



Commonwealth of Virginia  
Virginia Information Technologies Agency

**NCS SERVERS**

**Optional Use Contract**

Date: November 30, 2009

Contract #: VA-030727-NCS

Authorized User: State Agencies, Institutions, and other Public Bodies  
as defined in the VPPA

Contractor: NCS Technologies, Inc.  
9490 Innovation Loop  
Manassas, VA 20110

FIN: 54-1822366

Contact Person: Tran Vi  
888-746-4627, Ext. 1513  
Email: [tvi@ncst.com](mailto:tvi@ncst.com)

FOB: Destination

Delivery: 21 Days ARO

Term: December 1, 2009 – December 31, 2009

For Additional Information, Please Contact:

Contract Information:  
Greg Searce  
Strategic Sourcing Manager  
Phone: 804-416-6166  
E-Mail: [Gregory.searce@vita.virginia.gov](mailto:Gregory.searce@vita.virginia.gov)  
Fax: 804-416-6361

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>

**CONTRACT # VA-030727-NCS**  
**CONTRACT CHANGE LOG**

Change No.	Description of Change	Effective Date
1	Mod 1 adds additional equipment	
2	Mod 2 adds Substitutions to contract	3/15/04
3	Mod 3 changes specifications for Notebooks	8/24/04
4	Mod 4 - Equipment Substitution	11/30/04
5	Mod 5 - Equipment substitution and contract renewal and adds additional warranty provisions	5/12/05
6	Mod 6 - Equipment substitutions and addition	9/12/05
7	Mod 7 extends contract term	7/24/06
8	Mod 8 specifies equipment substitutions	6/19/06
9	Incorporates NG assignment rights for Executive Branch Agencies products and services	7/1/06
10	Mod 9 adds model NBT169 notebooks to the contract	9/5/06
11	Mod 10 adds Apollo Series Model CK2-A325 PC with processor of no less than 1.6GHz to the contract	2/2/07
12	Mod 11 adds Gemini Series Workstation with processor of no less than 1.6GHz to the contract	6/25/07
13	Mod 12 extends contract term and incorporates Request for Quote (RFQ) ordering process into the contract	7/24/07
14	Mod 13 adds Aurora 510V Series Notebooks with a processor of no less than 1.6GHz to the contract	9/17/07
15	Updates VITAs contact information	9/18/07
16	Mod 14 extends contract for 4 months	7/24/08
17	Mod 15 adds additional equipment	6/25/08
18	Mod 16 extends contract for 2 months	11/22/08
19	Mod 17 extends contract for an additional 4 months	2/1/09
20	Mod 18 extends contract for an additional 3 months	6/1/09
21	Mod 19 extends contract for an additional 2 months	9/1/09
22	Mod 20 extends contract for an additional 30 days for marketing and selling Servers or Maintenance on Servers ONLY	11/1/09
23	Mod 21 extends contract for an additional 30 days for marketing and selling Servers or Maintenance on Servers ONLY	12/1/09

Table 1  
Attachment "A"  
Contract VA-030727-NCS

NCS Servers

	<b>Cfg 1 Min Req.</b>	<b>Min.</b>	<b>NCS Specs</b>	<b>Cfg 2 Min Req</b>	<b>NCS Specs</b>
<b>Number of U's</b>	1		1	2	2
<b>Chassis</b>	Rack		Rackmount	Rack	Rackmount
<b>Max # of Processors</b>	2		2	2	2
<b>Included # of Processors</b>	1		1	1	1
<b>Processor Speed</b>			Intel Pentium III 1.13GHz	Intel Xeon, 1.8GHz	Intel Xeon 1.8 GHz CPU
<b>L2 Cache size</b>		512K		512K	512 KB of L2 cache
<b>Max Memory</b>		4GB		6GB	12 GB
<b>Included Memory</b>		512MB		1GB	Two 512 MB ECC registered DDR266 SDRAM DIMMs (total of 512 MB)
<b># Drive Bays</b>		2		3	9 (6 hot-swap HDD, 1 5.25" HH Ext., 1 slim CD-ROM, & 1
<b># Drives Included</b>		2		3	3
<b>Hard Disk Capacity per Drive (SCSI)</b>		18GB		36GB	Seagate Cheetah 10K.6 ST336607LC 36 GB HDD
<b>Hard Drive Speed</b>		10K RPM		10K RPM	10 K rpm
<b>Max Internal Capacity</b>		438 GB		438 GB	876 GB
<b># Externally Accessible Bays</b>		1		2	9
<b>Primary Controller</b>		RAID 0, Dual Channel		RAID 5, Dual Channel	Adaptec AIC-7902 dual-channel U320 SCSI on board plus Adaptec 2015S Zero Channel RAID 0, 1, 10, 5 adapter
<b>Network card</b>		Dual on board NICs, at least one with support for load balancing and failover		Dual on board NICs, at least one with support for load balancing and	On-board Intel 82546EB dual-port Gigabit Ethernet controller with support for load balancing and fail-over
<b>Fixed Optical Device</b>		CD-ROM Drive		CD-ROM Drive	slim CD-ROM drive
<b>Optical Device Speed</b>		24X		24X	24X

Table 1-1

Table 1  
Attachment "A"  
Contract VA-030727-NCS

<b>Number of PCI Slots</b>
<b>Remote Management Card</b>
<b>Operating System</b>
<b>Deployment Rails</b>
<b>Warranty</b>

2 Total	1 PCI-X (133 MHz, 64-bit) and 1 PCI low-profile (66 MHz, 64-bit)
Yes, included	Intelligent Platform Mgmt Interface (IPMI) 1.5 module with IPMI 1.5 server mgmt software
None	none included
Included	included
3 YR Parts & Labor, NBD	3 Yrs parts + on-site labor (next business day response)

3-4 Total	3 PCI-X low-profile (100 MHz, 64-bit) and 3 PCI low-profile
Yes, included	Intelligent Platform Mgmt Interface (IPMI) 1.5 module with IPMI 1.5 server mgmt software
None	none included
Included	included
3 YR Parts & Labor, NBD	3 Yrs parts + on-site labor (next business day response)

**OEM  
Model  
Reference  
Discount**

NCS
Reliance SPR SC1-S201
NCS MSRP
38.00%

NCS
Reliance SPR SC2-S187
NCS MSRP
38.00%

Table 2  
Attachment "A"  
Contract VA-030727-NCS

NCS Servers

<b>Number of U's</b>
<b>Chassis</b>
<b>Max # of Processors</b>
<b>Included # of Processors</b>
<b>Processor Speed</b>
<b>L2 Cache size</b>
<b>Max Memory</b>
<b>Included Memory</b>
<b># Drive Bays</b>
<b># Drives Included</b>
<b>Hard Disk Capacity per Drive (SCSI)</b>
<b>Hard Drive Speed</b>
<b>Max Internal Capacity</b>
<b># Externally Accessible Bays</b>
<b>Primary Controller</b>
<b>Network card</b>
<b>Fixed Optical Device</b>

<b>Cfg 3 Min Req</b>	<b>NCS Specs</b>
4	4
Rack	Rackmount
4	4
1	1
Intel Xeon, 1.8GHz	Intel Xeon MP 1.9 GHz CPU
1MB	1 MB of L2 cache
10GB	32 GB
2GB	Four 512 MB ECC registered DDR266 SDRAM DIMMs (total 2 GB - four-way interleave)
4	6 (4 hot-swap HDD, 1 slim CD-ROM, & 1 FDD bays)
4	4
36GB	Seagate Cheetah 10K.6 ST336607LC 36 GB HDD
10K RPM	10 K rpm
584 GB	584 GB
2	6
RAID 5, Dual Channel	Adaptec AIC-7899W dual-channel UL160 SCSI on-board plus Adaptec 200S Zero Channel RAID 0, 1, 10, 5 adapter
Dual on board NICs, at least one with support for load balancing and failover	On-board Intel 82550 10/100 Ethernet plus Intel PRO/100+ Server adapter to provide two ports with support for load balancing and fail over
CD-ROM Drive	slim CD-ROM drive

Table 2-1

Table 2  
Attachment "A"  
Contract VA-030727-NCS

<b>Optical Device Speed</b>
<b>Number of PCI Slots</b>
<b>Remote Management Card</b>
<b>Operating System</b>
<b>Deployment Rails</b>
<b>Warranty</b>

<b>24X</b>	<b>24X</b>
6 Total	6 PCI-X (100 MHz, 64-bit)
Yes, included	Intelligent Platform Mgmt Interface (IPMI) 1.5 module with IPMI 1.5 server mgmt software
None	none included
Included	included
3 YR Parts & Labor, NBD	3 Yrs parts + on-site labor (next business day response)

**OEM**  
**Model**  
**Reference**  
**Discount**

NCS
Reliance SPR SC4-S200
NCS MSRP
38.00%

Table 3  
Attachment "A"  
Contract VA-030727-NCS

NCS Options

<b>Discount</b>	<b>38%</b>
Change from rack to tower chassis	
2nd Processor Option Kit - Same Speed	
Additional 128MB RAM	
Additional 256MB RAM	
Additional 512MB RAM	
Additional 1GB RAM	
Increase each disk capacity to 36GB, 10K RPM, SCSCI Hot Plug (quote pricing for ALL disks)	
Increase each disk capacity to 73GB, 10K RPM, SCSCI Hot Plug (quote pricing for ALL disks)	
Increase each disk capacity to 146GB, 10K RPM, SCSCI Hot Plug (quote pricing for ALL disks)	
Increase each drive speed to 15K RPM (quote pricing for ALL disks)	
Increase each disk capacity to 36GB, 15K RPM, SCSCI Hot Plug (quote pricing for ALL disks)	
Increase each disk capacity to 73GB, 15K RPM, SCSCI Hot Plug (quote pricing for ALL disks)	
Remove Deployment Rails	
Internal DLT Tape Drive (40 GB/80 GB)	
External SDLT Tape Drive (110 GB/220 GB)	
Add CDRW Drive	
Add DVD Drive	
Add DVD/CDRW Drive	
Gigabit Network Connection	
Monitor Media and Documentation	
Linux Option	
Upgrade Warranty 4hr Response Time, M-F 8am-6pm	
Upgrade Warranty to 4hr Response Time, 7x24	
Add Win 2000 Server OS	
Remove Remote Management Card	
Upgrade from SCSI to Fibre Channel	

Table 4  
Attachment "A"  
Contract VA-030727-NCS

NCS Off-Spec

NCS Technologies	Servers	NCS MSRF	38.00%
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**MODIFICATION #21  
TO  
CONTRACT NUMBER VA-030727-NCS  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
NCS TECHNOLOGIES, Inc.**

This MODIFICATION #21 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and NCS Technologies, Inc., hereinafter referred to as "Contractor" relating to the modification of the above Contract. This Modification #21 is hereby incorporated into and made an integral part of Contract VA-030727-NCS (the Agreement), as modified.

The purpose of Modification #21 is to extend the contract from December 1, 2009 through December 31, 2009 to allow NCS to only market and sell servers and maintenance for servers. All other products/services from VA-030727-NCS are not permitted to be sold to Commonwealth of Virginia Authorized Users.

**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.**

NCS TECHNOLOGIES, INC.

BY: \_\_\_\_\_

NAME: Mark Christopher

TITLE: Executive Vice President

DATE: November 24, 2009

COMMONWEALTH OF VIRGINIA

BY: \_\_\_\_\_

NAME: Gregory H. Searce

TITLE: Strategic Sourcing Specialist

DATE: 11.30.09

**MODIFICATION #20  
TO  
CONTRACT NUMBER VA-030727-NCS  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
NCS TECHNOLOGIES, Inc.**

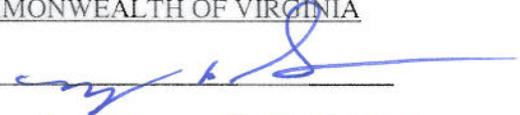
This MODIFICATION #20 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and NCS Technologies, Inc., hereinafter referred to as "Contractor" relating to the modification of the above Contract. This Modification #20 is hereby incorporated into and made an integral part of Contract VA-030727-NCS (the Agreement), as modified.

The purpose of Modification #20 is to extend the contract from November 1, 2009 through November 30, 2009 to allow NCS to only market and sell servers and maintenance for servers. All other products/services from VA-030727-NCS are not permitted to be sold to Commonwealth of Virginia Authorized Users.

**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.**

NCS TECHNOLOGIES, INC.  
BY:   
NAME: Mark Christopher  
TITLE: Executive VP & CFO  
DATE: October 26, 2009

COMMONWEALTH OF VIRGINIA  
BY:   
NAME: GREGORY H. SEARCE  
TITLE: STRATEGIC SOURCING SPECIALIST  
DATE: 10.30.09

**MODIFICATION #19  
TO  
CONTRACT NUMBER VA-030727-NCS  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
NCS TECHNOLOGIES, Inc.**

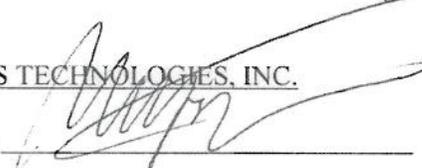
This MODIFICATION #19 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and NCS Technologies, Inc., hereinafter referred to as "Contractor" relating to the modification of the above Contract. This Modification #19 is hereby incorporated into and made an integral part of Contract VA-030727-NCS (the Agreement), as modified.

The purpose of Modification #19 is to extend the contract from September 1, 2009 through October 31, 2009 to allow NCS to only market and sell servers and maintenance for servers. All other products/services from VA-030727-NCS are not permitted to be sold to Commonwealth of Virginia Authorized Users.

**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.**

NCS TECHNOLOGIES, INC.

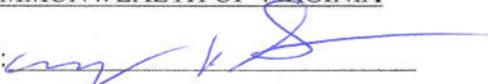
BY: 

NAME: Mark Christopher

TITLE: Executive VP & CFO

DATE: August 21, 2009

COMMONWEALTH OF VIRGINIA

BY: 

NAME: GREGORY H. SEARCE

TITLE: STRATEGIC SOURCING SPECIALIST

DATE: 8-24-09

**MODIFICATION #18  
TO  
CONTRACT NUMBER VA-030727-NCS  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
NCS TECHNOLOGIES, Inc.**

This MODIFICATION #18 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and NCS Technologies, Inc., hereinafter referred to as "Contractor" relating to the modification of the above Contract. This Modification #18 is hereby incorporated into and made an integral part of Contract VA-030727-NCS (the Agreement), as modified.

The purpose of Modification #18 is to extend the contract from June 1, 2009 through August 31, 2009 to allow NCS to only market and sell servers and maintenance for servers. All other products/services from VA-030727-NCS are not permitted to be sold to Commonwealth of Virginia Authorized Users.

**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.**

NCS TECHNOLOGIES, INC.

BY: \_\_\_\_\_

NAME: Mark Christopher

TITLE: Executive Vice President/CFO

DATE: May 21, 2009

COMMONWEALTH OF VIRGINIA

BY: \_\_\_\_\_

NAME: GREGORY H. SCARCE

TITLE: STRATEGIC SOURCING SPECIALIST

DATE: 5-21-09

**MODIFICATION #17  
TO  
CONTRACT NUMBER VA-030727-NCS  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
NCS TECHNOLOGIES, Inc.**

This MODIFICATION #17 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and NCS Technologies, Inc., hereinafter referred to as "Contractor" relating to the modification of the above Contract. This Modification #17 is hereby incorporated into and made an integral part of Contract VA-030727-NCS (the Agreement), as modified.

The purpose of Modification #17 is to extend the contract from February 1, 2009 through May 31, 2009 to allow NCS to only market and sell servers and maintenance for servers. All other products/services from VA-030727-NCS are not permitted to be sold to Commonwealth of Virginia Authorized Users.

**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.**

NCS TECHNOLOGIES, INC.

BY: \_\_\_\_\_

NAME: Mark Christopher

TITLE: Vice President

DATE: January 28, 2009

COMMONWEALTH OF VIRGINIA

BY: \_\_\_\_\_

NAME: GREGORY SCHARCE

TITLE: STRATEGIC SOURCING SPECIALIST

DATE: 1-28-09

**MODIFICATION #16  
TO  
CONTRACT NUMBER VA-030727-NCS  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
NCS TECHNOLOGIES, Inc.**

This MODIFICATION #16 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and NCS Technologies, Inc., hereinafter referred to as "Contractor" relating to the modification of the above Contract. This Modification #16 is hereby incorporated into and made an integral part of Contract VA-030727-NCS (the Agreement), as modified.

The purpose of Modification #16 is to extend the contract from November 22, 2008 through January 31, 2009.

These changes are effective immediately.

**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.**

NCS TECHNOLOGIES, INC.

BY: \_\_\_\_\_

NAME: Mark Christopher

TITLE: Vice President

DATE: October 20, 2008

COMMONWEALTH OF VIRGINIA

BY: \_\_\_\_\_

NAME: Gregory Scarce

TITLE: Strategic Sourcing Specialist

DATE: 11-3-08

**MODIFICATION #15  
TO  
CONTRACT NUMBER VA-030727-NCS  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
NCS TECHNOLOGIES, INC.**

This MODIFICATION #15 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and NCS Technologies, Inc, hereinafter referred to as "Contractor" relating to the modification of the above Contract. This Modification #15 is hereby incorporated into and made an integral part of Contract VA-030727-NCS (the Agreement), as modified.

The purpose of this Modification #15 is to document both parties' agreement concerning the addition of the following as identified herein.

**Desktops:**

*Artemis Series*

CT2-A340

CT2-I341

CT2-M346

CT2-A348

*Vantage Series*

FT1-F322

*Gemini Series*

CK3-A348

CK3-M346

CK3-I341

CK3-A340

*Galileo Series*

MA2-M342

**Notebooks:**

*Aurora Series*

Aurora 210A (NBS195)

Aurora 510V (NBS190)

Aurora 511A (NBS197)

Aurora 710V (NBS183)

*Atlas Series*

Atlas 620A (NBA185)

*Titanium Series*

Titanium III (NBT188)

Titanium III (NBT168)

Titanium IV (NBT196)

These changes are effective immediately.

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.

NCS TECHNOLOGIES, INC.

BY:  \_\_\_\_\_

NAME: Mark Christopher

TITLE: Vice President

DATE: 06/25/08

COMMONWEALTH OF VIRGINIA

BY:  \_\_\_\_\_

NAME: Doug Crenshaw

TITLE: Strategic Sourcing Manager

DATE: 06/25/08

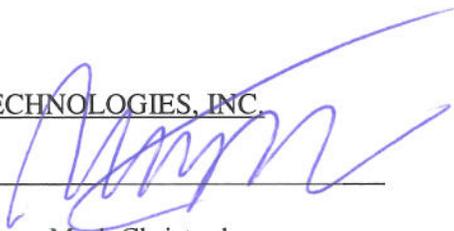
**MODIFICATION #14  
TO  
CONTRACT NUMBER VA-030727-NCS  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
NCS TECHNOLOGIES, INC.**

This MODIFICATION #14 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and NCS Technologies, Inc, hereinafter referred to as "Contractor" relating to the modification of the above Contract. This Modification #14 is hereby incorporated into and made an integral part of Contract VA-030727-NCS (the Agreement), as modified.

The purpose of this Modification #14 is to document both parties' agreement to extend the term of this contract from July 24, 2008 through November 21, 2008.

**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.**

NCS TECHNOLOGIES, INC.

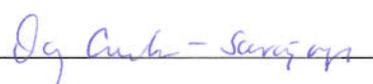
BY:  \_\_\_\_\_

NAME: Mark Christopher

TITLE: Vice President

DATE: 06/11/08

COMMONWEALTH OF VIRGINIA

BY:  \_\_\_\_\_

NAME: Jimmy MacKenzie

TITLE: Strategic Sourcing Consultant

DATE: 06/11/08

**MODIFICATION #13  
TO  
CONTRACT NUMBER VA-030727-NCS  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
NCS TECHNOLOGIES, Inc.**

This MODIFICATION #13 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and NCS Technologies, Inc., hereinafter referred to as "Contractor" relating to the modification of the above Contract. This Modification #13 is hereby incorporated into and made an integral part of Contract VA-030727-NCS (the Agreement), as modified.

The purpose of Modification #13 is to document both parties' agreement concerning the addition of the following as identified herein.

**Notebook**

Aurora 510v Series Notebooks with a processor of no less than 1.6GHz

These changes are effective immediately.

**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.**

NCS TECHNOLOGIES, INC.

BY: \_\_\_\_\_

NAME: Mark Christopher

TITLE: Vice President

DATE: September 11, 2007

COMMONWEALTH OF VIRGINIA

BY: \_\_\_\_\_

NAME: GREGORY SCARCE

TITLE: STRATEGIC SOURCING SPECIALIST

DATE: 9-17-07

**MODIFICATION #12  
TO  
CONTRACT NUMBER VA-030727-NCS  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
NCS TECHNOLOGIES, Inc.**

This MODIFICATION #12 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and NCS Technologies, Inc., hereinafter referred to as "Contractor" relating to the modification of the above Contract. This Modification #12 is hereby incorporated into and made an integral part of Contract VA-030727-NCS (the Agreement), as modified.

The purpose of this Modification #12 is to document both parties agreement to extend the term of this contract for one year, from July 24, 2007 to July 23, 2008.

The following term will be added:

“In addition to the supplier's responsibilities outlined in Section #32 to notify VITA of promotions and making such promotions available to all authorized users, Supplier also agrees to participate in an RFQ (Request for Quotation) process. Under the RFQ process, an authorized user may request that the Supplier provide a price quotation. The Supplier may offer a price discounted from the contract price without prior agreement from VITA; if Supplier offers a different price from the contract price via the RFQ process, the supplier shall not be in breach of the agreement. If Supplier offers a different price from the contract price to any authorized user without utilizing the RFQ process and without first obtaining VITA's agreement, the Supplier shall be in breach of the agreement as specified in Section 32 of the contract. Supplier may still offer promotions to all authorized user after providing at least 5 days written notice of such promotion to VITA.”

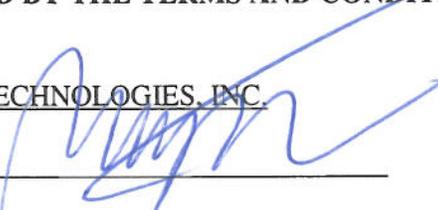
**Request for Quote (RFQ) Order Process:** This process involves contacting one or more contractors holding VITA statewide contracts and requesting that formal written quotes be provided. In most cases where an RFQ is used, the authorized user will define the required product(s) and/or service(s) and issue the RFQ to the appropriate contactors. Contractors will have a pre-determined amount of time to respond to the RFQ with qualitative responses (if requested) and a price quotation. If the authorized user elects to accept the quote and make a purchase, an eVA Direct Order, based upon and referencing the quote received is then issued. Any purchase that is a result of the RFQ process will be subject to the Terms and Conditions specified and outlined in the Contract and any subsequent modifications. Additional Terms and Conditions may be requested or mandated within the RFQ document.

These changes are effective immediately.

**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.**

NCS TECHNOLOGIES, INC.

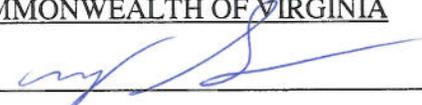
BY:  \_\_\_\_\_

NAME: Mark Christopher

TITLE: Vice President

DATE: July 10, 2007

COMMONWEALTH OF VIRGINIA

BY:  \_\_\_\_\_

NAME: GREGORY SEARLE

TITLE: STRATEGIC SOURCING SPECIALIST

DATE: 7-12-07

**MODIFICATION #11  
TO  
CONTRACT NUMBER VA-030727-NCS  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
NCS TECHNOLOGIES, Inc.**

This MODIFICATION #11 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and NCS Technologies, Inc., hereinafter referred to as "Contractor" relating to the modification of the above Contract. This Modification #11 is hereby incorporated into and made an integral part of Contract VA-030727-NCS (the Agreement), as modified.

The purpose of Modification #11 is to document both parties' agreement concerning the addition of the following as identified herein.

**PC**

Gemini Series Workstation with a processor of no less than 1.6GHz

These changes are effective immediately.

**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.**

NCS TECHNOLOGIES, INC.

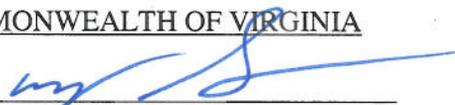
BY:  \_\_\_\_\_

NAME: Mark Christopher

TITLE: Vice President

DATE: June 20, 2007

COMMONWEALTH OF VIRGINIA

BY:  \_\_\_\_\_

NAME: GREGORY SEARCE

TITLE: STRATEGIC SOURCING SPECIALIST

DATE: 6-25-07

**MODIFICATION #10  
TO  
CONTRACT NUMBER VA-030727-NCS  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
NCS TECHNOLOGIES, Inc.**

This MODIFICATION #10 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and NCS Technologies, Inc., hereinafter referred to as "Contractor" relating to the modification of the above Contract. This Modification #10 is hereby incorporated into and made an integral part of Contract VA-030727-NCS (the Agreement), as modified.

The purpose of Modification #10 is to document both parties' agreement concerning the addition of the following as identified herein.

**PC**

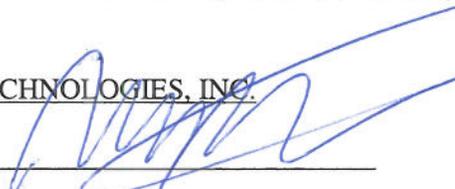
Apollo Series Model CK2-A325 with a processor of no less than 1.6GHz

These changes are effective immediately.

**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.**

NCS TECHNOLOGIES, INC.

BY:  \_\_\_\_\_

NAME: Mark Christopher

TITLE: Vice President

DATE: 1/31/07

COMMONWEALTH OF VIRGINIA

BY:  \_\_\_\_\_

NAME: GREGORY SCARCE

TITLE: STRATEGIC SOURCING SPECIALIST

DATE: 2-2-07

**MODIFICATION #9  
TO  
CONTRACT NUMBER VA-030727-NCS  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
NCS TECHNOLOGIES, Inc.**

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 NCS Technologies, Inc., 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-030727-NCS (the Agreement), as modified.

The purpose of Modification #9 is to document both parties' agreement concerning the addition of the following as identified herein.

**NOTEBOOKS**

Model NBT169 with a processor of no less than 1.6GHz

These changes are effective immediately.

**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.**

NCS TECHNOLOGIES, INC.

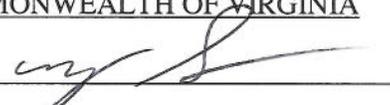
BY:  \_\_\_\_\_

NAME: Mark Christopher

TITLE: Vice President

DATE: 9/1/06

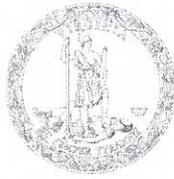
COMMONWEALTH OF VIRGINIA

BY:  \_\_\_\_\_

NAME: GREGORY SEAGLE

TITLE: STRATEGIC SOURCING SPECIALIST

DATE: 9-5-06



## COMMONWEALTH of VIRGINIA

July 28, 2006

Virginia Information Technologies Agency  
110 SOUTH SEVENTH STREET  
RICHMOND, VIRGINIA 23219

NCS Technologies, Inc.  
Tran Vi  
tvi@ncst.com  
9490 Innovation Loop  
Manassas, VA 20110

Re: Contract # VA-030727-NCS Notice of Assignment

Dear Tran Vi,

As you may be aware, in November 2005, the Commonwealth of Virginia and Northrop Grumman Information Technology, Inc. formed a partnership to modernize the state's information technology infrastructure. Under the Comprehensive Infrastructure Agreement arising from this partnership, Northrop Grumman will be providing the Commonwealth with the equipment and services necessary to build and operate IT infrastructure effective July 1, 2006. You may have already been contacted by Northrop Grumman to establish a contract for future goods and services.

In conjunction with those efforts, Northrop Grumman will be managing the Commonwealth's Executive Branch agencies' (agency listing attached) service/maintenance needs covered by your contract and, therefore, your assistance is requested. The Commonwealth hereby requests your consent to assign to Northrop Grumman any services/maintenance previously purchased under this contract, effective July 1, 2006, including all rights, interest and obligations with the above contract or such unexpired warranty services from the Purchase Orders ("P.O.") attached for the sole purpose of having Northrop Grumman and its contractors provide the Commonwealth with the services set forth in the Comprehensive Infrastructure Agreement.

Attached please find P.O.'s that are currently active from the Commonwealth. Please review and confirm that these are accurate and that there are no others outstanding at this time. If no P.O.'s are attached, please confirm that the Commonwealth has NO active P.O.'s for the above contract number that would be affected by this partnership.

Any future maintenance/service orders placed by Northrop Grumman should be invoiced directly to Northrop Grumman. Please send invoices to the address listed on the Northrop Grumman Purchase Order.

If this assignment meets with your approval, please have this letter executed as provided below and return to me either by fax at 804-371-5969 or by PDF attachment via email.

Should you have any questions regarding this notice, please do not hesitate to contact me. Your cooperation in support of the Commonwealth's new partnership is greatly appreciated.

Sincerely,

Tammy Trexler  
Tammy.Trexler@vita.virginia.gov  
Supply Chain Management  
VITA

Acknowledge and agree to the above assignment:

«SUPPLIER»

By (Signature): 

Name: TRAN VI

Title: DIRECTOR, SALES ADMINISTRATION

Date: 8/3/06

Cc: George Vrtiak

**MODIFICATION #7 # 8**  
**TO**  
**CONTRACT NUMBER VA-030727-NCS**  
**BETWEEN THE**  
**COMMONWEALTH OF VIRGINIA**  
**AND**  
**NCS TECHNOLOGIES, Inc.**

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 NCS Technologies, Inc., 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-030727-NCS (the Agreement), as modified.

The purpose of Modification #7 is to document both parties' agreement concerning the substitution of specific equipment as identified herein.

**DESKTOPS**

Configuration #4 Apollo CM3-A250 replaced with Vantage FT1-F300  
Configuration #5 Apollo CK2-A256 replaced with Artemis CT1-A277  
Configuration #6 Apollo CD4-A256 replaced with Apollo CD4-A277  
Configuration #7 Apollo CM3-A258 replaced with Apollo CK2-A277

**NOTEBOOKS**

Configuration #1 Atlas M6 NBA120-TS09 replaced with Atlas 620A NBA148-TG16  
Configuration #2 Atlas M6 NBA120-TS09 replaced with Atlas 620V NBA151-TG21  
Configuration #3 Atlas M6 NBA120-TS09 replaced with Atlas 960V NBA160-TG11

Delete configuration #4 Atlas M3 NBA120-TS09  
Delete configuration #5 Atlas 320A NBA141-TS06

These changes are effective immediately.

**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.**

NCS TECHNOLOGIES, INC.

BY: \_\_\_\_\_

NAME: Mark Christopher

TITLE: Vice President

DATE: June 15, 2006

COMMONWEALTH OF VIRGINIA

BY: \_\_\_\_\_

NAME: GREGORY SCHARCE

TITLE: STRATEGIC SOURCING SPECIALIST

DATE: 6-19-06

**MODIFICATION #7  
TO  
CONTRACT NUMBER VA-030727-NCS  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
NCS TECHNOLOGIES, INC.**

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 NCS Technologies, Inc, 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-030727-NCS (the Agreement), as modified.

The purpose of this Modification #7 is to document both parties' agreement to extend the term of this contract from July 24, 2006 through July 23, 2007.

**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.**

NCS TECHNOLOGIES, INC.

BY:  \_\_\_\_\_

NAME: Mark Christopher

TITLE: Vice President

DATE: 3/28/26

COMMONWEALTH OF VIRGINIA

BY:  \_\_\_\_\_

NAME: Doug Crenshaw

TITLE: STRATEGIC Security Mgr

DATE: 4/13/06

**MODIFICATION #6  
TO  
CONTRACT NUMBER VA-030727-NCS  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
NCS TECHNOLOGIES, INC.**

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 NCS Technologies, Inc, 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-030727-NCS (the Agreement), as modified.

The purpose of this Modification #6 is to document both parties' agreement concerning the substitution and addition of the specific equipment as identified herein:

Replace the following:

CM3-A239 with CK2-A269

CM3-A233 with CD4-A269

CM3-A245 with CM3-A269

Additional Desktop Configuration CT1-A269

**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.**

NCS TECHNOLOGIES, INC.

BY: \_\_\_\_\_

NAME: Mark Christopher

TITLE: Vice President

DATE: 9/9/05

COMMONWEALTH OF VIRGINIA

BY: \_\_\_\_\_

NAME: Doug Crenshaw

TITLE: Strategic Sourcing Mgr

DATE: 9/12/05

**MODIFICATION #5  
TO  
CONTRACT NUMBER VA-030727-NCS  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
NCS TECHNOLOGIES, INC.**

This MODIFICATION #5 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and NCS Technologies, Inc, hereinafter referred to as "Contractor" relating to the modification of the above Contract. This Modification #5 is hereby incorporated into and made an integral part of Contract VA-030727-NCS (the Agreement), as modified.

The purpose of this Modification #5 is to document both parties' agreement concerning the substitution of the specific equipment as identified herein:

Notebook Configuration #1 is replaced by the Atlas 710A NBA 125-TS14  
Notebook Configuration #2 is replaced by the Atlas 710A NBA 125-TS14  
Notebook Configuration #3 is replaced by the Atlas 710V NBA 138-TS11  
Notebook Configuration #4 is replaced by the Atlas 610A NBA 135-TS05

Additional Desktop Configuration #4: Apollo CM3-A250  
Additional Desktop Configuration #5: Apollo CK2-A256  
Additional Desktop Configuration #6: Apollo CD4-A256  
Additional Desktop Configuration #7: Apollo CM3-A258

New Notebook Configuration #5: Atlas 320A NBA 136-TS12  
New Notebook Configuration #6: Atlas 910A NBA 141-TS06

New Server Configuration #4: Reliance SPR SR2-S243  
New Server Configuration #5: Reliance IV CW1-S240  
New Server Configuration #6: Reliance IV CW1-T259

**Reference: Item #40, "Term":**

Both above-referenced parties hereby agree to extend the term of Contract VA-030727-NCS from July 24, 2005 through July 23, 2006.

**Reference: Item #73, Warranty":**

Both of the above-reference parties agree to add the following provisions to this section:

*Notebooks:*

"NCS Express Platinum": Extends overnight replacement period from third year to fourth year. Available only at time of system purchase. List \$175, VITA \$161.

*Workstations:*

"NCS Platinum Plus One": Warranty can be extended from third year to fourth year, available only at time of system purchase. List \$150, VITA \$138.

"NCS Platinum Plus Two": Extends on-site service period from three to five years. Available only at time of system purchase. List \$200, Vita \$184.

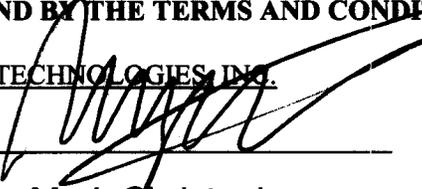
*Servers:*

"NCS Platinum LTS Plus One": Extends on-site warrant period from three to four years. Available only at time of system purchase. List \$300, Vita price \$275

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-030727-NCS and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

**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.**

NCS TECHNOLOGIES, INC.

BY:  \_\_\_\_\_

NAME: Mark Christopher

TITLE: Vice President

DATE: May 10, 2005

COMMONWEALTH OF VIRGINIA

BY:  \_\_\_\_\_

NAME: Doug Crenshaw

TITLE: Senior Service Consultant

DATE: 5-10-05

**MODIFICATION #4  
TO  
CONTRACT NUMBER VA-030727-NCS  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
NCS TECHNOLOGIES, INC.**

This MODIFICATION #4 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and NCS Technologies, Inc, hereinafter referred to as "Contractor" relating to the modification of the above Contract. This Modification #4 is hereby incorporated into and made an integral part of Contract VA-030727-NCS (the Agreement), as modified.

The purpose of this Modification #3 is to document both parties' agreement concerning the substitution of the specific equipment as identified herein:

Desktop Configuration #1 is replaced by the Apollo CM3-A239  
Desktop Configuration #2 is replaced by the Apollo CM3-A233  
Desktop Configuration #3 is replaced by the Apollo CM3-A245

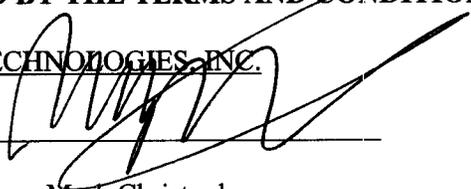
Notebook Configuration #1 is replaced by the Atlas M6 NBA120-TS09  
Notebook Configuration #2 is replaced by the Atlas M6 NBA120-TS09  
Notebook Configuration #3 is replaced by the Atlas M6 NBA120-TS09  
Notebook Configuration #4 is replaced by the Atlas M3 NBA112-TS05

Server Configuration #1 is replaced by the Reliance SPR Model SC1-S201  
Server Configuration #2 is replaced by the Reliance SPR Model SC2-S187  
Server Configuration #3 is replaced by the Reliance SPR Model SC4-S200

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-030727-NCS and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

**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.**

NCS TECHNOLOGIES, INC.

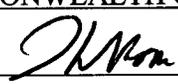
BY:  \_\_\_\_\_

NAME: Mark Christopher

TITLE: Vice President

DATE: 11/17/04

COMMONWEALTH OF VIRGINIA

BY:  \_\_\_\_\_

NAME: Timothy W. Moore

TITLE: Purchasing & Contract Manager

DATE: 11/20/04

**MODIFICATION #3  
TO  
CONTRACT NUMBER VA-030727-NCS  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
NCS TECHNOLOGIES, INC.**

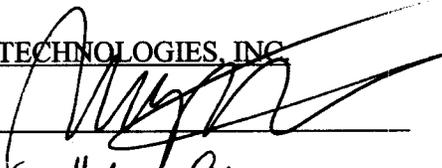
This MODIFICATION #3 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and NCS Technologies, Inc, hereinafter referred to as "Contractor" relating to the modification of the above Contract. This Modification #3 is hereby incorporated into and made an integral part of Contract VA-030727-NCS (the Agreement), as modified.

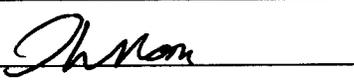
The purpose of this Modification #3 is to document both parties' agreement concerning the change in the specifications for Notebook requirements, as delineated in Appendix "A", all "Notebook" configurations.

**Floppy disk drives are no longer a mandatory requirement of notebook specifications. They are an option.**

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-030727-NCS and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

**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.**

NCS TECHNOLOGIES, INC  
BY:   
NAME: Mark Cunningham  
TITLE: Vice President  
DATE: 8/23/04

COMMONWEALTH OF VIRGINIA  
BY:   
NAME: Timothy W. W. W.  
TITLE: Operator Mgr  
DATE: 8/24/04

**MODIFICATION #2  
TO  
CONTRACT NUMBER VA-030727-NCS  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
NCS TECHNOLOGIES, INC.**

This MODIFICATION #2 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and NCS Technologies, Inc, hereinafter referred to as "Contractor" relating to the modification of the above Contract. This Modification #2 is hereby incorporated into and made an integral part of Contract VA-030727-NCS (the Agreement), as modified.

The purpose of this Modification #2 is to document both parties' agreement concerning substitution of specific equipment as identified herein.

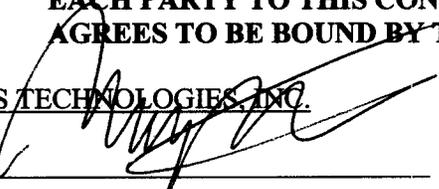
<u>Desktop Model</u>	<u>SKU</u>	<u>Discount</u>
Apollo CM3-A122	87-CM3-122-0-3	18.5%
<i>Replaces:</i>		
Apollo CM3-1169	87-CM3-169-1-3	18.5%
Apollo CM3-I190	87-CM3-190-0-3	18.5%
<i>Replaces:</i>		
Apollo CM3-1169	87-CM3-169-2-3	18.5%
<u>Notebook Model</u>	<u>SKU</u>	<u>Discount</u>
Questa U6 NBQ115-TS05	88-NBQ-115-03	17.5%
<i>Replaces:</i>		
Atlas L2 NBA107-TS05	8-NBA-107-0-3	17.5%
Questa U6 NBQ115-TS05	88-NBQ-115-1-3	15.5%
<i>Replaces:</i>		
Atlas L2 NBA107-TS05	8-NBA-107-1-3	17.5%
Questa U6 NBQ115-TS09	88-NBQ-115-2-3	17.5%
<i>Replaces:</i>		
Atlas L2 NBA101-TS08	88-NBA-101-0-3	17.5%

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-030727-NCS 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.**

NCS TECHNOLOGIES, INC.

BY: 

NAME: Mark Christopher

TITLE: Vice President

DATE: 03/10/04

COMMONWEALTH OF VIRGINIA

BY: 

NAME: Timothy W Moore

TITLE: General Manager

DATE: 3/15/04

**MODIFICATION #1  
TO  
CONTRACT NUMBER VA-030727-NCS  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
NCS TECHNOLOGIES, INC.**

This MODIFICATION #1 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and NCS Technologies, Inc, hereinafter referred to as "Contractor" relating to the modification of the above Contract. This Modification #1 is hereby incorporated into and made an integral part of Contract VA-030727-NCS (the Agreement), as modified.

The purpose of this Modification #1 is to add the following desktop and notebook computers to the aforementioned contract. All approved equipment is identified herein, as listed on Contractor's "Appendices C and D", attached to this document and incorporated herein and made an integral component of this Modification #1. Discounts are from the Contractor's publicly available list price posted on the COV/NCS website.

<u>Desktop Model</u>	<u>SKU</u>	<u>Discount</u>
Apollo CM3-1169	87-CM3-169-0-3	18.5%
Apollo CM3-1169	87-CM3-169-1-3	18.5%
Apollo CM3-1169	87-CM3-169-2-3	18.5%
Options	As listed in Appendix C	18.5%

<u>Notebook Model</u>	<u>SKU</u>	<u>Discount</u>
Atlas L2 NBA107-TS05	8-NBA-107-0-3	17.5%
Atlas L2 NBA107-TS05	8-NBA-107-1-3	17.5%
Atlas L2 NBA101-TS08	88-NBA-101-0-3	17.5%
Atlas M3 NBA112-TS05	88-NBA-112-0-3	17.5%
Options	As listed in Appendix C	17.5%

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-030727-NCS 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.**

NCS TECHNOLOGIES, INC.

COMMONWEALTH OF VIRGINIA

BY: \_\_\_\_\_

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

**MASTER AGREEMENT  
CONTRACT VA-030727 - NCS  
BETWEEN  
THE COMMONWEALTH OF VIRGINIA  
AND  
NCS TECHNOLOGIES, INC.**

**1. SCOPE OF CONTRACT**

This is an agreement (the "Agreement") between the Commonwealth of Virginia ("Commonwealth") and NCS Technologies, Inc. (the "Contractor"), a corporation having its principal place of business at 9490 Innovation Loop, Manassas, Virginia 20110. This Agreement contains the Contractual terms and conditions by which the Commonwealth and Contractor will establish a Master Contract for the use by State Agencies, Institutions, and other public bodies as defined in § 2.2-4301 of the Virginia Public Procurement Act (VPPA), and hereinafter referred to as "Authorized Users", to acquire Servers ("Products"), Services, and Software (Software/Firmware), pursuant to the Commonwealth's Request For Proposal #2003-040, (the "RFP") and the Contractor's proposal, in response thereto.

**2. INTERPRETATION OF AGREEMENT**

As used in this Agreement, "software" and "software product" shall include all related materials and documentation, whether in machine-readable or printed form.

The documents comprising this Agreement, and their order of precedence in case of conflict, are: (1) this document, consisting of Terms and Conditions labeled 1 through 78, Attachment A, entitled Product Pricing, Attachment B entitled Reporting Format, and Attachment C entitled Lobbying Certificate; (2) the specific sections of the Contractor's proposal dated May 5, 2003 in response the following sections of the Commonwealth's RFP 2003-40 dated April 4, 2003 and amendments thereto: Section III. A entitled "Products and Services", Section III. B entitled "Pricing, Quality, and Service Requirements", and Appendices C, D, E, F, and G; Contractor written response (undated) to Evaluation Committee questions raised during Oral Presentations; and (3) all executed Orders and Attachments referencing this Agreement. The foregoing documents represent the complete and final agreement of the parties with respect to the subject matter of this Agreement.

If any term or condition of this Agreement is found to be illegal or unenforceable, it shall be severed, and the validity of the remaining terms and conditions shall not be affected.

Nothing in this Agreement shall be construed as an express or implied waiver of the Commonwealth's sovereign or Eleventh Amendment immunity, or as a pledge of its full faith and credit.

### **3. EXCLUSIVITY OF TERMS AND CONDITIONS**

The Virginia Information Technologies Agency (VITA) will not sign or execute any additional contract, license or other agreement, including shrink-wrap Software, containing contractual terms and conditions as a result of this procurement. Any documents signed by persons other than the Contracts Manager, VITA, shall have no validity and the attached Terms and Conditions shall supersede all such agreements. Vendors should read and understand all of the Terms and Conditions prior to submitting a bid.

### **4. VENDORS MANUAL**

This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at [www.dgs.state.va.us/dps](http://www.dgs.state.va.us/dps) under "Manuals."

### **5. 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.

### **6. ANTI-DISCRIMINATION**

By submitting their offers, offerors 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.

## **7. ETHICS IN PUBLIC CONTRACTING**

By submitting their offers, offerors certify that their offers are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their offer, 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.

## **8. IMMIGRATION REFORM AND CONTROL ACT OF 1986**

By submitting their offers, offerors 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.

## **9. DEBARMENT STATUS**

By submitting their offers, offerors certify that they are not currently debarred by the Commonwealth of Virginia from submitting offers 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.

## **10. 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.

## **11. MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR IFBs AND RFPs**

Failure to submit an offer on the official state form provided for that purpose shall be a cause for rejection of the offer. Modification of or additions to any portion of the Request for Proposal may be cause for rejection of the offer; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a offer as non-responsive. As a precondition to its acceptance, the Commonwealth may, in its sole discretion, request that the offeror withdraw or modify non-responsive portions of a offer 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.

## **12. PAYMENT**

### **a. To Prime Contractor:**

- 1) 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).
- 2) 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.
- 3) 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.
- 4) 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.

5) **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).

**b. To Subcontractors:**

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

(a) 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

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

2) 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.

**13. QUALIFICATIONS OF OFFERORS**

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

#### **14. COMMENCEMENT OF ACCEPTANCE TESTING**

The Commonwealth shall "Acceptance Test" the equipment within thirty (30) days of delivery. The "Acceptance Test" shall consist of forty-eight (48) consecutive business hours in conformance with the Contractor's technical specifications and functional descriptions as delineated herein. All "Acceptance Test" failures shall be reported to Contractor for return. Any failures not specifically identified to the Contractor within thirty (30) days shall be considered to have successfully passed the Acceptance Test.

#### **15. REQUIRED PERFORMANCE LEVEL**

To qualify for acceptance, all Equipment must concurrently perform in accordance with the technical specifications and functional descriptions, as contained or referenced in this Agreement, calculated over a period of forty-eight (48) consecutive business hours. The Commonwealth shall not pay any charges, either beforehand or retroactively, associated with the Contractor's requirement to achieve this performance level. If any Equipment does not meet the standard of performance during the initial forty-eight (48) consecutive business hours, then, at the Commonwealth's sole discretion, the acceptance period shall continue on a day-to-day basis until all Equipment concurrently meet the standard of performance for forty-eight (48) consecutive business hours.

Should it be necessary, the Commonwealth may delay the start of the acceptance period, but such a delay shall not exceed thirty (30) consecutive days from the date of receipt of Equipment.

#### **16. ACCEPTANCE**

The Equipment shall be deemed accepted on the first day after successful completion of the acceptance period. Upon request, the Commonwealth shall provide written confirmation of acceptance. If the standard of performance has not been met after thirty (30) calendar days have elapsed from the start of the acceptance period, the Commonwealth may require a replacement to be provided or may avail itself of the remedies for breach.

## 17. ASSIGNMENT OF CONTRACT

To the fullest extent permitted by law, the parties agree that Contractor's rights under this Agreement shall not be assignable, in whole or in part, to any other party without the Commonwealth's written consent, and that any purported assignment or transfer without such consent shall be null and void. If any law limits the right of the parties to prohibit assignment or nonconsensual assignments, the effective date of the assignment shall be as follows. The Contractor shall give the purchasing office prompt written notice of the assignment, signed by authorized representatives of both the Contractor and the assignee. This written notice shall be on the Virginia Information Technologies Agency's (VITA's) "Assignment Notice / Payment Instruction" form and shall provide all information requested on that form. Copies of the form may be obtained from the Contracts Manager VITA. Upon VITA's acknowledgment of receipt of the properly executed form, the Assignee shall notify the using agency or agencies receiving the goods or services of the assignment and shall supply the using agency with a copy of the properly executed form. Any payments made prior to the using agency's receipt of such notification and form shall not be covered by this assignment.

In the event the Commonwealth receives any notice from a third party claiming to be an assignee of any rights of the Contractor under this Agreement, Contractor agrees that payment or other performance in respect of those rights shall not be due until at least thirty days after the Commonwealth's receipt of the notice required by the above paragraph or receipt of a similarly executed notice confirming the absence or revocation of the purported assignment. The Office of Acquisition Services of VITA shall promptly notify the Contractor of any assignment notice it receives.

## 18. MODIFICATIONS

This Contract may be modified in accordance with 2.2-4309 of the Code of Virginia. The representatives noted below may only make such modifications. No modifications to this Contract shall be effective unless it is in writing and signed by the duly authorized representative of both parties. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent to breach is in writing.

Any Contract issued on a firm fixed price basis may not be increased more than twenty five percent (25%) or \$50,000.00 whichever is greater, without the approval of the Governor of the Commonwealth of Virginia or his authorized designee.

Authorized Representatives:

Commonwealth of Virginia:  
Contracts Manager, VITA

Contractor:  
Mark Christopher  
Vice President  
NCS Technologies, Inc.

## **19. 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.

## **20. USE OF BRAND NAMES**

Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict offerors to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article that the public body, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The offeror is responsible to clearly specify and identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified.

## **21. TRANSPORTATION AND PACKAGING**

By submitting their offer, all offerors certify and warrant that the price offered for F.O.B. 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.

## **22. INSURANCE**

By signing and submitting a proposal under this solicitation, the offeror certifies that if awarded the Contract, it will have the following insurance coverage at the time the Contract is awarded. For construction Contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the Code of Virginia. The offeror further certifies that the Contractor and any subcontractors will maintain these insurance coverages during the entire term of the Contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

### **INSURANCE COVERAGES AND LIMITS REQUIRED:**

- a. Worker's Compensation - Statutory requirements and benefits.

- b. Employers Liability - \$100,000.
- c. Commercial General Liability - \$500,000 combined single limit. Commercial General Liability is to include Premises/Operations Liability, Products and Completed Operations Coverage, and Independent Contractor's Liability or Owner's and Contractor's Protective Liability. The Commonwealth of Virginia must be named as an additional insured when requiring a Contractor to obtain Commercial General Liability coverage.

### **23. 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 ten (10) days. Additionally, a public posting of the award will be available on the eVA webpage at <http://awards.dgs.state.va.us/Award-View.asp>.

### **24. 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.

### **25. NONDISCRIMINATION OF CONTRACTORS**

An 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.

## **26. eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION**

The eVA Internet electronic procurement solution, web site portal [www.eva.state.va.us](http://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 prior to submitting a bid or offer. Failure to register will result in the bid 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.

Effective until July 1, 2003, the Commonwealth will direct AMS not to invoice for the 1% transaction fee for orders issued during the period July 1, 2002, through June 30, 2003, to allow additional time for vendors to become electronically enabled. AMS will continue to invoice for transaction fees accrued prior to July 1, 2002. To enable vendors to analyze the future impact of transaction fees, AMS will issue "no pay" invoices for transaction fees that would normally accrue during the period of July 1, 2002, through June 30, 2003. For contracts that extend beyond June 30, 2003, contractors may request price adjustments to incorporate the eVA transaction fee, as provided in the Price Escalation/De-escalation clause in the Terms and Conditions of the contract.

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.

## **27. eVA BUSINESS-TO-GOVERNMENT CONTRACTS**

The eVA Internet electronic procurement solution, web site portal [www.eva.state.va.us](http://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 requirements in a. and b. below 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](http://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](http://www.eva.state.va.us).

## **28. 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 de-installation 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.

**29. 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 hardware or software performance, or other physical design or functional characteristics of that which is offered.

**30. DELIVERY DATE**

The Contractor shall deliver the Products, and Software ready for testing within twenty-one (21) days After Receipt of the Order (ARO). If delivery of all Products and Software is not completed within the time specified, the Commonwealth may cancel any individual Order without further obligation. The Commonwealth may postpone any delivery date by notifying the Contractor at least seven (7) days prior to the delivery date. However, the delivery date shall not be postponed more than a total of thirty (30) days.

**31. RISK OF LOSS OR DAMAGE**

The Contractor shall have the risk of loss or damage to all equipment until clear and unrestricted title to such equipment is transferred to the Commonwealth.

**32. PRIME CONTRACTOR SPONSORED PRODUCT PROMOTIONS**

The Prime Contractor, at his/her discretion, is allowed to sponsor product / Service promotions during the Contract term or any extensions thereof under the following conditions:

- 1) Prime Contractor is required to provide in writing to VITA, at least 5 days prior to the promotion, the dates of the promotion or the duration of the promotion to include the commencement date and the ending date; the acceptable writing may be e-mail, or correspondence via USPS or other, and

- 2) Prime Contractor is required to identify in writing, the exact products / services covered in the promotion, and
- 3) Prime Contractor is required to identify in writing, the pricing during the promotion or the percentage discount, and
- 4) All Prime Contractor Sponsored Product / Service Promotions are required to be available to all Authorized Users of the Contract, should the Prime Contractor request a promotion that would be limiting, either through product configuration or quantities of products, the Commonwealth at its discretion, will not provide a written agreement. Both parties agree that promotions shall not target any one Authorized User, or a few Authorized Users, and
- 5) All Prime Contractor sponsored Product / Service Promotions shall be mutually agreed to in writing, and Prime Contractor shall be in breach of the Agreement in the absence of a writing from both parties; the writing may be e-mail or correspondence via USPS or other, and
- 6) In any instance of conflict between this clause, "Prime Contractor Sponsored Product / Service Promotions" and the Agreement, this clause shall take precedence. And
- 7) In any event wherein the Prime Contractor proposes prices that are different than the Contract prices to any Authorized User, without first obtaining mutual agreement in the format as identified herein, the Prime Contractor shall be in breach of the Agreement and the Commonwealth shall have all remedies available under Contract and law. And
- 8) The Commonwealth, at its discretion, may assist in advertising the promotion. This assistance will consist of advertising space on its (Commonwealth's) various web sites, or other assistance at its (Commonwealth's) discretion.

### **33. EQUIPMENT CONDITION**

All Equipment to be supplied by Contractor shall be new Equipment

### **34. AVAILABILITY OF EQUIPMENT AND SOFTWARE**

The Contractor represents and warrants that all Products were formally announced for marketing purposes before execution of this Agreement or, in the case of subsequent Orders, before execution of such Orders.

### **35. PATENT/COPYRIGHT PROTECTION**

Contractor, at its own expense, shall defend any suit brought against the Commonwealth for the infringement of patents, copyrights or trade secrets enforceable in the United States if the claim of infringement is alleged to relate to or arise from the Contractor's or Commonwealth's use of any equipment, software, materials or information prepared, developed or delivered in connection with performance of this Agreement. In such suit, Contractor shall indemnify the Commonwealth, its agents, officers and employees for any loss, liability or expense incurred as a result of such suit.

The purchasing agency shall notify the Contractor of such suit within a reasonable time after learning of it and shall give the Contractor the full right and opportunity to conduct the defense of the suit, subject however to the requirements of Section 2.2-510 and Section 2.2-514 of the Code of Virginia or any successor statute. If principles of governmental or public law are involved, the Commonwealth may, at its option and expense, participate in the defense of the suit.

The Contractor shall not be required to indemnify the Commonwealth for liability arising solely out of the Commonwealth's own specifications or design or solely from the combination of equipment or software furnished hereunder with any equipment or software not supplied by the Contractor.

If, any Product or Service becomes, or in the Contractor's opinion, is likely to become, the subject of a claim of infringement, Contractor may, at its option, provide non-infringing substitutes that are satisfactory to the Commonwealth, or at Contractor's option and expense, may obtain the right for the Commonwealth to continue the use of such Product or Service.

If the use of such equipment or software by the Commonwealth is prevented by permanent injunction or by Contractor's failure to procure the right for the Commonwealth to continue using the software, the Contractor agrees to take back the infringing equipment, software, materials or information and refund the total amount the Commonwealth has paid Contractor under this Agreement, less one half (1/2%) percent of the total paid for each month of use by the Commonwealth. This obligation is in addition to the obligations cited in the first four subparagraphs above.

### **36. 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.

### **37. 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.

### **38. TITLE TO EQUIPMENT**

Clear and unrestricted title to all equipment purchased under this Agreement shall pass to the Commonwealth upon payment of the purchase price.

#### **39. PRICE PROTECTION/ADJUSTMENTS**

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.

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 the date the price decrease is announced to the general public.

#### **40. TERM**

This Agreement shall take effect on the date of its final execution by both parties, and shall continue in full force for two (2) years, "initial Term". The Commonwealth at its sole discretion may extend this Agreement for three (3) additional one (1) year periods. The Commonwealth will issue a written notification to the Contractor stating the extension period, 30 days prior to the expiration of any current Term.

#### **41. 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.

#### **42. 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 orders, invoices or correspondence directly relating to this agreement.

#### **43. 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.

#### **44. SITE PREPARATION**

- a. Equipment environmental specifications, if required, for the equipment to be delivered under this Contract shall be furnished in writing by the Contractor upon award. These specifications shall be in such detail to ensure that the equipment to be installed shall operate efficiently from the point of view of environment.
- b. The State shall prepare the site at its own expense and in accordance with the equipment environmental specifications provided by the Contractor.

#### **45. SUPPLIES**

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

#### **46. TERMINATION FOR CONVENIENCE**

The Commonwealth may terminate this Contract in whole or in part, for Convenience at any time by submitting to the Contractor, a writing, sixty (60) days prior to the date of termination. The Commonwealth shall be obligated for all outstanding Orders, as per Contract, subsequent to this termination. The Commonwealth shall not be obligated for any other costs in the event of Termination for Convenience.

#### **47. FAILURE TO DELIVER**

In the event the Contractor fails for any reason to deliver in a timely manner or according to Contract terms the items set forth in the Schedule, the Commonwealth, at its own discretion, may give Contractor oral or written notice of such breach. Once notice by State is sent or given, State may immediately procure the items from another source. Once State has effected a purchase from an alternate source (in accordance with the Virginia Public Procurement Act) the parties agree that the State may charge-back Contractor, in which case Contractor agrees to reimburse State for any difference in cost between the original Contract price and the State's cost to cover from the alternate source. In no event shall State be held to pay Contractor any costs incurred by Contractor, including but not limited to ordering, marketing, manufacturing, or delivering the item(s) which are subject of the State's notice of breach. This remedy is in addition to and not in lieu of any other remedy the Commonwealth may have under this agreement and the laws of the Commonwealth of Virginia.

#### **48. 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. Tendency 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 Virginia Information Technologies Agency, 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 the Appendices to this Agreement or on the subsequent Order in question and need not be joined as a party to any dispute that may arise there under.

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.

#### **49. CREDITS**

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

#### **50. TITLE (SOFTWARE/FIRMWARE)**

The Contractor represents and warrants that it is the sole owner of the software/firmware product or, if not the owner, has received all proper authorizations from the owner to license the software/firmware product, and has the full right and power to grant the rights contained in this Contract. Contractor further warrants and represents that the software/firmware product is of original development, and that the package and its use will not violate or infringe upon any patent, copyright, trade secret or other property right of any other person.

#### **51. TERM OF LICENSE**

All licenses granted under this Agreement are purchased on a non-exclusive, irrevocable perpetual license basis and shall commence upon the acceptance of the software Product by the Commonwealth. Notwithstanding the foregoing, the Commonwealth may terminate the license at anytime. All licenses granted to the Commonwealth are for the use of the software Product at the Commonwealth's computing facilities at the sites identified in any executed Attachment or Order referencing this Agreement. This license is perpetual and in no event shall Contractor's remedies for any breach of this Agreement include the right to terminate any license or support services hereunder.

#### **52. CONTRACTOR'S WARRANTY POINT-OF-CONTACT**

The Contractor shall provide the Commonwealth with designated points-of-contact and make arrangements to enable its Warranty representative to receive such notification or other continuous telephone coverage to permit the Commonwealth to make such contact.

#### **53. WARRANTY AGAINST SHUTDOWN DEVICES**

Contractor warrants that the Products provided under this Agreement shall not contain any lock, counter, CPU reference, virus, worm or other device capable of halting operations or erasing or altering data programs. Contractor further warrants that neither the Contractor, nor its agents, employees or subcontractors shall insert any such device after execution of this Agreement.

#### **54. PERIODIC PROGRESS REPORTS/INVOICES**

For Contracts requiring the submission of periodic Contract performance progress reports or program status reports, the offeror will include a section on involvement of small businesses and business owned by women and minorities. This section will specify the actual dollars Contracted to-date with such businesses, actual dollars expended to-date with such businesses and the total dollars planned to be contracted for with such businesses on this Contract. This information shall be provided separately for small businesses, minority-owned businesses and women-owned businesses.

If the Contract does not require the submission of periodic progress reports, the offeror will provide the above required information on actual involvement of small businesses and businesses owned by minorities and women as part of their periodic invoices.

#### **55. FINAL ACTUAL INVOLVEMENT REPORT**

The Contractor will submit, prior to completion or at completion of the Contract and subject to final payment, a report on the actual dollars spent with small businesses and businesses owned by women and minorities during the performance of the Contract. At a minimum,

this report shall include for each firm Contracted with and for each business class (i.e. small, minority-owned, women-owned) the total actual dollars spent on this Contract, the planned involvement of the firm and business class as specified in the proposal, and the actual percent of the total estimated Contract value.

## **56. BUY OUTS – THIRD PARTY ACQUISITION**

Contractor shall promptly notify the VITA Contracts Manager in the event that the intellectual property in or business associated with any Product or Service covered by this Agreement is acquired from the Contractor by a third party or in the event the Contractor or substantially all of its assets is acquired by a third party.

The terms and conditions of this Agreement including but not limited to the license rights and related services shall not be affected in such event identified above even if the successor or assignee already has an agreement with the Commonwealth covering products and services of the type covered by this Agreement. The Contractor's responsibilities under this Agreement shall not be released by such acquisition. In addition, prior to any acquisition, Contractor shall obtain for the Commonwealth's benefit the assignee's agreement to fully perform this Agreement.

The successor or assignee, by taking any benefit, including acceptance of payment, under this Agreement ratifies this Agreement.

The failure of any successor or assignee of the Contractor to acknowledge its obligation to adhere to the terms and conditions of this Agreement shall constitute a breach of this Agreement for which the successor or assignee and the original Contractor shall be liable and subject to debarment.

## **57. ORDERS**

Authorized Users of this Contract may order Products and Software from this Contract by one of the following Order methods:

- A. Purchase Order: An official Purchase Order form issued by an Authorized User.
- B. Delivery Order (DO): A DO issued by the Office of Acquisition Services, VITA.
- C. EVA: eVA is the Commonwealth's total e-procurement solution. Contractor shall accept any and all orders issued through eVA.
- D. Charge/Credit Card:
  - 1) Any order/payment transaction processed through the Commonwealth's contract with American Express (AMEX).

Each order must not exceed \$5,000, or the then current charge card limit. Payment will be made by AMEX to Contractor within three (3) business days.

- 2) Any other order/payment charge or credit card process, such as AMEX, MASTERCARD, or VISA under contract for use by an Authorized User.

This ordering authority is limited to issuing orders for the Products/Software available under this Agreement. Under no circumstances shall any Authorized User of the Commonwealth have the authority to modify this Agreement.

Contractor acknowledges that the forgoing is not limited to preclude the Commonwealth from issuing Orders against subject Contract as it so chooses.

#### **58. INVOICING**

The Contractor shall remit each invoice to the ordering entity, or Authorized User. The Contractor shall issue invoices, identifying at a minimum, the components listed below.

- a. manufacturer's product number
- b. product description
- c. price per unit
- d. quantities of merchandise
- e. extended price
- f. date ordered
- g. date delivered
- h. listing of returns

#### **59. COMMONWEALTH'S RIGHTS TO COMPUTER SOFTWARE**

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

- a. Unlimited use of the Software Products on the machines for which it is acquired and on any replacement equipment;
- b. Use of such Software Products with a backup system if the system(s) for which it was acquired is for any reason, inoperative or during an emergency, or the performance of engineering changes in features or model;
- c. The right to use such Software Products at any Commonwealth installation to which the machine(s) may be transferred by the Commonwealth;
- d. The right to copy such software for safekeeping or backup purposes;
- e. The right to modify such Software Product or combine it with other programs or material at the Commonwealth's risk; and
- f. The Commonwealth shall have the right to reproduce any and all physical documentation supplied under the terms of this Agreement, provided, however,

that such reproduction shall be for the sole use of the Commonwealth and shall be subject to the same restrictions or use and disclosure as are contained elsewhere in this Agreement.

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

#### **60. MAINTENANCE RENEWAL**

Maintenance under this agreement shall be renewed at the option of the State. The State shall issue a written notification to the Contractor for each twelve (12) month period that maintenance services are required after the initial three (3) year warranty/maintenance period.

#### **61. 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 there under (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.

#### **62. CONTRACTOR'S REPORT OF SALES**

The Contractor shall provide reporting on a monthly basis that breaks out the spend amounts by Agency, Institution of Higher Education, Municipality and other Public Body, as well as the departmental and/or divisional levels that are buying. Reports shall be provided on the 15<sup>th</sup> of each month, reporting transactions that took place in the immediately prior month. At any time thereafter, as appropriate, additional reports may be agreed upon.

All reports are expected to be forwarded electronically via Email using Microsoft Excel Spreadsheet format to a list of email addresses that will be provided later. The specific types of information expected to be captured in each report are detailed below and in the "Reporting Format" spreadsheet, an example of which is contained in Appendix "B" to this Agreement.

- a. Spend by Agency, Institution of Higher, Public Body, etc. at 3 levels:
  - COV Agency/Institution/Municipality level (refer to "COV Level" worksheet)
  - System level (refer to "System Level" worksheet)
  - Component level (refer to "Component Level" worksheet)
- b. A column where you indicate whether the line item was a Standard Configuration or a Off-spec purchase
- c. For each component, index price, discount offered (according to discount schedule) and actual price charged
- d. Invoice Payment speed in days by Agency, Institution of Higher Education, Public Body, etc. for calculation of early payment discounts, if applicable
- e. An indication whether an item was ordered through eVA
- f. The contract number
- g. Other information that is necessary to the state for the proper monitoring and tracking of spending and any rebates due

**Electronic** copies of reports are expected to be provided to the Commonwealth no later than 15 days following the end of each month. Late delivery or non-delivery of required reports may result in cancellation of the award and in preclusion from bidding on any future requirements.

You will be provided a listing of the proper name and spelling of each Agency and Institution of Higher Education and Public Body, to be used in your reporting.

### **63. SURCHARGE ADJUSTMENT**

The Contractor must pay the Department of General Services (DGS), a Surcharge Adjustment (SCA) fee under this contract. The Contractor must remit the SCA within 30 days after the end of each quarterly reporting period as established in the clause entitled "Contractor's Report of Sales". The SCA equals two percent (2%) of the total quarterly sales reported. Contractor shall remit the SCA together with a copy of the Contractor's Report of Sales as delineated in the paragraph herein entitled "Contractor's Report of Sales". The SCA reimburses the Commonwealth and defrays the costs for Spend Management procurements and the administration of the subsequent awards. The SCA 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. DGS 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 DGS that validates agreement, then the payment shall be made by check as described herein made payable to the Department of General Services.

If the full amount of the SCA 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 SCA 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 SCA constitutes sufficient cause for terminating this Contract for default.

It is the intent of the Commonwealth to capture 2% of all sales, including but not limited to temporary reduced pricing, fire sales, one time sales, trade ins, and promotional items that have been marked down under this Contract.

**64. NONVISUAL ACCESS TO TECHNOLOGY:**

All information technology which, pursuant to this Agreement, is purchased or upgraded by or for the use of any State agency or institution or political subdivision of the Commonwealth (the "Technology") shall comply with the following non-visual access standards from the date of purchase or upgrade until the expiration of this Agreement:

- (i) Effective, interactive control and use of the Technology shall be readily achievable by non-visual means;
- (ii) The Technology equipped for non-visual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user of the Technology interacts;
- (iii) Non-visual access technology shall be integrated into any networks used to share communications among employees, program participants or the public; and
- (iv) The technology for non-visual access shall have the capability of providing equivalent access by non-visual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

Compliance with the foregoing non-visual access standards shall not be required if the head of the using agency, institution or political subdivision determines that (i) the Technology is not available with non-visual access because the essential elements of the Technology are visual and (ii) non-visual equivalence is not available.

Installation of hardware, software, or peripheral devices used for non-visual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information shall permit the installation and effective use of non-visual access software and peripheral devices.

If requested, the Contractor must provide a detailed explanation of how compliance with the foregoing non-visual access standards is achieved and a validation of concept demonstration.

The requirements of this Paragraph shall be construed to achieve full compliance with the Information Technology Access Act, 2.2-3500 through 2.2-3504 of the Code of Virginia.

**65. CONTINGENT FEE WARRANTY**

The Contractor represents and warrants that the Contractor has not employed or retained any company or person, except Contractor's regular, full-time employees, for the purpose of soliciting or securing this Agreement and has not given or agreed to give anything of value to any such company or person contingent upon the award or making of this Agreement. If either or both of the foregoing representations is untrue, the Commonwealth shall have the right to terminate this Agreement without liability or, in its discretion, recover from the Contractor the full amount of any such contingent compensation.

**66. PRIME CONTRACTOR RESPONSIBILITY**

If the Contractor's proposal includes any goods or services to be supplied by another party, the Contractor agrees as follows:

- a. The Contractor shall act as prime contractor for the procurement and maintenance of the entire proposed configuration and shall be the sole point of contact with regard to all obligations under this Agreement.
- b. The Contractor hereby represents and warrants that the Contractor has made such other party aware of the proposed use and disposition of the other party's Product or services, and that such other party has agreed in writing that it has no objection thereto.

**67. THIRD PARTY BILLING**

All goods or services provided under this Contract, 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.

**68. OPERATIONAL RESTRICTIONS**

Contractor warrants that, except as specifically agreed in writing all Products may be operated at any time for the convenience of the Commonwealth (exclusive of time required for preventive maintenance, remedial maintenance and approved engineering changes). Without limiting the foregoing, Contractor warrants that there are no restrictions as to consecutive hours or length of personnel shifts. The Commonwealth

may make the Products available to any Commonwealth agency or any other users under conditions where the Commonwealth supervises such use.

**69. TYPE CONTRACT**

This is an Indefinite Delivery, Indefinite Quantity requirements Master Contract.

**70. INSPECTION/LATENT DEFECTS**

All Equipment is subject to inspection and test. Equipment that does not meet specifications may be rejected. Failure to reject, however, does not relieve the Contractor of liability for latent or hidden defects subsequently revealed when goods are used after acceptance has occurred. If latent defects are found at any time during the term of this Agreement, the Contractor shall repair or replace the defective goods. This remedy shall be in addition to any other remedies or obligations under this Agreement or provided by law.

**71. DELIVERY DATE**

The Contractor shall deliver the Equipment, ready for testing within twenty-one (21) days ARO. If delivery of all Equipment is not completed within thirty (30) days after receipt of order by the vendor, the Commonwealth may, at their sole discretion, cancel the order without further obligation. The Commonwealth may postpone any delivery date by notifying the Contractor at least seven (7) days prior to the delivery date. However, the delivery date shall not be postponed more than a total of thirty (30) days.

**72. RECORDS**

The Commonwealth shall maintain appropriate daily records documenting performance during the acceptance period and such records shall be conclusive for purposes of determining acceptance.

**73. WARRANTY**

In this Agreement "Warranty" of Equipment shall mean: (1) all labor, parts and travel necessary to keep the Equipment in good operating condition and preserve its operating efficiency in accordance with its technical specifications; and (2) Any necessary shipment and insurance costs; and (3) Any Software and Firmware maintenance costs.

Warranty of Equipment shall not include electrical work external to the Equipment, the furnishing of supplies, or adding or removing accessories, attachments, or other devices not provided under this Agreement. Warranty of Equipment also shall not include repair of damage resulting from transportation by the Commonwealth between Commonwealth sites or from accident, unless the accident is caused by negligent or intentional acts or omissions of Contractor or its agents.

The Warranty prices listed in this Agreement include all Software and Firmware maintenance costs and Equipment costs of labor, parts, travel, factory overhaul, rehabilitation, transportation and substitute Equipment as necessary. If it is necessary to remove any Equipment from a Commonwealth location where On-site warranty is specified, the Contractor shall provide substitute Equipment at the time of removal. Substitute Equipment shall be comparable to the Equipment removed. In instances where it is necessary for the Contractor to return the Equipment to the factory, the Contractor shall be responsible for all costs of the Equipment from the time it leaves the Commonwealth site until it is returned to the Commonwealth site in good operating condition. Only new standard parts or parts equal in performance to new parts shall be used in effecting repairs. Parts that have been replaced shall become the property of the Contractor. Replacement parts installed shall become the property of the Commonwealth.

All desktops, notebooks, and servers delivered under this Agreement shall include a three (3) year On-site Warranty that commences after Equipment Acceptance, except as otherwise agreed upon as apart of an upgrade option or downgrade option on the original purchase of the product.

**ALL SOFTWARE AND FIRMWARE SHALL BE CONSIDERED AN INTEGRAL COMPONENT OF THE EQUIPMENT AND THE CONTRACTOR SHALL RESPOND TO ALL REQUESTS FOR WARRANTY SERVICE FOR ANY FAILURE.**

**74. COMMONWEALTH'S RESPONSIBILITIES DURING WARRANTY**

- a. During any term of Warranty, Commonwealth personnel shall not perform or attempt repairs to the Equipment except as authorized in writing by the Contractor.
- b. The Commonwealth shall permit access to the Equipment which is to be maintained, subject to the installation site's security regulations,
- c. The Commonwealth may provide storage space for spare parts and working space, including heat, light, ventilation, electric current and outlets, and telephones (for local calls only) for the use of maintenance personnel.
- d. The Commonwealth shall maintain the site in accordance with the equipment environmental specifications furnished by the Contractor.

**75. PRINCIPAL PERIOD OF MAINTENANCE (WARRANTY)**

For standard on-site warranty response, the Principal Period of Maintenance (PPM), for desktops, notebooks and servers shall be from 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding State/Institutions of Education holidays. Warranties with longer PPMs may be purchased. Please note that holidays may vary across individual Institutions of Higher Education.

**76. RESPONSE TIME**

During the PPM, the Contractor shall respond by telephone within two (2) hours after notification from the Commonwealth of a problem for desktops, notebooks and servers. The Contractor shall complete all repairs by the end of the next working day after notification by the Commonwealth of a malfunction. Warranty options with shorter response times may be purchased.

**77. EQUIPMENT REPLACEMENT DURING WARRANTY**

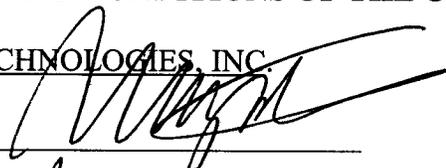
If the Equipment provided fails to perform in accordance with technical specifications and functional descriptions contained or referenced in this Agreement and is subject to warranty response three (3) or more times during any ninety (90) day period, then the Contractor shall, upon the Commonwealth's request, replace the Equipment at no cost to the Commonwealth. The replacement Equipment shall be delivered no later than fifteen (15) working days after the Commonwealth's request is received by the Contractor.

**78. DISPOSITION OF SOFTWARE**

Unless otherwise instructed by the Contractor, the State shall erase, destroy or otherwise render unusable the Software Product within thirty (30) days from the date of the Commonwealth's termination of the license. A letter certifying this destruction shall be sent to the Contractor as soon as this process is completed. The Commonwealth shall have the right to retain one copy for archival purposes.

**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.**

NCS TECHNOLOGIES, INC.

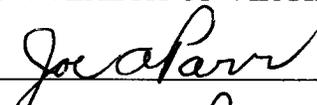
BY: 

NAME: Mark Christopher

TITLE: Vice President

DATE: July 24, 2003

COMMONWEALTH OF VIRGINIA

BY: 

NAME: Joe A. Parr

TITLE: Tech Contracts Mgr.

DATE: 7/25/03

**ATTACHMENT "A"**  
**TO**  
**AGREEMENT VA - 030727 – NCS**

***PRODUCT PRICING***

Attachment "A" is hereby incorporated into and made an integral part of Agreement Number VA - 030727 – NCS between NCS Technologies, Inc. and the Commonwealth of Virginia. In the event of any consistency between this Attachment “A” and Agreement VA-030727 - NCS, the provisions of Agreement VA-030727 - NCS shall Control

**PRODUCTS AND PRICING**

Server products and associated pricing/discounts are delineated in Tables 1, 2, 3, and 4 to this Attachment “A”. Tables 1, 2, 3, and 4 are incorporated herein and made an integral part of this Attachment “A” to the Agreement.

**Standard Configuration Pricing Applicability**

Category	Expectations
Future Configs Pricing	The % discount off index for each of the standard configs will be applicable to all future standard configurations that replace current ones, as was stipulated in the Section III.C of the RFP
Pricing Involving Options	<p>If an option in the options list associated with each config is purchased (this could refer to substitution, addition or deletion of a component), the price of the resulting machine will be:</p> <ul style="list-style-type: none"> <li>▪ Discounted Price of Standard config components + Discounted Price of option components</li> </ul> <p>If an option that is NOT in the options list associated with each config is purchased (this could refer to substitution, addition or deletion of a component), the price of the resulting machine will be:</p> <ul style="list-style-type: none"> <li>▪ Discounted Price of Standard Config components + (Index Price of Option component x (1 – Off-spec Discount for Option component))</li> </ul>
Pricing Involving Component Removal from Standard Configs	<p>If one or more Components within a standard config is removed, the resulting machine will be:</p> <ul style="list-style-type: none"> <li>▪ Discounted Price of Standard Config components – Sum of Discounted Prices of Components removed</li> <li>▪</li> </ul>
Future Options Pricing	Future option Components that replace current ones will be priced at the same discounts off index as the current ones
Date used for Discounted Price Calculation	The date of index pricing with respect to which discounts will be applied to arrive at discounted price will be the order date, NOT quote date

**REBATES**

The Contractor shall provide Quarterly rebates on purchases based on total Quarterly volume according to the following schedule. Rebates shall be payable to Department of General Services (DGS) at the end of each Quarter, along with the SCA (Paragraph 63):

Quarterly Volume (\$ Million)		Quarterly Rebate (%)
Greater Than	Less than or Equal to	
0.00	0.50	0.00%
0.50	1.00	0.00%
1.00	1.50	0.25%
1.50	2.00	0.25%
2.00	3.00	0.50%
3.00	4.00	1.00%
4.00	5.00	1.25%
5.00	6.00	1.50%
6.00	7.00	1.75%
7.00	9.00	2.00%
9.00	11.00	2.50%
11.00	13.00	3.00%
13.00	15.00	3.50%
15.00	17.00	4.00%
17.00	19.00	4.00%
19.00	21.00	4.50%
21.00		5.00%

**SHIP TO BILL TO ADDRESSES**

The shipping and billing addresses will be included on individual orders referencing this Contract

**DELIVERY**

Shipment by the Contractor shall be FOB destination. Shipping charges will be included in the discounted price of the units. No additional charges will be allowed. Units will be pre-assembled, with the exception of attaching peripheral devices. All internal cards, modems, etc. will be installed, along with appropriate drivers. Delivery will not exceed 21 days ARO. Contractor will notify the ordering Agency within 5 days if all or part of the order will not meet the delivery requirement. The ordering Authorized User, at its option, may elect to establish a new delivery date, or amend or cancel the order.

Emergency/rush delivery requiring special shipping and handling will be at Authorized Users' expense (with prior approval only). Rush delivery that occurs as a result of the Contractor's error will be free of charge

## **RETURN OF SYSTEM**

If a system is returned to a Contractor for failure of performance, the Contractor will, at the Authorized User's discretion, refund all amounts paid to the Contractor for such system or replace the system, and the following shall apply:

1. Within twenty (20) days of written notification by the using Authorized User, the Contractor will make arrangements for the return of the system.
2. All shipping and insurance costs will be borne by the Contractor.
3. Contractor will be liable for damages to the system, unless caused by fault or negligence of the Authorized User that occur during the return process.
4. If the system is returned to the Contractor for any other reason, then the Authorized User will be responsible for all costs associated with the preparation of the system for shipping, and for shipping costs to the Contractor's nearest service location.

## **SELF-MAINTAINER PROGRAM**

NCS offers a self-maintainer program for those Authorized Users who are interested in performing warranty service themselves. There are no initiation, subscription, or annual fees associated with this program. NCS will rely solely on the Authorized User determination as to which of its employees will be qualified to perform maintenance on NCS equipment. As such no training or certification is required, although NCS may make it available upon request. NCA will make a spare parts pool available for the purposes of self-maintenance. The number and types of components provided will be depend on the number of systems that are required to be maintained. Each Authorized User will be required to appoint an individual to serve as the custodian of such spare parts pool. NCS may reimburse the Authorized User (or its employees directly at the Authorized User's discretion) on a per incident basis for providing such service. The reimbursement rate will take many factors into consideration and will be negotiated on a case by case basis. Authorized Users interested in this program should contact the following NCS representative:

Kevin Baker  
Director of Customer Service  
Phone: 703-621-1551  
Fax: 703-621-1701  
Email: kbaker@ncst.com

## **VITA POINTS OF CONTACT**

### Contract Compliance Information:

Mrs. T. J. Hudson, CPPB, VCO  
Contracts Administrator  
Phone: 804-371-5971  
E-Mail: [tj.hudson@vita.virginia.gov](mailto:tj.hudson@vita.virginia.gov)  
Fax: 804-371-5969

### Contract Management:

Joe A. Parr, CPPO, VCO  
Contract officer  
Phone: 804-371-5991  
E-Mail: [joe.parr@vita.virginia.gov](mailto:joe.parr@vita.virginia.gov)  
Fax: 804-371-5969

## **NCS POINTS OF CONTACT**

### Contract Compliance Information

Tran Vi  
Contracts Manager  
NCS Technologies, Inc.  
9490 Innovation Loop  
Manassas, Virginia 20110  
Phone: 888-746-4627, Ext. 1513  
Email: [tvi@ncsi.com](mailto:tvi@ncsi.com)

### Contract Management

Mark Christopher  
Vice President  
NCS Technologies, Inc.  
9490 Innovation Loop  
Manassas, Virginia 20110  
Phone: 888-746-4627, Ext. 1502  
[mchristopher@ncst.com](mailto:mchristopher@ncst.com)

Table 1  
Attachment "A"  
Contract VA-030727-NCS

NCS Servers

<b>Number of U's</b>	
<b>Chassis</b>	
<b>Max # of Processors</b>	
<b>Included # of Processors</b>	
<b>Processor Speed</b>	
<b>L2 Cache size</b>	
<b>Max Memory</b>	
<b>Included Memory</b>	
<b># Drive Bays</b>	
<b># Drives Included</b>	
<b>Hard Disk Capacity per Drive (SCSI)</b>	
<b>Hard Drive Speed</b>	
<b>Max Internal Capacity</b>	
<b># Externally Accessible Bays</b>	
<b>Primary Controller</b>	
<b>Network card</b>	
<b>Fixed Optical Device</b>	
<b>Optical Device Speed</b>	

<b>Cfg 1 Min Req.</b>	<b>Min.</b>	<b>NCS Specs</b>
1		1
Rack		Rackmount
2		2
1		1
Intel Pentium III 1.13GHz		Intel Xeon 1.8 GHz CPU
512K		512 KB of L2 cache
4GB		12 GB
512MB		Two 256 MB ECC registered DDR266 SDRAM DIMMs (total of 512 MB)
2		5 (3 hot-swap HDD, 1 slim CD-ROM, & 1 FDD bays)
2		2
18GB		Seagate Cheetah 36ES ST318406LC 18 GB HDD
10K RPM		10 K rpm
438 GB		438 GB
1		5
RAID 0, Dual Channel		Adaptec AIC-7902 dual-channel U320 SCSI on board plus Adaptec 2015S Zero Channel RAID 0, 1, 10, 5 adapter
Dual on board NICs, at least one with support for load balancing and failover		On-board Intel 82546EB dual-port Gigabit Ethernet controller with support for load balancing and fail-over
CD-ROM Drive		slim CD-ROM drive
24X		24X

<b>Cfg 2 Min Req</b>	<b>NCS Specs</b>
2	2
Rack	Rackmount
2	2
1	1
Intel Xeon, 1.8GHz	Intel Xeon 1.8 GHz CPU
512K	512 KB of L2 cache
6GB	12 GB
1GB	Two 512 MB ECC registered DDR266 SDRAM DIMMs
3	9 (6 hot-swap HDD, 1 5.25" HH Ext., 1 slim CD-ROM, & 1
3	3
36GB	Seagate Cheetah 10K.6 ST336607LC 36 GB HDD
10K RPM	10 K rpm
438 GB	876 GB
2	9
RAID 5, Dual Channel	Adaptec AIC-7902 dual-channel U320 SCSI on board plus Adaptec 2015S Zero Channel RAID 0, 1,
Dual on board NICs, at least one with support for load balancing and	On-board Intel 82546EB dual-port Gigabit Ethernet controller with
CD-ROM Drive	slim CD-ROM drive
24X	24X

Table 1-1

Table 1  
Attachment "A"  
Contract VA-030727-NCS

<b>Number of PCI Slots</b>	2 Total	1 PCI-X (133 MHz, 64-bit) and 1 PCI low-profile (66 MHz, 64-bit)	3 PCI-X low-profile (100 MHz, 64-bit) and 3 PCI low-profile
<b>Remote Management Card</b>	Yes, included	Intelligent Platform Mgmt Interface (IPMI) 1.5 module with IPMI 1.5 server mgmt software	Intelligent Platform Mgmt Interface (IPMI) 1.5 module with IPMI 1.5 server mgmt software
<b>Operating System</b>	None	none included	none included
<b>Deployment Rails Warranty</b>	Included	included	included
	3 YR Parts & Labor, NBD	3 Yrs parts + on-site labor (next business day response)	3 Yrs parts + on-site labor (next business day response)

NCS  
Reliance SPR SC1-S201  
NCS MSRP  
38.00%

NCS  
Reliance SPR SC2-S187  
NCS MSRP  
38.00%

Table 2  
Attachment "A"  
Contract VA-030727-NCS

NCS Servers

	Cfg 3 Min Req	NCS Specs
<b>Number of U's</b>	4	4
<b>Chassis</b>	Rack	Rackmount
<b>Max # of Processors</b>	4	4
<b>Included # of Processors</b>	1	1
<b>Processor Speed</b>	Intel Xeon, 1.8GHz	Intel Xeon MP 1.9 GHz CPU
<b>L2 Cache size</b>	1MB	1 MB of L2 cache
<b>Max Memory</b>	10GB	32 GB
<b>Included Memory</b>	2GB	Four 512 MB ECC registered DDR266 SDRAM DIMMs (total 2 GB - four-way interleave)
<b># Drive Bays</b>	4	6 (4 hot-swap HDD, 1 slim CD-ROM, & 1 FDD bays)
<b># Drives Included</b>	4	4
<b>Hard Disk Capacity per Drive (SCSI)</b>	36GB	Seagate Cheetah 10K.6 ST336607LC 36 GB HDD
<b>Hard Drive Speed</b>	10K RPM	10 K rpm
<b>Max Internal Capacity</b>	584 GB	584 GB
<b># Externally Accessible Bays</b>	2	6
<b>Primary Controller</b>	RAID 5, Dual Channel	Adaptec AIC-7899W dual-channel UL160 SCSI on-board plus Adaptec 200S Zero Channel RAID 0, 1, 10, 5 adapter
<b>Network card</b>	Dual on board NICs, at least one with support for load balancing and failover	On-board Intel 82550 10/100 Ethernet plus Intel PRO/100+ Server adapter to provide two ports with support for load balancing and fail over
<b>Fixed Optical Device</b>	CD-ROM Drive	slim CD-ROM drive

Table 2-1

Table 2  
Attachment "A"  
Contract VA-030727-NCS

<b>Optical Device Speed</b>	24X
<b>Number of PCI Slots</b>	6 PCI-X (100 MHz, 64-bit)
<b>Remote Management Card</b>	Intelligent Platform Mgmt Interface (IPMI) 1.5 module with IPMI 1.5 server mgmt software
<b>Operating System</b>	none included
<b>Deployment Rails</b>	included
<b>Warranty</b>	3 Yrs parts + on-site labor (next business day response)

<b>6 Total</b>	24X
<b>Yes, included</b>	
<b>None</b>	
<b>Included</b>	
<b>3 YR Parts &amp; Labor, NBD</b>	

<b>OEM</b>	NCS
<b>Model</b>	Reliance SPR SC4-S200
<b>Reference</b>	NCS MSRP
<b>Discount</b>	38.00%

Table 3  
Attachment "A"  
Contract VA-030727-NCS

NCS Options

<b>Discount</b>	<b>38%</b>
Change from rack to tower chassis	
2nd Processor Option Kit - Same Speed	
Additional 128MB RAM	
Additional 256MB RAM	
Additional 512MB RAM	
Additional 1GB RAM	
Increase each disk capacity to 36GB, 10K RPM, SCSCI Hot Plug (quote pricing for ALL disks)	
Increase each disk capacity to 73GB, 10K RPM, SCSCI Hot Plug (quote pricing for ALL disks)	
Increase each disk capacity to 146GB, 10K RPM, SCSCI Hot Plug (quote pricing for ALL disks)	
Increase each drive speed to 15K RPM (quote pricing for ALL disks)	
Increase each disk capacity to 36GB, 15K RPM, SCSCI Hot Plug (quote pricing for ALL disks)	
Increase each disk capacity to 73GB, 15K RPM, SCSCI Hot Plug (quote pricing for ALL disks)	
Remove Deployment Rails	
Internal DLT Tape Drive (40 GB/80 GB)	
External SDLT Tape Drive (110 GB/220 GB)	
Add CDRW Drive	
Add DVD Drive	
Add DVD/CDRW Drive	
Gigabit Network Connection	
Monitor Media and Documentation	
Linux Option	
Upgrade Warranty 4hr Response Time, M-F 8am-6pm	
Upgrade Warranty to 4hr Response Time, 7x24	
Add Win 2000 Server OS	
Remove Remote Management Card	
Upgrade from SCSI to Fibre Channel	

Table 4  
Attachment "A"  
Contract VA-030727-NCS

NCS Off-Spec

NCS Technologies	Servers	NCS MSRF	38.00%
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ATTACHMENT "B"  
 CONTRACT VA-030727-NCS  
 REPORTING FORMAT

ILLUSTRATIVE ILLUSTRATIVE

Component Level Report

This report provides the detail of every single SKU of each system purchased

Item #	Manufacturer	Model	Category	SKU	Part #	Description	QTY	Unit Price	Total Price	Warranty	Rate	Warranty Price	Total Price
11180	Suprema Court	625003	623003	Desktop	Orange Y288	Desktop 1	1	156.00	156.00		48%	208.00	364.00
						CPU	1	300.00	300.00		48%	400.00	700.00
						RAM	1	400.00	400.00		48%	520.00	920.00
						Hardrive	1	200.00	200.00		48%	260.00	460.00
						Monitor	1	600.00	600.00		48%	792.00	1,392.00
						Optical Device	1	300.00	300.00		48%	396.00	696.00
						Warranty	1	1,000.00	1,000.00		48%	1,320.00	2,320.00
						Subtotal		\$2,896.00	\$2,896.00		48%	\$3,888.00	\$6,784.00
11189	DIT	625003	623003	Laptop	Lemon X118	Laptop 2	2	188.00	376.00		53%	496.00	872.00
						CPU	2	400.00	800.00		53%	1,040.00	1,840.00
						RAM	2	600.00	1,200.00		53%	1,560.00	2,760.00
						Hardrive	2	200.00	400.00		53%	520.00	920.00
						Monitor	2	600.00	1,200.00		53%	1,560.00	2,760.00
						Optical Device	2	300.00	600.00		53%	780.00	1,380.00
						Warranty	2	900.00	1,800.00		53%	2,352.00	4,152.00
						Subtotal		\$3,096.00	\$3,096.00		53%	\$4,116.00	\$7,212.00

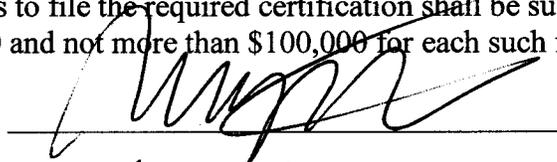
**ATTACHMENT "C"**  
**TO**  
**RFP # 2003-040**  
**VIRGINIA INFORMATION TECHNOLOGIES AGENCY**  
**CERTIFICATION REGARDING LOBBYING**

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 of 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 sub-awards at all tiers (including subcontracts, sub-grants, and Contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

Signature: \_\_\_\_\_



Printed Name: \_\_\_\_\_

MARK CHRISTOPHER

Organization: \_\_\_\_\_

NCS TECHNOLOGIES, INC.

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

JULY 24, 2003