



Commonwealth of Virginia  
Virginia Information Technologies Agency

**NETWORK GENERAL AND 3COM PRODUCTS AND SERVICES**

Optional Use Contract

Date: June 7, 2010

Contract #: VA-060629-ELSY

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

Contractor: Electronic Systems, Inc.  
369 Erwin Drive  
Virginia Beach, VA 23462

Contact: Joyce Chapman  
Voice: 757-497-8000  
Fax: 757-497-2095  
Email: [psteam@ESI.net](mailto:psteam@ESI.net)

FIN: 36-3328437

Pricing: [Exhibit C](#)

FOB: Destination

Term: June 30, 2010 – June 29, 2011

Payment: Net 30 days

For Additional Information, Please Contact:

Supply Chain Management  
Virginia Information Technologies Agency

Doug Leslie  
Phone: 804-416-6161  
E-Mail: [doug.leslie@vita.virginia.gov](mailto:doug.leslie@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>





## COMMONWEALTH of VIRGINIA

Samuel A. Nixon, Jr.  
Chief Information Officer  
E-mail: [cio@vita.virginia.gov](mailto:cio@vita.virginia.gov)

### Virginia Information Technologies Agency

11751 Meadowville Lane  
Chester, Virginia 23836-6315  
(804) 416-6100

TDD VOICE -TEL. NO.  
711

VIA REGISTERED, CERTIFIED MAIL

June 4, 2010

Ms. Joyce Chapman  
Electronic Systems, Inc.  
ESI Corporate  
369 Edwin Dr.  
Virginia Beach, VA 23462

RE: Contract VA-060629-ELSY, between the Virginia Information Technologies Agency (VITA) and Electronic Systems, Inc.

Notice of Contract Term Extension

Dear Ms. Chapman,

Pursuant to Section 3 (TERM AND TERMINATION) of Contract VA-060629-ELSY, VITA is exercising its right to extend the above-referenced contract for an additional one (1) year through June 29, 2011. This letter should serve as VITA's official notice to Electronic Systems, Inc. of its intent to extend the contract for one (1) additional year.

Please do not hesitate to contact me if you need any additional information concerning this contract extension.

Thank you.

Sincerely,

A handwritten signature in blue ink that reads "Doug Leslie".

Doug Leslie  
Strategic Sourcing Consultant  
(804) 416-6161



# COMMONWEALTH of VIRGINIA

Lemuel C. Stewart, Jr.  
Chief Information Officer  
Email: [cio@vita.virginia.gov](mailto:cio@vita.virginia.gov)

**Virginia Information Technologies Agency**  
11751 Meadowville Lane  
Chester, Virginia 23836-6315  
(804) 416-6100

TDD VOICE -TEL. NO.  
711

VIA OVERNIGHT COURIER SERVICE

June 3, 2009

Mr. Gary J. Lynn  
Electronic Systems, Inc.  
361 Southport Circle  
Virginia Beach, VA 23452

RE: Contract VA-060629-ELSY, between the Virginia Information Technologies Agency (VITA) and Electronic Systems, Inc.

Notice of Contract Term Extension

Dear Mr. Lynn,

Pursuant to Section 3 (TERM AND TERMINATION) of Contract VA-060629-ELSY, VITA is exercising its right to extend the above-referenced contract for an additional one (1) year through June 29, 2010. This letter should serve as VITA's official notice to Electronic Systems, Inc. of its intent to extend the contract for one (1) additional year.

Please do not hesitate to contact me if you need any additional information concerning this contract extension.

Thank you.

Sincerely,

A handwritten signature in blue ink that reads 'Doug Leslie'.

Doug Leslie  
Strategic Sourcing Consultant  
(804) 416-6161



Lemuel C. Stewart, Jr.  
Chief Information Officer

**COMMONWEALTH of VIRGINIA**  
**Virginia Information Technologies Agency**  
*Supply Chain Management*  
11751 Meadowville Lane  
Chester, Virginia 23836  
March 27, 2008

Phone: (804) 416-6162  
Fax: (804) 416-6361  
Email: george.goodman  
@vita.virginia.gov

Mr. Gary J. Lynn  
Electronic Systems, Inc.  
361 Southport Circle  
Virginia Beach, VA 23452

RE: VA-060629-ELSY

Dear Mr. Lynn:

Please consider this correspondence your notification of the Commonwealth's extension of the above referenced contract, in accordance with the Terms of the agreement.

The expiration of the agreement is now extended to June 29, 2009.

Regards,

A handwritten signature in blue ink that reads "George S. Goodman, Jr.".

George S. Goodman, Jr.  
IT Sourcing Consultant  
VITA/Supply Chain Management  
(804) 416-6162

C: contract file

PS: Please note VITA's new address:

VITA – Supply Chain Management  
c/o Commonwealth Enterprise Solutions Center  
11751 Meadowville Lane  
Chester, VA 23836

**MODIFICATION #1  
TO  
CONTRACT NUMBER VA-060629-ELSY  
BETWEEN THE VIRGINIA INFORMATION TECHNOLOGIES AGENCY  
ON BEHALF OF THE COMMONWEALTH OF VIRGINIA  
AND  
ELECTRONIC SYSTEMS, INC.**

This MODIFICATION #1 is an Agreement between the Virginia Information Technologies Agency (hereinafter referred to as "VITA"), pursuant to §2.2-2012 of the Code of Virginia and on behalf of the Commonwealth of Virginia, and Electronic Systems, Inc. ("Supplier") to modify Contract Number VA-060629-ELSY, as previously amended ("Contract"). This Modification is, upon execution by VITA and Supplier, incorporated into and made an integral part of the Contract.

The purpose of this Modification is as follows:

- i). Incorporate changes and additions to the Contract in order for Supplier to offer Network General Corporation Product and associated Services to the Authorized Users.
- ii). Incorporate the Small, Woman, and Minority-Owned Business participation reporting requirements.
- iii). Update contact information for Supplier Report of Sales and Industrial Funding Adjustment.

The following items are modified as follows:

**CHANGE #C1**

The "**PURPOSE**" section is changed from:

This Contract sets forth the terms and conditions under which Supplier agrees to sell certain of Supplier's Product, and to provide various Services to the Authorized Users. Such Product and Services may include but not be limited to any products and services in the 3Com catalog. ~~The Parties further agree that, upon an appropriate modification to this Contract in accordance with the "Modifications" clause incorporated by reference in "Incorporated Contractual Provisions" herein, such Product and Services may also include some or all of the Network General products and services proposed by Supplier in response to RFP 2006-03 (incorporated by reference as Exhibit A).~~

To:

This Contract sets forth the terms and conditions under which Supplier agrees to sell certain of Supplier's Product, and to provide various Services to the Authorized Users. Such Product and Services may include but not be limited to any products and services in the 3Com catalog and the Network General Corporation (NGC) products and services identified in Exhibit C.

**CHANGE #C2**

The definitions of "Product", "Service", and "Warranty Period" in the "**DEFINITIONS**" section are changed from:

**F. Product**

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

**J. Service**

Any Product related services provided, by Supplier under this Contract, including certain maintenance services for the Product in accordance with the terms of the Maintenance Agreement attached hereto as Exhibit D which, upon its execution, is incorporated herein by reference.

**O. Warranty Period**

The period following Acceptance of each 3com Product as such period is defined in the 3com Product Manufacturer's standard warranty included in Exhibit E.

To:

**F. Product**

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

**J. Service**

Any 3com Product related services provided, by Supplier under this Contract, including certain maintenance services for the 3com Product in accordance with the terms of the Maintenance Agreement attached hereto as Exhibit D which, upon its execution, is incorporated herein by reference. Any NGC Product related services provided by Supplier under this Contract, including certain maintenance services for the NGC Product in accordance with the terms of the NGC Maintenance Agreement attached hereto as Exhibit H which, upon its execution, is incorporated herein by reference.

**O. Warranty Period**

The period following Acceptance of each 3com Product as such period is defined in the 3com Product Manufacturer's standard warranty included in Exhibit E. One (1) year following Acceptance of each NGC hardware product or sixty (60) days following Acceptance of each NGC software product.

The reference to the NGC Maintenance Agreement (Exhibit H) is intended to incorporate by reference said exhibit upon its execution by VITA and Supplier.

**CHANGE #C3**

All references to the "Maintenance Agreement" or "Maintenance Agreement Exhibit" shall be changed to the "Maintenance Agreements" or "Maintenance Agreement Exhibits". Any reference to "Maintenance Agreement Exhibit D" shall be deemed to include "Maintenance Agreement Exhibit H" unless otherwise noted.

**CHANGE #C4**

The contact information table in the "**Supplier Report of Sales and Industrial Funding Adjustment**" clause in the "**PURCHASE, DELIVERY, INSTALLATION AND ACCEPTANCE**" section is removed and replaced with the following:

Contact information for the VITA Controller and the VITA IFA Coordinator submission of the Supplier Monthly Report of Sales and the IFA payment, as applicable, is available at <http://www.vita.virginia.gov/procurement/supplierResources.cfm> under "Supplier Reporting".

**ADDITION #A1**

The “**Small, Woman, and Minority-Owned Business (SWaM) Participation**” clause is added to the “**PURCHASE, DELIVERY, INSTALLATION AND ACCEPTANCE**” section as follows:

**P. Small, Woman, and Minority-Owned Business (SWaM) Participation**

Supplier and VITA agree to meet promptly after the Effective Date of this Contract to discuss the participation of Virginia Department of Minority Business Enterprise (DMBE)-certified Small, Woman, and Minority Owned Businesses (SWaMs) as subcontractors and second-tier suppliers under this Contract. Supplier and VITA will review Supplier’s SWaM subcontracting plan, which was submitted with Supplier’s proposal, and SWaM subcontract reporting, and will discuss ways of encouraging SWaM participation and increasing subcontracting spend with SWaM suppliers.

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

In addition, by the 10th day of every month, Supplier shall submit to VITA the Small, Woman, and Minority Owned Business (SWaM) Subcontracting Monthly Report (template available at <http://www.vita.virginia.gov/procurement/supplierResources.cfm>). Supplier’s report should include spend on all Supplier’s contracts with second-tier suppliers which provide products or services under this Contract. The report should specify the amount of such spend provided to SWaM vendors, by SWaM category, regardless of such SWaM vendors’ certification status. Supplier shall submit the report to [SWaM@vita.virginia.gov](mailto:SWaM@vita.virginia.gov).

**CHANGE #C5**

The “**Engineering Changes and Product Modification**” subsection of the “**PRODUCT SUPPORT**” section references a website ([www.3com.com](http://www.3com.com)) for Authorized Users to obtain information on planned engineering changes. To incorporate NGC Product, the applicable reference is changed from:

Each Authorized User that purchased product can obtain information on any planned engineering changes on the Manufacturer’s Website ([www.3com.com](http://www.3com.com)).

To:

Each Authorized User that purchased product can obtain information on any planned engineering changes on the Manufacturer’s Website ([www.3com.com](http://www.3com.com) or [www.networkgeneral.com](http://www.networkgeneral.com), as applicable).

**CHANGE #C6**

The subsection titled “Parts and Maintenance Support” in the “**PRODUCT SUPPORT**” section is renamed “Parts and Maintenance Support for 3com Product”. All services defined under this section shall apply to 3com Products.

**ADDITION #A2**

The following subsection is added to the “**PRODUCT SUPPORT**” section:

**E. Parts and Maintenance Support for NGC Product**

Supplier agrees to make available new/certifiable as new spare parts and complete maintenance for each Product type ordered by an Authorized User, for two (2) years from the date of shipment of the last unit of any given Product type or for the duration of a valid order for Maintenance/Support Services pursuant to the Maintenance Agreement, whichever is longer. Thereafter, Supplier shall advise such Authorized User of its intent to discontinue either certain parts or maintenance services for any Product type ordered by the Authorized User. Software

Support follows an N-2 policy which means the current version and two previous progressive versions are supported.

Supplier shall notify the Authorized User one (1) year prior to the effective date of any such discontinuance, and shall provide to the Authorized User the opportunity to purchase spare parts in a quantity adequate to support its installed base. Should Supplier advise the Authorized User of its intent to discontinue certain parts for any Product type ordered by the Authorized User, the Authorized User shall have the option to request, and Supplier shall have the obligation to provide, all documentation required to ensure ongoing support, including full maintenance and repair by the Authorized User or its designated third-party maintenance provider, within thirty (30) days prior to the discontinuance date or replace the unsupported Product with a supported Product at no more than the cost delta between the supported Product and the unsupported Product.

### **CHANGE #C7**

The subsection titled “Warranty Services” in the “**WARRANTY AND REMEDY**” section is renamed “Warranty Services for 3com Product”. The subsection titled “Maintenance Services” in the “**WARRANTY AND REMEDY**” section is renamed “Maintenance Services for 3com Product”. All services and remedies defined under these sections shall apply to 3com Products.

### **ADDITION #A3**

The following subsections are added to the “**WARRANTY AND REMEDY**” section:

#### **I. Warranty Services for NGC Product**

Standard warranty for NGC Product is return to factory with a 20-22 day turnaround for replacement Product. Higher support levels, including RMS same day ship or RMA same day ship with next business day onsite install, are available at the prices identified in Exhibit C.

#### **J. Maintenance Services for NGC Product**

Maintenance Services are described in Exhibit H, NGC Maintenance Agreement.

### **CHANGE #C8**

The subsection titled “License Grant” in the “**SOFTWARE LICENSE**” section is renamed “License Grant for 3com Product” and the clause thereunder is changed from:

#### **A. License Grant**

Supplier’s products may include System Software. Such System Software is licensed directly to Authorized User(s) by the software manufacturer (“Software Manufacturer”) through the end user licensing agreement (EULA), as amended, attached hereto as Exhibit F.

To:

#### **A. License Grant for 3com Product**

Supplier’s 3com products may include System Software. Such System Software is licensed directly to Authorized User(s) by the software manufacturer (“Software Manufacturer”) through the end user licensing agreement (EULA), as amended, attached hereto as Exhibit F.

### **ADDITION #A4**

The following subsection is added to the “**SOFTWARE LICENSE**” section:

**C. License Grant for NGC Product**

Supplier's NGC products may include Software. Such Software is licensed directly to Authorized User(s) by the software manufacturer ("Software Manufacturer") through the end user licensing agreement (EULA), as amended, attached hereto as Exhibit G.

**CHANGE #C9**

The "**Return or Destruction**" subsection of the "**CONFIDENTIALITY**" section is changed from:

**C. Return or Destruction**

Upon the termination or expiration of this Contract or upon the earlier request of the disclosing Party, the receiving Party shall (i) at its own expense, (a) promptly return to the disclosing Party all tangible Confidential Information (and all copies thereof except the record required by law) of the disclosing Party, or (b) upon written request from the disclosing Party, destroy such Confidential Information and provide the disclosing Party with written certification of such destruction, and (ii) cease all further use of the other Party's Confidential Information, whether in tangible or intangible form.

To:

**C. Return or Destruction**

Upon the termination or expiration of this Contract or upon the earlier request of the disclosing Authorized User, Supplier shall (i) at its own expense, (a) promptly return to the disclosing Authorized User all tangible Confidential Information (and all copies thereof except the record required by law) of the disclosing Authorized User, or (b) upon written request from the disclosing Authorized User, destroy such Confidential Information and provide the disclosing Authorized User with written certification of such destruction, and (ii) cease all further use of the Authorized User's Confidential Information, whether in tangible or intangible form.

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

**CHANGE #C10**

The following changes are made to the "**Entire Contract**" subsection of the "**GENERAL**" section and the exhibit titles to which they refer:

Exhibit D is re-titled "**Maintenance Agreement for 3com Products**".

Exhibit E is re-titled "**Supplier's Warranty and Maintenance Documents for 3com Products**".

Exhibit F is re-titled "**3com End User Licensing Agreement and Supplier Contract Addendum (for reference only)**".

Exhibit G entitled "**Network General Corporation End User License Agreement and Supplier Contract Addendum**" is added.

Exhibit H entitled "**Maintenance Agreement for NGC Product**" is added.

**CHANGE #C11**

The order of precedence established in the "**Entire Contract**" subsection of the "**GENERAL**" section is changed from:

*the Contract, Exhibit D, Maintenance Agreement, Exhibit B, Mean Time Between Failure, Exhibit C, Prices, Fees, Service Charges and Payment Schedule, Exhibit E, Supplier's Warranty and Maintenance Documents, Exhibit A, Request for Proposal and Supplier's Proposal*

To:

the Contract; with respect to 3com Product, Exhibit D, Maintenance Agreement for 3com Products, and with respect to NGC Product, Exhibit H, Maintenance Agreement for NGC Products, Exhibit B, Mean Time Between Failure, Exhibit C, Prices, Fees, Service Charges and Payment Schedule, Exhibit E, Supplier's Warranty and Maintenance Documents, Exhibit A, Request for Proposal and Supplier's Proposal

**CHANGE #C12**

The fees and charges for NGC Products and services identified in Attachment 1 hereto are incorporated into Exhibit C of the Contract.

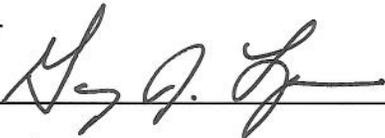
The foregoing is the complete and final expression of the agreement of VITA and Supplier to modify the Contract and cannot be modified, except by a writing signed by duly authorized representatives of both parties hereto.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

PERSONS SIGNING THIS MODIFICATION ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THE CONTRACT AND ACKNOWLEDGE THAT EACH PARTY TO THE CONTRACT AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT, AS MODIFIED HEREIN.

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

Supplier

By:   
(Signature)

Name: Gary J. Lynn  
(Print)

Title: Director of Sales

Date: 7/9/07

VITA

By:   
(Signature)

Name: DOUG LESLIE  
(Print)

Title: STRATEGIC SOURCING SPECIALIST

Date: 7/12/07

**Addition to Exhibit C - PRICES, FEES, SERVICE CHARGES AND PAYMENT SCHEDULE**

**Contract Number VA-060629-ELSY**

**Electronic Systems, Inc. Networking Products and Maintenance**

**Supplier Name: Electronic Systems, Inc.**

**All Network General Corporation Products and Services**

**Index Price List Source** Network General Corporation List Price

**Delivery Terms** F.O.B. Destination

**Standard Delivery Lead Time** 15 days ARO

<b>Product Category</b>	<b>Delivery Lead Time (Days ARO)</b>	<b>Government/Education Discount</b>
Products	15	17.5%
Services	15	1.5%

See Attached "Electronic Systems, Inc. Commonwealth of Virginia Contract Price List" for current products and pricing.

## SUPPLIER CONTRACT ADDENDUM

The Virginia Information Technologies Agency (hereinafter referred to as “VITA”), pursuant to §2.2-2012 of the Code of Virginia, and Network General (“Supplier”), a business incorporated in Delaware, having its principal place of business at 178 East Tasman Drive, San Jose, California 95134, are this day entering into a contract and, for their mutual convenience, the parties are using the standard form contract (“Network General End User License Agreement” or “Agreement”) provided by Supplier. This addendum, duly executed by the parties, is attached to and hereby made a part of Supplier’s standard form contract and together shall govern the use of any and all Software for use on Network General Products provided to Authorized Users, as defined herein, pursuant to Contract Number VA-060629-ELSY between VITA, on behalf of the Commonwealth of Virginia, and Electronic Systems, Inc., and licensed by the Commonwealth under this agreement whether or not specifically referenced in the order document.

Supplier represents and warrants that it is a corporation authorized to do in Virginia the business provided for in this contract.

This contract is executed by VITA on behalf of all public bodies, including VITA, as defined by §2.2-4301 and referenced by §2.2-4304 of the Code of Virginia, and hereinafter referred to as “Authorized Users.”

As used herein, the term “EULA” (end user licensing agreement) shall mean the Supplier’s standard form contract, as found in Attachment A to this addendum, and any and all exhibits and attachments thereto. The terms “You,” and/or “you” as used in the EULA, shall mean the Commonwealth or any Authorized User and its officers, directors, agents and employees. The term “internal business operations”, as used in the EULA, shall mean the business of the Authorized User.

Supplier’s standard form contract is, with the exceptions noted herein, acceptable to VITA. Nonetheless, because certain standard clauses that may appear in Supplier’s standard form contract cannot be accepted by VITA, and in consideration of the convenience of using that form, and this form, without the necessity of specifically negotiating a separate contract document, the parties hereto specifically agree that, notwithstanding any provisions appearing in the attached Supplier’s standard form contract, none of the following shall have any effect or be enforceable against the Commonwealth or any Authorized User, its officers, employees or agents:

- a). Requiring or stating that the terms of the attached Supplier’s standard form contract shall prevail over the terms of this addendum in the event of conflict;
- b). Requiring the application of the law of any state other than the Commonwealth of Virginia in interpreting or enforcing this contract or requiring or permitting that any dispute under this contract be resolved in any court other than a circuit court within the Commonwealth of Virginia;
- c). Renewing or extending the contract beyond the initial term or automatically continuing the contract period from term to term;
- d). Permitting termination by Supplier of the contract or the licenses granted hereunder, or permitting suspension of services by Supplier, except pursuant to an order from a court of competent jurisdiction;
- e). Permitting modification or replacement of the EULA pursuant to any new release, update or upgrade of Software or subsequent renewal of maintenance;
- f). Requiring VITA or any Authorized User, its officers, employees or agents to indemnify or to hold harmless Supplier for any act or omission;
- g). Binding VITA or any Authorized User, its officers, employees or agents to any arbitration or to the decision of any arbitration board, commission, panel or other entity;
- h). Limiting the liability of Supplier for property damage or personal injury;

- i). Requiring any dispute resolution procedure(s) other than those in accordance with §2.2-4363 et seq. of the Code of Virginia;
- j). Prohibiting VITA or any Authorized User from transferring or assigning this contract or any license to Software pursuant to the contract to any other Authorized User or managed service provider performing services for the benefit of an Authorized User;
- k). Permitting Supplier to assign, subcontract, delegate or otherwise convey the EULA and this Amendment, or any of its rights and obligations hereunder, to any entity without the prior written consent of VITA except as follows: Supplier may assign all or any of its rights and obligations to a third party as a result of a merger or acquisition or sale of all or substantially all of its assets to such third party provided assignee agrees to be bound by the terms and conditions set forth in the contract, or to an affiliate of Supplier, provided Supplier remains liable for affiliate's compliance with the terms and conditions set forth in this Contract;
- l). Granting Supplier or an agent of Supplier the right to audit or examine the books, records, or accounts of VITA or any Authorized User;
- m). Requiring VITA or any Authorized User to limit its rights or waive its remedies at law or in equity, including the right to a trial by jury; and
- n). Bestowing any right or incurring any obligation that is beyond the duly granted authority of the undersigned representative of VITA to bestow or incur on behalf of the Commonwealth of Virginia.

The parties further agree as follows:

- i). The contractual provisions at the following URL are statutorily mandated provisions that are hereby incorporated by reference (hereafter "State of Virginia Required Terms": [http://www.vita.virginia.gov/procurement/documents/terms\\_06-07sw.pdf](http://www.vita.virginia.gov/procurement/documents/terms_06-07sw.pdf)  
The contractual claims provision §2.2-4363 of the Code of Virginia is also incorporated by reference.  
Pursuant to Section 1 [6] of the State of Virginia Required Terms "Nonvisual Access to Technology and Section 508 Compliance" the parties acknowledge that the essential elements of the Technology are visual and nonvisual equivalence is not available. To the extent the Technology makes use of the Microsoft operating system, the Technology can be enabled to meet certain Section 508 requirements, however the essential elements of the Technology include graphical charts and other visual data that cannot be converted to a nonvisual equivalent. A summary of the Technology's Section 508 compliant elements is attached as Attachment B to this Addendum.
- ii). The United Nations Convention on Contracts for the International Sale of Goods and all other laws and international treaties or conventions relating to the sale of goods are expressly disclaimed. UCITA shall apply to this contract only to the extent required by §59.1-501.15 of the Code of Virginia.
- iii). Supplier shall comply with all applicable federal, state, and local laws, regulations, and ordinances.
- iv). Supplier agrees to indemnify, defend and hold harmless VITA, any Authorized User, their officers, directors, agents and employees ("Commonwealth's Indemnified Parties") from and against any and all third party claims, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, fines, judgments, settlements, expenses (including attorneys' and accountants' fees and disbursements) and costs (each, a "Claim" and collectively, "Claims"), incurred by,

borne by or asserted against any of Commonwealth's Indemnified Parties to the extent such Claims in any way relate to, arise out of or result from: (i) any intentional or willful conduct or negligence of any employee or subcontractor of Supplier resulting in property damage, personal injury or death or (ii) any act or omission of any employee or subcontractor of Supplier resulting in property damage, personal injury or death. Selection and approval of counsel and approval of any settlement shall be accomplished in accordance with all applicable laws, rules and regulations. For state agencies the applicable laws include §§ 2.2-510 and 2.2-514 of the Code of Virginia. In all cases the selection and approval of counsel and approval of any settlement shall be satisfactory to VITA or the Authorized User against whom the claim has been asserted.

- v). Any Authorized User may rely on independent contractors, acting on behalf of such Authorized User, to perform functions requiring the use of and access to the Supplier's Software. Nothing in the Supplier's standard form contract shall limit such third parties' from using or accessing the Software in order to perform such functions.
- vi). Nothing in the contract shall be construed as preventing the Authorized User from obtaining good and clear title to the any hardware, excluding the System Software, provided by Supplier, directly or through a reseller, free and clear of all liens, claims, security interests and encumbrances.
- vii). Supplier Software contains third party software, the Authorized User's use of which is subject to the terms and conditions of Microsoft and the GNU General Public License (GPL). Microsoft's mandatory flow down terms and conditions have been incorporated into Supplier's EULA. The terms and conditions of the GPL shall be provided in "read me" or "about" files in the Software. VITA has reviewed the version of the GPL provided in such files as of June 17, 2006 (GPL Version 2, June 1991). Should the Supplier substitute I such files another version of the GPL, Supplier shall immediately notify VITA of such change and shall refrain from providing Software subject to the new version until VITA has agreed to the terms and conditions therein. In the event of a conflict between the terms and conditions set forth in this Addendum and the Agreement and the terms and conditions set forth in any "read me" or "about" files, the terms and conditions of this Addendum and Agreement shall prevail. Should Supplier offer any Software products which contain third party software subject to terms and conditions other than those of Microsoft and the GPL, Supplier shall notify VITA in advance of providing such Software products to any Authorized User.

This contract, consisting of this VITA addendum and the attached Supplier's standard form contract, constitute the entire agreement between the parties and may not be waived or modified except by written agreement between the parties.

This contract has been reviewed by staff of VITA. Its substantive terms are appropriate to the needs of VITA and sufficient funds have been allocated for its performance by VITA. This contract is subject to appropriations by the Virginia General Assembly.

IN WITNESS WHEREOF, the parties have caused this contract to be duly executed as of the last date set forth below by the undersigned authorized representatives of the parties, intending thereby to be legally bound.

Supplier

By: Kevin R. Maloney  
(Signature)

Name: Kevin Maloney  
(Print)

Title: EVP, WW Sales

Date: 3/16/2007

---

VITA

By: Doug Leslie  
(Signature)

Name: DOUG LESLIE  
(Print)

Title: STRATEGIC SOURCING CONSULTANT

Date: 6/29/2007

## Network General Corporation

### End User License Agreement

NOTICE TO ALL USERS: PLEASE READ THIS CONTRACT CAREFULLY. THE TERMS AND CONDITIONS OF THIS END USER LICENSE AGREEMENT (“AGREEMENT”) GOVERN USE OF THE SOFTWARE UNLESS YOU AND NETWORK GENERAL CORPORATION (“NETWORK GENERAL”) HAVE EXECUTED A SEPARATE END USER LICENSE AGREEMENT WITH RESPECT TO THE PRODUCT.

Network General is willing to license the Software to you only upon the condition that you accept all the terms contained in this Agreement. By clicking on the “I accept” button below or by installing or using the Software, you have indicated that you understand this Agreement and accept all of its terms. If you do not accept all the terms of this Agreement, click on the button that indicates that you do not accept the terms of this Agreement and do not install the Software.

#### 1. Definitions.

- (a) “Application Interfaces and Workflow Methods” (collectively “APIs”) means the software application interfaces and workflow methods made available by Network General in certain Network General Products to enable integration, implementation or otherwise make a Product interoperable with third party hardware and software products.
- (b) “Documentation” means installation guides and operation manuals provided with the Product.
- (c) “Product” shall mean Software product (excluding APIs), hardware product, or a product which consists of Software and the associated hardware provided by Network General or Network General’s authorized reseller or distributor (an “Authorized Partner”) for use with the Software.
- (d) “Software” means the computer programs in object code only (except as otherwise provided in Section 13 of this Agreement) provided to you by Network General or an Authorized Partner, and any upgrades, subsequent versions and updates (collectively “Updates”) to such software that may be provided to you by Network General or an Authorized Partner if you are under a support contract. For purposes of this Agreement, the term Software does not include APIs.
- (e) “Use” or “Using” means to access, install, download, copy or otherwise benefit from executing or interaction with the Software.
- (f) “Network General” means Network General Corporation, a Delaware corporation, and any of its subsidiaries and affiliates.

**2. License Grant.** Subject to the terms and conditions of this Agreement, Network General hereby grants to you a non-exclusive, non-transferable license to Use the Product for your internal business operations. Some third party materials included in the Software may be subject to other terms and conditions, which are typically found in a “Read Me” file or “About” file in the Software. You agree to read such other terms and conditions and if you do not agree to accept such terms, not to use the Software.

**3. Term.** This Agreement is effective until terminated. You may terminate this Agreement at any time by destroying all copies of Software. This Agreement will terminate immediately without notice from Network General if you fail to comply with any provision of this Agreement. Upon termination of this Agreement, you must destroy or disable all copies of Software.

**4. Ownership Rights.** The Product is protected by United States and other copyright laws, international treaty provisions and other applicable laws in the country in which it is being used. Network General and its suppliers own and retain all right, title and interest in and to the Product, including certain patents, all copyrights, trade secret rights, associated trademarks and other intellectual property rights therein. Your possession, installation, or Use of the Product does not transfer to you any title to the intellectual property in the Product, and

you will not acquire any rights to the Product except as expressly set forth in this Agreement. Any copy of the Software and Documentation authorized to be made hereunder must contain the same proprietary notices, including any notice of copyright, trademark, logo, legend or other notice of ownership, that appear on and in the original copy of the Software and Documentation.

**5. Additional Terms and Limitations for Unsupported Products.**

(a) **APIs:** Network General may from time to time make APIs generally available. Such APIs are subject to the terms and conditions set forth in Network General's then-current Software Development License Agreement.

(b) **Pre-Release Product.** If the product you have received with this license is "Alpha" or "Beta" product (such Alpha or Beta product referred to herein as "Pre-Release Product"), then the provisions of this section apply. You acknowledge that Network General has not promised or guaranteed to you that Pre-Release Product will be announced or made available to anyone in the future; Network General has no express or implied obligation to you to announce or introduce the Pre-Release Product; and you understand that Network General may not introduce a product similar to or compatible with the Pre-Release Product. Accordingly, you acknowledge that any Use of the Pre-Release Product or any product associated with the Pre-Release Product is done entirely at your own risk. During the term of this Agreement, if requested by Network General, you will provide feedback to Network General regarding testing and use of the Pre-Release Product, including error or bug reports. If you have been provided the Pre-Release Product pursuant to a separate written agreement, your use of the Pre-Release Product is also governed by such agreement. Upon receipt of a later unreleased version of the Pre-Release Product or release by Network General of a publicly released commercial version of the Pre-Release Product, whether as a stand-alone product or as part of a larger product, you agree to return or destroy all copies of earlier Pre-Release Product received from Network General and to abide by the terms of the applicable End User License Agreement for any such later versions of the Pre-Release Product. You hereby agree that the features and functions of Pre-Release Products are confidential, and you will not disclose any such features and functions until such time as the Pre-Release is publicly available.

(c) **Unsupported Products.** If the product you have received with this license is or includes (i) product provided for the purpose of allowing you to test and evaluate the product prior to making a decision to purchase the product ("Evaluation Product"), (ii) "Pre-Release Product," or (iii) Sniffer Tool Collection Software ("Tools" and together with Evaluation Product and Pre-Release Product, the "Unsupported Products") then the provisions of this section apply. To the extent that any provision in this section is in conflict with any other term or condition in this Agreement, this section shall supersede such other term(s) and condition(s) with respect to the Unsupported Products, but only to the extent necessary to resolve the conflict. You acknowledge that the Unsupported Products may contain bugs, errors and other problems that could cause system or other failures and data loss. Consequently, Unsupported Products are provided to you "AS-IS" and Network General disclaims any warranty or liability obligations to you of any kind. Network General support service offerings are not available for the Unsupported Products. WHERE LEGAL LIABILITY CANNOT BE EXCLUDED, BUT MAY BE LIMITED, NETWORK GENERAL'S LIABILITY AND THAT OF ITS SUPPLIERS AND AUTHORIZED PARTNERS SHALL BE LIMITED TO THE AMOUNT PAID OR PAYABLE BY YOU TO NETWORK GENERAL FOR THE PRODUCTS LICENSED HEREUNDER FROM WHICH SUCH LOSS OR DAMAGE DIRECTLY AROSE. Your Use of the Evaluation or Pre-Release Product is limited to 30 days unless otherwise agreed to in writing by Network General.

**6. Restrictions.** You may not sell, lease, license, rent, loan, resell or otherwise transfer, with or without consideration, any Product. If you enter into a contract with a third party in which the third party manages your information technology resources ("Managing Party"), you may transfer only your rights to Use the Product to such Managing Party, provided that (a) the Managing Party only Uses the Product for your internal operations and not for the benefit of another third party; (b) the Managing Party agrees in writing provided to Network General to comply with the terms and conditions of this Agreement, and (c) you provide Network General with written notice that a Managing Party will be Using the Product on your behalf. Except with Network General's prior written consent, you may not permit third parties to benefit from the Use of the Product via a timesharing, service bureau or any

other arrangement. You may not reverse engineer, decompile, or disassemble the Product, except to the extent the foregoing restriction is expressly prohibited by applicable law. You may not modify, or create derivative works based upon, the Product in whole or in part. You may not copy the Software or Documentation except for a single copy for back-up purposes. You may not remove any proprietary notices or labels on the Software.

**7. Warranty and Disclaimer.** Network General warrants that (i) hardware will be free from defects in material and workmanship under normal use and service and will conform in all material respects to Network General's applicable specifications for one (1) year from the shipment date, and (ii) Software will perform substantially in conformance with the specifications set forth in the Documentation for 60 days from the shipment or transmission date. Network General does not warrant that operation of the Product will be error-free or uninterrupted. Network General shall, at its option, repair or replace any defective hardware and will provide a workaround or correction for any nonconformity in the Software provided that (a) you give Network General prompt written notice of the defect or nonconformity within the warranty period specified above; and (b) you return the defective hardware at your expense to Network General in accordance with Network General's standard parts exchange procedures. This warranty does not apply to defects or nonconformities in the Product caused by: (a) your failure to follow Network General's installation, operation or maintenance instructions or procedures; (b) your mishandling, misuse, negligence, or improper installation, deinstallation, storage, servicing or operation of the Product; (c) modifications or repairs not made by Network General or a Network General-certified individual; and (d) power failures, surges, fire, flood, accident, actions of third parties or other events outside Network General's reasonable control. Any hardware repaired or replaced by Network General or any Software for which a workaround or correction is provided shall continue to be warranted for the remainder of the original warranty period. Some newly manufactured Network General products may contain and Network General support may use remanufactured/reconditioned parts or components that meet the same quality standards as new parts and components and are covered by the applicable Network General product warranty. THIS WARRANTY (1) IS YOUR SOLE AND EXCLUSIVE REMEDY AND NETWORK GENERAL'S ENTIRE LIABILITY FOR DEFECTIVE OR NONCONFORMING ITEMS, AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF THIRD PARTY RIGHTS, AND (2) IS BETWEEN NETWORK GENERAL AND YOU (AS THE ORIGINAL PURCHASER) AND MAY NOT BE TRANSFERRED OR ASSIGNED, BY OPERATION OF LAW OR OTHERWISE, WITHOUT NETWORK GENERAL'S PRIOR WRITTEN CONSENT.

**8. Limitation of Liability.** NETWORK GENERAL SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM OR ARISING OUT OF OR IN CONNECTION WITH THE PRODUCT OR USE HEREUNDER, INCLUDING NETWORK FAILURES OF LOST PROFITS. NETWORK GENERAL'S LIABILITY SHALL NOT EXCEED THE AMOUNT PAID OR PAYABLE BY YOU FOR THE PRODUCT THAT DIRECTLY CAUSED THE LIABILITY. Network General is acting on behalf of its suppliers for the purpose of disclaiming, excluding and/or limiting obligations, warranties and liability as provided in this Agreement, but in no other respects and for no other purpose. The foregoing provisions shall be enforceable to the maximum extent permitted by applicable law.

**9. Notice to United States Government End Users.** The Product and accompanying Documentation are deemed to be "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Product and accompanying Documentation by the United States Government shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement.

**10. Confidentiality.** Each party agrees to maintain the confidentiality of the other party's Confidential Information, and not to disclose it to a third party, without the prior written consent of the other party. "Confidential Information" shall mean all documents, disclosures and written or oral statements disclosed by the disclosing party that are identified as "confidential;" and all such information that, by its nature is confidential regardless of whether it is marked.

**11. Export Controls.** You are advised that the Product and Documentation is of U.S. origin and subject to U.S. Export Administration Regulations; diversion contrary to U.S. law and regulation is prohibited. You agree not to

directly or indirectly export, import or transmit the Product and/or to any country, end user or for any end use that is prohibited by applicable U.S. regulation or statute (including but not limited to those countries embargoed from time to time by the U.S. government). You represent that neither the United States Bureau of Industry and Security nor any other governmental agency has issued sanctions against you or otherwise suspended, revoked or denied your export privileges. You agree not to use or transfer the Product for any end use relating to nuclear, chemical or biological weapons, or missile technology, unless authorized by the U.S. Government by regulation or specific written license. Additionally, you agree not to directly or indirectly export, import or transmit the Product contrary to the laws or regulations of any other governmental entity that has jurisdiction over such export, import, transmission or use.

**12. High Risk Activities.** The Product is not fault-tolerant and is not designed or intended for use in hazardous environments requiring fail-safe performance, including without limitation, in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, direct life-support machines, or any other application in which the failure of the Product could lead directly to death, personal injury, or severe physical or property damage (collectively, “High Risk Activities”). Network General expressly disclaims any express or implied warranty of fitness for High Risk Activities.

**13. Governing Law.** This Agreement shall be governed by and construed under the laws of the State of California without regard to the conflicts of law provisions thereof. All litigation arising under this Agreement shall be tried in the courts of Santa Clara County, California. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

**14. Free Software.** The Software may include some software programs that are licensed (or sublicensed) under the GNU General Public License (GPL) or other similar free software (“Free Software”) licenses which, among other rights, permit a user to copy, modify and redistribute certain programs, or portions thereof, and have access to the source code. The GPL requires that for any software covered under the GPL, which is distributed to users in an executable binary format, that the source code also be made available to those users. For any such software covered under the GPL, the source code will be provided to you upon your request. If any Free Software licenses require that Network General provide rights to use, copy or modify a software program that are broader than the rights granted in this agreement, then such rights shall take precedence over the rights and restrictions herein.

**15. Audit for License Usage.** Network General reserves the right to periodically audit you to ensure your compliance with the terms of this Agreement. During your standard business hours and upon prior written notice, Network General may visit you and you will make available to Network General or its representatives any records pertaining to the Software. The cost of any requested audit will be solely borne by Network General, unless such audit discloses an underpayment or amount due to Network General in excess of five percent (5%) of the initial license fee for the Software or you are using the Software in an unauthorized manner, in which case you shall pay the cost of the audit.

**16. Support Services.** Maintenance and technical support services (“Support”) for the Products shall be made available in accordance with Network General's then-current Support terms and conditions, as provided upon request.

**17. Miscellaneous.** This Agreement sets forth all rights for the user of the Software and is the entire Agreement between the parties with the exception of any applicable licenses described in Section 13 (“Free Software”). This Agreement supersedes any other communications, representations or advertising relating to the Products and Documentation. This Agreement may not be modified except by a written addendum which references this Agreement and is issued by a duly authorized representative of the parties. No provision hereof shall be deemed waived unless such waiver is in writing and signed by a duly authorized representative of Network General. If any provision of this Agreement is held invalid, the remainder of this Agreement shall continue in full force and effect. All rights not expressly set forth hereunder are reserved by Network General.

**18. Network General Customer Contact.** If you have any questions concerning these terms and conditions, or if you would like to contact Network General for any other reason, please 408-571-5000 or write to: Network General, 178 East Tasman Drive, San Jose, California 95134.

**ATTACHMENT B: Section 508/ITRM GOV103-00 Criteria Compliance**

This following information applies to all Network General products and is deemed Network General confidential information and may not be disclosed to third parties without Network General’s written consent. This document is being provided for informational purposes only and has been prepared in the ordinary course of business and reflects Network General’s current Sniffer product information.

If a T is noted below then the Criteria is consistent with 508. If blank, then not consistent.	Criteria	Section 508/ITRM GOV103-00 Reference	Supporting Features	Remarks(e.g., definition, equivalent facilitation, scope of support provided
	<b>Short Description of Functional Performance Criteria</b>			
T	At least one mode of information retrieval that does not require vision is provided	1194.31(a)/3.2.7(a)	Yes	Most of the functions of the Sniffer™ products are accessible through a key board.
T	At least one mode of information retrieval that does not require visual acuity >20/70 is provided	1194.31(b)/3.2.7(b)	Yes	Our software runs on Windows NT/2000/XP operating system and utilizes all the “accessibility functions” of the OS.
T	At least one mode of information retrieval that does not require hearing is provided	1194.31(c) /3.2.7(c)	Yes	
T	At least one mode of information retrieval that does not require hearing in an enhanced auditory fashion is provided	1194.31(d) /3.2.7(d)	Yes	
	At least one mode of information retrieval enhanced auditory fashion that does not require user speech is provided	1194.31(e) /3.2.7(e)	N/A	
	At least one mode of information retrieval that does not require user speech fine motor control is provided	1194.31(f) /3.2.7(f)	N/A	
	<b>Software Applications and Operating Systems</b>			
T	Product functions are executable from a textually discernable keyboard	1194.21(a)/3.2.1(a)	Yes	
T	Application does not disrupt the accessibility features of other products on the end-user's system	1194.21(b) /3.2.1(b)	Yes	
T	Focus is programmatically exposed	1194.21(c) /3.2.1(c)	Yes	Our product does not disrupt any of the operating system

If a T is noted below then the Criteria is consistent with 508. If blank, then not consistent.	Criteria	Section 508/ITRM GOV103-00 Reference	Supporting Features	Remarks(e.g., definition, equivalent facilitation, scope of support provided)
				functions.
T	Information about a user interface element is available to AT	1194.21(d) /3.2.1(d)	Yes	Per operating system API calls.
T	Meanings assigned to bitmap images are consistent	1194.21(e) /3.2.1(e)	Yes	
T	Textual information is provided	1194.21(f) /3.2.1(f)	Yes	
T	Application does not override contrast and color selections and other individual display attributes	1194.21(g) /3.2.1(g)	Yes	
T	Animated displays are displayable in non-animation mode	1194.21(h) /3.2.1(h)	Yes	Traffic generation, is the only part of our product that uses some animation. The information from that is also available in textual mode.
T	Color coding is not used as the only means of conveying information	1194.21(i) /3.2.1(i)	Yes	
T	A wide variety of color selections is provided	1194.21(j) /3.2.1(j)	Yes	
T	Software does not use flash or blink frequency of >2Hz and <55Hz	1194.21(k) /3.2.1(k)	N/A	
T	People using AT can access all of the information fields on electronic forms used	1194.21(l) /3.2.1(l)	Yes	

## EXHIBIT H, MAINTENANCE AGREEMENT FOR NGC PRODUCT

This Maintenance Agreement Exhibit (“Maintenance Agreement” or “Agreement”) is entered into as of July 3, 2007 (“Agreement Effective Date”) and, except as expressly set forth or provided herein, shall be governed by the terms and conditions of the Hardware and Maintenance Contract, Contract # VA-060629-ELSY, between the Virginia Information Technologies Agency (hereinafter referred to as the “VITA”), pursuant to §2.2-2012 of the Code of Virginia, and Electronic Systems, Inc. (“Supplier”), effective June 29, 2006 (the “Contract”).

### A. Purpose

Supplier agrees to provide Authorized Users with certain maintenance services (“Services” or “Maintenance Services”) for the Network General Corporation (“Network General” or “NGC”) Product ordered by Authorized Users from the Product list incorporated as Exhibit C to the Contract, in accordance with the terms and conditions set forth below.

### B. Definitions

As used in this Agreement, the terms set forth in this Section shall have the meanings provided herein. Other terms used in this Agreement but not defined in this Section shall have the meanings ascribed thereto or are otherwise defined in the Contract in which they are used and shall have the meanings therein indicated.

#### 1. Product

NGC Product, including all software, to be maintained under orders referencing this Maintenance Agreement.

#### 2. Maintenance Level

The parameters of Maintenance Services, including the times during which and time-frames in which Supplier shall respond to a request for Service. The available Maintenance Levels shall be as described in the Maintenance Services section of this Agreement. The actual Maintenance Level for a unit of Product shall be set forth in the executed order for Maintenance Services on that unit of Product, and listed in the Inventory Record, if any, as described herein.

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

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

#### 4. Maintenance Services

Those Services, preventive and remedial, performed by Supplier at Authorized User's request in order to ensure continued operation of the Product. Maintenance Services shall include but not be limited to services identical to the Warranty Services specified in the Contract, Warranty Services for NGC Product.

#### 5. Operating Condition

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

#### 6. Response Time

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

#### 7. Defect

A material Product or Software failure or defect.

#### 8. Major Release

A publicly released version of a Product, including Software, which incorporates a major functionality change such as a change of Operating System, designated by a change in

version number denominated by a change in the number to the left of the decimal point (e.g. a 4.0 to 5.0 release).

**9. Maintenance Release**

A publicly released version of a Product in which the core technology remains relatively the same, but adds multiple new features, designated by a change in version number denominated by a change in the first digit to the right of the decimal point (e.g. a 4.1 to 4.2 release). Maintenance Releases include service packs, patches and bug fixes, as applicable.

**10. Normal Business Hours**

7AM to 7PM Central Time in North America and 9:00 am to 17:00 pm Central European Time in EMEA. Normal Business Hours will vary in other regions. In the event the Product Manufacturer changes its Normal Business Hours, Supplier shall notify VITA and all Authorized Users in writing, and, if such changes result in a decreased level of support, Supplier shall offer adequate consideration for such changes.

**11. Service Contract Number**

The authorization number provided by Network General and required to receive Support Services. This is separate and distinct from the contract number of the Hardware and Maintenance Contract governing this account, number VA-060629-ELSY.

**C. Term and Termination**

**1. Agreement Effective Date**

This Maintenance Agreement shall become effective on the date set forth above, upon execution by VITA and Supplier and shall continue in effect for one (1) year. Thereafter, this Maintenance Agreement may be renewed for subsequent twelve (12) month periods should VITA elect. VITA may terminate this Maintenance Agreement, in total or as to any portion of the Product as specified in the Contract.

**2. Termination for Cause**

Should Supplier fail to perform its material obligations under this Maintenance Agreement, VITA or the affected Authorized User shall give Supplier written notice of such failure. Supplier shall have ten (10) days from receipt of said notice to correct this failure at no cost to VITA or such Authorized User. Should Supplier fail to correct its performance within the ten (10) day period, VITA shall have the right to immediately terminate this Maintenance Agreement or a portion of this Maintenance Agreement, or such Authorized User shall have the right to terminate its order for Maintenance Services pursuant to this Maintenance Agreement, by giving Supplier written notice of termination, and shall receive a refund of any amounts paid for Services not rendered after the effective date of termination. In the event of termination for breach, VITA and all Authorized Users reserve all remedies available in law and in equity.

**D. Product Covered**

Contract Exhibit C lists all NGC Product types covered under warranty and under this Maintenance Agreement. Supplier will provide in its monthly sales reports, a list of all units of Product purchased as well as invoice dates. The Authorized User will be responsible for tracking expirations of Warranty Period(s). Supplier shall maintain an inventory record (“Inventory Record”) of all units of Product covered under Maintenance Agreement by type, quantity, Authorized User and location. Inventory Record shall also include the end date for each unit’s MCP. Product quantities and types may vary as Product is added or deleted from coverage. Supplier shall be notified in writing of any Product removed from service, and Supplier shall automatically amend the Inventory Record without further action by Authorized User to reflect the relocation, addition or deletion of Product. Supplier shall provide a copy of the most current Inventory Record to any Authorized User upon request of such Authorized User at no additional charge.

**E. Maintenance Services**

Supplier shall offer to any Authorized User the Maintenance Services in accordance with the Maintenance Levels described as follows at the prices identified in Contract Exhibit C.

**1. Core Operational Support Program**

“Core Operational Support Program” includes (i) the ability for Authorized User to download Major Releases and Maintenance Releases that are generally available to Product Manufacturer’s customers purchasing Support Services; (ii) access to technical solutions from a searchable knowledge base; (iii) electronic incident submission; (iv) access to technical documents such as user guides, Frequently Asked Questions, and release notes; and (v) access to technical support engineers via 1-800-Sniffer or local support number on a 24 hours per day, seven (7) days per week basis.

**2. Advanced Operational Support Program**

“Advanced Operational Support Program” are enhanced services available in addition to the Core Operational Support Program and includes the following: (i) a designated, named engineer for remote troubleshooting and reactive assistance 24 hours per day 7 days per week on the Product; (ii) assistance with Software filter creation; (iii) remote installation and configuration assistance on the Product for up to four instances per year; (iv) proactive notifications of vulnerabilities related to deployed Software; (v) on-call, stand-by assistance for major Product roll out events; and (vi) operations management support.

**3. Advanced Operational Services Plus (“AOS Plus”)**

“Advanced Operational Services Plus (‘AOS Plus’)” are enhanced services available in addition to the Advanced Operational Support Program and includes the following: 50 hours per year of remote trace file analysis and 50 hours per year for network troubleshooting and design assistance. Unused hours expire at the end of each MCP.

**4. Product Replacement Options**

“Product Replacement Options” are the options for replacement of the Product. The options are as follows:

(i) Same Day Shipment with Onsite Installation: Supplier will provide same day shipment for RMA's created before 2:00 pm Central United States Time and will provide an on-site engineer to perform the installation of the replacement Product. Supplier will be responsible for tax, insurance and freight for the defective and replacement Product.

(ii) Same Day Shipment: Supplier shall provide same day shipment for RMA's created before 2:00 pm Central United States Time. Supplier will be responsible for tax, insurance and freight for the defective and replacement Product.

(iii) Next Business Day On-site Repair: Supplier shall repair defective Product on-site, at the Authorized User's location the next business day (excluding weekends).

(iv) Return to Factory: Supplier shall return repaired Product within 20-day of Supplier's receipt of the defective item. Supplier is responsible for tax, insurance and freight for the failed Product being shipped to Product Manufacturer and Supplier is responsible for tax, insurance and freight for the repaired Product being returned to Authorized User.

The turnaround times stated above are offered to the extent commercially feasible.

Supplier reserves the right to repair or replace defective Product with equivalent certifiable as new or new Product. Returned Product becomes the property of Network General when it is determined by Supplier to contain a Defect and when the Authorized User has accepted the replacement Product. The Commonwealth or the Authorized User, as applicable, will have title for all replacement Product provided by Supplier to Authorized User.

**F. Authorized User Data**

In order to provide Maintenance Services, Supplier may need to access storage devices or files containing Authorized User's or a third party's confidential data. Supplier may not access any

such storage devices or files with out the prior consent of the Authorized User, and such access, if granted, shall be granted solely to enable Supplier to provide Maintenance Services, and Supplier shall at all times be bound by the Confidentiality section of the Contract. Deliberate or negligent access by Supplier to such data or information for any purpose other than the provision of Maintenance Services shall constitute a breach of the Contract.

**G. Coverage**

Upon purchasing Support for Network General Products, Authorized User must purchase the same level of Support for the same Network General Products throughout Authorized User's installed base.

**H. Service Prerequisites**

To receive Maintenance and Support services Authorized User must report the Defect to the technical support number provided by Supplier. Authorized User should be prepared to provide Supplier with (i) its Support Service Contract Number, (ii) the location of the Software and/or Product, (iii) a detailed description of the problems or errors, (iv) a description of the Product, including the serial number where applicable, (v) and the names and versions of the operating systems, networks, and software running with the Software including patches and fixes.

Authorized User shall be responsible for obtaining all necessary rights to enable Supplier to perform Maintenance Services. Authorized User shall (a) make the Product available to Supplier for repair or replacement during Normal Business Hours, and (b) ensure that the premises where the Product is located shall be maintained in a safe condition and that Supplier personnel will not be subject to undue risk or danger while on the premises.

Authorized User shall promptly download, distribute and install Maintenance Releases as released by Network General during the Maintenance Period. Support is limited to (i) the current version and the two most recent version of the licensed Software and Product used in accordance with the Software Manufacturer's End User License Agreement (incorporated for reference only as Exhibit G to the Contract) and (ii) to problems that can be reproduced while running on a hardware configuration meeting published Network General specifications.

**I. Changes to Support**

Product Manufacturer may change or discontinue the Support programs or pricing from time to time, however the terms of the Support Program shall apply for the remainder of Authorized User's then-current MCP. In the event Product Manufacturer changes or discontinues its Maintenance or Support offerings, Supplier shall notify VITA and all Authorized Users in writing, and, if such changes result in a decreased level of support, Supplier shall offer adequate consideration for such changes.

**J. Geographic Limitations**

Geographic restrictions or limitations may apply to the services described herein, and services might not be available in all areas. Unless otherwise agreed in writing by Supplier, the Software or Product is eligible for service only if it remains in the support region where Authorized User acquired the Software or Product.

**K. Service Limitations**

Supplier shall support the current and two prior Releases of the applicable Product or Software. Supplier's service obligations do not apply to Defects, damage or Software errors caused by misuse, abuse, accident, force majeure, unauthorized modification, improper use or improper maintenance caused by Authorized User or a third party. Supplier shall have no support obligation hereunder where Product, tools or Software other than those supplied or approved by Supplier have been used. Except as provided in the Contract or in any order issued thereunder, Supplier is not responsible for importing or exporting customer data, creating or modifying custom business rules or reports, or supporting custom modifications to databases, Active Server Pages, or other code, components or programs. Supplier shall ensure that all Software is installed on equipment that meets Software Manufacturer's published specifications, and Supplier shall not modify (e.g., add other applications, drivers, OS patches, equipment, etc.) Software Manufacturer's default configurations so as to adversely impact in any way the Software. Any

unauthorized modification or alteration of the Software by an Authorized User may result in additional charges for Maintenance Services and support.

**L. Software Evolution**

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

**M. Remedies and Reporting**

**1. Response and Restore Time**

Supplier agrees to provide a Response Time and Restore Time in accordance with the Warranty Service level or Maintenance Level specified in each executed order from an Authorized User. Supplier shall be deemed to have received an Authorized User's request for Warranty Services or Maintenance Services when Authorized User advises Supplier of its need via e-mail, web form submission, printer message or telephone call.

Should Supplier fail to meet the Response Time or Restore Time, Authorized User shall be entitled to a payment of one-half percent (1/2%) of the product purchase price, plus one-half percent (1/2%) of the annual maintenance charge (if applicable) identified in the relevant order for each two (2) hour period of delay beyond the specified required Response Time or Restore Time. The total remedy payment per month for failure to respond or restore within the Response Time or Restore Time shall not exceed an amount equal to 10% of the purchase price, plus the total prorated monthly maintenance charge (if applicable) for products under warranty, or for products under maintenance only, the total prorated monthly maintenance charge for the affected Product. Such payment shall be made to Authorized User on a quarterly basis.

If Supplier is unable to make the Product, including any Software conform, in all material respects, to the Requirements within thirty (30) days following notification by an Authorized User, Supplier shall, at such Authorized User's request, accept return of the Product, and return all monies paid by such Authorized User for the returned Product and Documentation.

**2. Escalation Procedures**

Supplier's escalation procedures are as defined in Contract Exhibit A.

**3. Dispatch Procedures and Product Service Record**

Authorized User's designated control organization shall have the exclusive authority to request Warranty Services or Maintenance Services. Supplier shall not respond to calls for service from any other source without prior written approval of Authorized User's agreement administrator designated on the relevant order.

Upon request by the Authorized User, Supplier shall provide a Product Service Record for reporting details of all Warranty Services or Maintenance Services performed for each Product under warranty or an order for Maintenance Services. Product Service Record shall record the following:

- i). Installation/Relocation/Removal/Modifications
- ii). Remedial actions
- iii). Preventive actions
- iv). Service Out-Of-Scope

**N. Notification of Expiration**

Supplier shall notify Authorized User not less than ninety (90) days prior to expiration of the MCP for each Product.

Support Expired or Not Purchased: Authorized Users whose Support has expired, or who did not purchase Support at the time the Product was licensed or purchased or where the Product warranty expired, may purchase the level of support desired within one year thereafter by paying 100% of the annual contract price for support from the date Support terminated (or was not purchased) through the date of reinstatement, prorated on a monthly basis. Product for which Support has lapsed for more than 90 days may be subject to inspection at Authorized User's expense; however, if the lapse of Support was due to Supplier's failure to notify Authorized User as specified herein, Supplier shall bear any and all costs related to inspection of the Product.

#### **O. Ordering**

Authorized Users may place orders for Maintenance Services under this Maintenance Agreement at any time during the Maintenance Agreement term. Each order shall identify:

- i). Product and, if applicable, serial number, for which Maintenance Services shall be provided,
- ii). Maintenance Level to be provided, and
- iii). MCP for the Product Maintenance Services.

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

Option 2: Upon request by an Authorized User, Supplier shall provide and bill for Maintenance Services on a coterminous basis, such that all contracted maintenance services expire annually on the same date for such Authorized User.

Each order for Maintenance Services shall reference the Contract and this Maintenance Agreement.

#### **P. Charges and Payment**

##### **1. Maintenance Charges**

Authorized User shall pay Supplier annually in accordance with the charges specified on Contract Exhibit C or, for services not identified in Contract Exhibit C, as specified in the relevant order.

##### **2. Service Out-of-Scope Charges**

Supplier's hourly charges for Service Out-of-Scope are as set forth on Contract Exhibit C. Supplier shall invoice Authorized User for Service Out-of-Scope charges on a monthly basis. Each Service Out-of-Scope charge must be supported per incident, by a Service Maintenance Record, or Authorized User shall not be liable to pay such Service Out-of-Scope charges.

#### **Q. Selection and Management of Supplier Personnel**

Supplier shall take such steps as may be necessary to ensure that all Supplier personnel provided under this Contract are competent and knowledgeable of the contractual arrangements and the applicable order between Authorized User and Supplier. Supplier shall be solely responsible for the conduct of its employees and subcontractors and shall ensure that such employees and subcontractors comply with Authorized User's site security, information security and personnel conduct rules, as well as applicable federal, state and local laws. Authorized User reserves the right to require the immediate removal from its premises of any employee, subcontractor or agent of Supplier whom Authorized User believes has failed to comply or whose conduct or behavior is unacceptable or unprofessional or results in a security or safety breach.

#### **R. Supplier Personnel Supervision**

Supplier and Authorized User acknowledge that Supplier shall be and is the sole employer of Supplier personnel, and shall have sole responsibility to supervise, counsel, discipline, review, evaluate, set the pay rates of and terminate the employment of Supplier personnel.

**S. General**

**1. Incorporated Provisions**

This Maintenance Agreement shall be subject to the terms and conditions of the Contract which may continue in effect after Contract termination through termination of the Maintenance Agreement and any orders issued hereunder. These terms and conditions include, but are not limited to: ordering and invoicing procedures, the Supplier's Monthly Report of Sales and Industrial Funding Adjustment, Universal Service Fund, Liability and Indemnification, and the General Provisions of the Contract.

**2. Entire Agreement**

This Maintenance Agreement comprises the entire agreement between the Parties and may only be amended by an instrument in writing signed by VITA and Supplier. VITA and Supplier each acknowledge that it has had the opportunity to review this Maintenance Agreement with its legal counsel.

Executed as of the last date set forth below by the undersigned authorized representatives of the Parties.

Supplier  
By:   
(Signature)  
Name: Gary J. Lynn  
(Print)  
Title: Its: Director of Sales  
Date: 7/9/07

VITA  
By:   
(Signature)  
Name: DOUG LESLIE  
(Print)  
Title: Its: STRATEGIC SOURCING SPECIALIST  
Date: 7/12/07

## HARDWARE AND MAINTENANCE CONTRACT TABLE OF CONTENTS

<b>1.</b>	<b>PURPOSE</b>	<b>4</b>
<b>2.</b>	<b>DEFINITIONS</b>	<b>4</b>
	A. Acceptance	4
	B. Authorized User	4
	C. Confidential Information	4
	D. Manufacturer	4
	E. Operating Condition	4
	F. Product	4
	G. Manufacturer	4
	H. Receipt (of Product)	4
	I. Requirements	4
	J. Service	5
	K. System Software	5
	L. Supplier	5
	M. Supplier's Proposal	5
	N. VITA	5
	O. Warranty Period	5
	P. Warranty Services	5
<b>3.</b>	<b>TERM AND TERMINATION</b>	<b>5</b>
<b>4.</b>	<b>PURCHASE, DELIVERY, INSTALLATION AND ACCEPTANCE</b>	<b>6</b>
	A. Orders	6
	B. Delivery Procedure	6
	C. Late Delivery	7
	D. Purchase Price and Price Protection	7
	E. Request for Quote	8
	F. Supplier-Sponsored Product Promotions	8
	G. Purchase Payment Terms	8
	H. Invoice Procedure	9
	I. Product Trade-in and Upgrade	9
	J. Product Installation	9
	K. Product Acceptance Criteria	10
	L. Cure Period	10
	M. Product Discontinuation	10
	N. Supplier's Report of Sales and Industrial Funding Adjustment	10
	O. Universal Service Fund	11
<b>5.</b>	<b>PRODUCT SUPPORT</b>	<b>11</b>
	A. VITA or Third Party Support	11
	B. Engineering Changes and Product Modification	11
	C. Training	12
	D. Parts and Maintenance Support	12
<b>6.</b>	<b>WARRANTY AND REMEDY</b>	<b>12</b>
	A. Supplier	12
	B. Ownership	12
	C. Supplier Viability	12
	D. Compatibility	12
	E. Product	12
	F. Performance Standards and Mean Time Between Failure	13
	G. Warranty Services	13
	H. Maintenance Services	14

**TABLE OF CONTENTS (CONTINUED)**

<b>7. SCOPE OF USE</b>	<b>14</b>
<b>8. SOFTWARE LICENSE</b>	<b>14</b>
A. License Grant	14
B. Business Continuity and Recovery	14
<b>9. COMPETITIVE PRICING</b>	<b>15</b>
<b>10. CONFIDENTIALITY</b>	<b>15</b>
A. Treatment and Protection	15
B. Exclusions	15
C. Return or Destruction	15
<b>11. LIABILITY AND INDEMNIFICATION</b>	<b>15</b>
<b>12. SECURITY COMPLIANCE</b>	<b>16</b>
<b>13. BANKRUPTCY</b>	<b>16</b>
<b>14. GENERAL</b>	<b>17</b>
A. Relationship Between VITA and Supplier	17
B. Nonsolicitation of Employees	17
C. Incorporated Contractual Provisions	17
D. Governing Law	17
E. Dispute Resolution	17
F. Advertising and Use of Proprietary Marks	18
G. Notices	18
H. No Waiver	18
I. Assignment	18
J. Captions	18
K. Severability	18
L. Survival	18
M. Force Majeure	18
N. Remedies	19
O. Right to Audit	19
P. Contract Administration	19
Q. Entire Contract	19
 <b>EXHIBIT A, REQUEST FOR PROPOSAL AND SUPPLIER'S PROPOSAL</b>	 <b>21</b>
 <b>EXHIBIT B, MEAN TIME BETWEEN FAILURE</b>	 <b>22</b>
 <b>EXHIBIT C, PRICES, FEES, SERVICE CHARGES AND PAYMENT SCHEDULE</b>	 <b>23</b>
 <b>EXHIBIT D, MAINTENANCE AGREEMENT</b>	 <b>24</b>
A. Purpose	24
B. Definitions	24
C. Term and Termination	24
D. Product Covered	25
E. Maintenance Services	25
F. Notification of Expiration	28
G. Ordering	28
H. Charges and Payment	29
I. Selection and Management of Supplier Personnel	29
J. Supplier Personnel Supervision	29
K. General	29

**TABLE OF CONTENTS (CONTINUED)**

<b>EXHIBIT E, SUPPLIER’S WARRANTY AND MAINTENANCE DOCUMENTS AS AMENDED</b>	<b>31</b>
<b>EXHIBIT F, SUPPLIER’S SOFTWARE LICENSE AGREEMENT AS AMENDED BY VITA</b>	<b>39</b>

## HARDWARE AND MAINTENANCE CONTRACT

THIS HARDWARE AND MAINTENANCE CONTRACT (“Contract”) is entered into by and between the Virginia Information Technologies Agency (hereinafter referred to as “VITA”), pursuant to §2.2-2012 of the Code of Virginia and on behalf of the Commonwealth of Virginia, and Electronic Systems, Inc. (“Supplier”) to be effective as of June 29, 2006 (“Effective Date”). VITA and Supplier are referred to herein individually as “Party” and collectively as the “Parties.”

### 1. PURPOSE

This Contract sets forth the terms and conditions under which Supplier agrees to sell certain of Supplier’s Product, and to provide various Services to the Authorized Users. Such Product and Services may include but not be limited to any products and services in the 3Com catalog. The Parties further agree that, upon an appropriate modification to this Contract in accordance with the “Modifications” clause incorporated by reference in “Incorporated Contractual Provisions” herein, such Product and Services may also include some or all of the Network General products and services proposed by Supplier in response to RFP 2006-03 (incorporated by reference as Exhibit A).

### 2. DEFINITIONS

#### A. Acceptance

Acceptance shall take the form of completed acceptance testing in conformance with the Requirements as determined by Authorized User or successful delivery to the designated ship to location (Receipt), as specified in the applicable order.

#### B. Authorized User

All Public Bodies, including VITA and all Commonwealth agencies, as defined by §2.2-4301 and referenced by §2.2-4304 of the Code of Virginia.

#### C. Confidential Information

Any confidential or proprietary information of a Party that is disclosed in any manner, including oral or written, graphic, machine readable or other tangible form, to the other Party in connection with or as a result of discussions related to this Contract, and which at the time of disclosure either (i) is marked as being “Confidential” or “Proprietary”, (ii) is otherwise reasonably identifiable as the confidential or proprietary information of the Disclosing Party, or (iii) under the circumstances of disclosure should reasonably be considered as confidential or proprietary information of the disclosing Party.

#### D. Manufacturer

The original equipment manufacturer of the Product provided by Supplier under this Contract.

#### E. Operating Condition

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

#### F. Product

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

#### G. Manufacturer

The manufacturer of the Product provided by Supplier pursuant to this Contract.

#### H. Receipt (of Product)

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

#### I. Requirements

The functional, performance, operational, compatibility, Acceptance testing criteria and other parameters and characteristics of the Product described in the applicable documentation,

Supplier's Proposal and such other parameters, characteristics, or performance standards for the Product that may be agreed upon in writing by the Parties.

**J. Service**

Any Product related services provided, by Supplier under this Contract, including certain maintenance services for the Product in accordance with the terms of the Maintenance Agreement attached hereto as Exhibit D which, upon its execution, is incorporated herein by reference.

**K. System Software**

The operating system code, including software, firmware and microcode, (object code version) for each Product, including any subsequent revisions, as well as any applicable documentation.

**L. Supplier**

Includes any individual who is an employee, sub-contractor, or independent contractor of Supplier to provide Products and/or Services under this Contract.

**M. Supplier's Proposal**

Proposal submitted by Supplier and accepted by VITA, attached hereto as part of Exhibit A.

**N. VITA**

Virginia Information Technologies Agency, an agency of the Commonwealth of Virginia pursuant to Chapter 20.1 (§§2.2-2005 et seq.) of the Code of Virginia.

**O. Warranty Period**

The period following Acceptance of each Product as such period is defined in the Product Manufacturer's standard warranty included in Exhibit E.

**P. Warranty Services**

The services provided pursuant to the Manufacturer's standard warranty and maintenance service offerings.

**3. TERM AND TERMINATION**

This Contract is effective and legally binding as of the Effective date and, unless terminated as provided for in this section, shall continue to be effective and legally binding for a period of two (2) years. Should VITA elect, this Contract may be extended for up to three (3) additional one (1) year periods after the expiration of the initial two (2) year period. VITA will issue a written notification to the Supplier stating the extension period 30 days prior to the expiration of any current term. Warranty on any Product ordered during the term of the Contract, and Parts and Maintenance Support as described in the Maintenance Agreement Exhibit to this Contract, may extend beyond the term of this Contract.

VITA shall have the unilateral right to terminate this Contract, the Maintenance Agreement, or any order issued hereunder, for default. Supplier shall be deemed in default in the event that any one or more of the following events occur or continue during the term defined above:

- i). Supplier fails to deliver the Product required by this Contract, the Maintenance Agreement, or any order issued hereunder by the specified delivery date,
- ii). Supplier repeatedly fails to respond to requests for maintenance or other services within the time limits set forth in the Contract, the Maintenance Agreement, or any order issued hereunder, or
- iii). Supplier is in breach of any of the other terms set forth within this Contract or the Maintenance Agreement.

If VITA deems the Supplier to be in default, VITA shall issue a "Show Cause Notice" identifying the failure and providing Supplier ten (10) days to cure the failure/nonperformance. If Supplier fails to answer the Show Cause Notice, or does not correct the deficiencies noted, VITA may immediately terminate for default this Contract, Maintenance Agreement, or any order issued hereunder. In such event, the Authorized User shall only be liable for cost incurred prior to the date of termination for

default. All costs of de-installation and return of the equipment shall be at Supplier's expense. Supplier shall submit any dispute to VITA for resolution according to the terms of the Dispute Resolution section.

VITA's failure to exercise its right to terminate for default under this provision shall not be construed as a waiver of its right to terminate for default, rescind or revoke this Contract, the Maintenance Agreement, or any order issued hereunder in the event of any subsequent breach of any provisions of such agreements.

VITA may terminate for convenience this Contract, including the Maintenance Agreement Exhibit or any order, in whole or in part, with respect to the purchase of Product upon not less than forty-five (45) days prior written notice at any time for any reason. Supplier shall submit any dispute to VITA for resolution according to the terms of the Dispute Resolution Section. Upon termination for convenience, VITA shall have no future liability except for Services rendered or Product delivered by Supplier prior to the termination date.

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

##### **A. Orders**

Supplier is required to accept any order placed through the eVA electronic procurement website portal (<http://www.eva.state.va.us>). eVA is the Commonwealth of Virginia's total electronic procurement solution. State agencies, as defined in §2.2-2006 of the Code of Virginia, shall order through eVA. All other Authorized Users are encouraged to order through eVA, but may order through the following means:

- i). Purchase Order (PO): An official PO form issued by an Authorized User.
- ii). Any order/payment transaction processed through the Commonwealth of Virginia's contract with American Express (AMEX). Each order must not exceed \$5,000, or the then-current charge card limit.
- iii). Any other order/payment charge or credit card process, such as AMEX, MASTERCARD, or VISA under contract for use by an Authorized User.

This ordering authority is limited to issuing orders for the Products and Services available under this Contract. Under no circumstances shall any Authorized User have the authority to modify this Contract.

Prior to placing an order against this Contract, an Authorized User may request a quote from the Supplier. All price quotes provided by Supplier to Authorized Users shall be valid for a minimum of sixty (60) days.

##### **B. Delivery Procedure**

Supplier shall deliver all Product F.O.B. destination, with such destination being the "ship to" address as specified in the applicable order. For orders for which Supplier is to provide installation of the Product, Supplier shall bear all risk of loss of or damage to the Product until Acceptance by the Authorized User, provided such Authorized User allows for installation to occur within a reasonable period from delivery date. For orders for which Supplier is not to provide installation of the Product, Supplier shall bear all risk of loss or damage to the Product until Receipt. In all cases, Supplier shall arrange and pay for all transportation and insurance sufficient to fully protect the Product while in transit. Each shipment shall include a packing slip or label indicating this Contract number, the Authorized User's order number, the part number, a description of the Product shipped and the quantity shipped. Each package in any shipment shall conspicuously display a packing slip that will contain the following information.

- i). Item Product Number
- ii). Description
- iii). Quantity

- iv). Contract Number
- v). Purchase Order (PO) Number
- vi). Contact Name

Supplier shall barcode each item shipped. If any loss to, or damage of, the Product occurs prior to Acceptance by the Authorized User, Supplier shall immediately provide a replacement item. Title shall pass upon such Acceptance.

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

### **C. Late Delivery**

Supplier hereby acknowledges and agrees that failure to deliver the Product ordered in strict accordance with the agreed upon delivery schedule determined in accordance with this Section shall constitute a material breach of this Contract resulting in damages to the ordering Authorized User, the total sum of which would be impracticable or difficult to ascertain as of the effective date of this Contract. If a delay in delivery lasts longer than twenty-five (25) days, the Authorized User may immediately cancel the order. The Authorized User reserves any and all other remedies available at law or in equity.

If Product is unavailable from or on backorder with the Manufacturer, the requirement for on-time delivery shall be waived, provided, however, that Supplier promptly notifies the ordering Authorized User that the Product is on Manufacturer backorder and delivery will be delayed. If an equivalent alternative product is available, Supplier shall notify the Authorized User and, at the request of such Authorized User, amend the order to provide the equivalent alternative product at the same discount as the discount offered on the Product originally ordered. No penalties for late delivery will be assessed.

Notwithstanding the foregoing, in the event the Supplier fails for any reason to deliver by the agreed upon delivery date set forth in the order/schedule, the ordering Authorized User, at its own discretion, may give Supplier oral or written notice of such breach. Once notice by such Authorized User is sent or given, the Authorized User may immediately procure the items from another source. In no event shall any Authorized User be held to pay Supplier any costs incurred by Supplier, including but not limited to ordering, marketing, manufacturing, or delivering the item(s) which are subject of such Authorized User's notice of breach.

### **D. Purchase Price and Price Protection**

Exhibit C sets forth the prices by Product type (including whole units and repairable major components thereof) and for enhanced Warranty Services and Maintenance Services, and the appropriate Commonwealth discounts. Percentage discounts offered to the Commonwealth shall not decrease for a period of not less than one (1) year from the effective date of this Contract. Should the Manufacturer change its percentage discount to Supplier, VITA and Supplier may negotiate a corresponding change to the Commonwealth's percentage discount. Prices for Product and Services set forth at a flat rate (i.e., no percentage discount) shall not increase for a period of not less than two (2) years from the effective date of this Contract. Thereafter, any increase in price shall be limited to once per twelve (12) month period and shall not exceed the lesser of 3% or the annual increase in the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, for the expenditure category "Information technology, hardware and services" as published by the Bureau of Labor Statistics of the Department of Labor (<http://www.bls.gov/>), for the effective date of the increase compared with the same index one (1) year prior. Supplier shall demonstrate the added value for any requested price increase. Any change in price shall be submitted to all Authorized Users in writing in accordance with the above and shall not become effective for sixty (60) days thereafter. Semi-annually the prices for Product shall be checked against CPI-U, as defined above, for the expenditure category "Information technology, hardware and services", and the prices in Exhibit C shall be appropriately reduced to ensure continued price competitiveness, if required. Supplier agrees to offer Product price reductions to ensure compliance with the Competitive Pricing Section.

**E. Request for Quote**

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

In cases where the RFQ process is invoked, the Authorized User issues an RFQ describing its requirements to potential suppliers, and suppliers provide, within the timeframe specified in the RFQ, a detailed Statement of Work (SOW)-based quote. Any quote received by the Authorized User as a result of this process shall include (a) a detailed description of each product or service proposed, at the catalog line item level, (b) the quantity of each such product or service, (c) the index or catalog contract price, (d) the additional percentage discount offered, and (d) an extended price.

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

**F. Supplier-Sponsored Product Promotions**

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

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

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

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

**G. Purchase Payment Terms**

All payment obligations under this Contract are subject to the availability of legislative appropriations for this purpose. In the event of non-appropriation of funds for the items under this Contract, VITA may terminate this Contract, or any order, 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.

Authorized User shall not issue an order, through eVA or by means of a purchase order form or any other means, unless such Authorized User has secured funding for payment of any products or services purchased through such order.

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

Supplier is responsible for the accuracy of its billing information. Supplier agrees not to issue invoices hereunder until Product has been shipped. Charges not invoiced within ninety (90) days of Acceptance may not be paid.

In the event Product is shipped without the applicable Documentation, payment shall not be due until the required documentation is provided.

If there are any disputed items, an Authorized User shall pay all undisputed charges and promptly notify Supplier in writing of any disputed amount. Supplier shall thereupon review its records, and, if it does not concur with the Authorized User, provide the Authorized User with documentation to support the charge. All payment terms are net 30 days after Acceptance.

#### **H. Invoice Procedure**

Supplier shall remit each invoice to the bill to address provided with the order promptly after all Products or Services have been accepted. Payment for Product Maintenance Services shall be annually in arrears unless otherwise stated herein, or in any order referencing this Contract. No invoice shall include any costs other than those identified in Exhibit C or the executed order referencing this Contract. Without limiting the foregoing, all shipping costs are the Supplier's responsibility. Invoices issued by the Supplier shall identify at a minimum:

- i). Part number
- ii). Product or Service type and description
- iii). Product serial number, if any
- iv). Quantity, charge and extended pricing for each Product and/or Service item
- v). Applicable order date
- vi). Ship date
- vii). Ship-to location contact name
- viii). This Contract number and the applicable order number
- ix). Supplier's federal Employer Identification Number (EIN).

**ALL CONTRACTUAL OBLIGATIONS UNDER THIS CONTRACT IN CONNECTION WITH AN ORDER PLACED BY ANY PUBLIC BODY (as that term is defined in §2.2-4301 of the Code of Virginia) ARE THE SOLE OBLIGATION OF THE PUBLIC BODY PLACING THE ORDER AND NOT THE RESPONSIBILITY OF VITA UNLESS VITA IS THE PUBLIC BODY PLACING THE ORDER.**

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

An Authorized User and Supplier may negotiate trade-ins at any time during the Contract term.

#### **J. Product Installation**

ESI will provide any necessary services at charges outlined in Exhibit C. Upon request by an Authorized User, Supplier shall provide the initial installation of all Product for the additional charge(s) set forth in Exhibit C. Installation shall include: travel, unpacking, removal of all shipping/packing materials, positioning, connecting to internal utility services, powering up, running routine diagnostic tests, testing for proper operation, hardware and software configuration, providing all documentation to the Authorized User, and any related necessary services to allow for Acceptance by the Authorized User.

All Product installations shall comply with building and facilities standards established by the ordering Authorized User. If such Authorized User installs the Product, Supplier shall provide all reasonably necessary telephone assistance at no charge for a period of ninety (90) days after Product delivery to the Authorized User. After such ninety (90) day period, Supplier shall provide telephone assistance for Product installation at the charges outlined in Exhibit C.

**K. Product Acceptance Criteria**

Product shall be accepted when the ordering Authorized User determines that it successfully operates in accordance with the Requirements, but not longer than thirty (30) days from Receipt or, in the case where the Authorized User has ordered installation from Supplier, thirty (30) days from installation by Supplier. Supplier shall provide to the ordering Authorized User a contact number to report any defects in the Product and to escalate replacement or Warranty Service.

**L. Cure Period**

Supplier shall correct the non-conformities identified hereunder and shall thereafter re-submit such previously non-conforming Product for re-testing within five (5) days of written notice of non-conformance, or as otherwise agreed between the Authorized User and Supplier. In the event that Supplier fails to deliver Product which meets the Requirements, such Authorized User may, in its sole discretion: (i) reject the Product in its entirety and recover amounts previously paid hereunder; (ii) issue a “partial Acceptance” of the Product with an equitable adjustment in the price to account for such deficiency; or (iii) conditionally accept the applicable Product while reserving its right to revoke Acceptance if timely correction is not forthcoming.

**M. Product Discontinuation**

During the term of this Contract, if any Product listed on Exhibit C is discontinued and Supplier does not offer a substitute acceptable to VITA, Supplier shall, for each Authorized User who purchased the discontinued Product, continue to meet such Authorized User’s needs for the discontinued Product for not less than 24 months. Additionally, Supplier shall make available to the Authorized User maintenance parts for discontinued Product for five (5) years from the date of such discontinuation. In every event, Supplier will provide any Authorized User with 120 days advance written notice of its intent to discontinue any Product type previously ordered by such Authorized User.

**N. Supplier’s Report of Sales and Industrial Funding Adjustment**

By the 10th day of every month, the Supplier shall submit the “Supplier Monthly Report of Sales”. Upon Contract award, Supplier shall be provided a template showing the format in which the report is to be submitted. The report shall be submitted via electronic mail to the VITA IFA Coordinator and the VITA Controller (contact information provided below), and shall report all invoices submitted by Supplier pursuant to the Contract to all Authorized Users during the preceding month. The report shall also show a cumulative record of all invoices submitted to all Authorized Users pursuant to the Contract.

The Supplier shall submit the Industrial Funding Adjustment (IFA) payment for the period covered by such “Supplier Monthly Report of Sales” within thirty (30) days of submitting the “Supplier Monthly Report of Sales”. The IFA payment shall be submitted in the form of a check or electronic funds disbursement made payable to the Treasurer of Virginia. The IFA payment is equal to two percent (2%) of total sales under this Contract during the relevant month, as determined by the amount invoiced to Authorized Users. The IFA payment shall reference this Contract number, “report amounts”, and “report period”.

Supplier shall remit IFA payments made via check to VITA, Attention VITA Controller. Supplier shall also provide a copy of the IFA payment to the VITA IFA Coordinator via email or fax. Failure to comply with reporting and payment requirements of this section may result in default of Contract.

Contact Information

<p>VITA Controller                  110 South 7<sup>th</sup> Street, 3<sup>rd</sup> Floor                  Richmond, VA 23219-3931                  VITAController@vita.virginia.gov</p>	<p>VITA IFA Coordinator                  110 South 7<sup>th</sup> Street, 1<sup>st</sup> Floor                  Richmond, VA 23219                  804-371-5980 (Phone)                  804-371-5969 (Fax)                  ifacoordinator@vita.virginia.gov</p>
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**O. Universal Service Fund**

Supplier agrees to make available all Products and Services as listed and priced herein to any Authorized User which is a USF participant. Supplier agrees to provide the Products and Services directly to the USF participant, and to bill each USF participant directly. Supplier agrees and understands that the responsibility for collection of all charges incurred, and the responsibility for resolving all Product and Service problems as well as administration of this Contract for USF participation shall be the sole responsibility of the Supplier.

Supplier warrants that it is qualified under applicable Federal Communications Commission and Virginia State Corporation Commission rules to apply for and receive USF allocations/disbursements for products and services provided pursuant to this Contract to Authorized Users which are eligible for those allocations/disbursements on behalf, and for the benefit, of those Authorized Users. Supplier also agrees to maintain those qualifications and to assist Authorized Users in applying for and receiving these allocations/disbursements.

**5. PRODUCT SUPPORT**

**A. VITA or Third Party Support**

**1. Documentation and Support Availability**

In the event that VITA elects to discontinue the Maintenance Agreement, Exhibit D, Supplier, for a negotiated charge, shall provide all the necessary user and installation documentation and maintenance and repair training reasonably required to enable any Authorized User to maintain and repair the Product or to obtain support and maintenance services from a third-party. Supplier shall supply parts at the discounts established in Exhibit C for a period of five years from date of the last purchase, unless the Product for which parts are required has been discontinued in which case Supplier's obligations to supply parts shall be in accordance with the Product Discontinuation Section of this Contract.

**2. Timeliness and Price**

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

**B. Engineering Changes and Product Modification**

For each Authorized User that purchased Product, Supplier agrees to document and make available to such Authorized User any and all planned engineering changes to the Product ninety (90) days prior to incorporation. All engineering changes which affect the safety of the Product ("Safety Changes") or the ability of the Product to meet the published specifications ("Performance Changes"), shall be made at no cost to the Authorized User. Supplier shall install all Safety Changes and Performance Changes within thirty (30) days after issuance of the engineering change order by the Product Manufacturer. If such engineering changes affect Product processing or operating capability, they shall be scheduled at the Authorized User's request as to time and at the Authorized User's option. The Authorized User shall have the option to waive or pre-approve all other engineering changes planned by Supplier on the Product delivered or planned for delivery to the Authorized User. Each Authorized User that purchased product can obtain information on any planned engineering changes on the Manufacturer's Website (www.3com.com). All Safety Changes and Performance Changes shall be made by the Supplier upon request by any Authorized User at the prices set forth in Exhibit C.

**C. Training**

At request of the Authorized User, Supplier shall provide product training at the Hourly Engineering rate provided in Exhibit C. Minimum hours will be 4 for each occurrence of on-site training. Data conversion will not be priced at a fixed rate, but at the hourly rate provided in Exhibit C until project is completed and agreed to by Authorized User. Supplier also offers classroom training at the rate provided in Exhibit C.

**D. Parts and Maintenance Support**

Supplier agrees to make available new/certifiable as new spare parts and complete maintenance for each Product type ordered by an Authorized User, for five (5) years from the date of shipment of the last unit of any given Product type. Thereafter, Supplier shall advise such Authorized User of its intent to discontinue either certain parts or maintenance services for any Product type ordered by the Authorized User.

Supplier shall notify the Authorized User one (1) year prior to the effective date of any such discontinuance, and shall provide to the Authorized User the opportunity to purchase spare parts in a quantity adequate to support its installed base. Should Supplier advise the Authorized User of its intent to discontinue certain parts for any Product type ordered by the Authorized User, the Authorized User shall have the option to request, and Supplier shall have the obligation to provide, all documentation required to ensure ongoing support, including full maintenance and repair by the Authorized User or its designated third-party maintenance provider, within thirty (30) days prior to the discontinuance date or replace the unsupported Product with a supported Product at no more than the cost delta between the supported Product and the unsupported Product.

**6. WARRANTY AND REMEDY**

**A. Supplier**

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

**B. Ownership**

Supplier is the owner of the Product or otherwise has the right to grant to any Authorized User title to or the right to use the Product provided hereunder without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third-party. Upon receipt of payment, the ordering Authorized User shall obtain good and clear title to the Product, excluding the System Software, free and clear of all liens, claims, security interests and encumbrances.

**C. Supplier Viability**

Supplier warrants that it has the financial capacity to perform and continue to perform its obligations under this Contract that no legal proceedings have been threatened or brought against Supplier that could threaten performance of this Contract and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction.

**D. Compatibility**

Unless restricted by law or regulation, if Supplier is aware of any product life cycle information which may affect compatibility, Supplier shall disclose such information to the Authorized User prior to fulfilling any relevant order from such Authorized User.

**E. Product**

Supplier warrants the following with respect to the Product:

- i). If Product is pursuant to a particular Request for Proposal, such Product shall be fit for the particular purposes specified by VITA and Supplier is possessed of superior knowledge with respect to the Product and is aware that Authorized Users are relying on Supplier's skill and judgment in providing the Product;
- ii). The Product shall be free of defects in material, design and workmanship;

- iii). Upon delivery, the Product shall be new and in good operating condition and shall have all released engineering changes released to date already installed;
- iv). Each Product delivered hereunder shall function in conformance with the Requirements;
- v). Any engineering changes made to the Product or System Software revisions shall not degrade the performance of the Product to a level below that defined in the applicable Request for Proposal, and Manufacturers' published specifications;
- vi). Upon delivery, all System Software shall be at the current release level unless otherwise requested by the ordering Authorized User; and
- vii). The System Software shall not contain any embedded device or code (e.g., time bomb) that is intended to obstruct or prevent any Authorized User's use of the System Software, nor shall Supplier disable any Authorized User's use of such System Software through remote access or otherwise. If the System Software contains authorization codes allowing access to a data base or other software, Supplier warrants that such codes shall be perpetual and non-expiring.

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

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

**G. Warranty Services**

Supplier shall provide the services described in the Product Manufacturer's standard warranty, in Exhibit E, as well as unlimited telephonic support and all necessary travel and labor during the Warranty Period to maintain the Product in accordance with the Requirements. Each Product shall be covered by the Manufacturer's standard warranty.

Standard Warranty Services are as follows:

**1. Limited Lifetime**

Warranty Period shall be the lifetime of the unit of Product for as long as the original Authorized User, or its successor as mandated by statute or regulation, owns the unit of Product, or for five (5) years after the effective date of the Product Manufacturer's discontinuance of sale of the Product, whichever occurs first. However, for some Product, fan and power supply Warranty Period is limited to five (5) years.

**2. Other Services Provided with Product**

These services are not included as part of the Warranty Services and shall be offered free of charge to the Authorized User for so long as such services are offered free of charge to Supplier by the Product Manufacturer. This offering is not available where prohibited by law. Services are effective at Warranty Period start date, and are enabled with Product registration using eSupport registration.

**3. Advance Hardware Replacement**

For the duration of Warranty Period, Supplier shall dispatch replacement Product after approval of a request for services, as follows: (i) Next Business Day/NBD: for U.S. 48 contiguous states – same day ship with next business day delivery when call received before noon Pacific time; for all other locations in North America (including Alaska and Hawaii) –

same day ship when call received before noon Pacific time; for Western Europe – same day ship when call received before noon Greenwich time; for all other locations – next business day ship. Supplier may require one (1) additional day for dispatch of Product with encryption. 10 Days: ship within 10 business days. Actual delivery times may vary depending on Authorized User's user location. Supplier shall exercise all reasonable commercial efforts to meet the dispatch times for replacement of Product.

**4. Software Updates**

Supplier shall provide download access to maintenance and bug fix releases for the version of System Software installed on the unit of Product purchased.

**5. Product Maintenance Services and Renewal Options**

After expiration of the Warranty Period, Supplier shall offer to Authorized Users Product Maintenance Services, including Software support services ("Software Support Services") and services equivalent to the Warranty Services, at the prices set forth in Exhibit C. Supplier warrants that it shall make Product Maintenance Services available for all the Product, including System Software, listed in Exhibit C, or which are components of Products listed in Exhibit C, throughout the term of the Maintenance Agreement. Any Authorized User, at its sole option, may acquire Product Maintenance Services. Cancellation of Product Maintenance Services, including Software Support Services, by an Authorized User shall not affect this Contract or the grant of any license by Supplier.

**H. Maintenance Services**

Maintenance Services are described in Exhibit D, Maintenance Agreement.

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

**7. SCOPE OF USE**

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

**8. SOFTWARE LICENSE**

**A. License Grant**

Supplier's products may include System Software. Such System Software is licensed directly to Authorized User(s) by the software manufacturer ("Software Manufacturer") through the end user licensing agreement (EULA), as amended, attached hereto as Exhibit F.

**B. Business Continuity and Recovery**

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

## 9. COMPETITIVE PRICING

Supplier warrants and agrees that each of the charges, economic or product terms or warranties granted to VITA pursuant to this Contract are comparable to or better than the equivalent charge, economic or product term or warranty being offered to any commercial or government customer of Supplier. If Supplier enters into any arrangements with another customer of Supplier or with an Authorized User to provide Software or Services under more favorable prices, as the prices may be indicated on Supplier's current US and International price list or comparable document, then this Contract shall be deemed amended as of the date of such other arrangements to incorporate those more favorable prices, and Supplier shall immediately notify VITA of such change. Notwithstanding the foregoing, nothing contained in this Section shall affect Supplier's ability to engage in special pricing on a case by case basis under competitive circumstances when bidding on one-time, fixed-price, statement of work-based contracts, and such pricing shall have no effect on the prices offered under this Contract.

## 10. CONFIDENTIALITY

### A. Treatment and Protection

Each Party agrees to (i) hold in strict confidence all Confidential Information of the other Party, (ii) use the Confidential Information solely to perform or to exercise its rights under this Contract, and (iii) not to transfer, display, convey or otherwise disclose or make available all or any part of such Confidential Information to any third-party. However, an Authorized User may disclose the Confidential Information as delivered by Supplier to subcontractors, contractors or agents of such Authorized User that are bound by a non-disclosure Contract with such Authorized User. Each Party shall take the same measures to protect against the disclosure or use of the Confidential Information as it takes to protect its own proprietary or confidential information (but in no event shall such measures be less than reasonable care).

### B. Exclusions

The term "Confidential Information" shall not include information that is:

- i). in the public domain through no fault of the receiving Party or of any other person or entity that is similarly contractually or otherwise obligated;
- ii). obtained independently from a third-party without an obligation of confidentiality to the disclosing Party and without breach of this Contract;
- iii). independently developed by the receiving Party without reference to the Confidential Information of the other Party; or
- iv). required to be disclosed under The Virginia Freedom of Information Act (§§2.2-3700 et seq. of the Code of Virginia) or similar laws or pursuant to a court order.

### C. Return or Destruction

Upon the termination or expiration of this Contract or upon the earlier request of the disclosing Party, the receiving Party shall (i) at its own expense, (a) promptly return to the disclosing Party all tangible Confidential Information (and all copies thereof except the record required by law) of the disclosing Party, or (b) upon written request from the disclosing Party, destroy such Confidential Information and provide the disclosing Party with written certification of such destruction, and (ii) cease all further use of the other Party's Confidential Information, whether in tangible or intangible form.

## 11. LIABILITY AND INDEMNIFICATION

Supplier agrees to indemnify, defend and hold harmless VITA, any Authorized User, its officers, directors, agents and employees ("Authorized User's Indemnified Parties") from and against any and all third party claims, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, fines, judgments, settlements, expenses (including attorneys' and accountants' fees and disbursements) and costs (each, a "Claim" and collectively, "Claims"), incurred by, borne by or asserted against VITA or any of Authorized User's Indemnified Parties to the extent

such Claims in any way relate to, arise out of or result from: (i) any intentional or willful conduct or negligence of any employee or subcontractor of Supplier, (ii) breach of any representation, warranty or covenant of Supplier contained herein, (iii) any defect in the Product or Services, or (iv) any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Product or Services. Selection and approval of counsel and approval of any settlement shall be accomplished in accordance with all applicable laws, rules and regulations. For state agencies the applicable laws include §§ 2.2-510 and 2.2-514 of the Code of Virginia. In all cases the selection and approval of counsel and approval of any settlement shall be satisfactory to VITA or the Authorized User against whom the claim has been asserted.

In the event of a Claim pursuant to any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Product or Services, and in addition to all other obligations of Supplier in this Section, Supplier shall at its expense, either (a) procure for all Authorized Users the right to continue use of such infringing Product or Services, or any component thereof; or (b) replace or modify such infringing Product or Services, or any component thereof, with non-infringing Products or Services satisfactory to VITA. And in addition, Supplier shall provide any Authorized User with a comparable temporary replacement Product or reimburse any Authorized User for the reasonable costs incurred by such Authorized User in obtaining an alternative product in the event such Authorized User cannot use the affected Product. If Supplier cannot accomplish any of the foregoing within a reasonable time and at commercially reasonable rates, then Supplier shall accept the return of the infringing component of the Product or Services, along with any other components of any products rendered unusable by any Authorized User as a result of the infringing component, and refund the price paid to Supplier for such components.

**EXCEPT WITH REGARD TO CLAIMS FOR PROPERTY DAMAGE, PERSONAL INJURY OR INFRINGEMENT, AND THE INDEMNIFICATION AND CONFIDENTIALITY OBLIGATIONS, WITH RESPECT TO EACH OF WHICH LIABILITY SHALL NOT BE LIMITED PURSUANT TO THIS SECTION, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY (OR THE INDEMNIFIED PARTIES OF SUCH PARTY) FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING (WITHOUT LIMITATION) LOSS OF PROFIT, INCOME OR SAVINGS, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, EXCEPT WHEN SUCH DAMAGES ARE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE PARTY, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS.**

## **12. SECURITY COMPLIANCE**

Supplier agrees to comply with all provisions of the ordering Authorized User's then current security procedures as are pertinent to Supplier's operation and have been supplied to Supplier by Authorized User and further agrees to comply with all applicable federal, state and local laws. Supplier shall indemnify, defend, and hold VITA, the Authorized User, its officers, directors, employees and agents harmless from and against any and all fines, penalties (whether criminal or civil), judgments, damages and assessments, including reasonable expenses suffered by, accrued against, or charged to or recoverable from VITA, the Authorized User, its officers, directors, agents or employees, on account of the failure of Supplier to perform its obligations pursuant to this Section.

## **13. BANKRUPTCY**

If Supplier becomes insolvent, takes any step leading to its cessation as a going concern, or ceases business operations for any reason and other than assignment as allowed by this Contract, then VITA may immediately terminate this Contract on notice to Supplier unless Supplier immediately gives VITA adequate assurance of the future performance of this Contract. If bankruptcy proceedings are commenced with respect to Supplier, and if this Contract has not otherwise terminated, then VITA may suspend all further performance of this Contract until Supplier assumes or rejects this Contract pursuant to Section 365 of the Bankruptcy Code or any similar or successor provision. Any such suspension of further performance by VITA pending Supplier's assumption or rejection shall not be a breach of this Contract, and shall not affect VITA's right to pursue or enforce any of its rights under this Contract or otherwise.

## 14. GENERAL

### A. Relationship Between VITA and Supplier

Supplier has no authority to contract for VITA or in any way to bind or to commit VITA to any agreement of any kind or to assume any liabilities of any nature in the name of or on behalf of VITA. Under no circumstances shall Supplier, or any of its employees, hold itself out as or be considered an agent or an employee of VITA, and VITA shall have no duty to provide or maintain any insurance or other employee benefits on behalf of Supplier or its employees. Supplier represents and warrants that it is an independent contractor for purposes of federal, state and local employment taxes and agrees that VITA is not responsible to collect or withhold any federal, state or local employment taxes, including, but not limited to, income tax withholding and social security contributions, for Supplier. Any and all taxes, interest or penalties, including, but not limited to, any federal, state or local withholding or employment taxes, imposed, assessed or levied as a result of this Contract shall be paid or withheld by Supplier or, if assessed against and paid by VITA, shall be reimbursed by Supplier upon demand by VITA.

### B. Nonsolicitation of Employees

During the term of this Contract, and for a period of six (6) months after the expiration or termination of this Contract for any reason, the parties hereto agree that neither Party shall, on behalf of itself or on behalf of any other individual or entity, directly or indirectly solicit any employee of the other Party to leave the employ of the other Party, without the consent of such Party.

### C. Incorporated Contractual Provisions

The contractual provisions at the following URL are statutorily mandated provisions that are hereby incorporated by reference, including the contractual claims provision §2.2-4363 of the Code of Virginia: [http://www.vita.virginia.gov/procurement/documents/terms\\_05-06sw.pdf](http://www.vita.virginia.gov/procurement/documents/terms_05-06sw.pdf).

### D. Governing Law

This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without regard to that body of law controlling choice of law. Any and all litigation shall be brought in the circuit courts of the Commonwealth of Virginia. The English language version of this Contract prevails when interpreting this Contract. The United Nations Convention on Contracts for the International Sale of Goods and all other laws and international treaties or conventions relating to the sale of goods are expressly disclaimed. UCITA shall apply to this Contract only to the extent required by §59.1-501.15 of the Code of Virginia.

### E. Dispute Resolution

In accordance with §2.2-4363 of the Code of Virginia, Contractual claims, whether for money or other relief, shall be submitted in writing to VITA or the Authorized User from whom the relief is sought no later than sixty (60) days after final payment; however, written notice of the Supplier's intention to file such claim must be given to VITA or the appropriate Authorized User at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment. VITA or the Authorized User shall render a final decision in writing within thirty (30) days after its receipt of the Supplier's written claim.

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

Upon request from the Authorized User from whom the relief is sought, Supplier agrees to submit any and all contractual disputes arising from this Contract to VITA's alternative dispute resolution (ADR) procedures or the Authorized User's ADR procedures. Supplier may invoke VITA's ADR procedures or the ADR procedures of the Authorized User at any time and concurrently with any other statutory remedies prescribed by the Code of Virginia.

In the event of any breach by VITA, Supplier's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section. In no event shall Supplier's remedies include the right to terminate any license or support services hereunder.

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

Supplier shall not use VITA's or any Authorized User's name or refer to VITA or any Authorized User, directly or indirectly, in any press release or formal advertisement without receiving prior written consent of VITA or such Authorized User. In no event may Supplier use a proprietary mark without receiving the prior written consent of VITA or the Authorized User.

**G. Notices**

Any notice required or permitted to be given under this Contract shall be in writing and shall be deemed to have been sufficiently given if delivered in person, or if deposited in the U.S. mails, postage prepaid, for mailing by registered, certified mail, or overnight courier service addressed to the addresses shown on the signature page. Either Party may change its address for notice purposes by giving the other Party notice of such change in accordance with this Section.

**H. No Waiver**

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

**I. Assignment**

This Contract shall be binding upon and shall inure to the benefit of the permitted successors and assigns of each party hereto. Supplier may not assign, subcontract, delegate or otherwise convey this Contract, or any of its rights and obligations hereunder, to any entity without the prior written consent of VITA, and any such attempted assignment or subcontracting without consent shall be void. VITA may assign this Contract to any entity, so long as the assignee agrees in writing to be bound by the all the terms and conditions of this Contract.

If any law limits the right of the Parties to prohibit assignment or nonconsensual assignments, the effective date of the assignment shall be thirty (30) days after the Supplier gives VITA prompt written notice of the assignment, signed by authorized representatives of both the Supplier and the assignee. Any payments made prior to receipt of such notification shall not be covered by this assignment.

**J. Captions**

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

**K. Severability**

Invalidity of any term of this Contract, in whole or in part, shall not affect the validity of any other term. The Parties further agree that in the event such provision is an essential part of this Contract, they shall immediately begin negotiations for a suitable replacement provision.

**L. Survival**

The provisions of this Contract regarding Software License, Warranty, Confidentiality, Liability and Indemnification, and the General Provisions shall survive the expiration or termination of this Contract. In addition, the provisions of this Contract necessary for the use and operation of the Maintenance Agreement, Exhibit D hereunder, shall continue in effect through termination of the Maintenance Agreement and any orders issued thereunder.

**M. Force Majeure**

Neither Party shall be responsible for failure to meet its obligations under this Contract if the failure arises from causes beyond the control and without the fault or negligence of the non-performing Party. If any performance date under this Contract is postponed or extended pursuant to this section for longer than thirty (30) calendar days, VITA, by written notice given during the postponement or extension, may terminate Supplier's right to render further performance after the effective date of termination without liability for that termination.

**N. Remedies**

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

**O. Right to Audit**

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

- i). Three (3) years from Service performance date;
- ii). Performed at Supplier's premises, during normal business hours at mutually agreed upon times; and
- iii). Excludes access to Supplier cost information.

**P. Contract Administration**

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

**Q. Entire Contract**

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

- Exhibit A Request for Proposal and Supplier's Proposal
- Exhibit B Mean Time Between Failure
- Exhibit C Prices, Fees, Service Charges and Payment Schedule
- Exhibit D Maintenance Agreement
- Exhibit E Supplier's Warranty and Maintenance Documents
- Exhibit F Software Manufacturer's End User Licensing Agreement and Supplier Contract Addendum (for reference only)

This Contract and its Exhibits constitute the entire agreement between the Parties and supersedes any and all previous representations, understandings, discussions or agreements between VITA and Supplier as to the subject matter hereof. Any and all terms and conditions contained in, incorporated into, or referenced by the Supplier's Proposal or any other Supplier-provided material shall be deemed invalid. This Contract may only be amended by an instrument in writing signed by VITA and Supplier. In the event of a conflict, the following order of precedence shall apply: the *Contract*, Exhibit D, *Maintenance Agreement*, Exhibit B, *Mean Time Between Failure*, Exhibit C, *Prices, Fees, Service Charges and Payment Schedule*, Exhibit E, *Supplier's Warranty and Maintenance Documents*, Exhibit A, *Request for Proposal and Supplier's Proposal*

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

Executed as of the last date set forth below by the undersigned authorized representatives of the Parties.

Supplier  
By: Gary J. Lynn  
(Signature)  
Name: Gary J. Lynn  
(Print)

Its: \_\_\_\_\_  
Date: 6/28/06

VITA  
By: Doc Crenshaw  
(Signature)  
Name: Doc Crenshaw  
(Print)

Its: Strategic Sourcing Mgmt  
Date: 6/28/06

Address for Notice:  
Electronic Systems  
369 Edwin Drive  
Virginia Beach, VA 23462  
Attention: \_\_\_\_\_

Address for Notice:  
VITA – Supply Chain Management  
110 S. 7<sup>th</sup> St., Ste. 135  
Richmond, VA 23219  
Attention: Contract Administrator

## **EXHIBIT A – REQUEST FOR PROPOSAL AND SUPPLIER’S PROPOSAL**

RFP 2006-03 and Supplier’s Proposal response to RFP 2006-03 are incorporated into this contract and may be viewed by contacting VITA.

## **EXHIBIT B, MEAN TIME BETWEEN FAILURE (MTBF)**

Supplier shall provide manufacturer's Mean Time Between Failure (MTBF) data to VITA for all equipment offered under the Contract upon request.

**Exhibit C - PRICES, FEES, SERVICE CHARGES AND PAYMENT SCHEDULE**

**Contract Number VA-060629-ELSY**

**Electronic Systems, Inc. Networking Products and Maintenance**

**Supplier Name: Electronic Systems, Inc.**

**All 3Com Products and Services**

**Index Price List Source** 3Com List Price (3Com Americas Product Price List and 3Com Americas Service Pricing)

**Delivery Terms** F.O.B. Destination

**Standard Delivery Lead Time** 15 Days ARO

<b>Product Category</b>	<b>Delivery Lead Time (Days ARO)</b>	<b>Government/Education Discount</b>
Category D	15	17%
Category E	15	15%
Category F	15	29%
Category G	15	41%
Category J	15	38%
Category T	15	8%
NBXG	15	41%
NBXJ	15	38%
NBXF	15	29%
Service	15	15%
Gem Service	15	5%
Professional Service	15	3%

See Attached "Electronic Systems, Inc. Commonwealth of Virginia Contract Price List" for current products and pricing.

## EXHIBIT D, MAINTENANCE AGREEMENT

This Maintenance Agreement Exhibit (“Maintenance Agreement” or “Agreement”) is entered into as of June 29, 2006 (“Agreement Effective Date”) and, except as expressly set forth or provided herein, shall be governed by the terms and conditions of the Hardware and Maintenance Contract, Contract # VA-060629-ELSY, between the Virginia Information Technologies Agency (hereinafter referred to as the “VITA”), pursuant to §2.2-2012 of the Code of Virginia, and Electronic Systems, Inc. (“Supplier”), effective June 29, 2006, (the “Contract”).

### A. Purpose

Supplier agrees to provide Authorized Users with certain maintenance services (“Services” or “Maintenance Services”) for the Product ordered by Authorized Users from the Product list incorporated as Exhibit C to the Contract, in accordance with the terms and conditions set forth below.

### B. Definitions

As used in this Agreement, the terms set forth in this Section shall have the meanings provided herein. Other terms used in this Agreement but not defined in this Section shall have the meanings ascribed thereto or are otherwise defined in the Contract in which they are used and shall have the meanings therein indicated.

#### 1. Product

Product to be maintained under orders referencing this Maintenance Agreement.

#### 2. Maintenance Level

The parameters of Maintenance Services, including the times during which and time-frames in which Supplier shall respond to a request for Service. The available Maintenance Levels shall be as described in Contract Exhibit E. The actual Maintenance Level for a unit of Product shall be set forth in the executed order for Maintenance Services on that unit of Product, and listed in the Inventory Record, if any, as described herein.

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

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

#### 4. Maintenance Services

Those Services, preventive and remedial, performed by Supplier at Authorized User's request in order to ensure continued operation of the Product. Maintenance Services shall include but not be limited to services identical to the Warranty Services specified in the Contract, Warranty Services.

#### 5. Operating Condition

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

#### 6. Response Time

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

### C. Term and Termination

#### 1. Agreement Effective Date

This Maintenance Agreement shall become effective on the date set forth above, upon execution by VITA and Supplier and shall continue in effect for one (1) year. Thereafter, this Maintenance Agreement may be renewed for subsequent twelve (12) month periods should VITA elect. VITA may terminate this Maintenance Agreement, in total or as to any portion of the Product as specified in the Contract.

## 2. Termination for Cause

Should Supplier fail to perform its material obligations under this Maintenance Agreement, VITA shall give Supplier written notice of such failure. Supplier shall have ten (10) days from receipt of said notice to correct this failure at no cost to VITA. Should Supplier fail to correct its performance within the ten (10) day period, VITA shall have the right to immediately terminate this Maintenance Agreement or a portion of this Maintenance Agreement by giving Supplier written notice of termination, and shall receive a refund of any amounts paid for Services not rendered after the effective date of termination. In the event of termination for breach, VITA reserves all remedies available in law and in equity.

## D. Product Covered

Contract Exhibit C lists all Product types covered under warranty and under this Maintenance Agreement. Supplier will provide in its monthly sales reports, a list of all units of Product purchased as well as invoice dates. The Authorized User will be responsible for tracking expirations of Warranty Period(s). Supplier shall maintain an inventory record ("Inventory Record") of all units of Product covered under Maintenance Agreement by type, quantity, Authorized User and location. Inventory Record shall also include the end date for each unit's MCP. Product quantities and types may vary as Product is added or deleted from coverage. Supplier shall be notified in writing of any Product removed from service, and Supplier shall automatically amend the Inventory Record without further action by Authorized User to reflect the relocation, addition or deletion of Product. Supplier shall provide a copy of the most current Inventory Record to any Authorized User upon request of such Authorized User at no additional charge.

## E. Maintenance Services

Supplier shall offer to any Authorized User the Maintenance Services described in the Product Manufacturer's Express and Guardian maintenance service plans. Options offered under these plans are identified in Contract Exhibit E; associated prices are identified in Contract Exhibit C.

### 1. Preventive Maintenance

Preventive Maintenance is action, including, but not limited to, inspecting, adjusting and testing, furnished on a scheduled basis, to diagnose potential problems and ensure proper hardware operation, in accordance with the Product Manufacturer's recommended procedures, if any. The Product Manufacturer's recommended Preventive Maintenance procedures, if any, shall be provided with each unit shipped. Supplier shall provide such Preventive Maintenance to any Authorized User at the prices identified in Contract Exhibit C. Preventive Maintenance shall be provided on a schedule mutually agreed upon by Supplier and Authorized User. There shall be no charge to the Authorized User for Maintenance Services necessitated by Supplier's failure to perform Preventive Maintenance on schedule if such Authorized User purchased Preventive Maintenance and provided such failure is not the result of delays caused by the Authorized User.

### 2. Remedial Maintenance

Remedial Maintenance is Maintenance Service (in accordance with the hardware Manufacturer's recommended procedures for repair of the hardware) necessary to identify and repair hardware malfunctions in order to return the hardware to its original Operating Condition. Supplier agrees to utilize the most expeditious methods of restoring the hardware to its original Operating Condition, which may include part or whole unit replacement.

Supplier shall perform Remedial Maintenance when an Authorized User notifies Supplier of a hardware malfunction. Calls dispatched outside the times specified by the Maintenance Level specified in the executed order referencing this Maintenance Agreement at the Authorized User's request may be subject to Service Out-of-Scope charges. An Authorized User may elect, at any time during the initial Maintenance Coverage Period, an alternative Maintenance Level offered by Supplier and identified in Contract Exhibit C. Such amendment shall take effect within thirty (30) days following Supplier's receipt of Authorized

User's written notice, in the form of a modification to an order and shall include any appropriate adjustments to price in accordance with the fees identified in Contract Exhibit C.

**3. Replacement Parts**

Supplier may install or replace parts and components as it determines necessary to ensure hardware operation in accordance with the terms of this Maintenance Agreement and the Maintenance Service descriptions in Contract Exhibit E. Such parts and components used for replacement ("Replacement Parts") may be new or certifiable as new, provided Supplier shall use only new Replacement Parts or Replacement Parts of equal quality and functionality. Any replacement hardware shall become the sole property of such Authorized User and any defective hardware shall become the sole property of Supplier. Supplier shall be solely responsible for all shipping costs. Supplier agrees to provide and maintain, in good repair, adequate Replacement Parts and test equipment required for the Maintenance of the installed base of hardware.

**4. Notification and Correction of Defects**

If the Authorized User has registered for notification via Supplier's website, Supplier shall promptly notify all Authorized Users of any defects or malfunctions in the Product or documentation of which it learns from any source, correct any such defects or malfunctions or provide a workaround until corrected within five (5) business days of Supplier's knowledge of such defect or malfunction and provide all Authorized Users with corrections of same, at no additional cost. In the event that any Authorized User identifies, within the twelve (12) month period following Acceptance, any design defect or non-conformance to the Requirements, Supplier, at Supplier's sole expense, shall provide all parts, components and services required to correct the design defect and restore such item or shall replace it, so that it functions as warranted. If Supplier is unable to make the failed Product conform within five (5) days following notification by such Authorized User, Supplier shall, at the Authorized User's request, accept return of such Product(s), and return all monies paid for the failed units. Service provided by Supplier to correct the design defect shall be on-site. Supplier shall be solely responsible for the shipping cost to return any Product to Supplier. Supplier shall provide email notifications and bug fixes to all Authorized Users.

**5. On-site Warranty Services and Maintenance Services**

For all hardware identified in Contract Exhibit C, Supplier shall offer the Warranty Services and the Maintenance Services as described in Contract Exhibit E. Response times for all Warranty Service levels and Maintenance Levels are set forth in Contract Exhibit E.

**6. System Software Warranty Services and Maintenance Services**

For all System Software components of the hardware identified in Contract Exhibit C, Supplier shall offer the following Warranty Services and Maintenance Services. Response times for all Warranty Services levels and Maintenance Levels are set forth in Contract Exhibit E. During the Warranty Period and during the term of any order referencing this Maintenance Agreement, Supplier shall provide the following Warranty Services and Maintenance Services (including unlimited telephonic support and all necessary travel and labor) without additional charge to any Authorized User to maintain the System Software in accordance with the Requirements:

a) New Releases

Supplier shall offer, at the prices identified in Contract Exhibit C, the Software Manufacturer's Software Upgrades Service, which shall include feature enhancements, incremental functionality, and bug fixes for System Software for all Product. Software Upgrades Service may be purchased separately or as a component of the Manufacturer's Express and Guardian maintenance service plans.

Upgrades do not include separately orderable software releases. For voice products, the service shall include minor releases that have a separate part number but does not

include major voice software releases. As an example, a major release is a change from 1.0 to 2.0 and a minor release is a change from 1.1 to 1.2.

Any Authorized User who has purchased the standalone Software Upgrades Service offering, or software upgrades included in the Manufacturer's Express and Guardian maintenance service plans, shall have access to download from the internet incremental software functionality that has been added to new software releases. Such Authorized User may also download documentation containing installation instructions and a summary of the new features and problems that are addressed in that specific release.

b) Coverage

Supplier shall provide to the Authorized User all reasonably necessary telephone or written consultation requested by such Authorized User in connection with the use, problems, and operation of the System Software. Hours and days of availability of such support and response and resolution times shall be in accordance with the Maintenance Level selected by such Authorized User and identified in such Authorized User's order placed for Maintenance Services.

c) Software Evolution

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

d) Remedies

If Supplier is unable to make the System Software conform, in all material aspects, within ten (10) days following notification by an Authorized User, Supplier shall, at such Authorized User's request, accept return of the Software or Product, and return all monies paid by such Authorized User for the returned System Software or Product and Documentation.

**7. Additional On-site Services**

For those locations where Authorized User has selected dedicated on-site coverage, Supplier shall provide the following services in addition to Warranty Services and Maintenance Services: (i) relocation of previously installed hardware; (ii) assistance to Authorized User's communications department in mutually acceptable duties related to the Warranty Services provided under the Contract and the Maintenance Services provided under this Maintenance Agreement and any orders placed thereunder; and (iii) cabling, if applicable. Authorized User's order and the Inventory Record, if any, shall identify all locations that are covered by on-site coverage. These additional on-site services shall be provided by Supplier at the rates identified in Contract Exhibit C.

**8. Response and Restore Time**

Supplier agrees to provide a Response Time and Restore Time in accordance with the Warranty Service level or Maintenance Level specified in each executed order from an Authorized User. Supplier shall be deemed to have received an Authorized User's request for Warranty Services or Maintenance Services when Authorized User advises Supplier of its need via e-mail, web form submission, printer message or telephone call.

Should Supplier fail to meet the Response Time or Restore Time, Authorized User shall be entitled to a payment of one-half percent (1/2%) of the product purchase price, plus one-half percent (1/2%) of the annual maintenance charge (if applicable) identified in the relevant order for each two (2) hour period of delay beyond the specified required Response Time or Restore Time. The total remedy payment per month for failure to respond or restore within the Response Time or Restore Time shall not exceed an amount equal to 10% of the purchase price, plus the total prorated monthly maintenance charge (if applicable) for products under warranty, or for products under maintenance only, the total prorated monthly

maintenance charge for the affected Product. Such payment shall be made to Authorized User on a quarterly basis.

**9. Escalation Procedures**

Supplier's escalation procedures are as defined in Contract Exhibit A.

**10. Service Out-of-Scope**

An Authorized User may, at any time it deems necessary, request maintenance service which is outside the scope of the Warranty Services or Maintenance Services ("Service Out-of-Scope"), including, but not limited to: (i) service on equipment not covered by the Contract or this Maintenance Agreement, (ii) repair of damage or replacement of parts of hardware resulting from changes in the hardware environment, extraordinary use of the hardware, or interconnected devices by Authorized User, or (iii) service outside the applicable hours of service specified in an executed order referencing this Maintenance Agreement. The charge for such Service Out-of-Scope shall be at the hourly rate specified in Contract Exhibit C and shall be inclusive of all expenses. Maintenance Services requested for a unit of hardware within the forty-eight (48) hour period immediately following Remedial Maintenance performed on the same unit of hardware for the same problem, shall be provided at no charge. Requests for Service Out-of-Scope shall only be approved for payment by the Authorized User when a Product Service Record is included with the Service Out-of-Scope invoice.

**11. Dispatch Procedures and Product Service Record**

Authorized User's designated control organization shall have the exclusive authority to request Warranty Services or Maintenance Services. Supplier shall not respond to calls for service from any other source without prior written approval of Authorized User's agreement administrator designated on the relevant order.

Upon request by the Authorized User, Supplier shall provide a Product Service Record for reporting details of all Warranty Services or Maintenance Services performed for each Product under warranty or an order for Maintenance Services. Product Service Record shall record the following:

- i). Installation/Relocation/Removal/Modifications
- ii). Remedial actions
- iii). Preventive actions
- iv). Service Out-Of-Scope

**F. Notification of Expiration**

Supplier shall notify Authorized User sixty (60) days prior to expiration of the MCP for each Product.

**G. Ordering**

Authorized Users may place orders for Maintenance Services under this Maintenance Agreement at any time during the Maintenance Agreement term. Each order shall identify:

- i). Product and, if applicable, serial number, for which Maintenance Services shall be provided,
- ii). Maintenance Level to be provided, and
- iii). MCP for the Product Maintenance Services.

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

Option 2: Upon request by an Authorized User, Supplier shall provide and bill for Maintenance Services on a coterminous basis, such that all contracted maintenance services expire annually on the same date for such Authorized User.

Each order for Maintenance Services shall reference the Contract and this Maintenance Agreement.

## **H. Charges and Payment**

### **1. Maintenance Charges**

Authorized User shall pay Supplier annually in accordance with the charges specified on Contract Exhibit C or, for services not identified in Contract Exhibit C, as specified in the relevant order.

### **2. Service Out-of-Scope Charges**

Supplier's hourly charges for Service Out-of-Scope are as set forth on Contract Exhibit C. Supplier shall invoice Authorized User for Service Out-of-Scope charges on a monthly basis. Each Service Out-of-Scope charge must be supported per incident, by a Service Maintenance Record, or Authorized User shall not be liable to pay such Service Out-of-Scope charges.

## **I. Selection and Management of Supplier Personnel**

Supplier shall take such steps as may be necessary to ensure that all Supplier personnel provided under this Contract are competent and knowledgeable of the contractual arrangements and the applicable order between Authorized User and Supplier. Supplier shall be solely responsible for the conduct of its employees and subcontractors and shall ensure that such employees and subcontractors comply with Authorized User's site security, information security and personnel conduct rules, as well as applicable federal, state and local laws. Authorized User reserves the right to require the immediate removal from its premises of any employee, subcontractor or agent of Supplier whom Authorized User believes has failed to comply or whose conduct or behavior is unacceptable or unprofessional or results in a security or safety breach.

## **J. Supplier Personnel Supervision**

Supplier and Authorized User acknowledge that Supplier shall be and is the sole employer of Supplier personnel, and shall have sole responsibility to supervise, counsel, discipline, review, evaluate, set the pay rates of and terminate the employment of Supplier personnel.

## **K. General**

### **1. Incorporated Provisions**

This Maintenance Agreement shall be subject to the terms and conditions of the Contract which may continue in effect after Contract termination through termination of the Maintenance Agreement and any orders issued hereunder. These terms and conditions include, but are not limited to: ordering and invoicing procedures, the Supplier's Monthly Report of Sales and Industrial Funding Adjustment, Universal Service Fund, Liability and Indemnification, and the General Provisions of the Contract.

### **2. Entire Agreement**

This Maintenance Agreement comprises the entire agreement between the Parties and may only be amended by an instrument in writing signed by VITA and Supplier. VITA and Supplier each acknowledge that it has had the opportunity to review this Maintenance Agreement with its legal counsel.

Executed as of the last date set forth below by the undersigned authorized representatives of the Parties.

Supplier

By: Gary J. Lynn  
(Signature)

Name: Gary J. Lynn  
(Print)

Title: Its: \_\_\_\_\_

Date: 6/28/06

VITA

By: Day Crenshaw  
(Signature)

Name: Day Crenshaw  
(Print)

Title: Its: Strategic Services Mgr

Date: 6/29/06

## **EXHIBIT E, SUPPLIER'S WARRANTY AND MAINTENANCE DOCUMENTS**

This Exhibit E of Contract Number VA-060629-ELSY contains the following documents:

*New Product Warranty and Other Services Provided With the Purchase of Genuine 3com Product*

*3Com<sup>®</sup> Express<sup>SM</sup> Service*

*3Com<sup>®</sup> Guardian<sup>SM</sup> Service*

*3Com<sup>®</sup> Software Application Support Service*

*3Com<sup>®</sup> Software Upgrades Service*

*AMI Coverage and Response Definitions, Maintenance Services*

These documents represent the service offerings of the original equipment manufacturer. VITA and Supplier agree that this Contract, including any and all maintenance provided hereunder, is an agreement between VITA and Supplier, and not between VITA and the original equipment manufacturer. Therefore, the Parties agree that the above referenced documents contained in this Exhibit E are included solely to describe the services to be offered through the Supplier and do not represent any contractual agreement between VITA and the original equipment manufacturer. Any and all of the original equipment manufacturer's contractual "Terms and Conditions" included in or referenced by the documents contained in Exhibit E shall be deemed invalid for the purposes of this Contract.

**NEW PRODUCT WARRANTY AND OTHER SERVICES PROVIDED WITH THE PURCHASE OF GENUINE 3COM PRODUCT**

<b>Warranty term starts at date of purchase</b>						
<b>Products/Product Families</b>	<b>PRODUCT WARRANTY</b>		<b>OTHER SERVICES PROVIDED WITH PRODUCT**</b>			
	<b>Hardware Repair/Replace</b>	<b>Software Replace Media, Bug Fix</b>	<b>Hardware In-Warranty Fulfillment</b>	<b>Telephone Technical Support</b>	<b>Online Knowledgebase Support</b>	<b>Software Updates****</b>
OfficeConnect Hubs, Switches, Gateways, Secure Routers, Firewalls, Servers	3 Years	90 Days	Advance Hardware Replacement*** NBD	90 Days	Limited Lifetime*	Limited Lifetime*
OfficeConnect Wireless Adapters, PC Cards, Access Points, Gateways, Routers, Print Server	3 Years	90 Days	Advance Hardware Replacement*** NBD	90 Days	Limited Lifetime*	Limited Lifetime*
IntelliJack – FX	3 Years	90 Days	Advance Hardware Replacement*** NBD	90 Days	Limited Lifetime*	Limited Lifetime*
IntelliJack (except– FX), Network Jack	Limited Lifetime*	90 Days	30 Day Return To Factory	90 Days	Limited Lifetime*	Limited Lifetime*
Desktop, Mobile and Server NICs	Limited Lifetime*	90 Days	30 Day Return To Factory	90 Days	Limited Lifetime*	Limited Lifetime*
Embedded Firewall Adapters						
CAT6 Network Cables	Limited Lifetime*	90 Days	30 Day Return To Factory	90 Days	Limited Lifetime*	Limited Lifetime*
Baseline Hubs and Switches, including 2800, 2200, 2000 families	Limited Lifetime*	90 Days	Advance Hardware Replacement*** NBD	90 Days	Limited Lifetime*	Limited Lifetime*
Stackable Switches: 4900, 4500, 4400, 4200, 38x0, 3200 families	Limited Lifetime*	90 Days	Advance Hardware Replacement*** NBD	90 Days	Limited Lifetime*	Limited Lifetime*
Enterprise Stackable Switches: 5500, 5500G families	Limited Lifetime* 5 Years Power Supply, Fan	90 Days	Advance Hardware Replacement*** 10 Days	90 Days	Limited Lifetime*	Limited Lifetime*
Enterprise Wireless PC Cards	3 Years	90 Days	Advance Hardware Replacement*** NBD	90 Days	Limited Lifetime*	Limited Lifetime*
Enterprise Wireless Access Points, Bridges, Switches and Controllers	1 Year	90 Days	30 Day Return To Factory	90 Days	Limited Lifetime*	Limited Lifetime*
Enterprise Modular Switches: 40x0, 77x0, 8800 families	1 Year	90 Days	30 Day Return To Factory	90 Days	Limited Lifetime*	Limited Lifetime*
Enterprise Routers: 3000, 5000, 6000 families	1 Year	90 Days	30 Day Return To Factory	90 Days	Limited Lifetime*	Limited Lifetime*
Transceivers: GBIC, SFP, XFP, XENPAK	1 Year	90 Days	30 Day Return To Factory	90 Days	Limited Lifetime*	Limited Lifetime*
Voice platforms, including VCX and NBX Servers, Gateways, Phones	1 Year	90 Days	30 Day Return To Factory	90 Days	Limited Lifetime*	Not Included
Security Switches: X505	1 Year	90 Days	30 Day Return To Factory	90 Days	Limited Lifetime*	Not Included
Power Adapters, Power Supplies, Redundant Power Systems	1 Year	90 Days	30 Day Return To Factory	90 Days	Limited Lifetime*	Not Included
Enterprise Advanced Software	Does Not Apply	90 Days	Does Not Apply	90 Days	Limited Lifetime*	Limited Lifetime*
Network Management Software	Does Not Apply	90 Days	Does Not Apply	90 Days	Limited Lifetime*	Not Included
Enterprise Management Suite Software						
Security Software Applications	Does Not Apply	90 Days	Does Not Apply	90 Days	Limited Lifetime*	Not Included
Security Management Software						
Voice Software Applications, including NBX and VCX	Does Not Apply	90 Days	Does Not Apply	90 Days	Limited Lifetime*	Not Included

Note: Asterisked terms are defined in Contract VA-060519-ELSY.

January 13, 2006

Advance hardware replacement, telephone support and software upgrades combine to provide a responsive maintenance support package

## OVERVIEW

Express<sup>SM</sup> Service is a complete solution for businesses that install and maintain their own network hardware. It offers essential 3Com® support elements that help you leverage your in-house resources. Express Service provides rapid hardware replacement, easy access to telephone technical support, and software upgrades.

## KEY BENEFITS

### ADVANCE HARDWARE REPLACEMENT

Trained specialists verify the source of your network problems by telephone. When hardware return is necessary, 3Com ships a replacement unit to arrive at your site within the committed time frame. Select 4-hour or next business day response times.

### TELEPHONE TECHNICAL SUPPORT

Qualified technical support engineers help you resolve an unlimited number of incidents quickly and efficiently. Choose coverage during business hours five days a week or 24-hour coverage 365-days per year.

### SOFTWARE UPGRADES

Using an assigned password, download the latest software upgrades from the 3Com website to optimize the performance of your network. Upgrades do not include separately orderable software releases. For 3Com voice products, the service includes minor releases that have a separate part number but does not include major voice software releases. For example, a major release would be a change from 1.0 to 2.0 and a minor release would be a change from 1.1 to 1.2.

### ANNUAL AND MULTI-YEAR CONTRACTS

Express Service simplifies budgeting for network maintenance by providing a complete support service for one predictable annual fee. Multi-year Express Service contracts are also offered.

## TERMS AND CONDITIONS

Availability of hardware response times may vary by geography. Contract and site minimums apply. The 3Com Service Agreement Terms and Conditions document is available on request.

## HOW TO ORDER

To order Express Service or for additional information, please contact your local 3Com service reseller. Or contact 3Com Global Services directly.

### Asia Pacific

Telephone: +65 6543 6645

Email: [ap\\_service@3com.com](mailto:ap_service@3com.com)

### Latin America

Telephone: 305 461 8478

Email: [gso\\_lat\\_admin@3com.com](mailto:gso_lat_admin@3com.com)

### Europe, Middle East, and Africa

Telephone: +44 (0)1442 435529

Email: [focalpoint\\_services@3com.com](mailto:focalpoint_services@3com.com)

### North America

Telephone: 866 326 6222, toll free

Email: [service\\_quotedesk@3com.com](mailto:service_quotedesk@3com.com)

**On-site assistance, advance hardware replacement, telephone support and software upgrades combine to provide a high level of customer care**

## OVERVIEW

Guardian<sup>SM</sup> Service is a complete support solution for businesses that need on-site assistance. Guardian Service ensures that an engineer is available to provide prompt hardware replacement on-site when needed. Guardian customers also have easy access to telephone technical support, and software upgrades.

## KEY BENEFITS

### ON-SITE ASSISTANCE

When required, a 3Com® service engineer or trained representative will arrive to provide on-site assistance or hardware replacement within the committed time frame. Select 4-hour or next business day response times.

### TELEPHONE TECHNICAL SUPPORT

Qualified technical support engineers help you resolve an unlimited number of incidents quickly and efficiently. Choose coverage during business hours five days a week or 24-hour coverage 365-days per year.

### SOFTWARE UPGRADES

Using an assigned password, download the latest software upgrades from the 3Com website to optimize the performance of your network. Upgrades do not include separately orderable software releases. For 3Com voice products, the service includes minor releases that have a separate part number but does not include major voice software releases. For example, a major release would be a change from 1.0 to 2.0 and minor release would be a change from 1.1 to 1.2.

### ANNUAL AND MULTI-YEAR CONTRACTS

Guardian Service simplifies budgeting for network maintenance by providing a complete support service for one predictable annual fee. Multi-year Guardian Service contracts are also offered.

## TERMS AND CONDITIONS

Availability may vary by geography. Contract and site minimums apply. The 3Com Service Agreement Terms and Conditions document is available on request.

## HOW TO ORDER

To order Guardian Service or for additional information, please contact your local 3Com service reseller. Or contact 3Com Global Services directly.

### Asia Pacific

Telephone: +65 6543 6645

Email: [ap\\_service@3com.com](mailto:ap_service@3com.com)

### Latin America

Telephone: 305 461 8478

Email: [gso\\_lat\\_admin@3com.com](mailto:gso_lat_admin@3com.com)

### Europe, Middle East, and Africa

Telephone: +44 [0]1442 435529

Email: [focalpoint\\_services@3com.com](mailto:focalpoint_services@3com.com)

### North America

Telephone: 866 326 6222, toll free

Email: [service\\_quotedesk@3com.com](mailto:service_quotedesk@3com.com)



Support package for 3Com software application products includes telephone technical support and software upgrades

## OVERVIEW

3Com® Software Application Support Service is for businesses that have 3Com software applications. This service insures ongoing system performance and stability by providing easy access to telephone technical support, bug fixes, and 3Com software upgrades. Upgrades provided by this service do not include separately orderable software releases.

## KEY BENEFITS

### TELEPHONE TECHNICAL SUPPORT

Qualified technical support engineers help you resolve unlimited incidents quickly and efficiently. Telephone coverage is provided 24-hours per day, 365-days per year.

### SOFTWARE UPGRADES

Using an assigned password, download the latest software upgrades from the 3Com website to optimize the performance of your network. Separately orderable software releases are not included in this service.

For 3Com voice products the service includes minor releases that have a separate part number but does not include major voice software releases. As an example, a major release is a change from 1.0 to 2.0 and a minor release is a change from 1.1 to 1.2.

### TERMS AND CONDITIONS

The 3Com Service Agreement Terms and Conditions document is available on request.

### HOW TO ORDER

To order 3Com Software Application Support Service or for additional information, please contact your local 3Com service reseller or 3Com Global Services directly.

#### Asia Pacific

Telephone: +65 6543 6645

Email: [ap\\_service@3com.com](mailto:ap_service@3com.com)

#### Europe, Middle East, and Africa

Telephone: +44 (0)1442 435529

Email: [focalpoint\\_services@3com.com](mailto:focalpoint_services@3com.com)

#### Latin America

Telephone: 305 461 8478

Email: [gso\\_lat\\_admin@3com.com](mailto:gso_lat_admin@3com.com)

#### North America

Telephone: 866 326 6222, toll free

Email: [service\\_quotedesk@3com.com](mailto:service_quotedesk@3com.com)

Visit [www.3com.com](http://www.3com.com) for more information about 3Com secure converged network solutions.

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Easy access to  
software releases  
and documentation

## OVERVIEW

3Com® Software Upgrades Service includes feature enhancements, incremental functionality, and bug fixes for purchased products. Upgrades do not include separately orderable software releases.

For 3Com voice products the service includes minor releases that have a separate part number but does not include major voice software releases. As an example, a major release is a change from 1.0 to 2.0 and a minor release is a change from 1.1 to 1.2.

## KEY BENEFITS

### ABILITY TO DOWNLOAD FILES

This standalone software upgrade offering, as well as software upgrades included in 3Com's bundled Express<sup>SM</sup> and Guardian<sup>SM</sup> Service packages, provide access to incremental software functionality has been added to new software releases. Access the upgrades using a unique contract number and password corresponding to the software entitlement contract. Use this number to download software files from the 3Com web site whenever it is convenient.

### LIMITED TO SOFTWARE

The standalone Software Upgrades Service is limited to software upgrades and does not include access to technical support or hardware. For a complete service maintenance package, 3Com recommends Express Service which includes advance hardware replacement, telephone technical support, and software upgrades. The Guardian Service package, available in designated regions, has the same deliverables as Express with the addition of on-site assistance.

### INCLUDES DOCUMENTATION

Along with the software, you are provided access to the documentation that provides installation instructions and a summary of the new features and problems that are addressed in that specific release.

## ORDERING SOFTWARE UPGRADES SERVICE

### TERMS AND CONDITIONS

The Software Upgrades Service has a one-year term with the option to renew in subsequent years. The 3Com Service Agreement Terms and Conditions document is available upon request.

### PRICING AND AVAILABILITY

Pricing varies depending on the product purchased. To obtain a quote, please contact your authorized 3Com service reseller or 3Com Global Services.

#### Asia Pacific

Telephone: +65 6543 6645

Email: [ap\\_service@3com.com](mailto:ap_service@3com.com)

#### Latin America

Telephone: 305 461 8478

Email: [gso\\_lat\\_admin@3com.com](mailto:gso_lat_admin@3com.com)

#### Europe, Middle East, and Africa

Telephone: +44 (0)1442 435529

Email: [focalpoint\\_services@3com.com](mailto:focalpoint_services@3com.com)

#### North America

Telephone: 866 326 6222, toll free

Email: [service\\_quotedesk@3com.com](mailto:service_quotedesk@3com.com)



Visit [www.3com.com](http://www.3com.com) for more information about 3Com secure converged network solutions.

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400830-003 03/06

AMI COVERAGE AND RESPONSE DEFINITIONS, MAINTENANCE SERVICES, June 2005

<b>Express</b>	<b>8x5xNBD</b>	<b>24x7xNBD</b>	<b>8x5x4</b>	<b>24x7x4</b>
<b>Telephone Support</b>	8x5 local hours excluding 3Com holidays	24 hours per day 7 days per week including holidays.	8x5 local hours excluding 3Com holidays	24 hours per day 7 days per week including holidays.
<b>Part Dispatch</b>	Part dispatches made by 3:00PM local time will be shipped to arrive by Noon the next business day. Dispatches made after the 3:00PM cut-off will arrive by Noon on the 2nd business day.	Part dispatches made by 3:00PM local time will be shipped to arrive by Noon the next business day. Dispatches made after the 3:00PM cut-off will arrive by Noon on the 2nd business day.	Part dispatches made by 3:00PM local time will be shipped to arrive within 4 hours.	Parts will arrive within 4 hours of dispatch 24 hours per day, 7 days per week including holidays.
<b>Work Continuation*</b>	Telephone support ends at 5:00 local time and resumes at 9:00 the next business day.	Depending upon the severity level, the case can be worked 24 hours per day 7 days per week.	Telephone support ends at 5:00 local time and resumes at 9:00 the next business day.	Depending upon the severity level, the case can be worked 24 hours per day 7 days per week.

<b>Guardian</b>	<b>8x5xNBD</b>	<b>24x7xNBD</b>	<b>8x5x4</b>	<b>24x7x4</b>
<b>Telephone Support</b>	8x5 local hours excluding 3Com holidays	24 hours per day 7 days per week including holidays.	8x5 local hours excluding 3Com holidays	24 hours per day 7 days per week including holidays.
<b>Part Dispatch</b>	Part dispatches made by 3:00PM local time will be shipped to arrive by Noon the next business day. Dispatches made after the 3:00PM cut-off will arrive by Noon on the 2nd business day.	Part dispatches made by 3:00PM local time will be shipped to arrive by Noon the next business day. Dispatches made after the 3:00PM cut-off will arrive by Noon on the 2nd business day.	Part dispatches made by 3:00PM local time will be shipped to arrive within 4 hours.	Parts will arrive within 4 hours of dispatch 24 hours per day, 7 days per week including holidays.
<b>Engineer Dispatch</b>	Engineers dispatched by 3:00PM local time will arrive by Noon the next business day. Engineers dispatched after the 3:00PM cut-off will arrive by Noon on the 2nd business day.	<i>Part not required:</i> Engineers dispatched by 3:00 PM will arrive by noon the next business day. <i>Part required:</i> Engineers dispatched by 3:00 PM local time will arrive by noon the next business day. Engineers dispatched after the 3:00 PM cut-off will arrive by noon on the 2nd business day.	Engineers dispatched by 1:00PM local time will arrive within 4 hours. Engineers dispatched after 1:00PM will arrive by 12:00PM noon the next business day.	Engineers will arrive within 4 hours of dispatch 24 hours per day, 7 days per week including holidays.
<b>Work Continuation</b>	Telephone support ends at 5:00 local time and resumes at 9:00 the next business day.	Depending upon the severity level, the case can be worked 24 hours per day 7 days per week.	Telephone support ends at 5:00 local time and resumes at 9:00 the next business day.	Depending upon the severity level, the case can be worked 24 hours per day 7 days per week.

**\* Severity Work Continuation**

Severity 1—When an existing network is down or there is a critical impact to the customer's business operations. 3Com and the customer will commit necessary resources around the clock to resolve the situation.

Severity 2—When the operation of an existing network is severely degraded, or significant aspects of the customer's business operation are being negatively impacted by unacceptable network performance. 3Com and the customer will commit full-time resources during normal business hours to resolve the situation.

Severity 3—When the operational performance of the network is impaired while most business operations remain functional. 3Com and the customer are willing to commit resources during normal business hours to restore service to satisfactory levels.

Severity 4—When a customer requires information or assistance on 3Com product capabilities, installation, or configuration, and there is little or no impact to the customer's business operation. 3Com and the customer are willing to provide resources during normal business hours to provide information or assistance as requested.

## SUPPLIER CONTRACT ADDENDUM

The Virginia Information Technologies Agency (hereinafter referred to as "VITA"), pursuant to §2.2-2012 of the Code of Virginia, and 3Com Corporation ("Supplier"), a business incorporated in the state of Delaware, F.E.I.N. 94-2605794, having its principal place of business at 350 Campus Drive, Marlborough, Massachusetts 01752, are this day entering into a contract and, for their mutual convenience, the parties are using the standard form contracts provided by Supplier:

- i). 3Com End User Software License Agreement for 3com Products, Except for VCX, NBX and TippingPoint Products;
- ii). 3Com End User Software License Agreement for TippingPoint Products;
- iii). 3Com End User Software License Agreement for VCX Products; and
- iv). 3Com End User Software License Agreement for NBX Products.

This addendum, duly executed by the parties, is attached to and hereby made a part of Supplier's standard form contracts and together shall govern the use of any and all Software licensed by the Commonwealth under this agreement whether or not specifically referenced in the order document.

Supplier represents and warrants that it is a corporation authorized to do in Virginia the business provided for in this contract.

This contract is executed by VITA on behalf of all public bodies, including VITA, as defined by §2.2-4301 and referenced by §2.2-4304 of the Code of Virginia, and hereinafter referred to as "Authorized Users."

As used herein, the term "EULA" (end user licensing agreement) shall mean any of the Supplier's standard form contracts, as found in Attachment A to this addendum, and any and all exhibits and attachments thereto. The term(s) "You," and/or "you," as used in the EULAs, shall mean the Commonwealth or any Authorized User and its officers, directors, agents and employees. The term "internal use", as used in the EULA shall mean use by or on behalf of the Commonwealth or any Authorized User.

Supplier's standard form contracts are, with the exceptions noted herein, acceptable to VITA. Nonetheless, because certain standard clauses that may appear in Supplier's standard form contracts cannot be accepted by VITA, and in consideration of the convenience of using those forms, and this form, without the necessity of specifically negotiating a separate contract document, the parties hereto specifically agree that, notwithstanding any provisions appearing in the attached Supplier's standard form contracts, none of the following shall have any effect or be enforceable against the Commonwealth or any Authorized User, its officers, employees or agents:

- i). Requiring or stating that the terms of the attached Supplier's standard form contract shall prevail over the terms of this addendum in the event of conflict;
- ii). Requiring the application of the law of any state other than the Commonwealth of Virginia in interpreting or enforcing this contract or requiring or permitting that any dispute under this contract be resolved in any court other than a circuit court within the Commonwealth of Virginia;
- iii). Renewing or extending the contract beyond the initial term or automatically continuing the contract period from term to term;
- iv). Requiring that the contract be "accepted" or endorsed by the home office or by any other officer subsequent to execution by an official of VITA before the contract is considered in effect;
- v). Delaying the acceptance of this contract or its effective date beyond the date of execution;

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- vi). Requiring any total or partial compensation or payment for lost profit or liquidated damages by any Authorized User, its officers, employees or agents if the contract is terminated before its ordinary period;
- vii). Permitting termination by Supplier, or any of Supplier's licensors, of the contract or the licenses granted hereunder, or permitting suspension of services by Supplier, except pursuant to an order from a court of competent jurisdiction;
- viii). Permitting unilateral modification of this contract by Supplier;
- ix). Permitting modification or replacement of the EULA pursuant to any new release, update or upgrade of Software or subsequent renewal of maintenance. If Supplier provides to any Authorized User an update or upgrade subject to additional payment, such Authorized User shall have the right to reject such update or upgrade;
- x). Imposing interest charges contrary to that specified by §2.2-4347 et seq. of the Code of Virginia;
- xi). Requiring any Authorized User to maintain any type of insurance either for such Authorized User's benefit or for Supplier's benefit;
- xii). Granting Supplier a security interest in property of any Authorized User, its officers, employees or agents;
- xiii). Requiring any Authorized User, its officers, employees or agents to indemnify or to hold harmless Supplier for any act or omission;
- xiv). Establishing a presumption of severe or irreparable harm to Supplier by the actions or inactions of any Authorized User;
- xv). Limiting or adding to the time period within which claims can be made or actions can be brought;
- xvi). Limiting selection and approval of counsel and approval of any settlement in any claim arising under the EULA and in which any Authorized User, its officers, employees or agents is a named party;
- xvii). Binding any Authorized User, its officers, employees or agents to any arbitration or to the decision of any arbitration board, commission, panel or other entity;
- xviii). Obligating any Authorized User, its officers, employees or agents to pay costs of collection or attorney's fees;
- xix). Limiting the liability of Supplier for property damage or personal injury;
- xx). Requiring any dispute resolution procedure(s) other than those in accordance with §2.2-4363 et seq. of the Code of Virginia;
- xxi). Prohibiting VITA or any Authorized User from transferring or assigning to any entity this contract or any license to Software pursuant to the contract;
- xxii). Permitting Supplier to assign, subcontract, delegate or otherwise convey the EULA and this Amendment, or any of its rights and obligations hereunder, to any entity without the prior written consent of VITA except as follows: Supplier may assign all or any of its rights and obligations to a third party as a result of a merger or acquisition or sale of all or substantially all of its assets to such third party provided assignee agrees to be bound by the terms and conditions set forth in the contract, or to an affiliate of Supplier, provided Supplier remains liable for affiliate's compliance with the terms and conditions set forth in this Contract;
- xxiii). Granting Supplier or an agent of Supplier the right to audit or examine any Authorized User's books, records, or accounts;

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- xxiv). Permitting Supplier to access any Commonwealth records or data, except pursuant to court order;
- xxv). Permitting Supplier to use any information provided by the Commonwealth except for Supplier's own internal administrative purposes;
- xxvi). Requiring any Authorized User to limit its rights or waive its remedies at law or in equity, including the right to a trial by jury; and
- xxvii). Bestowing any right or incurring any obligation that is beyond the duly granted authority of the undersigned representative of VITA to bestow or incur on behalf of the Commonwealth of Virginia.

The parties further agree as follows:

- i). The contractual provisions at the following URL are statutorily mandated provisions that are hereby incorporated by reference:  
[http://www.vita.virginia.gov/procurement/documents/terms\\_05-06sw.pdf](http://www.vita.virginia.gov/procurement/documents/terms_05-06sw.pdf)  
The contractual claims provision §2.2-4363 of the Code of Virginia is also incorporated by reference.
- ii). The United Nations Convention on Contracts for the International Sale of Goods and all other laws and international treaties or conventions relating to the sale of goods are expressly disclaimed. UCITA shall apply to this contract only to the extent required by §59.1-501.15 of the Code of Virginia.
- iii). Supplier shall comply with all applicable federal, state, and local laws, regulations, and ordinances.
- iv). The Commonwealth does not waive its sovereign immunity or its immunity under the Eleventh Amendment.
- v). The Commonwealth is tax exempt and shall not be responsible for payment of taxes, duties, or penalties.
- vi). Supplier agrees to indemnify, defend and hold harmless any Authorized User, its officers, directors, agents and employees ("Commonwealth's Indemnified Parties") from and against any and all third party claims, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, fines, judgments, settlements, expenses (including attorneys' and accountants' fees and disbursements) and costs (each, a "Claim" and collectively, "Claims"), incurred by, borne by or asserted against any of Commonwealth's Indemnified Parties to the extent such Claims directly arise out of or result from: (i) any intentional or willful conduct or negligence of any employee or subcontractor of Supplier, or (ii) any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Software.

The above provision shall not apply to, and Supplier shall have no liability or obligation for, any infringement arising from the following: (i) any modification, servicing or addition made to the Product by anyone other than Supplier or by ESI on behalf of Supplier; (ii) the use of such a Product as a part of or in combination with any devices, parts or software not provided by Supplier or by ESI on behalf of Supplier; (iii) compliance with the Authorized User's design requirements or specifications; or (iv) the use of other than a current unaltered release of the Software available from Supplier. This exclusion applies to the extent that the infringement would have been avoided but for such modification, combination, compliance with specifications, use of other than the current release, or practice of such method or process.

In the event the use of any Product be enjoined, or in the event Supplier wishes to minimize its potential liability hereunder, Supplier may, at its sole option and expense:

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(i) procure for the Authorized User the right to use such Product; (ii) substitute a functionally equivalent, non-infringing unit of the Product; (iii) modify such Product so that it no longer infringes but remains functionally equivalent; or (iv) if none of the foregoing are commercially feasible, take back such Product and refund the purchase price paid by the Authorized User for such Product, depreciated over a five (5) year period using the straight line method.

THIS SECTION STATES SUPPLIER'S TOTAL RESPONSIBILITY AND LIABILITY FOR ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHT BY ANY 3COM PRODUCTS OR ANY PART THEREOF AND IS IN LIEU OF AND REPLACES ANY AND ALL OTHER EXPRESS, IMPLIED OR STATUTORY WARRANTIES REGARDING INFRINGEMENT.

Selection and approval of counsel and approval of any settlement shall be accomplished in accordance with all applicable laws, rules and regulations. For state agencies the applicable laws include §§ 2.2-510 and 2.2-514 of the Code of Virginia. In all cases the selection and approval of counsel and approval of any settlement shall be satisfactory to the Authorized User against whom the claim has been asserted.

- vii). Any Authorized User may rely on independent contractors, acting on behalf of such Authorized User, to perform functions requiring the use of and access to the Supplier's Software according to the terms and conditions in the EULAs in Attachment A, as amended by this addendum. Nothing in the Supplier's standard form contract shall limit such third parties' from using or accessing the Software, according to the terms and conditions in the EULAs in Attachment A, as amended by this addendum, in order to perform such functions.
- viii). Nothing in this contract shall be construed as conveying any rights or interest in Commonwealth data to Supplier.
- ix). Any travel expenses incurred by Supplier in the course of performing the services must be pre-approved by the appropriate Authorized User and shall be reimbursed at the then-current per diem rates published by the Virginia Department of Accounts.
- x). All payment obligations under this contract are subject to the availability of federal, state, and/or local appropriations for this purpose. In the event of non-appropriation of funds for the items under this contract, VITA may terminate, in whole or in part, this contract or any order or Statement of Work, for those goods or services for which funds have not been appropriated. This may extend to the renewal of maintenance services for only some of the licenses granted by Supplier. Written notice will be provided to the Supplier as soon as possible after legislative action is completed. There shall be no time limit for termination due to termination for lack of appropriations.
- xi). An Authorized User may require that Supplier personnel submit to a criminal background check prior to performance of any services under this contract.
- xii). An Authorized User may transfer or distribute the Software internally, for use in accordance with the terms of the EULAs in Attachment A, as amended by this addendum.

This contract, consisting of this VITA addendum and the attached Supplier's standard form contracts, constitute the entire agreement between the parties and may not be waived or modified except by written agreement between the parties.

This contract has been reviewed by staff of VITA. Its substantive terms are appropriate to the needs of VITA and sufficient funds have been allocated for its performance by VITA.

IN WITNESS WHEREOF, the parties have caused this contract to be duly executed as of the last date set forth below by the undersigned authorized representatives of the parties, intending thereby to be legally bound.

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Supplier

By: Charles H. DeMers

(Signature)

Name: Charles H. DeMers

Director of Finance, North America Sales

Title, Its: \_\_\_\_\_

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

VITA

By: [Signature]

(Signature)

Name: [Print Name]

(Print)

Title, Its: [Title]

Date: [Date]

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