VA-020409-DELL
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
DELL MARKETING L.P.**

This MODIFICATION #5 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State", "Commonwealth" or "VITA", and DELL MARKETING L.P. , hereinafter referred to as "Contractor", relating to Contract #VA-020409-DELL as amended, hereinafter referred to as the "Contract" or "Agreement". This Modification #5 is hereby incorporated into and made an integral part of the Agreement.

The purpose of Modification #5 is to extend the term of the Contract for an additional six (6) month period and to change the percentage discount off the Microsoft Estimated Retail Price.

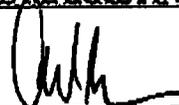
Both parties agree to the following:

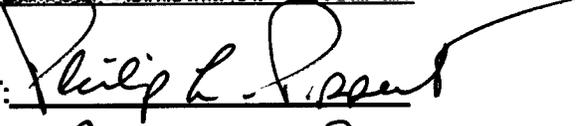
1. The Contract VA-020409-DELL is hereby extended for an additional six month period from the expiration date of April 30, 2005. The six month period will extend the Contract from April 30, 2005, through October 31, 2005 under the original terms and conditions of the Contract.
2. The percentage discount off the Microsoft Estimated Retail Price is hereby changed from 17.7% to 18.7% effective May 1, 2005 through the renewal period of October 31, 2005.

The foregoing is the complete and final expression of the parties' agreement to modify Contract #VA-020409-DELL and cannot be modified, except in 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.

DELL MARKETING L.P.
 BY: 
 NAME: Chad Rives
 TITLE: Dell Public Contracts
 DATE: 04-29-05

COMMONWEALTH OF VIRGINIA
 BY: 
 NAME: PHILIP L. PIPPERT
 TITLE: ASSOC. DIRECTOR, SCM
 DATE: 4/29/05

**MODIFICATION #4
CONTRACT NUMBER #VA-020409-DELL
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
DELL MARKETING, L.P.**

This MODIFICATION #4 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "VITA", "State" or "Commonwealth", and DELL MARKETING, L.P., hereinafter referred to as "Contractor", relating to Contract #VA-020409-DELL as amended, hereinafter referred to as the "Contract" or "Agreement". This Modification #4 is hereby incorporated into and made an integral part of the Agreement.

The purpose of Modification #4 is to extend the term of the Contract for an additional six month period to provide Microsoft Enterprise product(s) to the Commonwealth.

Both parties agree to the following:

1. The Contract VA-020409-DELL is hereby extended for an additional six month period. The six month period will extend the Contract from October 9, 2004 through April 30, 2005 under the original terms and conditions of the Contract.

The foregoing is the complete and final expression of the parties' agreement to modify Contract #VA-020409-DELL 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.

DELL MARKETING L.P.

COMMONWEALTH OF VIRGINIA

BY: Chad Rives

NAME: Chad Rives

TITLE: Public Contracts

DATE: 11/22/04

BY: Philip L. Pippert

NAME: PHILIP L. PIPPERT

TITLE: ASSOC. DIRECTOR, SCM

DATE: 11/22/04

**MODIFICATION #3
CONTRACT NUMBER #VA-020409-DELL
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
DELL MARKETING L.P.**

This MODIFICATION #3 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State", "Commonwealth" or "VITA", and DELL MARKETING L.P., hereinafter referred to as "Contractor", relating to Contract #VA-020409-DELL as amended, hereinafter referred to as the "Contract" or "Agreement". This Modification #3 is hereby incorporated into and made an integral part of the Agreement.

The purpose of Modification #3 is to extend the term of the Contract for an additional six (6) month period.

Both parties agree to the following:

1. The Contract VA-020409-DELL is hereby extended for an additional six month period from the original expiration date of April 9, 2004. The six month period will extend the Contract from April 9, 2004, through October 8, 2004 under the original terms and conditions of the Contract.

The foregoing is the complete and final expression of the parties' agreement to modify Contract #VA-020409-DELL 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.

DELL MARKETING L.P.

COMMONWEALTH OF VIRGINIA

BY: Belvis Jimmerson

BY: Ann Sells

NAME: Belvis Jimmerson

NAME: Ann Sells

TITLE: Contract Manager

TITLE: Contracts Engineer

DATE: March 16, 2004

DATE: 3-19-04

MODIFICATION #2
CONTRACT NUMBER #VA-020409-DELL
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
DELL MARKETING, L.P.

This MODIFICATION #2 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "VITA", "State" or "Commonwealth", and DELL MARKETING, L.P., hereinafter referred to as "Contractor", relating to Contract #VA-020409-DELL as amended, hereinafter referred to as the "Contract" or "Agreement". This Modification #2 is hereby incorporated into and made an integral part of the Agreement.

The purpose of Modification #2 is to amend the Contract to document the Commonwealth's notice of cancellation, as provided by letter on October 6, 2003 and December 19, 2003, for a portion of contract services and to document that "VITA" is the successor in interest to the Department of Information Technology.

Both parties agree to the following:

1. **Reference Contract Page C-9 of C-16, Section 28, entitled "Contract Prices and Price Lists" and Modification #1 to the Agreement:**

The following contract products and services are hereby acknowledged as cancelled pursuant to Section 34, entitled "Cancellation of Contract":

- a. Microsoft State and Local Government Select v.5.1 Products and Services: Microsoft State and Local Government Select 5.1, Level D, Estimated Retail Price less the contracted discount.
- b. Microsoft Worldwide Fulfillment Media and Documentation: Microsoft Worldwide Fulfillment Media and Documentation, Level D, Estimated Retail List Price less the contracted discount.
- c. Microsoft Academic Select v.5.1 Products and Services: Microsoft Academic Select 5.1, Level A, Estimated Retail Price less the contracted discount.
- d. Microsoft Worldwide Fulfillment Media and Documentation: Microsoft Worldwide Fulfillment Media and Documentation, Level A, Estimated Retail List Price less the contracted discount.
- e. Microsoft Select Academic v.6.0/Student Select Products and Services: Microsoft Select Academic v.6.0, Level A, Estimated Retail Price less the contracted discount.

2. **Reference Page 1, Section 6, "Issuing Office":**

Both parties hereby agree, that in accordance with the *Code of Virginia*, the Virginia Information Technologies Agency shall be deemed the successor in interest to the Department of Information Technology, the Department of Technology Planning and the Virginia Information Providers Network Authority. Without limiting the foregoing, all right, title and interest in and to any real or tangible personal property vested in the Department of Information Technology, the Department of Technology Planning and the Virginia Information Providers Network Authority as of the effective date of this act shall be transferred to and taken as standing in the name of the Virginia Information Technologies Agency.

The foregoing is the complete and final expression of the parties' agreement to modify Contract #VA-020409-DELL 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.

DELL MARKETING L.P.

COMMONWEALTH OF VIRGINIA

BY: Belvis Jimmerson _____

BY: Anna Sells _____

NAME: Belvis Jimmerson

NAME: Anna Sells

TITLE: Contract Manager

TITLE: Contracts Engineer

DATE: February 3, 2004

DATE: February 4, 2004

**MODIFICATION #1
TO
CONTRACT NUMBER #VA-020409-DELL
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
DELL MARKETING L.P.**

02 AUG 14 PM 2:00

This MODIFICATION #1 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth", and DELL MARKETING L.P., hereinafter referred to as "Contractor", relating to Contract VA-#020409-DELL, as amended, hereinafter referred to as the "Contract" or "Agreement". This Modification #1 is hereby incorporated into and made an integral part of the Agreement.

The purpose of Modification #1 is to document the addition of the Microsoft Select Academic Agreement, version 6.0, dated October 1, 2001, hereinafter referred to as the "Microsoft Agreement", to the Contract at the current percentage of discount.

Both parties agree to the following:

1. The Contractor agrees that the Microsoft Agreement is hereby added to the Contract.
2. The Contractor agrees to be bound by the terms and conditions as set forth in the Microsoft Agreement and to provide Microsoft LAR (Large Account Reseller) related services in accordance with the Contract.
3. The Contractor shall provide Microsoft software products for the Microsoft Agreement at the firm fixed 17.7 percentage discount off of the Microsoft Estimated Retail Price (ERP) List, Education level A.
4. The Contractor agrees to provide a 90 day warranty period for any defective media returned by the Commonwealth in accordance with the "Customer Remedies" provision contained in the Microsoft Agreement. The Contractor shall provide either the price paid for the Software Product media or replacement of the flawed media. Any replacement Software Product media will be warranted by the Contractor for the remainder of the original warranty period or thirty (30) days, whichever is longer.

The foregoing is the complete and final expression of the parties' agreement to modify Contract #VA-020409-DELL 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.

DELL MARKETING L.P.

COMMONWEALTH OF VIRGINIA

BY: Kay L. Schnuriger

BY: D. Ann Sells

NAME: Kay L. Schnuriger

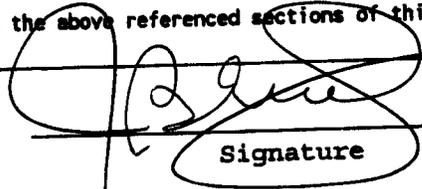
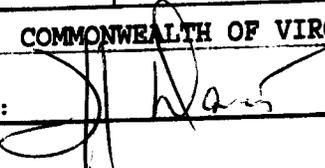
NAME: D. Ann Sells

TITLE: Contract Manager

TITLE: Contracts Engineer

DATE: August 13, 2002

DATE: August 19, 2002

SOLICITATION, OFFER AND AWARD DATA PROCESSING / TELECOMMUNICATIONS					FIN: 74-2616805	
1. Contract No:	2. IFB No:	3. Date Issued:	Date Due:	4. APR	5. Approval No:	
VA-020409-DELL	2002-020	Feb 22, 2002	Mar 15, 2002	79	D-78	
For Information Call: LaVerne Branch			(804) 371-5992			
6. ISSUING OFFICE:				7. SHIP TO:		
Department of Information Technology Acquisition Services Division 110 S. 7th Street, Lobby Floor Richmond, Va. 23219-9300 ATTN: Bid Section				Locations as specified on each Individual Purchase Order		
SOLICITATION						
8. Sealed bid(s) for furnishing the Products and Services set forth in the schedule, will be returned to the Issuing Office identified in block 6 above. Please provide an original and 0 copies. If hand carried, deliver to the ASD receptionist located on the Lobby Floor of the address listed in Block 6. Bids must be received prior to 2:00 p.m. local time Mar 15, 2002.						
This is an advertised solicitation which consists of (1) the schedule of Products and Services, pages 2 thru 9; (2) the solicitation instructions pages S-1 thru S-3; (3) The Contract Terms and Conditions page C-1 thru C-15; and (4) other provisions, representations, certifications or specifications as are attached or incorporated herein by reference.						
Offers will be publicly opened at: 2:10 p.m. local time Mar 15, 2002, in the ASD Conference Room, 110 South 7th Street, Lobby Floor.						
All offers are subject to the terms and conditions set forth in the above referenced sections of this solicitation.						
Paul H. Dodson, Director Acquisition Services				 Signature		
OFFER						
In compliance with the terms and conditions set forth in the solicitation, the undersigned agrees, if this offer is accepted within 90 calendar days from the date of receipt of offers, to furnish any or all items awarded at the prices offered in the schedule, delivered to the address in block 7, within the time specified in the schedule.						
9. CONTRACTOR:				10: BILL TO:		
Company Name: <u>Dell Marketing L.P.</u> Address: <u>One Dell Way, RR8/8706</u> City, State: <u>Round Rock, TX 78682</u> Signature: <u>Janet McLaughlin</u> Name (Typed): <u>Janet McLaughlin</u> Title: <u>Proposal Manager</u> Phone: <u>800-981-3355, x86928</u>				Locations as specified on each Individual Purchase Order		
AWARD						
11. Accepted as to Item Numbers:				12. Amount:	13. Award Date:	
all				Per Order	4-9-02	
14. Name of Contracting Officer:			15. COMMONWEALTH OF VIRGINIA		PAGES:	
Jeff Davis Contracts Manager			By: 		1 of 9	

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NAME OF CONTRACTOR			REQUIRED DELIVERY DATE:	INITIALS <i>Jmc</i>	
Dell Marketing L.P.			(RDD) 30 DAYS ARO		
ITEM NO	DESCRIPTION	QTY	UNIT	UNIT PRICE	EXTEND PRICE
1.	<p>List one(1) firm fixed Percentage Discount off of Microsoft Estimated Retail Price (ERP) List in the the "Unit Price" block to be applied to each of the Commonwealth of Virginia (COV) Microsoft Agreements listed below:</p> <ul style="list-style-type: none"> - State & Local Government Select Ver. 5.1 - Academic Select Ver. 5.1 - State and Local Government Enterprise Ver.6.0 - Worldwide Fulfillment Media Documentation <p>NO EXTENTION PRICE IS REQUIRED</p> <p>The Commonwealth receives Level-D Discount for State and Local:</p> <ul style="list-style-type: none"> - Government Select and Enterprise Agreements. - Worldwide Fulfillment Media and Documentation <p>The Commonwealth receives Level-A Discount for State and Local:</p> <ul style="list-style-type: none"> - Government Academic Agreement. - Worldwide Fulfillment Media Documentation <p>NOTE:</p> <ol style="list-style-type: none"> 1. The Code of Virginia Section 2.2-4331B prohibits the award of a public contract on the basis of "Cost-Plus a Percentage of Cost", except in the case of an emergency. 2. Prices submitted shall include Industrial Funding Adjustments (IFA). 3. Bidders shall read the electronic Virginia (eVA) Terms and Conditions # 40 and 41 and take them into consideration prior to submitting a bid. <p>*****DO NOT FILL IN HYPOTHETICAL EXAMPLE*****</p> <p>The following hypothetical calculation is an example of the process that will be used to determine the lowest responsive and responsible bid:</p> <p>Sample Item: Office XP Professional License Level-D discounted MS ERP \$ _____ (minus) _____ % discount = \$ _____ COV cost</p> <p>NOTE: The Bidders shall not employ calculations to arrive at an ERP since COV will only use the official ERP list provided by Microsoft as of the IFB issue month (February, 2002)</p>	1	lot	17.7% discount	

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NAME OF CONTRACTOR Dell Marketing L.P.		REQUIRED DELIVERY DATE: (RDD) 30 DAYS ARO	INITIALS <i>Jme</i>

1. DEFINITIONS:

1.1 "Potential Users" - Any Commonwealth of Virginia agency, institution, locality or public body defined in Section 2.2-4301 of the Virginia Public Procurement Act.

1.2 "Authorized Users" - Any potential user having received a Microsoft Enrollment Number.

1.3 Bidders - Microsoft Authorized, North American, Large Account Resellers

2. INSTRUCTIONS:

2.1 The Department of Information Technology (DIT) Acquisition Services Division (ASD) maintains a web site at <http://asd.state.va.us> that contains information for vendors, including bid information. Bidders should check this site regularly and prior to submitting a bid to insure that they are informed of any changes or amendments to the solicitation. The award notice will be posted to this web site.

2.2 Bid responses via E-mail and Facsimile will not be accepted.

2.3 The Bidder's Federal Identification Number (FIN) should be placed, in the appropriate box on Page 1 of this bid solicitation. Failure to provide a FIN number may result in our inability to verify Bidder's registration and a bid being ruled non-responsive.

2.4 Only bids from Microsoft Authorized North American Government Large Account Resellers (LAR) who are listed on Attachment-A, will be considered.

2.5 All Bidders submitting bids must be registered with the Department of Information Technology (DIT) prior to receiving an award. Forms are available from the issuing office, the ASD web site at <http://asd.state.va.us> or vendors may call 804 371-5900 to request form. A BID WILL NOT BE AWARDED IF THE VENDOR IS NOT REGISTERED WITH THE DEPARTMENT OF INFORMATION TECHNOLOGY (DIT).

2.6 Oral telephonic bid inquiries and requests for results, regarding this IFB will not be accepted nor will a response be given. All inquiries must be submitted electronically or in writing no later than 5:00 PM, five days before the due date. The message or the envelope should be marked "Questions on IFB # 2002-20". The electronic inquiry should be submitted to lbranch@dit.state.va.us Deliver envelope to the Issuing Office address identified in box # 6 on Page 1, to the attention of: LaVerne Branch. Whenever DIT deems it necessary, written response to questions will be prepared and posted on the DIT/ASD web site.

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Vendors will receive written answers to written questions, if any, and any other requested information and/or correspondence relating to this IFB. The Commonwealth will not be bound by verbal responses to questions. Answers resulting in changes to the requirements of the solicitation will be given by written Addenda thereto, and posted on the DIT/ASD web site.

2.7 Bidders wishing bid results should submit a self-addressed, stamped envelope along with their bid.

2.8 The Department of Information Technology does not discriminate against Faith Based Organizations.

2.9 Contractual Terms and Conditions are attached to this solicitation document. DIT will not sign or execute any additional contract, license or other agreement containing contractual terms and conditions as a result of this procurement with the exception of the Microsoft Select, Academic, and Enterprise Agreements. Any document signed by persons other than the DIT Contracts Manager, shall have no validity and the attached Terms and Conditions shall supercede all such agreements. Vendors should read and understand all of the Terms and Conditions prior to submission of a bid.

3. PURPOSE

3.1 The purpose of this Invitation for Bid (IFB) is to establish a two-year statewide term contract with one Microsoft Authorized North American Government Large Account Reseller(LAR) to provide Microsoft software products and LAR related services, at one firm fixed percentage discount off of the Microsoft Retail Price list. The awarded LAR contract will be available to all "Potential Users", to mean herein, all Commonwealth of Virginia agencies, institutions, and other public bodies as defined in Section 2.2-4301 of the Virginia Public Procurement Act.

4. BACKGROUND

4.1 It is the intent of the Commonwealth of Virginia to have in place, successfully negotiated Microsoft State and Local Government Select Ver.5.1, Microsoft Academic Select Ver.5.1 and Microsoft State and Local Enterprise Ver.6.0 Software License Agreements at the time a contract is awarded as a result of this IFB. The same percentage discount-off the ERP shall be applied by the LAR to each of these Agreements. These customized Agreements offer numerous enrollment options to meet the needs of the Commonwealth of Virginia. The Contractor will be required to execute each of the Agreements in combination with the Commonwealth and Microsoft. This contract, will not be mandatory. " Potential Users", as defined in Section 2.2-4301 of the Virginia Public Procurement Act are required to thoroughly review the provisions of the Microsoft Agreements, submit an executed Enrollment Agreement and obtain an Enrollment Number, prior to placing orders under this contract.

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<p>4.2 The LAR Contractor will provide Microsoft software products and related LAR service for each of the COV Microsoft Software License Agreements, to Authorized Users, being referred to herein as a user having received a Microsoft Enrollment Number. The pricing provided to the Commonwealth shall reflect Level-D discount for State, Local Government Select, Enterprise Agreements, and Worldwide Fulfillment Media Documentation orders, in addition to Level-A discount for State, Local Government Academic Agreement, and Worldwide Fulfillment Media Documentation orders.</p> <p>The discount shall be based on the most current, Microsoft Reference Price, also known as Estimated Retail Price (ERP), minus the same firm fixed percentage discount applied to each of the applicable Microsoft Agreements. The Commonwealth will receive the most current Microsoft ERP, for each type of license agreements, as issued by Microsoft on a monthly basis. The Microsoft ERP, minus the percentage of discount offered by the LAR Contractor, will be used by COV to determine the appropriate product cost the COV will pay to the LAR Contractor.</p> <p>4.3 In order to meet the Commonwealth's needs, while addressing Microsoft's recent licensing changes, the Commonwealth shall enter into State and Local Government, Academic Select Ver.5.1 and Select Enterprise Ver.6.0 Software License Agreements, for a two-year term. It is the intent of the Commonwealth to make the Software License Agreements available to "Potential Users", by April 1, 2002.</p> <p>4.4 The LAR Contractor shall be responsible for servicing and administering each Agreement, ensuring prompt processing of all enrollment forms, and ensuring each enrollment is properly placed against the correct type Microsoft Software License Agreement.</p> <p>4.5 Each "Authorized Users" will provide the LAR Contractor with a purchase order for each copy of software made under the Select Master Agreement.</p> <p>4.6 It is the intent of the Commonwealth that the percentage discount-off awarded, be the same for each type agreement, and applied to all products purchased:</p> <p>Commonwealth of VA Pools:</p> <ul style="list-style-type: none"> - Systems - Servers - Applications <p>4.7 The dollar volume for the past 2-1/2 years of the current Commonwealth's 3-year term contract is approximately \$30,000,000. This information is based on current contract volume information and is given only as a guide for preparing a bid. This figure should not be construed as representing actual amounts to be purchased under any awarded contract.</p>				

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<p>4.8 Copies of the Commonwealth of Virginia Microsoft Agreements, upon execution, will be available on the Department Of Information Technology Web Site, accessible by using the following steps :</p> <ul style="list-style-type: none"> * Internet Address: http://asd.state.va.us * Select: Statewide IT Contracts * Scroll Down the alpha listing to "Microsoft Select S/W Products * Contract number * Open, Download and Print the Complete Contract Document 			
<p>5. SCOPE OF CONTRACT</p> <p>5.1 The LAR Contractor shall provide all sales, support, management and reporting services required to process and account for "Authorized User" requests for Microsoft software products and LAR services under the applicable type Microsoft Software License Agreements.</p> <p>5.2 The LAR Contractor should identify "Potential Users", actively market the programs by methods such as, regional meetings, personal sales calls, WEB site information, mass mailings, email, etc. Enroll and educate potential users regarding rights and responsibilities under the applicable Agreement.</p> <p>5.3 The LAR Contractor shall assist "Potential Users" with enrollment, and process all Enrollment Forms within 24 hours, prior to placing their contract order.</p> <p>5.4 The LAR Contractor shall provide Select Ver. 5.1 product and service orders fulfillment, including, but not limited to the following:</p> <ul style="list-style-type: none"> a. Microsoft State and Local Government Select Ver, 5.1 Software License b. Microsoft Academic Select Ver 5.1 Software License c. Microsoft Enterprise Ver. 6.0 Software Licenses d. Microsoft Software Assurance and Upgrade Advantage (software upgrade and maintenance) e. Microsoft Worldwide Fulfillment Media Documentation(hard copy and/or CD) g. Any combination of the above <p>5.5 The LAR Contractor shall provide oral and written, calculated contract price quotations by subtracting the same awarded percentage discount from the most recent Microsoft published Estimated Retail Price list, also known as Reference Price list, under the applicable Agreement.</p> <p>5.6 The LAR Contractor shall develop, within 30 days after contract award, a LAR Internet Web page to assist " Authorized Users" in independently obtaining product information to include at a minimum: Product number, product name, ERP, percentage of discount, discount price, and quantity. The information shall be maintained by the LAR Contractor as a single Commonwealth of Virginia LAR Internet web page, specific to this LAR software contract.</p>			

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The site shall be easily accessible by a path including a product number or a keyword search engine (requiring minimum clicks of the mouse), downloadable, and clearly displaying the last date the website pricing was updated. The web page should permit "Authorized Users" to send e-mail to the COV LAR Contract Administrators and sales support staff. No other information about other COV contracts shall be co-mingled on the COV LAR web page. Pricing information maintained on the required Internet web page shall include, at a minimum, the applicable Microsoft Estimated Retail Price and the discount price with appropriate headers to discern the ERP and Discount pricing. "Authorized Users" shall be able to download and print the entire price list as well as pricing for individual items or groups of items.

5.7 The LAR Contractor should include an "Announcement and Information Page" on the COV LAR internet web site; this page shall be maintained by the LAR Contractor with the most recent special LAR announcements and information as requested by DIT. Additionally, the page shall clearly describe the path to get to the COV LAR contract pricing web page, and should have a link to the COV LAR contract web page and vice versa.

5.8 The LAR Contractor shall make updated, Microsoft ERP and discount pricing available on the COV web page on or before the first day of the month following its release by Microsoft. The updated price list shall not be implemented by the LAR contractor until it is published on the Commonwealth's LAR web page and is in effect at the time the order is submitted.

5.9 The LAR Contractor shall provide, requested written and/or oral contract quotations to "Authorized Users", which is to include at a minimum:

- a. Product Number
- b. Product Name
- c. Quantity
- d. ERP
- e. Discount Price

REPORTS

5.10 The LAR Contractor shall promptly report all orders to Microsoft in accordance with the provisions in the applicable Agreement.

5.11 The LAR Contractor shall ensure that all orders submitted to Microsoft reference valid Microsoft required data, such as, but not limited to, specific Enrollment Number, and a corresponding purchase order number. Any orders not referencing valid numbers shall be promptly returned to the "Authorized User".

5.12 Paper copy of LAR reports for the DIT Contracts Manager shall be delivered to the Issuing Office Address listed in block # 6 on Page 1. of this IFB. Electronic copy reports shall be sent to the email address: contracts@dit.state.va.us

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5.13 The LAR Contractor shall generate and issue, electronic and paper copy "Order Confirmation Reports" for each software product (i.e., license and/or maintenance) ordered by an "Authorized User". This report shall be issued for purchases, including those orders that may be aggregated on a single-purchase order document, and provided to "Authorized User"s within 15 days after request, and should include, at a minimum, the following:

- a. The name of Authorized User (ordering entity)
- b. Authorized User's purchase order number to contractor
- c. Contractor's purchase order number to Microsoft
- d. Microsoft Master Agreement Number
- e. Microsoft Enrollment Number
- f. Microsoft product number and quantity ordered
- g. Microsoft product description (Software language and/or version number)
- h. Term of coverage for MS Upgrade Advantage or Software Assurance

5.14 The LAR Contractor shall provide assistance to "Authorized User" in the reconciliation of actual processed orders, as released by Microsoft on their License Confirmation List. Assistance shall be provided within 15 days after receipt of the MS License Confirmation List. The LAR Contractor shall additionally provide a "Reconciliation Report", upon Authorized User request, which includes the Authorized User's purchase order number that corresponds to the confirmed licenses.

5.15 The LAR Contractor shall submit quarterly "Authorized Users" Reports electronically and by paper copy to the Dept. of Information Technology Contracts Manager. The report shall list the following information:

- a. Program Type (i.e. Standard Select, Enterprise, Academic Select)
- b. Authorized User Name and Date Enrolled
- c. Enrollment Number
- d. Contact Person: Name, Address, Telephone and Fax numbers
- e. Contact Person: E-mail Address

5.16 The LAR shall semi-annually submit "Purchase Volume Reports" within 5 days of the LAR Contract semi-annual period, to the DIT Contracts Manager. The Report shall be submitted electronically and as paper copy, and shall itemize the aggregated purchase quantity, qualifying units and purchase price for each contract item ordered during the reporting period. The report shall be subdivided for each Microsoft Agreement type (Select, Enterprise, Academic Select) and include corresponding subtotals for qualifying units.

STAFF

5.17 The LAR Contractor shall maintain one full-time, Microsoft certified, COV specific, Sales Representative, employed by the LAR Contractor, dedicated and knowledgeable in managing and administering each type of the COV Software Licensing Agreements. Additionally, the Contractor shall have a minimum of five (5) sales and service support staff, employed by the LAR Contractor, who is accessible via, telephone, fax and e-mail to ensure timely satisfactory response to "Authorized Users", within 8 hours after receipt of request.

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<p>5.18 The LAR Contractor shall provide a formatted information form, to the Authorized Users, at the same time the LAR website is made available to Authorized Users. The form shall identify the specific information that is needed and required by Contractor's sales and support staff, in order for Contractor'S staff to provide accurate information and price. The "Authorized User" may elect to fax, email, mail or provide form information verbally by telephone to the LAR Contractor to obtain pricing and product information. The formatted form shall be made available to the "Authorized User" on the LAR's Announcement and Information web page.</p>				
<p>6. ATTACHMENTS</p> <p>A.) North American Microsoft Certified Government LAR Vendors</p> <p>B.) Certification Regarding Lobbying</p>				

COMMONWEALTH OF VIRGINIA
Department of Information Technology
IFB No. 2002-20
ATTACHMENT - A

MICROSOFT AUTHORIZED NORTH AMERICAN LARGE ACCOUNT RESELLERS

Microsoft LAR Names	Address 1	City	State/Province	Zip/Post Code	Contact Name
Amerit Corporate Computer Sales and Solutions	40 Continental Boulevard	Merimeck	NH	03064	Susan Taylor
ASAP Software Express, Inc.	860 Asbury Drive	Buffalo Grove	IL	60089	Jennifer Bluis
Beyond.com Corporation	11400 Commerces Park Dr.	Renton	VA	20191	Don Beery
CDW Computer Centers, Inc.	200 N. Milwaukee Ave.	Vernon Hills	IL	60061	Jim Grass
Comark, Inc.	444 Scott Drive	Bloomington	IL	60108	Mark Thacker
Compaq Computer Corporation	10810 Farnam Drive	Omaha	NE	68154	John Cullen
CompuCom Systems	7171 Forest Lane	Dallas	TX	75230	Mark Dalton
Corporate Software	Two Edgewater Drive	Norwood	MA	02062-4637	Charlie Patisos
Dell Products, L.P.	One Dell Way	Round Rock	TX	78682	Rich O'Brien
Educational Resources	1850 Executive Drive	Elgin	IL	60123	Karen Schirler
En Pointe Technologies Sales, Inc.	100 N. Sepulveda 19th Floor	El Segundo	CA	90245	Anna Wright
Government Technology Services, Inc.	3901 Stonecroft Boulevard	Charlottesville	VA	20151-1010	John Linn
Hewlett-Packard Company	4880 Parkway Dr. Suite 100	Cincinnati	OH	45040	Tom Tiller
Inlight Direct USA, Inc.	6820 S. Hill Ave	Tempe	AZ	85283	Dave Williams
Sarcom	525 Vine St., 4th Floor	Cincinnati	OH	45202	Dan O'Brien
SoftChoice Corporation	173 Dufferin St, Suite 200	Toronto	ON	M8K 3H7	Anne Bruce
Software Management Services, Inc.	450 Acorn Lane	Downingtown	PA	19335	Cathy Shertzer
Software House International, Inc.	2 Riverview Drive	Somerset	NJ	08873	Thai Lee
Software Plus	10680 Baur Boulevard	St. Louis	MO	63132	Larry Melishock
Software Spectrum, Inc.	2140 Merritt Drive	Garland	TX	75041	Tony Muehlelek

SOLICITATION INSTRUCTIONS

REV. 11/01/01

1. EXPLANATION TO VENDORS

Any explanation desired by a vendor regarding this solicitation/invitation for bid must be requested in writing and with sufficient time allowed for a reply to reach the vendor before the submission of their bids. **PRIOR TO SUBMISSION OF A BID, VENDORS ARE REQUIRED TO READ THESE INSTRUCTIONS, REVIEW THE SCHEDULE, READ ALL TERMS AND CONDITIONS AND CHECK THE ACQUISITION SERVICE DIVISION'S (ASD'S) WEB PAGE AT ([HTTP://ASD.STATE.VA.US](http://ASD.STATE.VA.US)) FOR ANY AMENDMENTS OR CHANGES.** THIS SOLICITATION IS SUBJECT TO THE PROVISIONS OF THE COMMONWEALTH OF VIRGINIA VENDOR'S MANUAL WHICH WAS REVISED IN DECEMBER 1998 AND ANY REVISIONS THERETO, WHICH ARE HEREBY INCORPORATED INTO THIS CONTRACT IN THEIR ENTIRETY. A copy of the manual is available for review at the purchasing office, and can be obtained by calling the Division of Purchases and Supply (804) 786-3842, or by accessing the Department of General Services (DGS), Division of Purchases and Supply (DPS) Internet Home Page (www.dgs.state.va.us/dps). Any interpretation required by the State will be in the form of an amendment to the solicitation; SEE PARAGRAPH 11 BELOW. Oral explanations or instructions given before the award of the contract will not be binding. In any conflict arising between this solicitation and the Vendors' Manual, this solicitation shall prevail.

2. PREPARATION OF SOLICITATION

- A. Bids shall be submitted on the forms furnished, and must bear an original signature by an individual authorized to bind the company submitting the bid. If erasures or other changes appear on the form, each erasure or change must be initialed by the person signing the bid. Telegraphic or facsimile bids will not be considered. Vendors may not submit multiple bids in a single envelope.
- B. Vendors are required to enter their Federal Identification Number [FIN] in the upper right hand corner on Page 1, DIT Form 62. This number must correspond with the FIN number shown on Page 1 of the DIT Vendor Application For Registration Form submitted by a principal or officer of the firm submitting the bid. Failure to enter a number in the space provided or to provide a correct FIN number may delay award or result in DIT determining that the vendor is not registered to conduct business with DIT. It is the vendor's responsibility to provide the correct FIN number and to keep DIT updated as to any changes in vendor's status.
- C. The bid form may provide for submission of a price or prices for one or more items. All prices shall be entered in the schedule; DIT Form 62A or 62B. Where the bid form explicitly requires that the vendor bid on all items (e.g., an all or none requirement), failure to do so will disqualify the bid. When submission of a price on all items is not required, vendor should insert the words "no bid" in the space provided for any item on which no price is submitted.
- D. Additional bids may be submitted, when in the vendor's judgment they can provide more than one solution which meets the required specifications of the procurement. Additional bids shall be submitted on either a duplicate copy of the bid document or on plain paper and shall be clearly identified with the words "ADDITIONAL BID" written or printed on the face of each additional bid. Additional bids shall not be considered unless detailed specifications or descriptions sufficient to establish quality, utility and merit accompany the bid.

VENDORS SUBMITTING ADDITIONAL BIDS ARE REMINDED THAT THE TERMS AND CONDITIONS WHICH APPLY TO THE ORIGINAL BID SHALL ALSO APPLY TO THE ADDITIONAL BID AND ANY MODIFICATION TO TERMS AND CONDITIONS OF A SOLICITATION OR THE ADDITION OF RESTRICTIVE PROVISIONS BY A BIDDER SHALL BE CAUSE FOR REJECTION OF THE BID.

- E. Modification of bids already submitted will be considered if received at the office designated in the invitation for bids before the time set for opening of bids.

3. SUBMISSION OF BIDS

TO BE CONSIDERED, THE BID MUST BE RECEIVED AT THE ADDRESS GIVEN IN BLOCK #6 OF THE SOLICITATION ON OR BEFORE THE DATE AND HOUR DESIGNATED. Vendors must pay particular attention to ensure that the bid is properly addressed. The State is not responsible if the bid is not properly addressed. The State is not responsible if the bid does not reach the destination specified by the date and time identified in block #8 page 1 of the Bid. Sealed bids received after the date and hour identified in block #8 are automatically disqualified, and will not be considered. All bids must be sealed, marked and addressed, to the address shown in block #6 of the Solicitation, and marked on the outside of the vendor's envelope as in the example below. Failure to do so may result in a premature opening of, or a failure to open, the bid.

From: Name of Vendor
 Street or Box Number
 City, State, Zip Code
 Due Date Time
 IFB No.

4. SPECIFICATIONS AND USE OF BRAND NAMES

Unless otherwise provided in the solicitation, the name of a certain brand, make or manufacturer does not restrict bids to the specific brand, make or manufacturer named. Any item which the State at its sole discretion determines to be the equal of that specified as defined in the Schedule, will be accepted. The award will be made to the lowest responsive and responsible bidder or offeror offering the functional equivalent to the brand name described in the specification. Thus, equivalent products of other manufacturers will be considered only if proof of equivalency is contained in or accompanies the bid.

5. LATE BIDS, MODIFICATIONS OF BIDS OR WITHDRAWALS OF BIDS

- A. Any bids received at the office designated in block #6 of the Solicitation after the exact time specified for receipt will not be considered for award. (See Paragraph 4.10 of the Vendor's Manual for further discussion.)
- B. A bid may be amended and/or withdrawn by a vendor if the office issuing the bid receives the request in writing before the date and hour set forth in the bid form. The request must be signed by a person authorized to represent the person or firm that submitted the bid. Submission of a subsequent bid shall normally constitute the withdrawal of any prior bid submitted by the same bidder or offeror on the same IFB.

6. PUBLIC OPENING OF BIDS

Bids will be publicly opened at the time and date specified on page 1 of the Solicitation document. The content of these solicitations will be made public in accordance with Paragraphs 1.9 and 2.4 of the Vendor's Manual. Bids will not normally be evaluated at the bid opening meeting. All bids will be opened at the location shown on page 1 of the solicitation.

7. SOLICITATION TERMS AND CONDITIONS

The terms and conditions contained in this solicitation are considered mandatory and are the only terms and conditions governing transactions under any contract awarded as a result of this solicitation.

If the vendor includes additional terms and conditions on pre-printed marketing sheets, pre-printed catalogues, or other pre-printed materials, then it is understood that those terms and conditions are of no consequence to any resulting contract.

Any other modification, addition, clarification, or change to the mandatory terms and conditions by the vendor shall cause the bid to be rejected.

8. AWARD OF CONTRACT

Bids shall be evaluated and the responsive and responsible bidder offering the lowest price will be awarded the Contract. The State reserves the right to reject any and all bids in whole or in part and to waive any informality in the bids.

9. AWARD NOTICES

Upon the completion of evaluation, the State will either post a NOTICE OF AWARD (NOA) or a NOTICE OF INTENT TO AWARD (NOITA). If a NOITA is used, the notice will be publicly posted ten days prior to the actual award date of the contract. All award notices will be posted on ASD's Web Page ([HTTP://ASD.STATE.VA.US](http://ASD.STATE.VA.US)) and posted in ASD's lobby in written format.

A NOTICE OF INTENT TO AWARD OR A NOTICE OF AWARD will be mailed to any bidder submitting a self-addressed, stamped envelope with their bid.

NOTICES OF INTENT TO AWARD OR NOTICES OF AWARD will be posted in accordance with paragraph 6.3 of the Vendor's Manual.

TELEPHONIC REQUESTS FOR BID RESULTS WILL NOT BE HONORED.

10. FAILURE TO DELIVER

Failure to comply with the terms and conditions of the IFB or to deliver equipment, software or services identified in the solicitation at the price quoted may result in cancellation or rescission of the award/contract by the Commonwealth and may subject the Contractor to removal from DIT's Vendor Registration file and ruled ineligible to participate in DIT's (and other agencies and institutions information technology) procurements for a period of 12 months.

11. AMENDMENT OF SOLICITATION

Any amendment or change to this solicitation will be issued in writing and will identify the changes to be made in the bid. All amendments will be posted to the ASD's Web page at (<http://asd.state.va.us>) and posted in ASD's lobby in written format.

If the bid opening date is extended the new date and time will be clearly shown on the face of the amendment.

Bidders will be required to sign and return a copy of the amendment with their bid to indicate that they have received the document and are aware of the changes made.

12. ANTI-COLLUSION CERTIFICATION

By Bidder's signature on the face of this bid, Bidder certifies that this bid is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a bid for the same equipment, software, or services, and is in all respects fair and without collusion or fraud. Vendor understands collusive bidding is a violation of the Virginia Governmental Frauds Act and Federal Law and can result in fines, prison sentences, and civil damage awards. Bidder agrees to abide by all conditions of this bid and certifies that he or she is authorized to sign this bid for the bidder' firm.

13. DEMONSTRATIONS

The State reserves the right to require the Bidder to demonstrate to the satisfaction of the State, that the products offered will perform in a completely acceptable manner and to meet or exceed the specifications referenced in the solicitation. The demonstration site and time is subject to agreement between the State and Bidder. A Bidder refusing to demonstrate his products bid after determination that he is the apparent low responsive and responsible bidder may be removed from DIT's vendor registration file and ruled ineligible to participate in DIT's (and other agencies and institutions information technology) procurements for a period of 12 months.

14. PROTESTS OF AWARDS

All protests of awards shall be conducted in accordance with Chapter 9 of the Vendors Manual.

15. VENDOR REGISTRATION

AN AWARD WILL NOT BE MADE TO ANY BIDDER NOT REGISTERED WITH THE DEPARTMENT OF INFORMATION TECHNOLOGY (DIT). A completed registration form must be on file or received by DIT (Acquisition Services Division) not later than the award date. Call (804) 371-5900 to request a registration form.

16. CONTRACT

Any contract which is awarded as a result of this solicitation, offer and award shall be between DIT and the Contractor. No other agency, institution or public body may negotiate in any way with the vendor concerning the items identified in the schedule or any terms and conditions of the contract. All problems associated with the resulting contract shall be brought to the attention of the Contracts Manger, DIT.

Specifications - Any comments or questions concerning the specifications, terms and conditions or any note contained in this solicitation shall be submitted, in writing to the issuing office (See Block #6 DIT Form #62) at least ten (10) days prior to the closing date.

17. TRADE SECRETS OR PROPRIETARY INFORMATION

Trade secrets or proprietary information submitted by a bidder in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the bidder must invoke the protections of *Code of Virginia*, Section 2.2-4342, prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reason why protection is necessary. **The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. The classification of an entire bid document, line item prices and/or total bid prices as proprietary or trade secrets is not acceptable and will result in rejection of the bid.**

1. SCOPE OF CONTRACT

The following paragraphs contain the statewide Contractual terms and conditions established by the Commonwealth of Virginia, hereinafter referred to as "State", "Commonwealth" or "DIT" (Department of Information Technology), by which Agencies, Institutions, and other public bodies have obtained an appropriate enrollment number and as defined in § 2.2-4301 the Virginia Public Procurement Act ("VPPA"), are hereinafter referred to as "Authorized Users" that may acquire Microsoft software and services from the Contractor identified in block #9, page 1 of the Commonwealth's IFB 2002-20.

2. VENDORS MANUAL

This solicitation is subject to the provisions of the Commonwealth of Virginia Vendors Manual and any revisions thereto, which are hereby incorporated into this Contract in their entirety. A copy of the manual is normally available for review at the purchasing office and in addition, a copy can be obtained by calling the Division of Purchases and Supply (804) 786-3842, or by accessing the Department of General Services (DGS), Division of Purchases and Supply (DPS) Internet site (www.dgs.state.va.us/dps/).

3. APPLICABLE LAWS AND COURTS

This solicitation and any resulting Contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations.

4. ANTI-DISCRIMINATION

By submitting their bids, bidders certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and §2.2-4311 of the Virginia Public Procurement Act. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the Contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that Contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (Code of Virginia, § 2.2-4343.1E).

In every Contract over \$10,000 the provisions in a. and b. below apply:

a. During the performance of this Contract, the Contractor agrees as follows:

- 1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis

prohibited by state law relating to discrimination in employment, except there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

- 2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
 - 3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for meeting these requirements.
- b. The Contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

5. ETHICS IN PUBLIC CONTRACTING

By submitting their bids, bidders certify that their bids are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other bidder, supplier, manufacturer or subcontractor in connection with their bid, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

6. IMMIGRATION REFORM AND CONTROL ACT OF 1986

By submitting their bids, bidders certify that they do not and will not during the performance of this Contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

7. DEBARMENT STATUS

By submitting their bids, bidders certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids on Contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

8. ANTITRUST

By entering into a Contract, the Contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said Contract.

9. MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR IFBs

Failure to submit a bid on the official state form provided for that purpose shall be a cause for rejection of the bid. Modification of or additions to any portion of the Invitation for Bids may be cause for rejection of the bid; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid as nonresponsive. As a precondition to its acceptance, the Commonwealth may, in its sole discretion, request that the bidder withdraw or modify nonresponsive portions of a bid which do not affect quality, quantity, price, or delivery. No modification of or addition to the provisions of the Contract shall be effective unless reduced to writing and signed by the parties.

10. CLARIFICATION OF TERMS

If any prospective bidder has questions about the specifications or other solicitation documents, the prospective bidder should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.

11. PAYMENT

1. To Prime Contractor:

- a. Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/Contract. All invoices shall show the state Contract number and/or purchase order number; social security number (for individual Contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- c. All goods or services provided under this Contract or purchase order, that are to be paid for with public funds, shall be billed by the Contractor at the Contract price, regardless of which public agency is being billed.
- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- e. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time "Orders" are placed. In such cases, Contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges that appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon

determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the Contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A Contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges that are not in dispute (Code of Virginia, § 2.2-4363).

2. To Subcontractors:

a. A Contractor awarded a Contract under this solicitation is hereby obligated:

(1) To pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the Contract; or

(2) To notify the agency and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.

b. The Contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the Contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier Contractor performing under the primary Contract. A Contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

12. QUALIFICATIONS OF BIDDERS

The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the bidder to perform the services/furnish the goods and the bidder shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect bidder's physical facilities prior to award to satisfy questions regarding the bidder's capabilities. The Commonwealth further reserves the right to reject any bid if the evidence submitted by, or investigations of, such bidder fails to satisfy the Commonwealth that such bidder is properly qualified to carry out the obligations of the Contract and to provide the services and/or furnish the goods contemplated therein.

13. TESTING AND INSPECTION

The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

14. ASSIGNMENT OF CONTRACT

A Contract shall not be assignable by the Contractor in whole or in part without the written consent of the Commonwealth.

15. CHANGES TO THE CONTRACT

Changes can be made to the Contract in any of the following ways:

1. The parties may agree in writing to modify the scope of the Contract. An increase or decrease in the price of the Contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the Contract.
2. The Purchasing Agency may order changes within the general scope of the Contract at any time by written notice to the Contractor. Changes within the scope of the Contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:
 - a. By mutual agreement between the parties in writing; or
 - b. By agreeing upon a unit price or using a unit price set forth in the Contract, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the Contractor's records and/or to determine the correct number of units independently; or
 - c. By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the Contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the Contractor, as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the Contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this Contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this Contract shall excuse the Contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the Contract generally.

16. DEFAULT

In case of failure to deliver goods or services in accordance with the Contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the Commonwealth may have.

17. TAXES

Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request, and can be obtained online at <http://www.tax.state.va.us/>. Deliveries against this Contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

18. TRANSPORTATION AND PACKAGING

By submitting their bids, all bidders certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.

19. ANNOUNCEMENT OF AWARD

Upon the award or the announcement of the decision to award a Contract as a result of this solicitation, ASD will publicly post such notice on its website at <http://asd.state.va.us/> for a minimum of 10 days. The Commonwealth will make the award to the responsive and responsible bidder offering the highest percentage of discount. The purchasing office reserves the right to conduct any test it may deem advisable and to make all evaluations. The Commonwealth also reserves the right to reject any or all bids, in whole or in part, to waive informalities and to delete items prior to making the award, wherever it is deemed in the sole opinion of the procuring public body to be in its best interest.

20. DRUG-FREE WORKPLACE

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific Contract awarded to a Contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract.

21. NONDISCRIMINATION OF CONTRACTORS

A bidder, offeror, or Contractor shall not be discriminated against in the solicitation or award of this Contract because of race, religion, color, sex, national origin, age, or disability or against faith-based organizations. If the award of this Contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this Contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

22. BREACH

The Contractor shall be deemed in breach of this Agreement if the Contractor (a) fails to make any Product or Service ready for acceptance testing by the specified delivery date; (b) repeatedly fails to respond to requests for maintenance or other required service within the time limits set forth in this Agreement; (c) fails to comply with any other term of this Agreement and fails to cure such noncompliance within ten days (or such greater period as is acceptable to the Commonwealth) following Contractor's receipt of a Show Cause Notice identifying such noncompliance; or (d) fails to provide a written response to the Commonwealth's Show Cause Notice within ten days after receiving same.

The Contractor shall not be in breach of this Agreement if its default was due to causes beyond the reasonable control of, and occurred without any fault or negligence on the part of, both the Contractor and its subcontractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Commonwealth in either its sovereign or Contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

In the event of breach, in addition to any other remedies provided by law, the Commonwealth may cancel its obligations with respect to any or all unaccepted Products or Services. All costs for deinstallation and return of Products shall be borne by the Contractor. In no event shall any failure by the Commonwealth to exercise any remedy available to it be construed as a waiver of or consent to any breach.

23. CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS

Any commitment made by the Contractor within the scope of this Contract shall be binding upon Contractor. For the purposes of this Contract, a commitment by the Contractor includes:

- a. Prices and options committed to remain in force over a specified period(s) of time;

- b. Any written warranty or representation made by the Contractor in this solicitation as to software performance, or other physical design or functional characteristics of that which is offered.

24. NON-APPROPRIATION

All funds for payment of equipment, software or services ordered under this Contract are subject to the availability of legislative appropriation for this purpose. In the event of non-appropriation of funds by the Legislature for the items under this Contract, the Commonwealth will terminate this Contract for those goods or services for which funds have not been appropriated. Written notice will be provided to the Contractor as soon as possible after legislative action is completed.

If any purchases are to be supported by federal funding, and such funding is not made available, the Commonwealth may terminate this Contract for goods or services dependent on such federal funds without further obligation.

25. HEADINGS NOT CONTROLLING

Headings used in this Contract are for reference purposes only and shall not be considered to be a substantive part of this Contract.

26. ENTIRE AGREEMENT

The solicitation (IFB 2002-20), any addenda thereto, and the bid response submitted by the successful Contractor are incorporated herein and constitutes the entire agreement between the parties with respect to the subject matter of this Contract. Additionally, the Contractor agrees by his performance under this Contract to be bound by the terms and conditions of the Microsoft State and Local Select Government v5.1, Microsoft State and Local Enterprise v6.0 and the Microsoft Academic Select v5.1 software license agreements established by the Commonwealth and MSLI, GP (Microsoft Affiliate) and any subsequent revisions, modifications, updates thereto, and the published Microsoft Estimated Retail Price Lists.

No other written documents regardless of form or content shall be executed by any agency or institution for the specified Microsoft software and services acquired under this Contract unless signed by the Contracts Manager, DIT, or his alternate as designated by the Director, DIT.

27. PRICE PROTECTION/ADJUSTMENTS

The Contract price shall include all products delivered and ready for the Commonwealth's use and shall include all applicable freight, handling and inside delivery charges; extra charges will not be allowed.

The State will not pay any additional costs above those costs provided for in the Schedule identified herein. In no event may the amount of any Contract, without adequate consideration, be increased for any purpose. During the term of the Contract no decrease in the contracted discount will be allowed.

Any price decrease effectuated during the Contract period by reason of market change shall be passed on to the Commonwealth of Virginia. This decrease will be effective on or before the first of the month following receipt of the ERP list.

28. CONTRACT PRICES AND PRICE LISTS

Contract prices shall be determined as follows:

- a. Microsoft State and Local Government Select v.5.1 Products and Services: Microsoft State and Local Government Select 5.1, *Level D* Estimated Retail List Price less the contracted discount.
- b. Microsoft State and Local Enterprise v6.0 Products and Services: Microsoft State and Local Enterprise v6.0, *Level D* Estimated Retail List Price less the contracted discount.
- c. Microsoft World Wide Fulfillment Media and Documentation: Microsoft World Wide Fulfillment Media and Documentation, *Level D* Estimated Retail List Price less the contracted discount.
- d. Microsoft Academic Select v.5.1 Products and Services: Microsoft Academic Select 4.0 *Level A* Estimated Retail List Price less the contracted discount.
- e. Microsoft World Wide Fulfillment Media and Documentation: Microsoft World Wide Fulfillment Media and Documentation, *Level A* Estimated Retail List Price less the contracted discount.

29. SPECIAL OR EDUCATIONAL DISCOUNTS

- a. During the Contract period if Microsoft or the Contractor offers promotional discounts as a general practice or offers educational discounts to schools and institutions of higher education for items available under this Contract with the result that those prices are lower than the prices available under this Contract, then the promotional discounts shall be made available to all "Authorized Users" under this Contract, or in the case of educational discounts, they shall be made available to schools and institutions of higher education eligible to place "Orders" against this Contract.
- b. The effective date for price changes/discounts will be the date on or before the first of the month following receipt of the ERP list or the promotional offer.
- c. If the Contractor does not sell to "Authorized Users" eligible to place "Orders" against this state Contract at the lower prices/discounts required by subsection a. above, it shall owe a rebate to each affected purchaser which is equal to the amount of the overcharge. Said rebate shall be made within 30 days after the Contractor becomes aware of the overcharge or within 30 days after the "Authorized User" requests the rebate, whichever comes first.

30. TERM

The term of this Contract shall be for 24 months commencing upon the date of award. Delivery of all products or services ordered by the Commonwealth, prior to the expiration date of this Contract, shall be fulfilled by the Contractor.

31. INVENTIONS AND COPYRIGHTS

The Contractor is prohibited from copyrighting any papers, reports, forms or other materials, and from obtaining any patent on any invention or other discovery resulting solely from its performance under the terms and conditions of this Contract.

32. CONTRACTUAL RECORDS

All Contractual books, records and other documents related to matters under this Contract shall be made available by Contractor to the State and its designated agents for a period of five (5) years after final payment for purposes of audit and examination.

Contractual records are hereby further defined as this Contract and all delivery/purchase/AMEX /eVA "Orders", invoices or correspondence directly relating to this agreement.

33. LIMITATION OF LIABILITY

To the maximum extent permitted by applicable law, the Contractor will not be liable under this Contract for any indirect, incidental, special or consequential damages, or damages from loss of profits, revenue, data or use of the supplies, equipment and/or services delivered under this Contract. This limitation of liability will not apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or negligence on the part of the Contractor; or (c) circumstances where the Contract expressly provides a right to damages, indemnification or reimbursement.

34. CANCELLATION OF CONTRACT

The Commonwealth reserves the right to cancel and terminate any resulting Contract, in part or in whole, without penalty, upon 60 days written notice to the Contractor. Any Contract cancellation notice shall not relieve the Contractor of the obligation to deliver any outstanding "Orders" issued prior to the effective date of cancellation.

35. CONTRACTUAL DISPUTES

In accordance with Section 2.2-4363 of the Code of Virginia, Contractual claims, whether for money or other relief, shall be submitted in writing to the purchasing agency no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim must be given to such agency 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 purchasing

agency shall render a final decision in writing within thirty (30) days after its receipt of the Contractor's written claim.

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

The Department of Information Technology, its officers, agents and employees, including, without limitation, the Contracts Manager, are executing this Agreement and any "Orders" issued hereunder, solely in its or their statutory and regulatory capacities as agent for the Commonwealth agency purchasing and receiving the goods or services identified in Attachment "A" to this Agreement or on the subsequent Order in question and need not be joined as a party to any dispute that may arise thereunder.

In the event of any breach by the Commonwealth, Contractor'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 Contractor's remedies include the right to terminate any license or support services hereunder.

36. CREDITS

Any credits due the State under the terms of this Contract may be applied against Contractor's invoices with appropriate information attached.

37. COMPLIANCE WITH FEDERAL LOBBYING ACT

- a. Contractor shall not, in connection with this Agreement, engage in any activity prohibited by 31 U.S.C.A. Section 1352 (entitled "Limitation on use of appropriated funds to influence certain Federal Contracting and financial transactions") or by the regulations issued from time to time thereunder (together, the "Lobbying Act"), and shall promptly perform all obligations mandated by the Lobbying Act in connection with this Agreement, including, without limitation, obtaining and delivering to the Commonwealth all necessary certifications and disclosures.
- b. Contractor is hereby advised that a significant percentage of the funds used to pay Contractor's invoices under this Agreement may be federal funds. Under no circumstances shall any provision of this Agreement be construed as requiring or requesting the Contractor to influence or attempt to influence any person identified in 31 U.S.C.A. Section 1352 (a) (1) in any matter.
- c. A representative of Contractor shall sign the certification attached as Attachment "B" and deliver such certification to the Commonwealth simultaneously with the execution and delivery of this Agreement. Contractor shall have the certification signed by a representative with knowledge of the facts and shall fulfill the promises of undertakings set forth in the certification.

38. CONTRACTOR'S REPORT OF SALES

The Contractor must report the quarterly dollar value, in U.S. dollars and rounded to the nearest whole dollar, of all sales under this Contract by calendar quarter; i.e., January through March, April through June, July through September, and October through December. The dollar value of a sale is the price paid by the user for products and services on a Contract order as recorded by the Contractor. The reported Contract sales value must include the Industrial Funding Adjustment, as delineated in paragraph entitled "Industrial Funding Adjustment". The Contractor shall provide this report in hard copy to the Controller, DIT, and a copy of the report to the Contracts Manager, DIT, both within 30 days after the end of each quarterly reporting period as defined herein. The report must show each individual item and quantities purchased and the purchaser. The report is required to be hard copy. DIT may at a later time, agree to an electronic version of the report, however, in lieu of any express agreement by both parties as to the electronic format, the Commonwealth will only accept a hardcopy version. The Contractor shall define "sale" prior to the first reporting period and then shall maintain that definition through out the term of this Agreement. Sale may be defined as; 1) when the Commonwealth pays the purchase price, or 2) when the Commonwealth accepts the Products or 3) other as defined by the Contractor.

39. INDUSTRIAL FUNDING ADJUSTMENT

The Contractor must pay DIT, an Industrial Funding Adjustment (IFA). The Contractor must remit the IFA within 30 days after the end of each quarterly reporting period as established in the clause entitled "Contractor's Report of Sales". The IFA equals two percent (2%) of the total quarterly sales reported. Contractor shall remit the IFA together with a copy of the Contractor's Report of Sales as delineated in the paragraph herein entitled "Contractor's Report of Sales". The IFA reimburses the Commonwealth and defrays the costs for IT procurement and the administration of the subsequent awards. The IFA amount due must be paid by check with identification of "Contract number", "report amounts", and "report period", on either the check stub or other remittance material. DIT may at its discretion, agree to an electronic funds transfer, in lieu of a check, however in the absence of an express written agreement from DIT that validates agreement, then the payment shall be made by check as described herein made payable to the Controller, DIT.

If the full amount of the IFA is not paid within 30 calendar days after the end of the applicable reporting period, it shall constitute a Contract debt to the Commonwealth of Virginia, and the State may exercise all rights and remedies available under law. Failure to submit sales reports, falsification of sales reports, and or failure to pay the IFA in a timely manner may result in termination or cancellation of this Contract. Willful failure or refusal to furnish the required reports, falsification of sales reports, or failure to make timely payment of the IFA constitutes sufficient cause for terminating this Contract for default.

It is the intent of the Commonwealth to capture 2% of all sales, including temporary reduced pricing, fire sales, one time sales, trade ins, promotional items that have been marked down and all sales to the Commonwealth under this Agreement.

40. eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION

The eVA Internet electronic procurement solution, web site portal www.eva.state.va.us, streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service, and complete the Ariba Commerce Services Network registration.

Vendors are strongly encouraged to register your company prior to submitting a bid or offer. Failure to register will result in your bid or offer being found non-responsive and rejected. All vendors must register in both the eVA and the Ariba Commerce Services Network Vendor Registration Systems.

- a. eVA Basic Vendor Registration Service: \$25 Annual Fee plus a Transaction Fee of 1% per order received. The maximum transaction fee is \$500 per order. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, and electronic bidding, as they become available.
- b. eVA Premium Vendor Registration Service: \$200 Annual Fee plus a Transaction Fee of 1% per order received. The maximum transaction fee is \$500 per order. eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments, and ability to research historical procurement data, as they become available.
- c. Ariba Commerce Services Network Registration. The Ariba Commerce Services Network (ACSN) registration is required and provides the tool used to transmit information electronically between state agencies and vendors. There is no additional fee for this service.

41. eVA BUSINESS-TO-GOVERNMENT CONTRACTS

The eVA Internet electronic procurement solution, web site portal www.eva.state.va.us, streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

Failure to comply with the above requirements will be just cause for the Commonwealth to reject your bid/offer or terminate this Contract for default.

Vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution and agree to comply with the following:

- a. Submit a fully executed American Management Systems, Inc., (AMS) Trading Partner Agreement, a copy of which can be accessed and downloaded from www.eva.state.va.us. AMS

is the Commonwealth's service provider to implement and host the eVA e-procurement solution.

- b. Provide an electronic catalog (price list) for items awarded under a term Contract. The format of this electronic catalog shall conform to the eVA Catalog Interchange Format (CIF) Specification that can be accessed and downloaded from www.eva.state.va.us.

42. CONTRACTS WITH BUYERS

The requirements Contract between the Contractor and DIT does not in itself constitute a purchase order for purchase of any product or service. During the term of the requirements Contract, Authorized Users will issue "Orders" to purchase the products and services required herein. Except for DIT "Orders", DIT shall not be liable for any of the obligations, acts, or omissions of any other Authorized User's "Orders" placed against this Contract.

43. DELIVERY

Delivery of all requested Contract items shall be made within seven (7) calendar days after receipt of purchase order.

44. DELIVERY POINT

Except when otherwise specified herein, all items shall be F.O.B. destination and delivered to any point within the Commonwealth of Virginia as directed by the Authorized Users.

45. OUTSOURCING OPTION

The Commonwealth reserves the right, at its sole option, to exercise the Outsourcing Option of the Microsoft State and Local Government Select v5.1, Microsoft Academic Select v5.1 and Microsoft State and Local Government Enterprise v6.0 License Agreements with a vendor or vendors other than the bidder to whom this Contract is awarded.

46. ORDERS

Authorized Users of this Contract may place "Orders" against this Contract by one of the following methods:

- A. Purchase Order
- B. Charge Card: An ordering and payment process under Contract with American Express (AMEX). Each order must not exceed \$5,000 of the then current charge card limit. Payment will be made to Contractor by AMEX within three business days.
- C. Delivery Order

D. Orders processed through eVA

This ordering authority is limited to issuing "Orders" for software available under this Contract. Under no circumstances shall any Agency, Institution, or other public body of the Commonwealth, have the authority to modify this Contract.

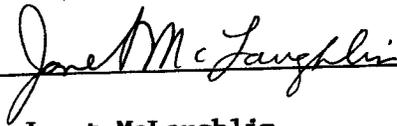
ATTACHMENT "B"
TO
IFB # 2002- 20
FOR THE
VIRGINIA DEPARTMENT OF _____
CERTIFICATION REGARDING LOBBYING

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

- a. 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.
- b. 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.
- c. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and Contracts under grants, loans and cooperative agreements) and that all subrecipients 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:

Janet McLaughlin

Organization:

Dell Marketing L.P.

Date:

March 13, 2002



COMMONWEALTH of VIRGINIA
Department of Information Technology
Acquisition Services Division
110 S. 7th Street
Richmond, Va. 23219

TDD VOICE-- TEL NO
804/371-8076

April 9, 2002

Ms. Janet McLaughlin
Dell Marketing L.P.
One Dell Way, RR8/8706
Round Rock, TX 78682

RE: IFB# 2002-020; VA-020409-DELL (Contract)

Dear Ms. McLaughlin:

Please accept this letter as your official notice of award for the above referenced procurement. A copy of the fully executed contract is enclosed with this notice. Please reference the contract number shown above in all future correspondence/invoices concerning this agreement.

Correspondence concerning acceptance of the products and services should be addressed to the attention of the individual identified, as shown in block #7, Page 1, of DIT Form 62 / the contract. The DIT point of contact for this procurement is Ms.Laverne Branch, and the DIT point of contact for the resulting contract is Staff.

Sincerely,

A handwritten signature in black ink, appearing to be "Jeff Davis", written over a large, stylized oval shape.

Jeff Davis
Contracts Manager

Enclosure
cc: File