



Commonwealth of Virginia  
Virginia Information Technologies Agency

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

Date: July 11, 2011

Contract #: VA-090202-DELL

Authorized User: All public bodies, including VITA, as defined by §2.2-4301 and referenced by §2.2-4304 of the *Code of Virginia*

Contractor: Dell Marketing L.P.  
One Dell Way, MS 8-02  
Round Rock, TX 78682

FIN: 74-2616805

Contact Person: Frank Plemons  
Voice: 512-513-9347  
Fax: 800-443-9527  
Email: [Frank\\_plemons@dell.com](mailto:Frank_plemons@dell.com)

Term: February 2, 2011 – February 1, 2012

Payment: Net 30 days

For Additional Contract Information, Please Contact:

Virginia Information Technologies Agency  
Supply Chain Management

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

NOTES: Individual Commonwealth of Virginia employees are not authorized to purchase equipment or services for their personal use from this Contract.

For updates, please visit our Website at <http://www.vita.virginia.gov/procurement/contracts.cfm>

**VIRGINIA INFORMATION TECHNOLOGIES AGENCY (VITA):** Prior review and approval by VITA for purchases in excess of \$100,000.00 is required for State Agencies and Institutions only.



**MODIFICATION #3  
TO  
CONTRACT NUMBER VA-090202-DELL  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
DELL MARKETING, L.P.**

This MODIFICATION #3 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and DELL MARKETING, L.P., hereinafter referred to as "Contractor" relating to the modification of the above Contract. This Modification #3 is hereby incorporated into and made an integral part of Contract VA-090202-DELL (the Agreement), as modified.

Exhibit E (EULA) from the Hardware and Maintenance Contract is no longer associated with VA-090202-DELL.

Exhibit A (Software Functional Requirements) from the Software Contract is no longer associated with VA-090202-DELL.

Exhibit C (Software Maintenance Services) from the Software Contract is no longer associated with VA-090202-DELL.

Exhibit D (EULA) from the Software Contract is no longer associated with VA-090202-DELL.

Exhibit E (Escrow Agreement) from the Software Contract is no longer associated with VA-090202-DELL.

Exhibit A (Service Requirements) from the Information Technology Services Contract is no longer associated with VA-090202-DELL.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-090202-DELL and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.**

**PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.**

DELL MARKETING, L.P.

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

*Ashleigh Lane*

NAME: Ashleigh Lane

TITLE: Public Contract Manager

DATE: 07/05/2011

COMMONWEALTH OF VIRGINIA

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

*Dana B. Smith*

NAME: Dana B. Smith

TITLE: CONTROLLER

DATE: 7.7.2011

**MODIFICATION #2  
TO  
CONTRACT NUMBER VA-090202-DELL  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
DELL MARKETING, L.P.**

This MODIFICATION #2 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and DELL MARKETING, L.P., hereinafter referred to as "Contractor" relating to the modification of the above Contract. This Modification #2 is hereby incorporated into and made an integral part of Contract VA-090202-DELL (the Agreement), as modified.

The term of the contract is extended under the same terms for the period beginning February 2, 2011 through February 1, 2012.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-090202-DELL and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.**

**PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.**

DELL MARKETING, L.P.

BY: Lauren D. McCosham

NAME: Lauren D. McCosham

TITLE: Contract Manager

DATE: 1/26/2011

COMMONWEALTH OF VIRGINIA

BY: Samuel A. Nixon, Jr.

NAME: SAMUEL A. NIXON, JR.

TITLE: CIO OF THE COMMONWEALTH

DATE: 1/31/11

**MODIFICATION #1  
TO  
CONTRACT NUMBER VA-090202-DELL  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
DELL MARKETING, L.P.**

This MODIFICATION #1 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and DELL MARKETING, L.P., hereinafter referred to as "Contractor" relating to the modification of the above Contract. This Modification #1 is hereby incorporated into and made an integral part of Contract VA-090202-DELL (the Agreement), as modified.

Modification #1 allows for the following:



November 17, 2009

Greg Searce, VCO  
Strategic Sourcing Specialist  
Commonwealth Enterprise Solutions Center  
11751 Meadowville Lane  
Chester, VA 23836

Reference: Dell's Commonwealth of Virginia IT Contracts  
(Dell Contract Ref. Nos. 90307/70683, 07/09/11ABP, 74787, 56AAK)  
Subject: Dell Hardware Customization/ Custom Factory Integration (CFI) Services

Dear Mr. Searce:

As part of Dell's efforts to optimize its supply chain, Dell will be subcontracting performance of certain portions of our Hardware Customization/CFI services to a select few third party providers ("Dell Service Providers"). Hardware Customization/CFI services include custom asset tagging, integration of hardware components, installation of software images and other similar custom factory integration services. Dell Service Providers may be performing their Hardware Customization/CFI services outside the country where your order is placed.

Dell is sending you this notice to request your authorization for Dell to perform Hardware Customization/CFI services as described above. Please rest assured that Dell remains directly responsible to you for the performance of the Hardware Customization/CFI services under the relevant contract(s) between our organizations. Your authorization will apply to all purchases made by any entities under the terms of the referenced Contract as of the date of your authorization below, and will remain in effect until you provide written notice to Dell revoking this authorization.

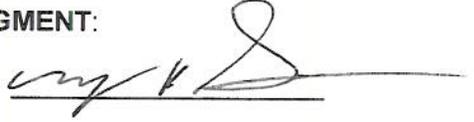
Kindly signify your consent by having an authorized representative sign in the space below and returning this letter to Lauren McCosham no later than November 30, 2009, either by fax at (512) 283-9092 or e-mail at lauren\_mccosham@dell.com. Should you have any questions regarding this request, please contact your Dell Account Representative by phone at 717-503-7700 or e-mail at Tim\_Wilkinson@dell.com.

Dell very much appreciates your business, and looks forward to continuing a mutually beneficial relationship into the future.

Best regards,

Lauren D. McCosham  
Contract Manager

**ACKNOWLEDGMENT:**

By:   
Print Name: Gregory H. Searce  
Title: Strategic Sourcing Specialist  
Company: VITA  
Date: 12.09.2009

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-090202-DELL and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.**

**PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.**



# **Hardware and Maintenance Contract**

between

The Virginia Information Technologies Agency

on behalf of

**The Commonwealth of Virginia**

and

**Dell Marketing LP**

## HARDWARE AND MAINTENANCE CONTRACT TABLE OF CONTENTS

<b>1.</b>	<b>PURPOSE</b>	<b>5</b>
<b>2.</b>	<b>DEFINITIONS</b>	<b>5</b>
	A. Acceptance	5
	B. Authorized Users	5
	C. Confidential Information	5
	D. Maintenance Level	5
	E. Maintenance Coverage Period (MCP)	5
	F. Maintenance Services (or Maintenance)	5
	G. Operating Condition	5
	H. Party	5
	I. Product	5
	J. Receipt (of Product)	5
	K. Requirements	6
	L. Response Time	6
	M. Service	6
	N. Software Publisher	6
	O. Supplier	6
	P. System Software	6
<b>3.</b>	<b>TERM AND TERMINATION</b>	<b>6</b>
	A. Contract Term	6
	B. Termination for Convenience	6
	C. Termination for Breach or Default	6
	D. Termination for Non-Appropriation of Funds	7
	E. Effect of Termination	7
	F. Transition of Services	7
	G. Contract Kick-Off Meeting	7
	H. Contract Closeout	8
<b>4.</b>	<b>DELIVERY, INSTALLATION AND ACCEPTANCE</b>	<b>8</b>
	A. Delivery Procedure	8
	B. Late Delivery	8
	C. Product Trade-in and Upgrade	9
	D. Product Installation	9
	E. Product Acceptance	9
	F. Cure Period	9
	G. Product Discontinuation	9
<b>5.</b>	<b>PRODUCT SUPPORT AND ADDITIONAL SERVICES</b>	<b>10</b>
	A. Authorized User or Third Party Support	10
	1. Documentation and Support Availability	10
	2. Timeliness and Price	10
	B. Engineering Changes and Product Modification	10
	C. Training	10
	D. Parts and Maintenance Support	10
	E. Inventory Record	10
	F. Product Service Record	11
	G. Additional Services	11
<b>6.</b>	<b>WARRANTY AND REMEDY</b>	<b>11</b>
	A. Supplier	11
	B. Ownership	11
	C. Supplier Viability	11
	D. Product	11

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<b>E. Product Performance Data</b>	<b>12</b>
<b>F. Warranty Services</b>	<b>12</b>
1. Product Covered	12
2. Preventive Maintenance	13
3. Remedial Maintenance	13
4. Replacement Parts	13
5. Spares	13
6. Notification and Correction of Defects	13
7. One-year Depot Warranty	13
8. On-site Warranty	13
9. System Software Warranty	13
10. Escalation Procedures	13
11. Remedies	13
12. Product Maintenance Services and Renewal Options	13
<b>7. MAINTENANCE SERVICES</b>	<b>14</b>
<b>A. Ordering</b>	<b>14</b>
<b>B. Renewal</b>	<b>14</b>
<b>C. Services</b>	<b>14</b>
1. Product Covered	15
2. Preventive Maintenance	15
3. Remedial Maintenance	15
4. Replacement Parts	15
5. Spares	15
6. Notification and Correction of Defects	15
7. Advanced Replacement Services	15
8. On-site Maintenance Services	15
9. Escalation Procedures	15
10. Remedies	15
<b>8. SCOPE OF USE</b>	<b>15</b>
<b>9. SOFTWARE LICENSE</b>	<b>16</b>
<b>D. Authorized User Compliance</b>	<b>16</b>
<b>E. No Subsequent, Unilateral Modification of Terms by Supplier (“Shrink Wrap”)</b>	<b>16</b>
<b>10. ORDERS AND COMPENSATION</b>	<b>16</b>
<b>A. Supplier Quote and Request for Quote</b>	<b>16</b>
<b>B. Orders</b>	<b>17</b>
<b>C. Purchase Price and Price Protection</b>	<b>17</b>
<b>D. Supplier-Sponsored Product Promotions</b>	<b>18</b>
<b>E. Invoice Procedure</b>	<b>18</b>
<b>F. Purchase Payment Terms</b>	<b>18</b>
<b>11. REPORTING</b>	<b>19</b>
<b>A. Supplier’s Report of Sales and Industrial Funding Adjustment</b>	<b>19</b>
<b>B. Small Business Participation</b>	<b>19</b>
<b>12. COMPETITIVE PRICING</b>	<b>19</b>
<b>13. CONFIDENTIALITY</b>	<b>20</b>
<b>A. Treatment and Protection</b>	<b>20</b>
<b>B. Exclusions</b>	<b>20</b>
<b>C. Return or Destruction</b>	<b>20</b>
<b>14. INDEMNIFICATION AND LIABILITY</b>	<b>20</b>
<b>A. Indemnification</b>	<b>20</b>
<b>B. Liability</b>	<b>21</b>

<b>15. SECURITY COMPLIANCE</b>	<b>22</b>
<b>16. BANKRUPTCY</b>	<b>22</b>
<b>17. GENERAL PROVISIONS</b>	<b>22</b>
<b>A. Relationship Between VITA and Authorized User and Supplier</b>	<b>22</b>
<b>B. Incorporated Contractual Provisions</b>	<b>23</b>
<b>C. Compliance with the Federal Lobbying Act.</b>	<b>23</b>
<b>D. Governing Law</b>	<b>23</b>
<b>E. Dispute Resolution</b>	<b>23</b>
<b>F. Advertising and Use of Proprietary Marks</b>	<b>23</b>
<b>G. Notices</b>	<b>24</b>
<b>H. No Waiver</b>	<b>24</b>
<b>I. Assignment</b>	<b>24</b>
<b>J. Captions</b>	<b>24</b>
<b>K. Severability</b>	<b>24</b>
<b>L. Survival</b>	<b>24</b>
<b>M. Force Majeure</b>	<b>24</b>
<b>N. Remedies</b>	<b>24</b>
<b>O. Right to Audit</b>	<b>24</b>
<b>P. Offers of Employment</b>	<b>25</b>
<b>Q. Contract Administration</b>	<b>25</b>
<b>R. Entire Contract</b>	<b>25</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 Dell Marketing LP ("Supplier"), a Texas Limited Partnership headquartered at One Dell Way, Round Rock, TX 78682, to be effective as of February 2, 2009 ("Effective Date").

## 1. PURPOSE

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

## 2. DEFINITIONS

### A. Acceptance

Acceptance shall take the form of completed and successful acceptance testing as detailed in Section 4E.

### B. Authorized Users

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

### C. Confidential Information

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

### D. Maintenance Level

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

### E. Maintenance Coverage Period (MCP)

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

### F. Maintenance Services (or Maintenance)

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

### G. Operating Condition

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

### H. Party

Supplier, VITA, or any Authorized User.

### I. Product

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

### J. Receipt (of Product)

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

**K. Requirements**

The functional, performance, operational, compatibility, and other parameters and characteristics of the Product as set forth in the applicable documentation, Exhibit A and such other parameters, characteristics, or performance standards for the Product that may be agreed upon in writing by the Parties. [Note: In case of conflict, see the Entire Contract clause for order of precedence.]]

**L. Response Time**

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

**M. Service**

Any Product-related work performed or service provided, including certain Maintenance Services or other services for the Product and provision to the Authorized User of any deliverable, by Supplier under this Contract, including but not limited to installation/de-installation, maintenance, support, training, migration, and optimization of hardware or software, warranty services, factory integration (software or equipment components), asset management, recycling/disposal, certification, migration, pre-implementation design, disaster recovery planning and support, service desk/helpdesk and any other related technical support service required for the effective operation or optimization of a hardware or software product.

**N. Software Publisher**

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

**O. Supplier**

Means the Supplier and any of its Affiliates (i.e., an entity that controls, is controlled by, or is under common control with Supplier).

**P. System Software**

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

**3. TERM AND TERMINATION****A. Contract Term**

This Contract is effective and legally binding as of the Effective Date and, unless terminated as provided for in this section, shall continue to be effective and legally binding for a period of two (2) years. VITA, at its sole discretion, may extend this Contract for up to three (3) additional one (1) year periods after the expiration of the initial two (2) year period. VITA will issue a written notification to the Supplier stating the extension period, not less than thirty (30) days prior to the expiration of any current term. Warranty on or Maintenance Services for any Product ordered during the term of the Contract may extend beyond the term of this Contract. Performance of an order or SOW issued during the term of this Contract may survive the expiration of the term of this Contract, in which case all terms and conditions required for the operation of such order or SOW shall remain in full force and effect until the Warranty or Maintenance Services pursuant to such order or SOW have met the final Acceptance criteria of the applicable Authorized User.

**B. Termination for Convenience**

VITA may terminate this Contract, in whole or in part, or any order issued hereunder, in whole or in part, or an Authorized User may terminate for convenience an order, in whole or in part, upon not less than thirty (30) days prior written notice at any time for any reason.

**C. Termination for Breach or Default**

VITA shall have the right to terminate this Contract, in whole or in part, or any order issued hereunder, in whole or in part, or an Authorized User may terminate an order, in whole or in part, for breach and/or default of Supplier. Supplier shall be deemed in breach and/or default in the event that Supplier fails to meet any material obligation set forth in this Contract or in any order issued hereunder.

If VITA deems the Supplier to be in breach and/or default, VITA shall provide Supplier with notice of breach and/or default and allow Supplier fifteen (15) days to cure the breach and/or default. If

Supplier fails to cure the breach as noted, VITA may immediately terminate this Contract or any order issued hereunder, in whole or in part. If an Authorized User deems the Supplier to be in breach and/or default of an order, such Authorized User shall provide Supplier with notice of breach and/or default and allow Supplier fifteen (15) days to cure the breach and/or default. If Supplier fails to cure the breach and/or default as noted, such Authorized User may immediately terminate its order, in whole or in part. Any such termination shall be deemed a Termination for Breach or a Termination for Default. In addition, if Supplier is found by a court of competent jurisdiction to be in violation of or to have violated 31 USC 1352 or if Supplier becomes a party excluded from Federal Procurement and Non-procurement Programs, VITA may immediately terminate this Contract, in whole or in part, for breach. VITA shall provide written notice to Supplier of such termination and Supplier shall provide written notice to VITA if Supplier is charged with violation of 31 USC 1352 or if federal debarment proceedings are instituted against Supplier.

#### **D. Termination for Non-Appropriation of Funds**

All payment obligations under this Contract are subject to the availability of legislative appropriations at the federal, state, or local level, for this purpose. In the event of non-appropriation of funds, irrespective of the source of funds, for the items under this Contract, VITA may terminate any order, in whole or in part, or an Authorized User may terminate its order, in whole or in part, for those goods or services for which funds have not been appropriated. Written notice will be provided to the Supplier as soon as possible after legislative action is completed.

#### **E. Effect of Termination**

Upon termination, neither the Commonwealth, nor VITA, nor any Authorized User shall have any future liability except for Products or certain Maintenance or other Services accepted by the Authorized User prior to the termination date.

In the event of a Termination for Breach or Termination for Default, Supplier shall accept return of any Products or services that were not accepted by the Authorized User(s), and Supplier shall refund any monies paid by any Authorized User for such Product or services, including certain Maintenance Services, and all costs of de-installation and return of the Products shall be borne by Supplier.

#### **F. Transition of Services**

Prior to or upon expiration or termination of this Contract and at the request of VITA, Supplier shall provide reasonable assistance as VITA or an Authorized User may reasonably require to transition Product-related Services to any other supplier with whom VITA or such Authorized User contracts for provision of Product-related services. This obligation may extend beyond expiration or termination of the Contract for a reasonable period of time not to exceed six (6) months. In the event of a termination for breach and/or default of Supplier, Supplier shall provide such assistance at no charge or fee to VITA or any Authorized User; otherwise, Supplier shall provide such assistance at the hourly rate or a charge agreed upon by Supplier and VITA or an Authorized User.

#### **G. Contract Kick-Off Meeting**

Within 30 days of Contract award, Supplier may be required to attend a contract orientation meeting, along with the VITA contract manager/administrator, the VITA and/or other CoVa Agency project manager(s) or authorized representative(s), technical leads, VITA representatives for SWaM and Sales/IFA reporting, as applicable, and any other significant stakeholders who have a part in the successful performance of this Contract. The purpose of this meeting will be to review all contractual obligations for both parties, all administrative and reporting requirements, and to discuss any other relationship, responsibility, communication and performance criteria set forth in the Contract. The Supplier may be required to have its assigned account manager as specified in Section 6.0 and a representative from its contracts department in attendance. The time and location of this meeting will be coordinated with Supplier and other meeting participants by the VITA contract manager.

**H. Contract Closeout**

Prior to the contract's expiration date, Supplier may be provided contract close out documentation and shall complete, sign and return to VITA Supply Chain Management within 30 days of receipt. This documentation may include, but not be limited to: Patent/Royalty Certificate, Tangible Property/Asset Certificate, Escrow Certificate, SWaM Reports Completion Certificate, Sales Reports/IFA Payments Completion Certificate, and Final Payment Certificate. Supplier is required to process these as requested to ensure completion of close-out administration and to maintain a positive performance reputation with the Commonwealth of Virginia. Any closeout documentation not received within 30 days of Supplier's receipt of our request will be documented in the contract file as Supplier non-compliance. Supplier's non-compliance may affect any pending payments due the Supplier, including final payment, until the documentation is returned.

**4. DELIVERY, INSTALLATION AND ACCEPTANCE****A. Delivery Procedure**

Supplier shall deliver all Product F.O.B. destination, with such destination being the "ship to" address specified in the applicable order. For orders for which Supplier is to provide installation of the Product, Supplier shall bear all risk of loss of or damage to the Product until Receipt/Acceptance by the Authorized User. For orders for which Supplier is not to provide installation of the Product, Supplier shall bear all risk of loss or damage to the Product until Receipt. In all cases, Supplier shall arrange and pay for all transportation and insurance sufficient to fully protect the Product while in transit. Each shipment shall include a packing slip indicating the Authorized User's order number, the part number, a description of the Product shipped and the quantity shipped. Each package in any shipment shall be numbered, shall have stenciled on one end and one side a description of the quantity of Product contained therein by part number and description, and shall conspicuously display the number of the package in that shipment which contains the packing slip. If required by the Authorized User, Supplier shall bar code all packages shipped. If any loss to, or damage of, the Product occurs prior to Acceptance by the Authorized User, Supplier shall immediately provide a replacement item. Title to Product, excluding System Software, shall pass upon Receipt.

Supplier shall make available all appropriate and/or related user documentation, if any, at the time of delivery of the first unit of each different Product type.

**B. Late Delivery**

Supplier hereby acknowledges and agrees that failure to deliver the Product ordered in strict accordance with the mutually agreed upon delivery schedule determined in accordance with this Section may result 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 the delay lasts longer than thirty (30) days, the Authorized User may cancel the order with written notice.

In addition, in the event the Supplier fails for any reason to deliver repeatedly within thirty (30) days of the agreed upon delivery date set forth in the order/schedule, the ordering Authorized User, at its own discretion, may give Supplier written notice of breach. Once notice by such Authorized User is sent or given, the Authorized User may immediately procure the undelivered items, or items substantially similar thereto, from another source. Once the Authorized User has effected a purchase from an alternate source (in accordance with the Virginia Public Procurement Act, §§ 2.2-4300 et seq. of the Code of Virginia), the Authorized User may charge-back Supplier, in which case Supplier agrees to reimburse the Authorized User for any reasonable difference in cost between the original contract price and the Authorized User's cost to cover from the alternate source, provided that the Authorized User has taken reasonable steps to mitigate such costs. In no event shall any Authorized User be held to pay Supplier any costs incurred by Supplier, including but not limited to ordering, marketing, manufacturing, or delivering the item(s) which are subject of such Authorized User 's notice of breach. Notwithstanding the foregoing, the Parties reserve any and all other remedies available at law or in equity.

VITA and Authorized Users agree that no such damages or reimbursements shall apply in instances of delivery delays beyond Supplier's control, including industry wide shortages, constrained markets, acts of God, war, terrorism or any other factors beyond Supplier's control.

**C. Product Trade-in and Upgrade**

(To be determined prior to contract execution)

**D. Product Installation**

Unless mutually agreed by the Parties, Authorized User shall provide the initial installation of all Product. Installation may include: unpacking, removal of all shipping/packing materials, positioning, connecting to internal utility services, testing, related necessary services to allow for Acceptance by the Authorized User.

All Product installations shall comply with building and facilities standards established by the ordering Authorized User. Supplier agrees to provide all reasonably necessary telephone assistance at no charge.

**E. Product Acceptance**

Product shall be deemed accepted when the ordering Authorized User determines that such Product successfully operates in accordance with the Requirements. Such Authorized User shall commence Acceptance testing within a reasonable amount of time, or within such other period as set forth in the applicable order, after Receipt/installation of the Product. Acceptance testing will be no longer than fifteen (15) days, or such longer period as may be agreed in writing between Authorized User and Supplier. Supplier agrees to provide to the Authorized User such assistance and advice as the Authorized User may reasonably require, at no additional cost, during such Acceptance testing, other than pre-approved travel expenses incurred which are reimbursable by the Authorized User at the then-current per diem amounts as published by the Virginia Department of Accounts. Any such travel expenses must be pre-approved by the Authorized User and shall be reimbursable by such Authorized User at the then-current per diem amounts as published by the Virginia Department of Accounts ([http://www.doa.virginia.gov/Admin\\_Services/CAPP/CAPP\\_Topics/20335\\_Meals\\_Lodging\\_102007.pdf](http://www.doa.virginia.gov/Admin_Services/CAPP/CAPP_Topics/20335_Meals_Lodging_102007.pdf), or a successor URL(s)). Authorized User shall provide to Supplier written notice of Acceptance upon successful Acceptance testing. Should Authorized User fail to provide Supplier written notice of successful or unsuccessful Acceptance testing within fifteen (15) days of the date of invoice, the Product(s) shall be deemed Accepted. However, the right to accept or reject Products is not the only remedy that Authorized User shall have with respect to product return, as Authorized Users may return Products within the terms of Suppliers applicable satisfaction and return policy.

**F. Cure Period**

Supplier shall correct any non-conformities identified during Acceptance testing and re-submit such previously non-conforming Product for re-testing within fourteen (14) days of written notice of non-conformance, or as otherwise agreed between the Authorized User and Supplier in the applicable order. Should Supplier fail to take reasonable steps to cure the non-conformity or deliver Product which meets the Requirements, such Authorized User may, in its sole discretion: (i) reject the Product in its entirety and recover amounts previously paid hereunder; or (ii) issue a "partial Acceptance" of the Product with a mutually agreed upon equitable adjustment in the price to account for such deficiency.

**G. Product Discontinuation**

During the term of this Contract, if any Product listed on Exhibit C is discontinued, Supplier agrees to work with VITA to establish a substitute acceptable to VITA. Additionally, for all systems under service contract, Supplier shall make available to the Authorized User maintenance parts for discontinued Product for five (5) years from the date of such discontinuation, as long as the parts remain commercially available. In every event, Supplier will provide any Authorized User with advance notice of its intent to discontinue any Product type previously ordered by such Authorized User.

## **5. PRODUCT SUPPORT AND ADDITIONAL SERVICES**

### **A. Authorized User or Third Party Support**

#### **1. Documentation and Support Availability**

In the event that VITA terminates this Contract, Supplier shall provide all the necessary user and installation documentation and maintenance and repair training reasonably required to enable any Authorized User of reasonable skill standard for the industry to maintain and repair the Product itself or to obtain support and maintenance services from a third-party. Supplier shall also provide the documentation and training necessary to allow any Authorized User to self-maintain to the subcomponent level. VITA acknowledges that any additional training may result in additional cost.

#### **2. Timeliness and Price**

Supplier agrees to make the above-referenced documentation, training and spare parts and components available within thirty (30) days following receipt of a written request, and at a price set forth in Exhibit C, such price not to exceed Supplier's published price list, or the fair market value. 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**

Upon request, Supplier agrees to document and provide product roadmaps and updates to VITA and such Authorized Users regarding any engineering changes to the Products prior to incorporation, provided that the parties have executed appropriate Non-Disclosure Agreements. All changes which affect the safety of the Product ("Safety Changes") shall be made at no cost to the Authorized User.

### **C. Training**

Any applicable training may vary on the Product purchased. The Product purchase price may include training at a mutually agreeable location on the use and operation of the Product, including instruction in any necessary conversion of such Authorized User's data for such use. Pursuant to a mutually agreed upon schedule, Supplier shall provide sufficient personnel experienced and qualified to conduct such training. Available optional training, and applicable pricing and discounts, are described in Exhibit C.

### **D. Parts and Maintenance Support**

Supplier agrees to make available spare parts and the Maintenance Services identified in the Maintenance Services section herein and Exhibit D hereto for each Product type ordered by an Authorized User. For any products under service contract, 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. Spare parts may be manufacturer certified refurbished parts carrying manufacturer warranties.

Supplier shall notify the Authorized User prior to the effective date of any such discontinuance, and shall provide to the Authorized User the opportunity to purchase spare parts in a quantity adequate to support its installed base. Should Supplier advise the Authorized User of its intent to discontinue certain parts for any Product type ordered by the Authorized User, the Authorized User has the option to request and Supplier has the obligation to provide, all documentation 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.

### **E. Inventory Record**

Upon request by the Authorized User, Supplier shall provide, at no additional cost, a record of all units of Product covered under warranty/maintenance by type, quantity and location, including the end date for each unit's Warranty Period or maintenance term ("Inventory Record"). Product

quantities and types may vary as Product is added or deleted from coverage, and Authorized User shall notify Supplier in writing of any Product relocated, added, or removed from service. Upon such notification, Supplier shall amend the Inventory Record to reflect such relocation, addition, or deletion of Product. Supplier shall provide, at no additional cost, a copy of the most current Inventory Record to any Authorized User upon request.

**F. Product Service Record**

Upon request by the Authorized User Supplier shall provide, at no additional cost, a Product Service Record for each unit of Product covered under warranty or maintenance. The Product Service Record shall record the following for such unit of Product: Original Invoice Number, Issue Date, System Description Part Number, Service Tag Number, Status of Call, Part Description, City and State of part dispatched, Quantity, Problem/Description Service Type. Additional information may be available. Upon request by the Authorized User, Supplier shall provide, at no additional cost, a copy of the Product Service Record.

**G. Additional Services**

In addition to any on-site warranty or maintenance service obligations, Supplier shall, upon request of an Authorized User by means of an order issued in accordance with the ordering provisions of this Contract, provide additional on-site services which may include: (i) relocation of previously installed hardware; (ii) assistance to Authorized User's communications department in mutually acceptable duties related to the warranty or maintenance services provided under this Contract; and (iii) cabling, if applicable. The Authorized User shall compensate Supplier for such additional on-site services in accordance with the prices identified in Exhibit C.

Furthermore, Supplier shall, upon request of an Authorized User by means of an order issued in accordance with the ordering provisions of this Contract, provide the following services beyond those identified as warranty or maintenance service offerings: (i) service on equipment not covered by this Contract, (ii) repair of damage or replacement of parts of hardware resulting from changes in the hardware environment, extraordinary use of the hardware, or interconnected devices, or (iii) service outside the applicable hours of service specified in an executed order referencing this Contract. The charge for such services shall be at the hourly rate specified in Exhibit C and shall be inclusive of all expenses. Warranty or maintenance services requested for a unit of hardware within the forty-eight (48) hour period immediately following Remedial Maintenance performed on the same unit of hardware for the same problem, shall not be considered an additional service and shall be provided at no charge.

**6. WARRANTY AND REMEDY**

**A. Supplier**

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

**B. Ownership**

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

**C. Supplier Viability**

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

**D. Product**

Supplier warrants the following with respect to the Product:

- i). Product pursuant to a particular Request for Proposal (RFP), quote, or Request for Quote (RFQ), shall meet the requirements as specified by VITA in the RFP and in this Contract and, if applicable, by the authorized User requesting such quote or issuing such RFQ, and Supplier is possessed of superior knowledge with respect to the Product and is aware that Authorized Users are relying on Supplier's skill and judgment in providing the Product; The Product shall be free of defects in material, design and workmanship;
- ii). Upon delivery, the Product shall be new and in Operating Condition and shall have all released engineering changes released to date already installed;
- iii). Each Product delivered hereunder shall function in conformance with the Requirements;
- iv). No engineering change made to the Product or System Software revisions shall degrade the performance of the Product to a level below that defined in the applicable Request for Proposal, and in the Product manufacturer's published specifications;
- v). Upon delivery, all System Software shall be at the current release level unless otherwise requested by the ordering Authorized User; and
- vi). 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.

#### **E. Product Performance Data**

Supplier agree to provide product performance data discovered during Field Quality Management Lifecycle assessments to VITA during the Quarterly reviews, and address such performance standard issues as necessary. Products that are consistently showing poor product performance will be repaired or replaced in accordance with the product's warranty.

#### **F. Warranty Services**

VITA acknowledges that Warranty Services may depend on the Product offered and level of support purchased; and Supplier agrees to work with Authorized User to ensure Warranty Services are appropriate for the Authorized User's needs.

During the warranty period Supplier warrants that the Product shall meet or exceed the Requirements. Supplier shall provide warranty services (including unlimited telephonic support and all necessary travel and labor) during the Warranty Period at the prices identified in Exhibit C. Supplier shall correct, at no additional cost to any Authorized User, all errors identified during the warranty period that result in a failure of the Product to meet the Requirements.

Exhibit D provides detailed descriptions of the Supplier's warranty and maintenance offerings and responsibilities as well as remedies available to the Authorized User Exhibit D defines coverage periods, response times, and restore times.

If multiple warranty levels are available, an Authorized User may elect, at any time, an alternative warranty level offered by Supplier. Such amendment shall take effect within thirty (30) days following Supplier's receipt of Authorized User's written notice, in the form of a modification to an order.

Authorized User's designated control organization shall have the exclusive authority to request warranty services. Supplier will work with Authorized User as appropriate to ensure that Supplier does not generally respond to calls for service from any other source without prior approval of Authorized User's agreement administrator designated on the relevant order.

#### **1. Product Covered**

Exhibit C lists all Product types covered under warranty.

**2. Preventive Maintenance**

Supplier's Preventive Maintenance offerings and responsibilities, and the Authorized User's associated remedies, are described in [Exhibit D](#).

**3. Remedial Maintenance**

Supplier's Remedial Maintenance offerings and responsibilities, and the Authorized User's associated remedies, are described in [Exhibit D](#).

**4. Replacement Parts**

Supplier's offerings and responsibilities related to Replacement Parts, and the Authorized User's associated remedies, are described in [Exhibit D](#).

**5. Spares**

Supplier's offerings and responsibilities related to Spares, and the Authorized User's associated remedies, are described in [Exhibit D](#).

**6. Notification and Correction of Defects**

Supplier's offerings and responsibilities related to notification and correction of defects, and the Authorized User's associated remedies, are described in [Exhibit D](#).

**7. One-year Depot Warranty**

Supplier's depot warranty offerings and responsibilities are described in [Exhibit D](#).

**8. On-site Warranty**

Supplier's on-site warranty offerings and responsibilities are described in [Exhibit D](#).

**9. System Software Warranty**

As part of the standard warranty offering, during the Warranty Period, Supplier shall provide the following warranty services (including unlimited telephonic support and all necessary travel and labor) without additional charge to any Authorized User to maintain the factory-installed System Software in accordance with the Requirements:

**a) Service Packs and/or Service Pack Components**

Supplier's installation and configuration support covers service packs and/or service pack components for the factory-installed System Software, such as supplements, updates, patches and releases.

**b) Coverage**

Supplier's offerings and responsibilities includes telephonic and written consultation in connection with use, problems, and operation of the factory-installed System Software.

**10. Escalation Procedures**

TBD based on Supplier proposal.

**11. Remedies**

In addition to any remedies described in [Exhibit D](#), if Supplier is unable to make the Product, 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, replace the non-conforming Product.

Notwithstanding anything to the contrary in this Contract or in any exhibit hereto, VITA and any Authorized User retain all rights and remedies available at law or in equity.

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

Prior to the expiration of the Warranty Period, the Authorized User, at its sole discretion, may order from Supplier additional Maintenance Services. Termination of this Contract or cancellation of Maintenance Services, including System Software Maintenance Services if

provided as a separate offering from Supplier, by an Authorized User shall not affect this Contract or the grant of any license pursuant thereto.

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

## **7. MAINTENANCE SERVICES**

VITA acknowledges that Maintenance Services depend upon the Product offered and level of support purchased. Supplier agrees to work with VITA to ensure maintenance services are appropriate for the Authorized User.

Supplier shall provide Maintenance Services (including unlimited telephonic support and all necessary travel and labor) during the Maintenance Coverage Period (MCP) at the prices identified in [Exhibit C](#) without additional charge to maintain the Product in accordance with the Requirements.

[Exhibit D](#) provides detailed descriptions of the Supplier's warranty and maintenance offerings and responsibilities as well as remedies available to the Authorized User in the event Supplier fails to perform its warranty and maintenance obligations. Any remedies shall be paid to the Authorized User on a quarterly basis. [Exhibit D](#) defines coverage periods, response times, and restore times.

Authorized User's designated control organization shall have the exclusive authority to request maintenance services. Supplier agrees to work with Authorized Users as appropriate to ensure that Supplier does not generally respond to calls for service from any other source without prior approval of Authorized User's agreement administrator designated on the relevant order.

### **A. Ordering**

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

Product and, if applicable, serial number, for which Maintenance Services shall be provided, Maintenance Level to be provided, and MCP for the Product Maintenance.

Authorized User may elect, at any time, an alternative Maintenance Level offered by Supplier. Such amendment shall take effect within thirty (30) days following Supplier's receipt of Authorized User's written notice, in the form of a modification to an order.

Co-termination of MCP, TBD based on Supplier proposal.

### **B. Renewal**

At least sixty (60) days prior to the expiration of the MCP for each unit of Product, Supplier shall notify the Authorized User of such expiration, and the Authorized User, at its sole discretion, may issue an order to Supplier to renew Maintenance Services, including System Software Maintenance Services, for an additional one (1) year period. The annual fee for Maintenance Services shall not exceed the fee charged for the preceding year's Maintenance Services by more than three percent (3%), or the annual change in CPI, as defined in the Purchase Price and Price Protection section, in effect at the time, whichever is less. [This applies to the discount percentage and is not applicable to the retail price list.](#) Termination of this Contract or cancellation of Maintenance Services, including System Software Maintenance Services if provided as a separate offering from Supplier, by an Authorized User shall not affect this Contract or the grant of any license pursuant thereto.

### **C. Services**

Maintenance Services shall be as follows:

**1. Product Covered**

Exhibit C lists all Product types for which Supplier offers Maintenance Services. No Authorized User is obligated to continue Maintenance Services on Product that has been removed from service, provided Supplier has been notified in writing of such removal.

**2. Preventive Maintenance**

Supplier's Preventive Maintenance offerings and responsibilities, and the Authorized User's associated remedies, are described in Exhibit D.

**3. Remedial Maintenance**

Supplier's Remedial Maintenance offerings and responsibilities, and the Authorized User's associated remedies, are described in Exhibit D.

**4. Replacement Parts**

Supplier's offerings and responsibilities related to Replacement Parts, and the Authorized User's associated remedies, are described in Exhibit D.

**5. Spares**

Supplier's offerings and responsibilities related to Spares, and the Authorized User's associated remedies, are described in Exhibit D.

**6. Notification and Correction of Defects**

Supplier's offerings and responsibilities related to notification and correction of defects, and the Authorized User's associated remedies, are described in Exhibit D.

**7. Advanced Replacement Services**

Supplier's advanced replacement service offerings and responsibilities are described in Exhibit D.

**8. On-site Maintenance Services**

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

**9. Escalation Procedures**

TBD based on Supplier proposal.

**10. Remedies**

In addition to any remedies described in Exhibit D, if Supplier is unable to make the Product, 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, provide a replacement Product at no additional cost to the Authorized User.

Notwithstanding anything to the contrary in this Contract or in any exhibit hereto, VITA and any Authorized User retain all rights and remedies available at law or in equity.

**8. SCOPE OF USE**

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

## 9. SOFTWARE LICENSE

If Authorized User is a state agency, board, commission, or other quasi-political entity of the Commonwealth of Virginia or other body referenced in Title 2.2 of the Code of Virginia, the license shall be held by the Commonwealth. If Authorized User is a locality, municipality, school, school system, college, university, local board, local commission, or local quasi-political entity, the license shall be held by that public body.

Supplier shall provide System Software for Product. Such System Software is licensed directly from the Software Publisher through the end user licensing agreement (EULA), or in the case of Microsoft, the applicable Microsoft agreement,

### D. Authorized User Compliance

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

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

Notwithstanding any other provision or other unilateral license terms which may be issued by Supplier after the Effective Date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of an order for System Software licensed under this Contract, or the fact that such other agreement may be affixed to or accompany System Software upon delivery (“shrink wrap”), the terms and conditions set forth herein shall supersede and govern licensing and delivery of all products and services hereunder, unless otherwise required by the Software Publisher. If this is the case, Supplier acknowledges that VITA may require that the Software Publisher execute an addendum to such shrink wrap terms and conditions or EULAs to address terms and conditions with which VITA, as a government entity, by law or by policy, cannot agree. If such additional shrink wrap licenses, EULAs or any additional terms and conditions are required by the Software Publisher, Supplier agrees to assist VITA in securing Software Publisher’s consent to the aforementioned addendum.

## 10. ORDERS AND COMPENSATION

### A. Supplier Quote and Request for Quote

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

In cases where the RFQ process is invoked, the Authorized User will issue an RFQ describing its requirements to potential suppliers, and suppliers will provide, at their discretion, within the timeframe specified in the RFQ, a detailed Statement of Work (SOW)-based quote. Any quote submitted to the Authorized User as a result of this process shall include (a) a detailed description of each item proposed, at the Exhibit C line item level, (b) the quantity of each such item, (c) the contract price, (d) any additional percentage discount offered, and (e) an extended/total price.

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

that any terms and conditions of the Authorized User are inconsistent with the terms and conditions of this Contract, the terms and conditions of this Contract shall supersede.

### **B. Orders**

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

Supplier is required to accept any order placed by an Authorized User through the eVA electronic procurement website portal ([eVA Home Page](#)). eVA is the Commonwealth of Virginia's e-procurement system. State agencies, as defined in §2.2-2006 of the Code of Virginia, shall order through eVA. All other Authorized Users are encouraged to order through eVA, but may order through the following means:

vii). Purchase Order (PO): An official PO form issued by an Authorized User.

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

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

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

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

### **C. Purchase Price and Price Protection**

Exhibit C sets forth the prices by Product type (including whole units and repairable major components thereof) and for warranty services and Maintenance Services, and the appropriate Commonwealth discounts. Prices for Product shall not increase and the discounts shall not decrease for a period of not less than two (2) years from the Effective Date of this Contract. As consideration of the Products purchased hereunder, the Authorized User shall pay Supplier the Supplier's list price (as posted on Supplier's retail pricelist) less the percentage discount(s) set forth in Exhibit C. The percentage discounts shall be the minimum discounts applicable throughout the term of this contract, including extensions. Supplier reserves the right to change retail prices on its retail price list without notice.

Thereafter, any increase in price shall be limited to once per twelve (12) month period and shall not exceed the lesser of three percent (3%) or the annual increase in the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, for the expenditure category "Information technology, hardware and services" as published by the Bureau of Labor Statistics of the Department of Labor (<http://www.bls.gov/>), for the effective date of the increase compared with the same index one (1) year prior. Supplier shall demonstrate the added value for any requested price increase. Any change in price shall be submitted in writing in accordance with the above and shall not become effective for sixty (60) days thereafter. Semi-annually, VITA may check the prices for Product against the CPI-U, as defined above, for the expenditure category "Information technology, hardware and services", and the prices in Exhibit C shall be appropriately reduced to

ensure continued price competitiveness, if required. [This paragraph applies to the discount percentage and is not applicable to the retail price list.](#) Supplier agrees to offer Product price reductions to ensure compliance with the Competitive Pricing Section.

#### **D. Supplier-Sponsored Product Promotions**

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

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

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

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

#### **E. Invoice Procedure**

Supplier shall remit each invoice to the "bill-to" address provided with the order promptly after all Products or Services have been accepted. No invoice shall include any costs other than those identified in the executed order, which costs shall be in accordance with [Exhibit C](#). Without limiting the foregoing, all shipping costs are the Supplier's responsibility except to the extent such charges are identified in [Exhibit C](#), or as noted in any executed order referencing this Contract. Invoices issued by the Supplier shall identify at a minimum:

- i). Product or Service type and description
- ii). Quantity, charge and extended pricing for each Product and/or Service item
- iii). Applicable order date
- iv). Ship date
- v). Ship-to location contact name
- vi). This Contract number and the applicable order number

Additional invoices may be required by Authorized User from time to time detailing charges for Product at affiliate locations by corporate department.

Any terms included on Supplier's invoice shall have no force or effect and will in no way bind VITA or any Authorized User.

#### **F. Purchase Payment Terms**

Supplier is responsible for the accuracy of its billing information. Supplier agrees not to issue invoices hereunder until Product has been shipped. Charges for Product or Services accepted more than ninety (90) days prior to receipt of a valid invoice may not be paid. Should Supplier repeatedly over bill Authorized User, Authorized User may assess a one percent (1%) charge for the amount over billed for each month that such over billing continues.

If there are any disputed items, an Authorized User shall pay all undisputed charges and promptly notify Supplier in writing of any disputed amount. Supplier shall thereupon review its records, and, if it does not concur with the Authorized User, provide the Authorized User with documentation to support the charge. If such charges remain in dispute, such dispute shall be resolved in accordance with the Dispute Resolution section of this Contract. In the absence of the Supplier's written evidence identifying the merit of the disputed amounts, Authorized User may not pay the disputed amounts and may consider the matter concerning the specific identified amounts closed. All payment terms are net 30 days from receipt of invoice or equipment, whichever is later.

## 11. REPORTING

### A. Supplier's Report of Sales and Industrial Funding Adjustment

By the 10th business day of every month, the Supplier shall submit the "Supplier Monthly Report of Sales". A template showing the format in which the report is to be submitted and contact information for submission is available at

<http://www.vita.virginia.gov/uploadedFiles/SCM/SupplierReportofSalesTemplate.xls>. The report shall be submitted via electronic mail to the VITA IFA Coordinator and shall report total sales (defined for purposes of this report as all invoiced payments received by Supplier from all Authorized Users) for this Contract during the preceding month. Supplier shall be responsible for submitting the monthly report of sales even if Supplier has had no sales (i.e., a \$0.00 total sales value) for the reporting period.

The Supplier shall submit the Industrial Funding Adjustment (IFA) payment for the period covered by such "Supplier Monthly Report of Sales" within thirty (30) days after submitting the "Supplier Monthly Report of Sales". The IFA payment is equal to two percent (2%) of total sales reported during the relevant month.

The IFA payment shall be submitted to VITA, Attention VITA Controller in the form of a check or electronic payment, made payable to the Treasurer of Virginia. The IFA payment shall reference this Contract number, "report amounts", and "report period" and shall be accompanied by a copy of the relevant "Supplier Monthly Report of Sales". Contact information for submission of IFA payments is available at

<http://www.vita.virginia.gov/uploadedFiles/SCM/SupplierReportofSalesTemplate.xls>.

Failure to comply with reporting, payment and distribution requirements of this section may result in default of the Contract.

### B. Small Business Participation

Supplier and VITA agree to meet promptly after the Effective Date of this Contract to discuss the participation of Virginia Department of Minority Business Enterprise (DMBE)-certified Small Businesses as subcontractors and second-tier suppliers under this Contract.

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

In addition, by the 10th business day of every month, Supplier shall submit to VITA the Small Business Subcontracting Monthly Report (template to be provided). The report should specify the amount of such spend provided to small businesses. Supplier shall submit the report to [SWaM@vita.virginia.gov](mailto:SWaM@vita.virginia.gov).

## 12. COMPETITIVE PRICING

Supplier warrants and agrees that the pricing pursuant to this Contract is comparable to the pricing offered to other similarly situated government customers of Supplier purchasing the same or substantially similar quantities of Products or Services under similar terms and conditions. If Supplier enters into any arrangement with another similarly situated government customer of Supplier to provide the same or similar quantities of identical products or Services under similar terms and conditions at more favorable prices, then VITA may request that this Contract be amended as of the date of such other arrangements to incorporate those more favorable prices.

### 13. CONFIDENTIALITY

#### A. Treatment and Protection

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

#### B. Exclusions

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

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

#### C. Return or Destruction

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

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

### 14. INDEMNIFICATION AND LIABILITY

#### A. Indemnification

Supplier agrees to indemnify, defend and hold harmless the Commonwealth, VITA, any Authorized User, their officers, directors, agents and employees (collectively, "Commonwealth's Indemnified Parties") from and against any and all third party claims, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, assessments, fines (whether criminal or civil), judgments, settlements, expenses (including attorneys' and accountants' fees and disbursements) and costs (each, a "Claim" and collectively, "Claims"), incurred by, borne by or asserted against any of Commonwealth's Indemnified Parties to the extent such Claims in any way relate to, arise out of or result from: (i) any intentional or willful misconduct or negligence of any employee, agent, or subcontractor of Supplier working within the scope of or coincident with their employment on customer's premises and for a specific customer engagement or service, (ii) any act or omission of any employee, agent, or subcontractor of Supplier resulting in personal injury (including death) or damage to real tangible property, ;(iii) any defect in a Product resulting in personal injury (including death) or damage to real tangible property; (iv) any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Supplier's Product or Services; (v) **any claim that Supplier did not have the legal right to provide an Authorized User with a non-supplier product; or**

(vi) the failure of Supplier to perform its obligations pursuant to the Section entitled 'Security Compliance.' 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. To the extent permitted by law, the Commonwealth, VITA, and any Authorized User shall be responsible for their own acts or omissions.

In the event that a Claim is commenced against any of Commonwealth's Indemnified Parties alleging that use of the Supplier's Product or any Product component or that the provision of Services under this Contract infringes any third party's intellectual property rights and Supplier is of the opinion that the allegations in such Claim in whole or in part are not covered by this indemnification provision, Supplier shall immediately notify VITA and the affected Authorized User(s) in writing, via certified mail, specifying to what extent Supplier believes it is obligated to defend and indemnify under the terms and conditions of this Contract. Supplier shall in such event protect the interests of the Commonwealth's Indemnified Parties and secure a continuance to permit VITA and the affected Authorized User(s) to appear and defend their interests in cooperation with Supplier as is appropriate, including any jurisdictional defenses VITA or the affected Authorized User(s) may have.

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

With respect to any claim that Non-supplier product(s) infringes upon another person's or entity's patent, copyright, trade secret or other intellectual property rights in the United States. Supplier agrees to pass through to the appropriate Authorized User any rights to indemnification protection for which Supplier currently or subsequently has an agreement in place with the potentially infringing equipment manufacturer/entity.

#### **B. Liability**

Supplier shall have unlimited liability with respect to (i) any intentional or willful misconduct or negligence of any employee, agent, or subcontractor of Supplier, (ii) any independent act or omission of any employee, agent, or subcontractor of Supplier not at the direction of an Authorized User, (iii) claims for bodily injury, including death, and real and tangible property damage, (iv) Supplier's indemnification obligations, (v) Supplier's confidentiality obligations, and (vi) Supplier's security compliance obligations. Supplier agrees that it is fully responsible for all acts and omissions of its employees, agents, and subcontractors, including their gross negligence or willful misconduct.

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

**NEGLIGENCE OR WILLFUL MISCONDUCT OF THE PARTY, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS.****15. SECURITY COMPLIANCE**

Supplier agrees to comply with all provisions of the then-current Commonwealth of Virginia security procedures, published by the Virginia Information Technologies Agency (VITA) and which may be found at (<http://www.vita.virginia.gov/library/default.aspx?id=537#securityPSGs>) or a successor URL(s), as are pertinent to Supplier's operation. Supplier further agrees to comply with all provisions of the relevant Authorized User's then-current security procedures as are pertinent to Supplier's operation and which have been supplied to Supplier by such Authorized User. Supplier shall also comply with all applicable federal, state and local laws and regulations. For any individual Authorized User location, security procedures may include but not be limited to: background checks, records verification, photographing, and fingerprinting of Supplier's employees or agents. Supplier may, at any time, be required to execute and complete, for each individual Supplier employee or agent, additional forms which may include non-disclosure agreements to be signed by Supplier's employees or agents acknowledging that all Authorized User information with which such employees and agents come into contact while at the Authorized User site is confidential and proprietary. Any unauthorized release of proprietary information by the Supplier or an employee or agent of Supplier shall constitute a breach of this Contract.

**16. BANKRUPTCY**

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

**17. GENERAL PROVISIONS****A. Relationship Between VITA and Authorized User and Supplier**

Supplier has no authority to contract for VITA or any Authorized User or in any way to bind or to commit VITA or any Authorized User to any agreement of any kind or to assume any liabilities of any nature in the name of or on behalf of VITA or any Authorized User. Under no circumstances shall Supplier, or any of its employees, hold itself out as or be considered an agent or an employee of VITA or any Authorized User, and neither VITA nor any Authorized User shall have any duty to provide or maintain any insurance or other employee benefits on behalf of Supplier or its employees. Supplier represents and warrants that it is an independent contractor for purposes of federal, state and local employment taxes and agrees that neither VITA nor any Authorized User is responsible to collect or withhold any federal, state or local employment taxes, including, but not limited to, income tax withholding and social security contributions, for Supplier. Any and all taxes, interest or penalties, including, but not limited to, any federal, state or local withholding or employment taxes, imposed, assessed or levied as a result of this Contract shall be paid or withheld by Supplier or, if assessed against and paid by VITA or any Authorized User, shall be reimbursed by Supplier upon demand by VITA or such Authorized User.

**B. Incorporated Contractual Provisions**

The then-current contractual provisions at the following URL are mandatory contractual provisions, required by law or by VITA, and that are hereby incorporated by reference:

<http://www.vita.virginia.gov/uploadedFiles/SCM/StatutorilyMandatedTsandCs.pdf>

The contractual claims provision §2.2-4363 of the Code of Virginia and the required eVA provisions at <http://www.vita.virginia.gov/uploadedFiles/SCM/eVATsandCs.pdf> are also incorporated by reference.

The then-current terms and conditions in documents posted to the aforereferenced URLs are subject to change pursuant to action by the legislature of the Commonwealth of Virginia, change in VITA policy, or the adoption of revised eVA business requirements. If a change is made to the terms and conditions, a new effective date will be noted in the document title. Supplier is advised to check the URLs periodically.

**C. Compliance with the Federal Lobbying Act.**

Supplier's signed certification of compliance with 31 USC 1352 (entitled "Limitation on use of appropriated funds to influence certain Federal Contracting and financial transactions") or by the regulations issued from time to time thereunder (together, the "Lobbying Act") is incorporated as Exhibit F hereto.

**D. Governing Law**

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

**E. Dispute Resolution**

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

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

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

In the event of any breach by a public body, Supplier's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section.

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

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

**G. Notices**

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

**H. No Waiver**

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

**I. Assignment**

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

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

**J. Captions**

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

**K. Severability**

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

**L. Survival**

The provisions of this Contract regarding Software License, Warranty, Confidentiality, Liability and Indemnification, and the General Provisions shall survive the expiration or termination of this Contract. In addition, the provisions of this Contract necessary for the use and operation of the Maintenance provisions herein, shall continue in effect through termination of the Maintenance Services ordered pursuant to the Maintenance provisions herein.

**M. Force Majeure**

No Party shall be responsible for failure to meet its obligations under this Contract if the failure arises from causes beyond the control and without the fault or negligence of the non-performing Party. If any performance date under this Contract is postponed or extended pursuant to this section for longer than thirty (30) calendar days, VITA, by written notice given during the postponement or extension, may terminate Supplier's right to render further performance after the effective date of termination without liability or fault to Supplier for that termination, and in addition an Authorized User may terminate any order affected by such postponement or delay.

**N. Remedies**

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

**O. Right to Audit**

VITA reserves the right to audit its purchase orders and associated invoices submitted under this Contract. VITA's right to audit shall be limited as follows:

- vii). On an annual basis during the term of this Contract and up to three (3) years from Service performance date;

- viii). May be performed at Supplier's premises, during normal business hours at mutually agreed upon times; and
- ix). Excludes access to Supplier cost information.

**P. Offers of Employment**

During the first twelve (12) months of the Contract, Supplier shall not actively solicit and knowingly hire an employee of VITA who has substantially worked on any project covered by this Contract without prior written consent. Supplier's normal advertising to the public and/or disclosure to recruiters of employment openings is not restricted or affected by this provision. This prohibition is limited to this specific contract only.

**Q. Contract Administration**

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

**R. Entire Contract**

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

- Exhibit A Request for Proposal
- Exhibit B Supplier's Response to Request for Proposal
- Exhibit C Prices, Fees, Service Charges and Payment Schedule
- Exhibit D Warranty and Maintenance Descriptions
- Exhibit E Software Publisher's EULA, as amended (for reference only)
- Exhibit F Certification Regarding Lobbying
- Exhibit G Awarded Categories

This Contract, its Exhibits, and any prior non-disclosure agreement constitute the entire agreement between VITA and Supplier and supersedes any and all previous representations, understandings, discussions or agreements between VITA and Supplier as to the subject matter hereof. Any and all terms and conditions contained in, incorporated into, or referenced by the Supplier's proposal shall be deemed invalid. The provisions of the Virginia Department of General Services, Division of Purchases and Supply Vendor's Manual shall not apply to this Contract or any order issued hereunder. This Contract may only be amended by an instrument in writing signed by VITA and Supplier. In the event of a conflict, the following order of precedence shall apply: this Contract document, Exhibit C, Exhibit A, Exhibit D, Exhibit B, Exhibit E.

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

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

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

Supplier  
By: Lesley Braun  
(Signature)

Name: Lesley Braun  
(Print)

Title: Sr Contracts Consultant

Date: 1/27/09

VITA  
By: James T. Roberts  
(Signature)

Name: James T. Roberts  
(Print)

Title: Director Finance & Administration

Date: 2-02-09

Address for Notice:  
Dell Marketing LP  
One Dell Way RR8-07  
Rosna Park, TX 78682  
Attention: Contracts Manager

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

# EXHIBIT B



## RFP Section 5.

### ***Detailed Description of Proposed Solution***

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

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

The acceptable codes for Column A are as follows:

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

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

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

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

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

#### **A. GENERAL**

<b>C.</b>	<b>Requirements</b>	<b>A</b>	<b>B</b>
1.	Can you sell to all locations of all public bodies in the entire Commonwealth of Virginia? Will you be incorporating subcontractors or alliances? Please provide the details of your plan.	<b>Y</b>	<p>Dell sells directly to all locations within the Commonwealth of Virginia.</p> <p>Dell's Sales Team consists of Account Executives, Inside Sales Representatives, and Software &amp; Peripheral Representatives that proactively manage the various types of customers eligible to purchase off of VITA contracts. Dell also works with resellers to achieve the highest level of customer awareness possible. In addition to face-to-face customer meetings, Dell offers a customized web site allowing customers to view product details, features and benefits as well as set up their standards to make online purchases. Please see Supporting Documentation for details of our Implementation Plan, immediately following this table.</p>



2.	<p>Can you provide service to all locations of all public bodies in the entire Commonwealth of Virginia? Will you be incorporating subcontractors or alliances? Please provide the details of your plan.</p>	Y	<p>Dell can provide service to public bodies in the Commonwealth of Virginia.</p> <p>Dell will incorporate partners to help serve the Commonwealth.</p> <p>Please see Attachment D – Subcontracting Plan for additional Supplier information.</p>
3.	<p>VITA strongly encourages Suppliers to develop a catalog website that <i>interfaces</i> with eVA. Can your company produce a punch-out catalog website?</p> <p>Refer to:</p> <p><a href="http://www.eva.virginia.gov/vendors/pages/catalogcreation.htm">http://www.eva.virginia.gov/vendors/pages/catalogcreation.htm</a></p> <p>Please provide either screen shots or a link to serve as an example.</p>	Y	<p>Please refer to the Supporting Documentation section, labeled Web Portal for details on Dell's Premier Page program – Premier provides efficient, one-stop shopping for all of your IT product needs. We'll build your Premier site with systems configured to your specifications, and customize your selection of software and peripherals to meet your standards.</p>
4.	<p>Can your firm have a catalog website up, functioning and interfacing with eVA within 30 days of contract award?</p>	Y	<p>Dell's Sales Team has the functionality to set up the Premier Page Program - Premier provides efficient, one-stop shopping for all of your IT product needs. We'll build your Premier site with systems configured to your specifications, and customize your selection of software and peripherals to meet your standards.</p>
5.	<p>Will your firm have a dedicated account management team on this contract? Please provide details.</p>	Y	<p>Account Manager, Inside Sales Representative, Software Account Executive, Technical Sales Representative, Systems Consultant, Services Account Managers, Contracts Specialist.</p> <p>Please see the Appendix labeled Supporting Documentation section, for additional Account Management details.</p>
6.	<p>Will your firm have more than one field account executive on this contract? Please provide details.</p>	Y	<p>There will be one or more field account executives for State &amp; Local Government, Higher Education and K-12 customers within the Commonwealth of Virginia.</p>



7.	Does your firm have the marketing ability and resources to promote this contract to schools, universities, local and VITA agencies? Please provide marketing plan and examples of marketing tools.	Y	Dell can utilize different forms of marketing to keep customer awareness of Dell products and events at each locality.  Please see Supporting Documentation section, labeled Marketing Details for additional information.
8.	Will your proposed product line be compatible with the following operating systems, Microsoft Windows 98, 2000, NT, 2003 Server, XP and Vista?	Y	Client offerings meet XP and Vista compatibility. Servers are 2003 compatible.
9.	Does your firm offer an employee, teacher or student purchase program? Please provide details.	Y	They'll receive up to a 6% discount on Dell Dimension desktop or Inspiron notebook computers, based on their chosen system's price. They can double that discount (up to 12% off) by choosing 3- or 4-year At-Home Service. They'll also receive frequent promotions and discounts on other electronics and accessories available from Dell.  Please see the Appendix section for additional EPP details.
10.	Does your firm offer any product incentives, credits and or rebate programs? Please provide details.	Y	Additional product incentives are available for discussion based on volume purchasing.

**B. REPORTS**

	Requirements	A	B
1.	Can your firm provide reports on request to users detailing products that have been placed in any of their locations? Please provide examples.	Y	OrderWatch & Purchase History  Please see the Appendix section for some sample report snap shots.
2.	Does your firm maintain an electronic service log that is available to users on specific computer hardware? Please provide examples.	Y	<ul style="list-style-type: none"> <li>•Service Parts Shipping Performance</li> <li>•Next Business Day, On-Site Service Performance</li> <li>•4-Hour On-Site Service Performance</li> <li>•Other Service Call Counts</li> <li>•Line of Business Breakdown</li> <li>•Service Parts Performance Trend</li> <li>•Next Business Day, On-Site Service Trend</li> <li>•Call Age Analysis Trend</li> <li>•Next Business Day, On-</li> </ul> Please see the Appendix section for some sample report snap shots.



3.	Does your firm provide any additional reports that would be an added value to the Commonwealth? Please describe and provide examples.	Y	Asset Management, Warranty Status, Invoice Tracking, Service History, Executive Reports, Software Licensing.
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**C. RELATED SERVICES**

	Requirements	A	B
1.	Does your firm have a customer support program? Please describe your firm's ability to keep users informed of new products, changes in technology, advanced specification documentation and other market information.	Y	Your account executive keeps an eye on the big picture for you, overseeing your day-to-day account activities and supplying you with updates on all Dell products and services.
2.	Does your firm provide installation services? Please provide details.	Y	Please see Supporting Documentation, Client Installation for additional details.
3.	Is your firm able to respond to a user request for service within eight (8) business hours? Please provide detail on how this will be accomplished.	Y	Please see Supporting Documentation, labeled Support for additional.
4.	Is your firm willing to commit to service-level agreements? If so please refer to Appendix C and fill in the aqua shaded areas.	Y	Please see completed Appendix C.
5.	Does your firm offer 8am to 5pm EST hardware and software support? Please provide details.	Y	Please see Supporting Documentation, labeled Support.
6.	For security reasons, will your firm allow the user to keep a failed hard drive while receiving a new hard drive that is covered under warranty? Please provide details.	Y	Please see Supporting Documentation, labeled Keep your Hard Drive for additional details.
7.	Does your firm provide custom imaging? Please provide details.	Y	Please see Supporting Documentation, labeled Custom Factory Integration for additional details.
8.	Does your firm provide in-house quality assurance and testing processes for all hardware? Please provide details.	Y	Please see Supporting Documentation, labeled Quality for details.
9.	Does your firm provide service and repair for warranty and non-warranty maintenance for hardware? Please provide details and time frames.	Y	Please see Supporting Documentation, labeled Support for details.
10.	Do your service and maintenance technicians have and maintain current industry certifications? Please provide details and types of certifications.	Y	Dell technicians have an internal support staff with the following range of relevant industry certifications: A+, Network+, Microsoft Certified Professional (MCP), Microsoft Certified Systems Engineer, Red Hat Certified Engineer (RHCE), Certified Novell Engineer (CNE), Cisco Certified Network Associate (CCNA), EMC Proven Professional, etc. Technicians receive ongoing



			training based on industry updates from Dell's suppliers, in addition to all Dell system launches/refreshes.
11.	Does your firm provide onsite and/or depot warranty and repair? Please provide details.	Y	Please see Supporting Documentation, labeled Support.
12.	Does your firm offer the use of spare parts/loaner equipment on both warranty and out of warranty parts? Please provide details.	Y	Please see Supporting Documentation, labeled Spare Parts & Loaners.
13.	Does your firm provide asset management and equipment tracking services? Please provide details.	Y	Please see Supporting Documentation, labeled Asset Tracking section for additional details.
14.	Does your firm ship all in stock orders same day? Please list all shipping timelines and include caveats for delay, etc.	Y	Please see Supporting Documentation, labeled Shipping.
15.	Does your firm have an in-house order tracking system that can be accessed 24 x7 by a user? Please provide details.	Y	Please see Supporting Documentation, labeled Web Portal and Support for details.
16.	Does your firm have the ability to deliver large quantities of equipment to multiple locations? Please describe your firm's process and experience including delivery time and scheduling procedures.	Y	Please see Supporting Documentation, labeled Shipping for details on how Dell continuously delivers to multiple locations seamlessly.
17.	Does your firm have a return policy? Please provide details?	Y	Please see Supporting Documentation, labeled Dell Return Policy.
18.	Does your firm charge a re-stocking fee on returned equipment? Please provide details.	Y	Please see Supporting Documentation, labeled Dell Return Policy.
19.	Does your firm offer IT equipment disposal and recycling services? Please provide details.	Y	Please see Supporting Documentation, labeled Asset Recovery for details
20.	Does your firm adhere to Energy Star 4.0 energy efficiency standards for computer hardware products? Please provide list of qualified products.	Y	Please see Supporting Documentation, labeled Energy Star for qualified products and details.



**PC**

**Intel or AMD Based**

<i>Minimum Configurations</i>	<b>Unit Price</b>	<b>Discount %</b>	<b>Unit Discounted Price</b>
<b>A. Standard Desktop Offering</b>	<b>\$853.00</b>	<b>26%</b>	<b>\$586.81</b>
2.4 Ghz Core 2 Duo E6600/ 2 Ghz Athlon 64 X2 3800+ or equivalent			
Graphics Media Accelerator (256mb RAM minimum)			
2GB RAM or greater			
80GB SATA drive or greater			
CDRW/DVD+/-RW Combo Drive			
Microsoft Vista Business Capable			
Two Front Facing USB Ports or greater			
17" LCD Monitor (minimum)			
Two button optical mouse with scroll wheel			
Keyboard with 103 keys			
10/100/1000 RJ-45			

Warranty is three years on-site. Additionally, you may offer depot.  
quote 464316461

	<b>Unit Price</b>	<b>Discount %</b>	<b>Unit Discounted Price</b>
<b>B. Premium Desktop Offering</b>	<b>\$1,188.00</b>	<b>26%</b>	<b>\$829.52</b>
3-GHz Core 2 Duo E6850 or equivalent			
Discrete Graphics Media Accelerator (256mb RAM minimum)			
2GB RAM or greater			
120GB SATA drive or greater			
CDRW/ DVD+/-RW Combo Drive			
Microsoft Vista Business Capable			
Two Front Facing USB Ports or greater			
21" LCD Monitor			
Two button optical mouse with scroll wheel			
Keyboard with 103 keys			
10/100/1000 RJ-45			
quote 464316740			

Warranty is three years on-site. Additionally, you may offer depot.

Units above are base offerings.

AMD processors must be at least equivalent to listed Intel processors

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

<http://ftpbox.us.dell.com/slq/weekly/dellpricereport.pdf>

Dell is proposing fixed discount percentages from Dell's retail price list for all eligible fixed configuration products as noted in Appendix A. Dell's discount offering shall remain fixed throughout the life of the contract. Any other configurations, upgrades, or products not associated with the fixed configuration systems shall be offered according to Dell's discount catalog offering as noted in the Pricing Section of Dell's Proposal on Page 68.

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## Notebook

Intel/ AMD Based

Minimum Configurations

	Unit Price	Discount %	Unit Discounted Price
<b>A. Standard Notebook Offering</b>	<b>\$1,015.00</b>	<b>18%</b>	<b>\$832.30</b>
2 GHz Core 2 Duo T7300 or equivalent			
Integrated Graphics Media Accelerator (256mb RAM min)			
1GB RAM or greater			
80GB SATA hard drive or greater			
CDRW/DVD+/-RW Combo Drive			
Microsoft Vista Business Capable			
Integrated fingerprint reader (optional)			
802.11a/b/g/draft-n intergrated wireless			
14.1 inch screen or greater			
quote 464318401			

Warranty is three years on-site. Additionally, you may offer depot.

	Unit Price	Discount %	Unit Discounted Price
<b>B. Premium Notebook Offering</b>	<b>\$1,565.00</b>	<b>18%</b>	<b>\$1,263.62</b>
2.4 GHz Core 2 Duo T7700 or equivalent			
Discreet Graphics Media Accelerator (256mb RAM min)			
2GB RAM or greater			
120GB SATA hard drive or greater			
CDRW/DVD+/-RW Combo Drive			
Microsoft Vista Business Capable			
Integrated fingerprint reader (Optional)			
802.11a/b/g/draft-n intergrated wireless			
17 inch screen or greater			
10/100/1000 RJ45			
quote 464319440			

Warranty is three years on-site. Additionally, you may offer depot.

## Tablet

Intel/ AMD Based

	Unit Price	Discount %	Unit Discounted Price
<b>C. Tablet Offering</b>	<b>\$2,694.00</b>	<b>18%</b>	<b>\$2,200.89</b>
1.6-GHz Core 2 Duo L7500 or equivalent			
Discreet Graphics Media Accelerator (256mb RAM min)			
2GB RAM or greater			
80 GB SATA hard drive or greater			
CDRW/DVD+/-RW Combo Drive (external ok)			
Microsoft Vista Business Capable			
Integrated fingerprint reader (optional)			
802.11a/b/g/draft-n intergrated wireless			
12 inch screen or greater			
10/100/1000 RJ-45			
quote 464319954			

The processor in the Dell Tablet is a Core 2 Duo U7700 1.33GHz Ultra Low Voltage(ULV)  
This processor is designed to run at speeds lower the 1.6GHz, which reduces heat and provides increased battery life.

In addition, the Dell Tablet uses the ATI integrated Graphics Radeon Xpress X1250 instead a discrete graphics card to reduce heat and provide increased battery life. In addition, it provides equivalent performance to the graphics specification

Warranty is three years on-site. Additionally, you may offer depot.

AMD processors must be at least equivalent to listed Intel processors

Units above are base offerings.

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

<http://ftpbox.us.dell.com/slg/weekly/dellpricereport.pdf>

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## Rugged Notebooks

### Intel/ AMD Based

Partial Mil Spec 810.F (shock, vibration, etc)

<i>Minimum Configurations</i>	Unit Price	Discount %	Unit Discounted Price
<b>A. Standard Rugged Notebook Offering</b>	<b>\$2,250.00</b>	<b>18%</b>	<b>\$1,742.51</b>
2 GHz Core 2 Duo T7300 or equivalent			
Integrated Graphics Media Accelerator (256mb RAM min)			
1GB RAM or greater			
80GB SATA hard drive or greater			
CDRW/DVD+/-RW Combo Drive			
Microsoft Vista Business Capable			
Integrated fingerprint reader (optional)			
802.11a/b/g/draft-n intergrated wireless			
12 inch screen or greater			
10/100/1000 RJ45			
56K RJ-11			
quote 464320678			

Warranty is three years on-site. Additionally, you may offer depot.

<i>Minimum Configurations</i>	Unit Price	Discount %	Unit Discounted Price
<b>B. Premium Rugged Notebook Offering</b>	<b>\$2,315.00</b>	<b>18%</b>	<b>\$1,795.80</b>
2.4 GHz Core 2 Duo T7700 or equivalent			
Discreet Graphics Media Accelerator (256mb RAM min)			
2GB RAM or greater			
120GB SATA hard drive or greater			
CDRW/DVD+/-RW Combo Drive			
Microsoft Vista Business Capable			
Integrated fingerprint reader (Optional)			
802.11a/b/g/draft-n intergrated wireless			
14 inch screen or greater			
10/100/1000 RJ-45			
56K RJ-11			
quote 464321333			

Warranty is three years on-site. Additionally, you may offer depot.

Units above are base offerings.

AMD processors must be at least equivalent to listed Intel processors

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## Peripherals

### Minimum Configurations

A. Flash Drives	Unit Price	Discount %	Unit Discounted Price
2 GB	10.99	13.00%	\$9.56
4 GB	18.99	13.00%	\$16.52
8 GB	37.99	13.00%	\$33.05

B. Monitors (wide aspect)	Unit Price	Discount %	Unit Discounted Price
17" LCD	189	13.00%	\$164.43
19" LCD	199	13.00%	\$173.13
21" LCD	259	13.00%	\$225.33

C. Docking Station	Unit Price	Discount %	Unit Discounted Price
Ethernet- RJ45	79.99	13.00%	\$69.59
Audio Line In/Out			
Video- 15 Pin High Density			
Keyboard USB			
Mouse USB			

D. Port Replicator	Unit Price	Discount %	Unit Discounted Price
Audio Headphone	95.99	13.00%	\$83.51
Audio RCA Digital Coax			
Ethernet- RJ45			
Video- S-Video			
Video- RCA Composite			
Serial- 9 Pin D-Shell			
Serial- RJ 11 Mod			

The port replicator meets all the specifications except for Audio RCA Digital Coax, Video- S-Video and Video- RCA Composite.

E. External USB Floppy Drive	Unit Price	Discount %	Unit Discounted Price
1.44MB	32.99	13.00%	\$28.70

F. Network Interface Cards	Unit Price	Discount %	Unit Discounted Price
10/100/1000 BASE-T (RJ 45)	49.99	13.00%	\$43.49

G. Mouse	Unit Price	Discount %	Unit Discounted Price
Optical Scroll Mouse- PS/2	10.99	13.00%	\$9.56
Optical Scroll Mouse- USB	15.99	13.00%	\$13.91

H. Keyboard	Unit Price	Discount %	Unit Discounted Price
Standard Keyboard- PS/2	10.99	13.00%	\$9.56
Standard Keyboard- USB	23.99	13.00%	\$20.87

I. Battery Back Up Unit	Unit Price	Discount %	Unit Discounted Price
Output Capacity- 865Watts/ 1440VA	497.95	13.00%	\$433.21
Nominal Output/Input Voltage- 120V			
Output Connection Type- (6) NEMA 5-15R			
Half Load Run Time- 20 minutes			
Full Load Run Time- 7 minutes			
Rackmount/Tower			

Warranty is manufacturer's warranty

Units above are base offerings.

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

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Dell provides services that can be customized based on a customer's needs and requirements. The services are scoped with a customer and custom statements of work are developed based on each opportunity. Each project can be determined as fixed fee/fixed deliverable, time & materials, or price per asset. This category includes any and all services that Dell offers. "Services" are broadly classed as installation/de-installation, maintenance, support, training, migration, management, optimization of products offered, supplied, or related technology. These types of services may include, but are not limited to: warranty services, maintenance, installation, installation of software, de-installation, factory integration (software or equipment components), asset management, recycling/disposal, training and certification, pre-implementation design, disaster recovery planning and support, service desk/helpdesk, assessment, implementation, and any other directly related technical support service required for the effective operation of a product/technology offered or supplied.

All Services have a minimum of 0% discount. This category also includes any and all 3rd party services that Dell offers.

Below is a list of sample services and sample prices. Each engagement requires to be scoped appropriately. The services listed below are representative services and are not all inclusive of the services Dell can provide. Please see your Dell sales representative for assistance on scoping a services engagement.

Category	Short Description	Price
Desktop In	Desktop Installation	\$56.00
	Desktop Deinstallation	\$11.00
	New Periperral Install (during Basic installation)	\$16.00
	Hard Drive Removal (during Basic Installation)	\$11.00
	Asset tagging (during basic installation)	\$4.50
	Peer to peer data migration (during basic installation)	\$28.00
	attended imaging via CD (during basic installation)	\$27.00
	Additional GB Migration (during basic installation)	\$6.50
Asset reco	Asset Recovery Services: 1 piece DHL Mailer	\$28.00
	Asset Recovery Services: 1 piece Box & DHL Mailer	\$53.00
	Asset Return Services: Lease Return Transportation plus Datawipe and Settlement Report	\$60.00
	Asset Return Services: Lease Return Transportation only	\$30.00
	Asset Return Services: Data wipe 21-50	\$16.25
	Asset Return Services: Data wipe less than 51-200	\$15.75
Factory Se	Asset Return Services: Data wipe less than 201+	\$13.25
	Factory Asset Tag	\$7.00
	Factory Image Load	\$25.00
Server Ins	Factory based project setup	\$20.00
	Server Installation of Windows Operating System on 1 Dell Server	\$399.00
	Server Installation of Windows Operating System on 2+ Dell Server	\$299.00
	Server Onsite Installation, PowerEdge Hardware and Windows OS install	\$299.00
	Remote Configuration of a Dell PowerEdge SC Series Server	\$179.00
	Installation, Migration and Deinstallation of an Existing Server to a PowerEdge Server (1-5)	\$1,599.00
	Installation, Migration and Deinstallation of an Existing Server to a PowerEdge Server (6+)	\$1,999.00
	Remote Migration of a Server to a New Server and Operating System	\$1,599.00
Technology	Microsoft Office SharePoint Server Requirements Discovery	\$19,170.00
	Oracle Migration Readiness Assessment, Small 1 database	\$24,000.00
	Oracle Migration Readiness Assessment, Medium 2 databases	\$44,100.00
	Oracle Migration Readiness Assessment, Large 3 databases	\$65,500.00
	Energy Smart Data Center Assessment Mini, up to 500 sq ft	\$11,950.00
	Energy Smart Data Center Assessment Small, 501-1000 sq ft	\$17,500.00
	Energy Smart Data Center Assessment Medium, 1001-1500 sq ft	\$22,500.00
	Energy Smart Data Center Assessment Large, 1501-2500 sq ft	\$31,500.00
	Exchange 2007 Readiness Assessment	\$10,750.00
	Netware to OES Assessment and Travel, 1-50 servers	\$12,500.00
	Netware to OES Assessment and Travel, 50-100 servers	\$25,000.00
	Windows Server Technology Workshop	\$10,499.00
	Backup Restore Archive Assessment, Entry	\$13,800.00
	Backup Restore Archive Assessment, Standard	\$17,200.00
	Backup Restore Archive Assessment, Large	\$24,200.00
	Data Mgmt and Storage Tech Assessment, Entry	\$10,900.00
	Data Mgmt and Storage Tech Assessment, Standard	\$14,300.00
	Data Mgmt and Storage Tech Assessment, Large	\$21,300.00
	Storage For Server Virtualization Assessment, Entry	\$10,900.00
	Storage For Server Virtualization Assessment, Standard	\$14,300.00
	Storage For Server Virtualization Assessment, Large	\$21,300.00
	Dell File Simplification Assessment	\$6,000.00
	DPS-INF Unified Communication Technology Workshop Session	\$10,964.00
	IT Simplification Assessment, Mini	\$58,000.00
	IT Simplification Assessment, Small	\$110,000.00
	IT Simplification Assessment, Medium	\$162,000.00
	IT Simplification Assessment, Large	\$216,000.00
	Backup Monitoring Setup, Enterprise(176-250 Hosts)	\$34,500.00
	Backup Monitoring Annual, Enterprise(176-250 Hosts)	\$179,800.00
	Managed Backup Setup, Entry(up to 50 Hosts)	\$34,200.00
	Managed Backup Annual, Entry(up to 50 Hosts)	\$178,000.00
	Tiered Storage Design, Entry (up to 50 Hosts)	\$20,350.00
Tiered Storage Design, Standard (51-100 Hosts)	\$34,250.00	
Tiered Storage Design, Enterprise (101-250 Hosts)	\$54,250.00	
Disaster Recovery Design,Std(Upto 2 Data Cntr,4 rem offc,2 appl or 4 recrvy svcs)	\$137,600.00	
Citrix Xen Server Technology Introduction (2 XenServer + 1 XenCenter)	\$12,200.00	
VIRTUALIZATION READINESS ASSESSMENT UP TO 25 SERVERS	\$9,900.00	

	Virtualization Readiness Assessment, up to 75 servers	\$16,500.00
	Virtualization Readiness Assessment - Medium	\$22,200.00
	Virtualization Readiness Assessment - Large	\$32,000.00
	VMWare P2V Migrations Workshop Consulting Service	\$8,200.00
	VMware Infrastructure Upgrade Workshop	\$11,200.00
	Virtual Infrastructure Health Check	\$11,200.00
	VMWare Combined ESX and Virtual Center Workshop Consulting Service	\$12,200.00
	VMware Combined ESX, Virtual Center and P2V Workshop Consulting Service	\$15,700.00
	Unified Communication Technology Workshop Session	\$10,964.00
	DMS Application Management Packaging/ Virtualization per package	\$850.00
	DMS Life Cycle Assessment	\$80,000.00
	DMS Window Vista Readiness Assessment	\$25,000.00
	DMS Window Office 2007 Assessment	\$35,000.00
	DMS Image Management X Image (for XP SP2 or 1 OS)	\$20,000.00
	DMS Dell Automated Deployment Basic	\$29,000.00
	DMS Dell Automated Deployment Standard	\$49,000.00
	DMS Dell Automated Deployment Advanced	\$100,000.00
	DMS Dell Automated Deployment Enterprise	\$182,000.00
	DMS Flex Computing Assessment Lite	\$20,000.00
	DMS Flex Computing Assessment Standard	\$44,493.00
Training	Vmware Installation, Configuration and Management: Open Enrollment	\$2,995.00
	Introduction to PC 90 day Access (Online)	\$10.00
	Microsoft Office 2007 Starter Pack with Live Tutor (Online)	\$20.00
	Windows Vista Strater Pack with Live Tutor (Online)	\$15.00
	Windows Vista and Office 2007 Starter Pack with Live Tutor (Online)	\$25.00
	Complete eLearning Pack with Live Tutor (Online)	\$99.00
	Office Corporate Starter Pack (Online)	\$10.00
	PowerEdge Configuration and Troubleshooting {Austin}	\$1,395.00
	PowerEdge Configuration and Troubleshooting {Customer's Site}	\$7,995.00
	Dell Hardware Maintenance - Client (Portables, Desktops, Workstations) {Austin}	\$995.00
	Dell Hardware Maintenance - Client (Portables, Desktops, Workstations) {Customer's site}	\$6,995.00
	DCSE Exam (online with basic self-study material)	\$179.00

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**COTS Software**

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

**Gov't Pricing**

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

COTS	Discount %
Adobe	0.00%
Autodesk	0.00%
Citrix	0.00%
Corel	0.00%
DoubleTake	0.00%
Intuit	0.00%
McAfee	0.00%
Novell	0.00%
Nuance	0.00%
Quark Software	0.00%
Quest Software	0.00%
Riverdeep	0.00%
Symantec	0.00%
Trend Micro	0.00%
VMWare	0.00%
WebSense	0.00%

**Academic Pricing**

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

COTS	Discount %
Adobe	0.00%
Autodesk	0.00%
Citrix	0.00%
Corel	0.00%
DoubleTake	0.00%
Intuit	0.00%
McAfee	0.00%
Novell	0.00%
Nuance	0.00%
Quark Software	0.00%
Quest Software	0.00%
Riverdeep	0.00%
Symantec	0.00%
Trend Micro	0.00%
VMWare	0.00%
WebSense	0.00%

**Gov't Pricing**

Title	Price
Adobe Acrobat Professional Version 9 Windows	218.33
Adobe Photoshop CS4 Windows	635.24
Autodesk Sketchbook 2009 Pro	120
McAfee Active Virus Defense	14.87
Symantec Norton Antivirus 2009	25
Symantec Backup Exec 12.5 for Windows Servers	454.25

**PRICE FOR ABOVE TITLES SHOULD BE QUOTED FOR PURCHASE OF ONE (1) COPY**

**Academic Pricing**

Title	Price
Adobe Acrobat Professional Version 9 Windows	131.03
Adobe Photoshop CS4 Windows	276.43
Autodesk Sketchbook 2009 Pro	120
McAfee Active Virus Defense	14.87
Symantec Norton Antivirus 2009	25
Symantec Backup Exec 12.5 for Windows Servers	454.25

**PRICE FOR ABOVE TITLES SHOULD BE QUOTED FOR PURCHASE OF ONE (1) COPY LICENSE AND MEDIA**

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

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

\* A Virginia government publicly available price list may be found at [shop.asap.com](http://shop.asap.com)  
Please log in to our Dell|ASAP Online system using  
login name: **VITA@VA.gov** and password: **pricing**

Please note: The pricing on the Dell | ASAP Software publicly-available price list for all individual titles in the market basket has been established for Virginia.

Dell | ASAP Software would also like to offer the Commonwealth of Virginia many additional publishers currently available in our product line. We have

added additional rows listing these publishers below. Should additional publishers become available during the term of our agreement, we would like to offer them to you also as part of this agreement, pending your approval.

1099 PRO	0.00%
12 INCH DESIGN	0.00%
1-2-3 FILE CONVERT	0.00%
1E	0.00%
2BRIGHTSPARKS	0.00%
2X SOFTWARE	0.00%
3COM	0.00%
4DEVELOPERS	0.00%
4TOPS	0.00%
8E6 TECHNOLOGIES	0.00%
A LA MODE	0.00%
AABACA	0.00%
AASHTO	0.00%
ABACRE	0.00%
ABACUS	0.00%
ABACUS LAW	0.00%
ABBOTT SYSTEMS	0.00%
ABBYY USA	0.00%
ABC-CLIO	0.00%
ABLESOFT	0.00%
ABM AMERICA	0.00%
ABRAXAS	0.00%
ABSOF	0.00%
ABSOLUTE SOFTWARE	0.00%
ACCELERANDO, INC.	0.00%
ACCENTURE	0.00%
ACCESSDATA	0.00%
ACCURO HEALTHCARE SOLUTIONS	0.00%
ACCUWEATHER	0.00%
ACD SYSTEMS LTD	0.00%
ACL SERVICES LTD	0.00%
ACOUSTICA	0.00%
ACQUIRED KNOWLEDGE	0.00%
ACRO SOFTWARE	0.00%
ACROBOTICS	0.00%
ACRONIS	0.00%
ACS FIREHOUSE SOFTWARE	0.00%
ACT-3D B.V.	0.00%
ACTION SOFTWARE INTERNATIONAL	0.00%
ACTIVE INK SOFTWARE	0.00%
ACTIVE SOFTWARE	0.00%
ACTIVEPDF	0.00%
ACTIVESTATE	0.00%
ACTIVEXPERTS SOFTWARE	0.00%
ACTIVIDENTITY	0.00%

1099 PRO	0.00%
12 INCH DESIGN	0.00%
1-2-3 FILE CONVERT	0.00%
1E	0.00%
2BRIGHTSPARKS	0.00%
2X SOFTWARE	0.00%
3COM	0.00%
4DEVELOPERS	0.00%
4TOPS	0.00%
8E6 TECHNOLOGIES	0.00%
A LA MODE	0.00%
AABACA	0.00%
AASHTO	0.00%
ABACRE	0.00%
ABACUS	0.00%
ABACUS LAW	0.00%
ABBOTT SYSTEMS	0.00%
ABBYY USA	0.00%
ABC-CLIO	0.00%
ABLESOFT	0.00%
ABM AMERICA	0.00%
ABRAXAS	0.00%
ABSOF	0.00%
ABSOLUTE SOFTWARE	0.00%
ACCELERANDO, INC.	0.00%
ACCENTURE	0.00%
ACCESSDATA	0.00%
ACCURO HEALTHCARE SOLUTIONS	0.00%
ACCUWEATHER	0.00%
ACD SYSTEMS LTD	0.00%
ACL SERVICES LTD	0.00%
ACOUSTICA	0.00%
ACQUIRED KNOWLEDGE	0.00%
ACRO SOFTWARE	0.00%
ACROBOTICS	0.00%
ACRONIS	0.00%
ACS FIREHOUSE SOFTWARE	0.00%
ACT-3D B.V.	0.00%
ACTION SOFTWARE INTERNATIONAL	0.00%
ACTIVE INK SOFTWARE	0.00%
ACTIVE SOFTWARE	0.00%
ACTIVEPDF	0.00%
ACTIVESTATE	0.00%
ACTIVEXPERTS SOFTWARE	0.00%
ACTIVIDENTITY	0.00%

ACTUALTOOLS	0.00%
ACTUATE	0.00%
ADAMA ENGINEERING	0.00%
ADAPTAVIST	0.00%
ADAPTEC	0.00%
ADAPTIVE COMMUNICATIONS	0.00%
ADAPTIVE TECHNOLOGY CONSULTING	0.00%
ADD-IN EXPRESS LTD.	0.00%
ADD-INS	0.00%
ADDINSOFT	0.00%
ADEPT COMPUTER SOLUTIONS	0.00%
ADIRONDACK SOLUTIONS	0.00%
ADKINS RESOURCE	0.00%
ADLIB DOCUMENT SOLUTIONS	0.00%
ADMINISTAFF	0.00%
ADREM SOFTWARE	0.00%
ADULTPDF	0.00%
ADVANCED GLOBAL SYSTEMS	0.00%
ADVANCED GRAPHICS SOFTWARE	0.00%
ADVANCED SOFTWARE ENGINEERING	0.00%
ADVANCED SYSTEMS	0.00%
ADVANCED TECHNOLOGY CONSULTANTS	0.00%
ADVANCED TOOLWARE	0.00%
ADVANCEDFORCE INFOSECURITY SOLUTIONS	0.00%
ADVANCEWARE SOLUTIONS	0.00%
ADVANSYS PTY LIMITED	0.00%
ADVENTNET	0.00%
ADVENTOS LLC.	0.00%
ADVISTOR	0.00%
ADVSOFT	0.00%
AEC	0.00%
AGATE SOFTWARE	0.00%
AGENCY SOFTWARE	0.00%
AGILAIRE	0.00%
AGORA SOFTWARE BV	0.00%
AGS PUBLISHING	0.00%
AI INTERNET SOLUTIONS	0.00%
AI SQUARED	0.00%
AIA BOOKSTORE	0.00%
AIRDEFENSE MOBILE SOFTWARE	0.00%
AIRMAGNET	0.00%
AIVOSTO OY	0.00%
AKALTECH	0.00%
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CLICKTEAM	0.00%
CLICKTRACKS	0.00%
CLOUDMARK	0.00%
CLUSTERQUE	0.00%
CMH SOFTWARE	0.00%
CMS PERIPHERALS	0.00%
COADE	0.00%
COCUT	0.00%
CODE	0.00%
CODE FUTURES SOFTWARE, LTD.	0.00%
CODE RELIEF	0.00%
CODEBASE SOFTWARE	0.00%
CODESMITHTOOLS	0.00%
CODEWEAVERS	0.00%
CODEWORK	0.00%
COFFEECUP SOFTWARE	0.00%
COGNIVIEW	0.00%
COGNOS	0.00%
COLASOFT CO. LTD.	0.00%
COLE SYSTEMS ASSOCIATES INC.	0.00%
COLLABNET	0.00%
COLLABORATIVE FUSION	0.00%
COLLECTIVE SOFTWARE	0.00%
COLLECTIVEDATA	0.00%
COLLIGO NETWORKS	0.00%
COLORMETRIX TECHNOLOGIES	0.00%
COLORVISION	0.00%

CHEVIN FLEET SOLUTIONS	0.00%
CHICAGO SOFT	0.00%
CHIEF ARCHITECT	0.00%
CHILKAT SOFTWARE	0.00%
CHILLI SOURCE	0.00%
CHROMIX	0.00%
CI TECHNOLOGIES	0.00%
CIM	0.00%
CIMAWARE SOFTWARE	0.00%
CIMMETRY SYSTEMS	0.00%
CIMQUEST INGEAR	0.00%
CINGULAR WIRELESS	0.00%
CIRBA	0.00%
CIRCLE SYSTEMS	0.00%
CISCO SYSTEMS	0.00%
CKN & ASSOCIATES	0.00%
CLASS ON DEMAND	0.00%
CLASSAPPS	0.00%
CLEARLIGHT NETWORKS	0.00%
CLEARSWIFT	0.00%
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COMMAND COMMUNICATIONS	0.00%
COMMON SENSE SOFTWARE	0.00%
COMMON TIME	0.00%
COMMUNITY DEVELOPMENT SOFTWARE	0.00%
COMM-UNITY NETWORKING SYSTEMS	0.00%
COMMVAULT SYSTEMS	0.00%
COMPONENT DESIGNS INC.	0.00%
COMPONENT SOURCE	0.00%
COMPONENT WORKSHOP	0.00%
COMPONENTART	0.00%
COMPONENTONE	0.00%
COMPULINK LTD	0.00%
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COMPUTER ASSOCIATES	0.00%
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COMPUTER SYSTEMS ODESSA	0.00%
COMPUTERS MADE EFFECTIVE	0.00%
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CONQUEST SOFTWARE SOLUTIONS	0.00%
CONTENT VISION	0.00%
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CORE LEARNING	0.00%
CORE SECURITY TECHNOLOGIES	0.00%
CORE TECHNOLOGY	0.00%
CORPORATE COMMUNICATIONS INTERACTIVE	0.00%
CORPORATE WEB SOLUTIONS LTD	0.00%
COST XPERT GROUP	0.00%
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CPACS	0.00%
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DMT SOFTWARE	0.00%
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EMCO SOFTWARE LTD	0.00%
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ESEA	0.00%
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EVENT TRACKER	0.00%
EVERMAP COMPANY	0.00%
EVERNOTE	0.00%
EVIWARE	0.00%
EXC SOFTWARE	0.00%
EXCLAIMER LIMITED	0.00%
EXCLAMATIONSOFT	0.00%
EXECUTIVE INFORMATION SYSTEMS	0.00%
EXECUTIVE PAULSE	0.00%
EXETER SOFTWARE	0.00%
EXPERIENCE IN SOFTWARE	0.00%
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FABLEVISION INC.	0.00%
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NETWORK ENGINES	0.00%
NETWORK GENERAL	0.00%
NETWORK INSTRUMENTS	0.00%
NETWORK SOLUTIONS	0.00%
NETXPOSURE	0.00%
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NICE SYSTEMS	0.00%
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PLIXER INTERNATIONAL	0.00%
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POCKETSOFT	0.00%
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POWER PRODUCTION	0.00%
POWERCONTROLS SERVER LICENSE	0.00%
PQ SYSTEMS	0.00%
PRAGMATECH	0.00%
PRAGMATIC SOFTWARE COMPANY	0.00%
PRE EMPTIVE SOLUTIONS	0.00%
PRE-ENGINEERING SOFTWARE	0.00%
PREMIER ASSISTIVE TECHNOLOGY	0.00%
PREMIUMSOFT CYBERTECH LTD	0.00%
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PROGRESS SOFTWARE	0.00%
PROJECT WIZARDS	0.00%
PROMEGA	0.00%
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QUALICOMP	0.00%
QUALITY SYSTEMS INTEGRATORS	0.00%
QUANTITATIVE MICROSOFTWARE	0.00%
QUERY TOOL	0.00%
QUESTEQ	0.00%
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REDDOT SOLUTIONS	0.00%
REDIX	0.00%
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SYSTWEAK	0.00%
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TETRAD	0.00%
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TEXAS INSTRUMENTS	0.00%
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TGRMN SOFTWARE	0.00%
THARO SYSTEMS	0.00%
THAWTE USA	0.00%
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THE MARCOM GROUP	0.00%
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WORKSHARE TECHNOLOGY	0.00%

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WORLD SOFTWARE	0.00%
WORLD SYNC	0.00%
WYSE TECHNOLOGY	0.00%
X LINK	0.00%
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ZIP CODE DOWNLOAD	0.00%
ZIX	0.00%
ZOOMERANG	0.00%

**EXHIBIT E: CERTIFICATION REGARDING LOBBYING**

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

- i). No Federal appropriated funds have been paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee or an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal Contract, grant, loan, or cooperative agreement.
- ii). If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- iii). The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and Contracts under grants, loans and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

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

Signature: *\* Lesley Brawn*  
Printed Name: Lesley Brawn  
Organization: Deer Marketing US  
Date: 6/27/09

*\* To the best of my knowledge & belief*

## **EXHIBIT G**

### **AWARDED CATEGORIES**

- DESKTOP
- NOTEBOOK
- RUGGED
- PERIPHALS
- COTS



# **Software Contract**

between

The Virginia Information Technologies Agency

on behalf of

The Commonwealth of Virginia

and

Dell Marketing LP

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**SOFTWARE CONTRACT  
TABLE OF CONTENTS**

<b>1. PURPOSE AND SCOPE</b>	<b>4</b>
<b>2. DEFINITIONS</b>	<b>4</b>
A. Acceptance	4
B. Agent	4
C. Authorized Users	4
D. Computer Virus	4
E. Confidential Information	4
F. Documentation	4
G. Electronic Self-Help	4
H. Maintenance Level	4
I. Maintenance Period	5
J. Maintenance Services (or Maintenance)	5
K. Party	5
L. Requirements	5
M. Services	5
N. Software	5
O. Software Publisher	5
P. Supplier	5
<b>3. TERM AND TERMINATION</b>	<b>5</b>
A. Contract Term	5
B. Termination for Convenience	6
C. Termination for Breach or Default	6
D. Termination for Non-Appropriation of Funds	6
E. Effect of Termination	6
F. Transition of Services	6
G. Contract Kick-Off Meeting	7
H. Contract Closeout	7
<b>4. SOFTWARE LICENSE</b>	<b>7</b>
License Type	8
I. No Subsequent, Unilateral Modification of Terms by Supplier (“Shrink Wrap”)	8
<b>5. DELIVERY AND INSTALLATION</b>	<b>8</b>
J. Scheduling	8
K. Installation of Software	8
1. Supplier Installation of Software	8
L. Documentation of Software Configuration	8
<b>6. ACCEPTANCE AND CURE PERIOD</b>	<b>8</b>
M. Acceptance	8
N. Cure Period	9
<b>7. WARRANTY SERVICES</b>	<b>9</b>
<b>8. MAINTENANCE SERVICES</b>	<b>9</b>
O. Escalation Procedures	9
P. Remedies	9
<b>9. GENERAL WARRANTY</b>	<b>10</b>
Q. Ownership	10
R. Software and Documentation	10
S. Limited Warranty	10
T. Malicious Code	10
U. Open Source	10

---

V. Supplier's Viability	10
W. Supplier's Past Experience	11
10. TRAINING AND DOCUMENTATION	11
11. FEES, ORDERING AND PAYMENT PROCEDURE	11
A. Fees and Charges	11
B. Reproduction Rights	11
C. Evaluation Copy of Software	12
D. Ordering	12
E. Invoice Procedures	12
F. Purchase Payment Terms	13
G. Alternate Channel Participation (Resellers/Distributors)	13
12. REPORTING	13
A. Supplier's Report of Sales and Industrial Funding Adjustment	13
B. Small Business Participation	14
13. COMPETITIVE PRICING	14
14. CONFIDENTIALITY	14
A. Treatment and Protection	14
B. Exclusions	14
C. Return or Destruction	15
15. INDEMNIFICATION AND LIABILITY	15
A. Indemnification	15
B. Liability	16
16. SECURITY COMPLIANCE	16
17. BANKRUPTCY	17
18. GENERAL PROVISIONS	17
A. Relationship between VITA, Authorized User, and Supplier	17
B. Incorporated Contractual Provisions	17
C. Compliance with the Federal Lobbying Act	18
D. Governing Law	18
E. Dispute Resolution	18
F. Advertising and Use of Proprietary Marks	18
G. Notices	18
H. No Waiver	18
I. Assignment	19
J. Captions	19
K. Severability	19
L. Survival	19
M. Force Majeure	19
N. Remedies	19
O. Right to Audit	19
P. Offers of Employment	20
Q. Contract Administration	20
R. Entire Contract	20

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## SOFTWARE CONTRACT

THIS SOFTWARE CONTRACT ("Contract") is entered into by and between the Virginia Information Technologies Agency (VITA) pursuant to §2.2-2012 of the Code of Virginia and on behalf of the Commonwealth of Virginia, (hereinafter referred to as "VITA") and Dell Marketing LP ("Supplier"), a Texas Limited Partnership headquartered at One Dell Way, Round Rock, Texas 78682, to be effective as of February 2, 2009 ("Effective Date").

### 1. PURPOSE AND SCOPE

This Contract sets forth the terms and conditions under which Supplier agrees to resell Software, and to provide various associated Services to the Authorized Users.

### 2. DEFINITIONS

#### A. Acceptance

Acceptance shall take the form of successful delivery or completed and successful Acceptance testing in conformance with Section 6.

#### B. Agent

Any third party independent agent of any Authorized User.

#### C. Authorized Users

All public bodies, including VITA, as defined by §2.2-4301 and referenced by §2.2-4304 of the Code of Virginia.

#### D. Computer Virus

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

#### E. Confidential Information

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

#### F. Documentation

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

#### G. Electronic Self-Help

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

#### H. Maintenance Level

The parameters of Maintenance Services, including the times during which and time-frames in which Software Publisher shall respond to a request for Maintenance Services. The available Maintenance Levels shall be as defined in Exhibit C hereto. The actual Maintenance Level for a

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unit of Software shall be set forth in the executed order for Maintenance of that Software referencing this Contract.

**I. Maintenance Period**

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

**J. Maintenance Services (or Maintenance)**

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

**K. Party**

Supplier, VITA, or any Authorized User.

**L. Requirements**

The functional, performance, operational, compatibility, and other parameters and characteristics of the product as set forth in the applicable documentation, Exhibit A and such other parameters, characteristics, or performance standards for the product that may be agreed upon in writing by VITA and Supplier or the Parties to an order issued hereunder. [Note: In case of conflict, see the Entire Contract clause for order of precedence.]

**M. Services**

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

**N. Software**

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

**O. Software Publisher**

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

**P. Supplier**

Means the Supplier and any of its Affiliates (i.e., an entity that controls, is controlled by, or is under common control with Supplier) who agrees to provide the Software and associated Services as a reseller under this Agreement

**3. TERM AND TERMINATION**

**A. Contract Term**

This Contract is effective and legally binding as of the Effective Date and, unless terminated as provided for in this section, shall continue to be effective and legally binding for a period of two (2) years. VITA, in its sole discretion, may extend this Contract for up to three (3) additional one (1) year periods after the expiration of the initial two (2) year period. VITA will issue a written notification to the Supplier stating the extension period, not less than thirty (30) days prior to the expiration of any current term. Warranty on or Maintenance Services for any Software ordered during the term of the Contract may extend beyond the term of this Contract. Performance of an order or SOW issued during the term of this Contract may survive the expiration of the term of this Contract, in which case all terms and conditions required for the operation of such order or SOW shall remain in full force and effect until Services pursuant to such order or SOW have met the final Acceptance criteria of the applicable Authorized User.

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**B. Termination for Convenience**

VITA may terminate this Contract, in whole or in part, or an Authorized User may terminate an order, in whole or in part upon not less than thirty (30) days prior written notice at any time for any reason.

**C. Termination for Breach or Default**

VITA shall have the right to terminate this Contract, in whole or in part, or any order issued hereunder, in whole or in part, or an Authorized User may terminate an order, in whole or in part, for breach and/or default of Supplier. Supplier shall be deemed in breach and/or default in the event that Supplier fails to meet any material obligation set forth in this Contract or in any order issued hereunder.

If VITA deems the Supplier to be in breach and/or default, VITA shall provide Supplier with notice of breach and/or default and allow Supplier fifteen (15) days to cure the breach and/or default. If Supplier fails to take reasonable steps to cure the breach as noted, VITA may immediately terminate this Contract or any order issued hereunder, in whole or in part.

If an Authorized User deems the Supplier to be in breach and/or default of an order, such Authorized User shall provide Supplier with notice of breach and/or default and allow Supplier fifteen (15) days to cure the breach and/or default. If Supplier fails to take reasonable steps to cure the breach and/or default as noted, such Authorized User may immediately terminate its order, in whole or in part.

Any such termination shall be deemed a Termination for Breach or a Termination for Default. In addition, if Supplier is found by a court of competent jurisdiction to be in violation of or to have violated 31 USC 1352, or if Supplier becomes a party excluded from Federal Procurement and Nonprocurement Programs, VITA may immediately terminate this Contract, in whole or in part, for breach. VITA shall provide written notice to Supplier of such termination, and Supplier shall provide prompt written notice to VITA if Supplier is charged with violation of 31 USC 1352 or if federal debarment proceedings are instituted against Supplier.

**D. Termination for Non-Appropriation of Funds**

All payment obligations under this Contract are subject to the availability of legislative appropriations at the federal, state, or local level, for this purpose. In the event of non-appropriation of funds, irrespective of the source of funds, for the items under this Contract, VITA may terminate any order, in whole or in part, or an Authorized User may terminate its order, in whole or in part, for those goods or services for which funds have not been appropriated. Written notice will be provided to the Supplier as soon as possible after legislative action is completed.

**E. Effect of Termination**

Upon termination, the Commonwealth shall have no future liability except for Software accepted or Services rendered by Supplier prior to the termination date.

In the event of a Termination for Breach or Termination for Default, Supplier shall accept return of any Software or Services that were not accepted by the Authorized User(s), and Supplier shall refund any monies paid by any Authorized User for such Software or Services, and all costs of de-installation and return of such Software or Services shall be borne by Supplier.

**F. Transition of Services**

Prior to or upon expiration or termination of this Contract and at the request of VITA, Supplier shall provide all reasonable assistance as VITA or an Authorized User may reasonably require to transition Services to any other supplier with whom VITA or such Authorized User contracts for provision of Software-related services. This obligation may extend beyond expiration or termination of the Contract for a reasonable period of time not to exceed six (6) months. In the event of a termination for breach and/or default of Supplier, Supplier shall provide such assistance at no charge or fee to VITA or any Authorized User; otherwise, Supplier shall provide

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such assistance at a reasonable hourly rate or a charge agreed upon by Supplier and VITA or an Authorized User.

**G. Contract Kick-Off Meeting**

Within 30 days of Contract award, Supplier may be required to attend a contract orientation meeting, along with the VITA contract manager/administrator, the VITA and/or other CoVa Agency project manager(s) or authorized representative(s), technical leads, VITA representatives for SWaM and Sales/IFA reporting, as applicable, and any other significant stakeholders who have a part in the successful performance of this Contract. The purpose of this meeting will be to review all contractual obligations for both parties, all administrative and reporting requirements, and to discuss any other relationship, responsibility, communication and performance criteria set forth in the Contract. The Supplier may be required to have its assigned account manager as specified in Section 6.0 and a representative from its contracts department in attendance. The time and location of this meeting will be coordinated with Supplier and other meeting participants by the VITA contract manager.

**H. Contract Closeout**

Prior to the contract's expiration date, Supplier may be provided contract close out documentation and shall complete, sign and return to VITA Supply Chain Management within 30 days of receipt. This documentation may include, but not be limited to: Patent/Royalty Certificate, Tangible Property/Asset Certificate, Escrow Certificate, SWaM Reports Completion Certificate, Sales Reports/IFA Payments Completion Certificate, and Final Payment Certificate. Supplier is required to process these as requested to ensure completion of close-out administration and to maintain a positive performance reputation with the Commonwealth of Virginia.

**4. SOFTWARE LICENSE**

If Authorized User is a state agency, board, commission, or other quasi-political entity of the Commonwealth of Virginia or other body referenced in Title 2.2 of the Code of Virginia, the license shall be held by the Commonwealth. If Authorized User is a locality, municipality, school, school system, college, university, local board, local commission, or local quasi-political entity, the license shall be held by that public body.

VITA acknowledges that Supplier is a reseller of the Software being provided under this Agreement and in most cases the Software Publisher requires an End User License Agreement (EULA). In such cases, Supplier acknowledges that VITA will require that Software Publisher execute an addendum to such EULA to address terms and conditions in such EULA with which VITA, as a government entity, by law or by policy, cannot agree. Supplier agrees to assist VITA in securing Software Publisher's consent to the aforementioned addendum.

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

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

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

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## **License Type**

All licenses granted, regardless of the type, include all uses set forth above. License type may vary by Software product and Software Publisher and shall be set forth in the EULA.

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

Notwithstanding any other provision or other unilateral license terms which may be issued by Supplier after the Effective Date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of an order for Software licensed under this Contract, or the fact that such other agreement may be affixed to or accompany Software upon delivery (“shrink wrap”), the terms and conditions set forth herein shall supersede and govern licensing and delivery of all products and services hereunder, unless otherwise required by the Software Publisher. If this is the case, Supplier acknowledges that VITA may require that the Software Publisher execute an addendum to such shrink wrap terms and conditions or EULAs to address terms and conditions with which VITA, as a government entity, by law or by policy, cannot agree. If such additional shrink wrap licenses, EULAs or any additional terms and conditions are required by the Software Publisher, Supplier agrees to assist VITA in securing Software Publisher’s consent to the aforementioned addendum.

## **5. DELIVERY AND INSTALLATION**

### **J. Scheduling**

Supplier shall deliver Software and perform the Services according to the delivery dates as mutually agreed upon.

### **K. Installation of Software**

#### **1. Supplier Installation of Software**

Unless mutually agreed upon by the parties, the Authorized User shall be responsible for the installation of the Software. If requested to do so by VITA or an Authorized User, Supplier may install the Software in accordance with the installation schedule set forth in a SOW as mutually agreed upon by the Parties. If Supplier installs Software, Supplier shall conduct its standard appropriate diagnostic evaluation at the Authorized User’s user site to determine that the Software is properly installed and fully ready for productive use, and shall supply the Authorized User with a copy of the results of the diagnostic evaluation promptly after completion of installation. Supplier agrees that failure to install the Software in accordance with the delivery schedule in the applicable order may result in damages to the Authorized User. If the delay lasts longer than thirty (30) days, such Authorized User may immediately cancel the order. Such Authorized User reserves any and all other remedies available at law or in equity for delays lasting longer than thirty (30) days or for non-delivery.

### **L. Documentation of Software Configuration**

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

## **6. ACCEPTANCE AND CURE PERIOD**

### **M. Acceptance**

Software shall be deemed accepted upon Delivery. Supplier agrees to provide to such Authorized User such assistance and advice as such Authorized User may reasonably require, at no additional cost, for a reasonable period of time after delivery to assist with any relevant questions. Other than travel expenses pre-approved by the Authorized User which will be reimbursable by such Authorized User at the then-current per diem amounts as published by the

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Virginia Department of Accounts

([http://www.doa.virginia.gov/Admin\\_Services/CAPP/CAPP\\_Topics/20335\\_Meals\\_Lodging\\_10200\\_7.pdf](http://www.doa.virginia.gov/Admin_Services/CAPP/CAPP_Topics/20335_Meals_Lodging_10200_7.pdf), or a successor URL(s)). Authorized User shall provide to Supplier written notice of Acceptance upon completion of successful Acceptance testing. Should Authorized User fail to provide Supplier written notice of successful or unsuccessful Acceptance testing within five (5) days following the Acceptance testing period, the Software shall be deemed Accepted, if such acceptance testing is authorized by the Software Publisher according to the publisher's then-current return policy. Supplier agrees to accept return of any Software that has not been opened or downloaded within thirty (30) days of delivery, if such return is authorized by the Software Publisher according to the publisher's then-current return policy.

#### **N. Cure Period**

Supplier shall correct any non-conformities identified during Acceptance testing and re-submit such non-conforming Software for re-testing within seven (7) days of the appropriate Authorized User's written notice of non-conformance, or as otherwise agreed between such Authorized User and Supplier in the applicable order. Should Supplier fail to cure the non-conformity or deliver Software which meets the Requirements, such Authorized User may, in its sole discretion: (i) reject the Software in its entirety and recover amounts previously paid hereunder; (ii) issue a "partial Acceptance" of the Software with an equitable adjustment in the price to account for such deficiency; or (iii) conditionally accept the applicable Software while reserving its right to revoke Acceptance if timely correction is not forthcoming. Failure of the Software to meet, in all material respects, the Requirements after the second set of acceptance tests may constitute a default by Supplier. In the event of such default, the Authorized User may, at its sole discretion, terminate its order, in whole or in part, for the Software and Services to be provided thereunder by Supplier. [Modify this section to receive a refund if monies were paid prior to Acceptance.]

### **7. WARRANTY SERVICES**

VITA acknowledges that Warranty Services depend upon the Product offered and level of support purchased. Supplier agrees to assign all applicable warranties for the Software to VITA and Authorized Users. VITA agrees that Software Publisher is responsible for Warranty Services, including correction of known defects, coverage, services levels, and remedies. Supplier agrees to work with Authorized User to ensure proper adequate product support, but shall not be responsible for the performance of such Warranty Services.

### **8. MAINTENANCE SERVICES**

VITA acknowledges that Maintenance Services depend upon the Product offered and level of support purchased, and that the Software Publisher is responsible for such Maintenance Services, including correction of known defects, dissemination of product patches, new releases and fixes. Supplier agrees to work with Authorized User to ensure proper adequate product support, but shall not be responsible for the performance of such Maintenance Services.

#### **O. Escalation Procedures**

Escalation Procedures shall vary depending on the Software and the Software Publisher.

#### **P. Remedies**

In addition to any remedies described in Exhibit C, if Software Publisher is unable to make the Software conform, in all material respects, to the Requirements within thirty (30) days following notification by an Authorized User, Authorized User may request from the Software Publisher cancellation of the license to such non-conforming software and (i) return all monies paid by such Authorized User for the cancelled license, pro-rated using the straight-line method for an estimated software life cycle of five (5) years, or, if a term license, shall return the prorated license fee for the remainder of the license term; and (ii) return the prorated maintenance charge for the remainder of the maintenance term. Such return and refund will be determined between

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the Authorized User and the Software Publisher, and Supplier shall have no obligation in regards to such remedies.

## **9. GENERAL WARRANTY**

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

### **Q. Ownership**

Supplier has the right to distribute the Software granted hereunder without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party.

### **R. Software and Documentation**

Supplier warrants the following with respect to the Software:

- i). If the RFP specified or Exhibit A specifies the hardware equipment an Authorized User shall use to run the Software, then Supplier warrants the Software, is compatible with and shall perform as stated with such hardware. However Supplier will in no event be liable for the failure of Software if such failure is due to misinformation from the Authorized End User, changes in the hardware or use of third party software by an Authorized User.
- ii). If an order issued by an Authorized User pursuant to this Contract specified the hardware equipment such Authorized User shall use to run the Software, then Supplier warrants the Software, is compatible with and shall perform as stated with such hardware as of the date of such order. However Supplier will in no event be liable for the failure of Software if such failure is due to misinformation from the Authorized End User, changes in the hardware or use of third party software by such Authorized User.
- iii). The Software provided hereunder is at the current release level unless an Authorized User specifies an older version in its order;
- iv). No corrections, work-arounds or future Software releases provided by Supplier under the warranty provisions or under maintenance or support services shall degrade the Software, cause any other warranty to be breached;
- v). Supplier warrants that the Documentation and all modifications or amendments thereto which Supplier is required to provide under this Contract shall be sufficient in detail and content to allow an Authorized User to load/use/operate the Software without reference to any other materials or information.

### **S. Limited Warranty**

During the applicable warranty period Supplier shall provide assistance as requested by an Authorized User in exercising its rights pursuant to Software Publisher's limited warranty.

### **T. Malicious Code**

Supplier shall not knowingly provide any Software with known Computer Viruses or undocumented features in the Software at the time of delivery to an Authorized User.

### **U. Open Source**

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

### **V. Supplier's Viability**

Supplier warrants that it has the financial capacity to perform and continue to perform its obligations under this Contract; that Supplier has no constructive or actual knowledge of a potential legal proceeding being brought against Supplier that could materially adversely affect

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performance of this Contract and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction.

**W. Supplier's Past Experience**

Supplier warrants that it has sold the Software previously to other customers on other occasions without any known significant problems due to the Software or Software Publisher.

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

**10. TRAINING AND DOCUMENTATION**

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

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

**11. FEES, ORDERING AND PAYMENT PROCEDURE**

**A. Fees and Charges**

As consideration for the Software license(s) and Services provided herein, an Authorized User shall pay Supplier the fee(s) set forth on Exhibit B, which lists any and all fees and charges. The fees and any associated discounts shall be applicable throughout the term of this Contract; provided, however, that in the event the fees or discounts apply for any period less than the entire term, Supplier agrees that it shall not increase the fees more than once during any twelve (12) month period, commencing at the end of year one (1). No such increase shall exceed the lesser of three percent (3%) or the annual increase in the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, All Items, Not Seasonally Adjusted, as published by the Bureau of Labor Statistics of the Department of Labor (<http://www.bls.gov/cpi/home.htm>), for the effective date of the increase compared with the same index one (1) year prior. This applies to the discount percentage and is not applicable to the retail price list. Any such change in price shall be submitted in writing in accordance with the above and shall not become effective for sixty (60) days thereafter. Supplier agrees to offer price reductions to ensure compliance with the Competitive Pricing Section.

**B. Reproduction Rights**

For enterprise and other appropriate license types, at an Authorized User's request, and where available, Supplier shall provide the Authorized User with a reproducible media if requested. Such Authorized User shall be responsible for making copies and distributing the Software as required. Within thirty (30) days of the end of each calendar quarter, such Authorized User shall provide to Supplier a report of the net number of additional copies of the Software deployed

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during the quarter. Supplier shall invoice such Authorized User for the net number of new licenses reported as deployed.

**C. Evaluation Copy of Software**

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

**D. Ordering**

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

Supplier is required to allow any orders to be placed by an Authorized User through the eVA electronic procurement website portal ([eVA Home Page](#)). eVA is the Commonwealth of Virginia's e-procurement system. State agencies, as defined in §2.2-2006 of the Code of Virginia, shall order through eVA. All other Authorized Users are encouraged to order through eVA, but may order through the following means:

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

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

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

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

**E. Invoice Procedures**

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

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

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iv). This Contract number and the applicable order number

Any terms included on Supplier's invoice shall have no force or effect and will in no way bind VITA or any Authorized User.

#### **F. Purchase Payment Terms**

Supplier is responsible for the accuracy of its billing information. Supplier agrees not to issue invoices prior to the shipment date from Supplier's facility for the Software invoiced. Charges for Software or Services accepted more than ninety (90) days prior to receipt of a valid invoice may not be paid.

In the event Software is shipped without the applicable Documentation, payment shall not be due until the required Documentation is provided. Authorized User shall notify Supplier within 5 days if the applicable documentation was not shipped with the Software.

If there are any disputed items, an Authorized User shall pay all undisputed charges and promptly notify Supplier in writing of any disputed amount. Supplier shall thereupon review its records, and, if it does not concur with the Authorized User, provide the Authorized User with documentation to support the charge. If such charges remain in dispute, such dispute shall be resolved in accordance with the Dispute Resolution section of this Contract. All payment terms are net 30 days after invoice.

#### **G. Alternate Channel Participation (Resellers/Distributors)**

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

- i). Supplier shall provide to VITA the names and applicable contact information of its authorized Resellers. VITA may, at its sole discretion, issue a solicitation in accordance with the Virginia Public Procurement Act (VPPA), §§ 2.2-4300 et seq. of the Code of Virginia, for the participation of such Resellers as alternate distribution sources for Supplier.
- ii). Once a Reseller is issued a contract in accordance with the VPPA, an Authorized User may issue an order directly to such Reseller, in accordance with the VPPA and/or other applicable statutes or regulations. Reseller shall ship and bill Authorized Users directly in accordance with the terms of its contract with VITA, on behalf of the Commonwealth of Virginia.
- iii). Orders placed with Resellers pursuant to a contract awarded in accordance with items (i) and (ii) above may contain only Software previously approved for license under this Contract.
- iv). Reseller may invoice and will be paid in accordance with the terms of its contract with VITA.

## **12. REPORTING**

### **A. Supplier's Report of Sales and Industrial Funding Adjustment**

By the 10th business day of every month, the Supplier shall submit the "Supplier Monthly Report of Sales". A template showing the format in which the report is to be submitted and contact information for submission is available at <http://www.vita.virginia.gov/uploadedFiles/SCM/SupplierReportofSalesTemplate.xls>. The report shall be submitted via electronic mail to the VITA IFA Coordinator and shall report total sales (defined for purposes of this report as all invoiced payments received by Supplier from all Authorized Users) for this Contract during the preceding month. Supplier shall be responsible for submitting the monthly report of sales even if Supplier has had no sales (i.e., a \$0.00 total sales value) for the reporting period.

The Supplier shall submit the Industrial Funding Adjustment (IFA) payment for the period covered by such "Supplier Monthly Report of Sales" within thirty (30) days after submitting the "Supplier Monthly Report of Sales". The IFA payment is equal to two percent (2%) of total sales reported during the relevant month.

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The IFA payment shall be submitted to VITA, Attention VITA Controller in the form of a check or electronic payment, made payable to the Treasurer of Virginia. The IFA payment shall reference this Contract number, "report amounts", and "report period" and shall be accompanied by a copy of the relevant "Supplier Monthly Report of Sales". Contact information for submission of IFA payments is available at <http://www.vita.virginia.gov/uploadedFiles/SCM/SupplierReportofSalesTemplate.xls>.

VITA shall provide written notice to Supplier of any failure to comply with reporting, payment and distribution requirements of this section, and Supplier shall have a reasonable amount of time to cure such reporting discrepancies. Repeated failure to cure such discrepancies within a reasonable amount of time may result in default of the Contract.

#### **B. Small Business Participation**

Supplier and VITA agree to meet promptly after the Effective Date of this Contract to discuss the participation of Virginia Department of Minority Business Enterprise (DMBE)-certified Small Businesses as subcontractors and second-tier suppliers under this Contract.

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

In addition, by the 10th business day of every month, Supplier shall submit to VITA the Small Business Subcontracting Monthly Report (template to be provided). Supplier's report should include spend on all Supplier's contracts with second-tier suppliers which provide products or services under this Contract. The report should specify the amount of such spend provided to small businesses. Supplier shall submit the report to [SWaM@vita.virginia.gov](mailto:SWaM@vita.virginia.gov).

### **13. COMPETITIVE PRICING**

Supplier warrants and agrees that the pricing pursuant to this Contract is comparable to pricing being offered to other similarly situated government customers of Supplier purchasing the same or substantially similar quantities of similar Software under similar terms and conditions. If Supplier enters into any arrangements with another similarly situated government customer of Supplier to provide the same or substantially similar quantities of similar Software under similar terms and conditions at more favorable prices, then VITA may request that this Contract be amended as of the date of such other arrangements to incorporate those more favorable prices.

### **14. CONFIDENTIALITY**

#### **A. Treatment and Protection**

Each Party shall (i) hold in strict confidence all Confidential Information of any other Party, (ii) use the Confidential Information solely to perform or to exercise its rights under this Contract, and (iii) not transfer, display, convey or otherwise disclose or make available all or any part of such Confidential Information to any third-party. However, a Party may disclose the Confidential Information as delivered by Supplier to subcontractors, contractors or agents of such Party that are bound by non-disclosure contracts with such Party. 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;

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- iii). developed independently by the receiving Party without reference to the Confidential Information of the other Party; or
  - iv). required to be disclosed under The Virginia Freedom of Information Act (§§2.2-3700 et seq. of the Code of Virginia) or similar laws or pursuant to a court order.

### **C. Return or Destruction**

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

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

## **15. INDEMNIFICATION AND LIABILITY**

### **A. Indemnification**

Supplier agrees to indemnify, defend and hold harmless the Commonwealth, VITA, any Authorized User, their officers, directors, agents and employees (collectively, "Commonwealth's Indemnified Parties") from and against any and all third party claims, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, assessments, fines (whether criminal or civil), judgments, settlements, expenses (including attorneys' and accountants' fees and disbursements) and costs (each, a "Claim" and collectively, "Claims"), incurred by, borne by or asserted against any of Commonwealth's Indemnified Parties to the extent such Claims in any way relate to, arise out of or result from: (i) any intentional or willful **misconduct** or negligence of any employee, agent, or subcontractor of Supplier working within the scope of or coincident with their employment on customer's premises and for a specific customer engagement or service, (ii) any act or omission of any employee, agent, or subcontractor of Supplier resulting in personal injury (including death) or damage to real tangible property; (iii) any defect in a Product resulting in personal injury (including death) or damage to real tangible property; (iv) any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Supplier's Product or Services; **(v) any claim that Supplier did not have the legal right to provide an Authorized User with a non-supplier product;** or (vi) the failure of Supplier to perform its obligations pursuant to the Section entitled 'Security Compliance.' 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. To the extent permitted by law, the Commonwealth, VITA, and any Authorized User shall be responsible for their own acts or omissions.

In the event that a Claim is commenced against any of Commonwealth's Indemnified Parties alleging that use of the Supplier's Product or any Product component or that the provision of Services under this Contract infringes any third party's intellectual property rights and Supplier is of the opinion that the allegations in such Claim in whole or in part are not covered by this indemnification provision, Supplier shall immediately notify VITA and the affected Authorized User(s) in writing, via certified mail, specifying to what extent Supplier believes it is obligated to defend and indemnify under the terms and conditions of this Contract. Supplier shall in such event protect the interests of the Commonwealth's Indemnified Parties and secure a continuance

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to permit VITA and the affected Authorized User(s) to appear and defend their interests in cooperation with Supplier as is appropriate, including any jurisdictional defenses VITA or the affected Authorized User(s) may have.

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

With respect to any claim that Non-supplier product(s) infringes upon another person's or entity's patent, copyright, trade secret or other intellectual property rights in the United States, Supplier agrees to pass through to the appropriate Authorized User any rights to indemnification protection for which Supplier currently or subsequently has an agreement in place with the potentially infringing equipment manufacturer/entity.

#### **B. Liability**

Supplier shall have unlimited liability with respect to (i) any intentional or willful misconduct or negligence of any employee, agent, or subcontractor of Supplier, (ii) any independent act or omission of any employee, agent, or subcontractor of Supplier not at the direction of an Authorized User, (iii) claims for bodily injury, including death, and real and tangible property damage, (iv) Supplier's indemnification obligations, (v) Supplier's confidentiality obligations, and (vi) Supplier's security compliance obligations. Supplier agrees that it is fully responsible for all acts and omissions of its employees, agents, and subcontractors, including their gross negligence or willful misconduct.

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

#### **16. SECURITY COMPLIANCE**

Supplier agrees to take reasonable steps to comply with all applicable provisions of the then-current Commonwealth of Virginia security procedures, published by the Virginia Information Technologies Agency (VITA) and which may be found at <http://www.vita.virginia.gov/library/default.aspx?id=537#securityPSGs> or a successor URL(s), as are pertinent to Supplier's operation. Supplier further agrees to comply with all applicable provisions of the relevant Authorized User's then-current security procedures as are pertinent to Supplier's operation and which have been supplied to Supplier by such Authorized User. Supplier shall also comply with all applicable federal, state and local laws and regulations. For any individual Authorized User location, security procedures may include but not be limited to: background checks, records verification, photographing, and fingerprinting of Supplier's employees or agents. Supplier may, at any time, be required to execute and complete, for each individual Supplier employee or agent, additional forms which may include non-disclosure agreements to be signed by Supplier's employees

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or agents acknowledging that all Authorized User information with which such employees and agents come into contact while at the Authorized User site is confidential and proprietary. Any unauthorized release of proprietary information by the Supplier or an employee or agent of Supplier shall constitute a breach of this Contract. VITA and Authorized Users acknowledge that additional security procedures may result in additional costs.

## **17. BANKRUPTCY**

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

## **18. GENERAL PROVISIONS**

### **A. Relationship between VITA, Authorized User, and Supplier**

Supplier has no authority to contract for VITA or any Authorized User or in any way to bind, to commit VITA or any Authorized User to any agreement of any kind, or to assume any liabilities of any nature in the name of or on behalf of VITA or any Authorized User. Under no circumstances shall Supplier, or any of its employees, hold itself out as or be considered an agent or an employee of VITA or any Authorized User, and neither VITA nor any Authorized User shall have any duty to provide or maintain any insurance or other employee benefits on behalf of Supplier or its employees. Supplier represents and warrants that it is an independent contractor for purposes of federal, state and local employment taxes and agrees that neither VITA nor any Authorized User is responsible to collect or withhold any federal, state or local employment taxes, including, but not limited to, income tax withholding and social security contributions, for Supplier. Any and all taxes, interest or penalties, including, but not limited to, any federal, state or local withholding or employment taxes, imposed, assessed or levied as a result of this Contract shall be paid or withheld by Supplier or, if assessed against and paid by VITA or any Authorized User, shall be reimbursed by Supplier upon demand by VITA or such Authorized User.

### **B. Incorporated Contractual Provisions**

The then-current contractual provisions at the following URL are mandatory contractual provisions, required by law or by VITA, that are hereby incorporated by reference:  
<http://www.vita.virginia.gov/uploadedFiles/SCM/StatutorilyMandatedTsandCs.pdf>

The contractual claims provision §2.2-4363 of the Code of Virginia and the required eVA provisions at <http://www.vita.virginia.gov/uploadedFiles/SCM/eVATsandCs.pdf> are also incorporated by reference.

The then-current terms and conditions in documents posted to the aforementioned URLs are subject to change pursuant to action by the legislature of the Commonwealth of Virginia, change in VITA policy, or the adoption of revised eVA business requirements. If a change is made to the terms and conditions, a new effective date will be noted in the document title. VITA shall take reasonable efforts to notify Supplier of any applicable changes, but Supplier is advised to check the URLs periodically.

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### **C. Compliance with the Federal Lobbying Act**

Supplier's signed certification of compliance with 31 USC 1352 (entitled "Limitation on use of appropriated funds to influence certain Federal Contracting and financial transactions") or by the regulations issued from time to time thereunder (together, the "Lobbying Act") is incorporated as Exhibit F hereto.

### **D. Governing Law**

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

### **E. Dispute Resolution**

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

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

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

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

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

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

### **G. Notices**

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

### **H. No Waiver**

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

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### **I. Assignment**

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

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

### **J. Captions**

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

### **K. Severability**

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

### **L. Survival**

The provisions of this Contract regarding Software License, Warranty, Confidentiality, Liability and Indemnification, and the General Provisions shall survive the expiration or termination of this Contract.

### **M. Force Majeure**

No Party shall be responsible for failure to meet its obligations under this Contract if the failure arises from causes beyond the control and without the fault or negligence of the non-performing Party. If any performance date under this Contract is postponed or extended pursuant to this section for longer than thirty (30) calendar days, VITA, by written notice given during the postponement or extension, may terminate Supplier's right to render further performance after the effective date of termination without liability or fault to Supplier for that termination, and in addition an Authorized User may terminate any order affected by such postponement or delay.

### **N. Remedies**

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

### **O. Right to Audit**

VITA reserves the right to audit its purchase orders and associated invoices submitted under this Contract. VITA's right to audit shall be limited as follows:

- i). On an annual basis during the term of this Contract and up to three (3) years from Software delivery or Service performance date;
- ii). May be performed at Supplier's premises, during normal business hours at mutually agreed upon times; and
- iii). Excludes access to Supplier cost information.

In no event shall Supplier have the right to audit, or require to have audited, VITA or any Authorized User.

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**P. Offers of Employment**

During the first twelve (12) months of the Contract, Supplier will not actively solicit and knowingly hire an employee of an Authorized User who has substantially worked on any project covered by this Contract without prior written consent. Supplier's normal advertising to the public and/or disclosure to recruiters of employment openings is not restricted or affected by this provision. This prohibition is limited to this specific contract only.

**Q. Contract Administration**

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

**R. Entire Contract**

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

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

This Contract, its Exhibits, and any prior non-disclosure agreement constitute the entire agreement between VITA and Supplier and supersede any and all previous representations, understandings, discussions or agreements between VITA and Supplier as to the subject matter hereof. Any and all terms and conditions contained in, incorporated into, or referenced by the Supplier's Proposal shall be deemed invalid. The provisions of the Virginia Department of General Services, Division of Purchases and Supply Vendor's Manual shall not apply to this Contract or any order issued hereunder. This Contract may only be amended by an instrument in writing signed by VITA and Supplier. In the event of a conflict, the following order of precedence shall apply: this Contract document, Exhibit A, any individual order, Exhibit D.

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

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

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

Supplier

By: *Lesley Brawn*  
(Signature)

Name: *Lesley Brawn*  
(Print)

Title: *Sr. Contracts Consultant*

Date: *1/27/09*

VITA

By: *James T. Roberts*  
(Signature)

Name: James T. Roberts  
(Print)

Title: Director Finance & Administration

Date: 2-09-09

Address for Notice:

*Deu Marketing*  
*One Deu Way RRP-07*  
*Rosna Rock TX 78682*

Attention: *Contracts Manager*

Address for Notice:

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

Attention: Contract Administrator

EXHIBIT B

**COTS Software**

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

**Gov't Pricing**

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

COTS	Discount %
Adobe	0.00%
Autodesk	0.00%
Citrix	0.00%
Corel	0.00%
DoubleTake	0.00%
Intuit	0.00%
McAfee	0.00%
Novell	0.00%
Nuance	0.00%
Quark Software	0.00%
Quest Software	0.00%
Riverdeep	0.00%
Symantec	0.00%
Trend Micro	0.00%
VMWare	0.00%
WebSense	0.00%

**Academic Pricing**

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

COTS	Discount %
Adobe	0.00%
Autodesk	0.00%
Citrix	0.00%
Corel	0.00%
DoubleTake	0.00%
Intuit	0.00%
McAfee	0.00%
Novell	0.00%
Nuance	0.00%
Quark Software	0.00%
Quest Software	0.00%
Riverdeep	0.00%
Symantec	0.00%
Trend Micro	0.00%
VMWare	0.00%
WebSense	0.00%

**Gov't Pricing**

Title	Price
Adobe Acrobat Professional Version 9 Windows	218.33
Adobe Photoshop CS4 Windows	635.24
Autodesk Sketchbook 2009 Pro	120
McAfee Active Virus Defense	14.87
Symantec Norton Antivirus 2009	25
Symantec Backup Exec 12.5 for Windows Servers	454.25

PRICE FOR ABOVE TITLES SHOULD BE QUOTED FOR PURCHASE OF ONE (1) COPY

**Academic Pricing**

Title	Price
Adobe Acrobat Professional Version 9 Windows	131.03
Adobe Photoshop CS4 Windows	276.43
Autodesk Sketchbook 2009 Pro	120
McAfee Active Virus Defense	14.87
Symantec Norton Antivirus 2009	25
Symantec Backup Exec 12.5 for Windows Servers	454.25

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

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

\* A Virginia government publicly available price list may be found at [shop.asap.com](http://shop.asap.com)  
Please log in to our Dell|ASAP Online system using  
login name: **VITA@VA.gov** and password: **pricing**

Please note: The pricing on the Dell | ASAP Software publicly-available price list for all individual titles in the market basket has been established for Virginia.

Dell | ASAP Software would also like to offer the Commonwealth of Virginia many additional publishers currently available in our product line. We have

added additional rows listing these publishers below. Should additional publishers become available during the term of our agreement, we would like to offer them to you also as part of this agreement, pending your approval.

1099 PRO	0.00%
12 INCH DESIGN	0.00%
1-2-3 FILE CONVERT	0.00%
1E	0.00%
2BRIGHTSPARKS	0.00%
2X SOFTWARE	0.00%
3COM	0.00%
4DEVELOPERS	0.00%
4TOPS	0.00%
8E6 TECHNOLOGIES	0.00%
A LA MODE	0.00%
AABACA	0.00%
AASHTO	0.00%
ABACRE	0.00%
ABACUS	0.00%
ABACUS LAW	0.00%
ABBOTT SYSTEMS	0.00%
ABBYY USA	0.00%
ABC-CLIO	0.00%
ABLESOFT	0.00%
ABM AMERICA	0.00%
ABRAXAS	0.00%
ABSOF	0.00%
ABSOLUTE SOFTWARE	0.00%
ACCELERANDO, INC.	0.00%
ACCENTURE	0.00%
ACCESSDATA	0.00%
ACCURO HEALTHCARE SOLUTIONS	0.00%
ACCUWEATHER	0.00%
ACD SYSTEMS LTD	0.00%
ACL SERVICES LTD	0.00%
ACOUSTICA	0.00%
ACQUIRED KNOWLEDGE	0.00%
ACRO SOFTWARE	0.00%
ACROBOTICS	0.00%
ACRONIS	0.00%
ACS FIREHOUSE SOFTWARE	0.00%
ACT-3D B.V.	0.00%
ACTION SOFTWARE INTERNATIONAL	0.00%
ACTIVE INK SOFTWARE	0.00%
ACTIVE SOFTWARE	0.00%
ACTIVEPDF	0.00%
ACTIVESTATE	0.00%
ACTIVEXPERTS SOFTWARE	0.00%
ACTIVIDENTITY	0.00%

1099 PRO	0.00%
12 INCH DESIGN	0.00%
1-2-3 FILE CONVERT	0.00%
1E	0.00%
2BRIGHTSPARKS	0.00%
2X SOFTWARE	0.00%
3COM	0.00%
4DEVELOPERS	0.00%
4TOPS	0.00%
8E6 TECHNOLOGIES	0.00%
A LA MODE	0.00%
AABACA	0.00%
AASHTO	0.00%
ABACRE	0.00%
ABACUS	0.00%
ABACUS LAW	0.00%
ABBOTT SYSTEMS	0.00%
ABBYY USA	0.00%
ABC-CLIO	0.00%
ABLESOFT	0.00%
ABM AMERICA	0.00%
ABRAXAS	0.00%
ABSOF	0.00%
ABSOLUTE SOFTWARE	0.00%
ACCELERANDO, INC.	0.00%
ACCENTURE	0.00%
ACCESSDATA	0.00%
ACCURO HEALTHCARE SOLUTIONS	0.00%
ACCUWEATHER	0.00%
ACD SYSTEMS LTD	0.00%
ACL SERVICES LTD	0.00%
ACOUSTICA	0.00%
ACQUIRED KNOWLEDGE	0.00%
ACRO SOFTWARE	0.00%
ACROBOTICS	0.00%
ACRONIS	0.00%
ACS FIREHOUSE SOFTWARE	0.00%
ACT-3D B.V.	0.00%
ACTION SOFTWARE INTERNATIONAL	0.00%
ACTIVE INK SOFTWARE	0.00%
ACTIVE SOFTWARE	0.00%
ACTIVEPDF	0.00%
ACTIVESTATE	0.00%
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IPSWITCH	0.00%

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LOGRHYTHM	0.00%
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LONE TAR/CACTUS SOFTWARE	0.00%
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LSOFT TECHNOLOGIES	0.00%
LUCENT TECHNOLOGIES	0.00%
LUCID8	0.00%
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MAKE MUSIC	0.00%
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MATCHWARE	0.00%
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NETSUPPORT	0.00%
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NETVISION	0.00%
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NETWORK GENERAL	0.00%
NETWORK INSTRUMENTS	0.00%
NETWORK SOLUTIONS	0.00%
NETXPOSURE	0.00%
NEUALOG	0.00%
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PETRA	0.00%
PEXUS	0.00%
PG MUSIC	0.00%
PGP	0.00%
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PHASE 3 IMAGING SYSTEMS	0.00%
PHASE ONE	0.00%
PHD TECHNOLOGIES	0.00%
PHOEBUS LLC.	0.00%
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PICTURECODE	0.00%

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PLIXER INTERNATIONAL	0.00%
PNL TOOLS	0.00%
POCKETMAX	0.00%
POCKETSOFT	0.00%
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POINT CLICK LEARN	0.00%
POINTSEC	0.00%
POLICY TECH INTERNAIONAL	0.00%
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POLYCOM INC.	0.00%
POLYHEDRIC SOFTWARE	0.00%
POLYSERVE	0.00%
POLYVISION	0.00%
PORT80 SOFTWARE INC.	0.00%
PORTALOGIKS	0.00%
PORTECK	0.00%
PORTER LEE	0.00%
PORTLOCK SOFTWARE	0.00%
PORTRAIT DISPLAY	0.00%
POSTER SOFTWARE	0.00%
POTION FACTORY	0.00%
POWER ADMIN	0.00%
POWER ISO	0.00%
POWER PRODUCTION	0.00%
POWERCONTROLS SERVER LICENSE	0.00%
PQ SYSTEMS	0.00%
PRAGMATECH	0.00%
PRAGMATIC SOFTWARE COMPANY	0.00%
PRE EMPTIVE SOLUTIONS	0.00%
PRE-ENGINEERING SOFTWARE	0.00%
PREMIER ASSISTIVE TECHNOLOGY	0.00%
PREMIUMSOFT CYBERTECH LTD	0.00%
PRESENTER SOFT	0.00%
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PROGRESS SOFTWARE	0.00%
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QCOHERENT	0.00%
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QNX SOFTWARE SYSTEMS INT'L	0.00%
QS/1 DATA SYSTEMS	0.00%
QSR INTERNATIONAL	0.00%
QSTAR	0.00%
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QUALICOMP	0.00%
QUALITY SYSTEMS INTEGRATORS	0.00%
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QUERY TOOL	0.00%
QUESTEQ	0.00%
QUESTION MARK	0.00%
QUEUE	0.00%
QUICKWARE	0.00%
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REALOBJECTS	0.00%
REALTIME SOFT	0.00%
REASOFT DEVELOPMENT	0.00%
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RECOSOFT	0.00%
RECOVERONIX LTD	0.00%
RECOVERY TOOLBOX	0.00%
RECRYSTALLIZE COM	0.00%
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RED GATE SOFTWARE LTD	0.00%
RED GIANT SOFTWARE	0.00%
RED HAT	0.00%
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REDDOT SOLUTIONS	0.00%
REDIX	0.00%
REDLINE SOFTWARE	0.00%
REDOT SOLUTIONS	0.00%
REFOX-USA	0.00%
REGALL LLC.	0.00%
REINDEER GRAPHICS	0.00%
REL SOFTWARE	0.00%
REMEDY INTERACTIVE	0.00%

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R.M. WILSON CONSULTING	0.00%
RACKWISE	0.00%
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REAL SOFTWARE	0.00%
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SOFTLAND SRL	0.00%
SOFTLOGICA	0.00%
SOFTPERFECT RESEARCH	0.00%
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SOFTRON MEDIA SERVICES	0.00%
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SOFTSTAR SYSTEMS	0.00%
SOFTWARE 995	0.00%
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SOFTWARE ILLUSTRATED	0.00%
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SOFTWARE SHELF INTERNATIONAL	0.00%
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SOGETI USA	0.00%
SOLARWINDS	0.00%
SOLID DOCUMENTS	0.00%
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SOLIMAR SYSTEMS	0.00%
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SMARTSOFT	0.00%
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SYSTAT	0.00%
SYSTEM SOFTWARE TECHNOLOGY	0.00%
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SYSTEMWERX LIMITED	0.00%
SYSTRAN SOFTWARE	0.00%
SYSTWEAK	0.00%
TAB PRODUCTS	0.00%
TABERNUS	0.00%
TABLEAU	0.00%
TACTICAL SOFTWARE	0.00%
TAL ENTERPRISES	0.00%
TAL TECHNOLOGIES	0.00%
TALL COMPONENTS	0.00%
TALTECH	0.00%
TANGIBLE SOFTWARE SOLUTIONS	0.00%
TANIDA	0.00%
TAPSPACE PUBLICATIONS	0.00%
TARANTULA CONSULTING	0.00%
TASKWARE	0.00%
TDC GROUP	0.00%
TEACHUCOMP	0.00%
TEACUP SOFTWARE	0.00%
TEAMPRISE	0.00%
TEAMSTUDIO	0.00%
TEAMVIEWER	0.00%
TECH DATA	0.00%
TECHARTS	0.00%
TECHHIT	0.00%
TECHNOLOGY PATHWAYS	0.00%
TECHNOSOLUTION	0.00%
TECHSMITH	0.00%
TECHTOOLS	0.00%
TECHVISION SOFTWARE	0.00%
TECTURA	0.00%
TEKLYNIX	0.00%
TELEATLAS	0.00%
TELELOGIC	0.00%
TELERIK	0.00%
TELESTREAM	0.00%
TELESYS TECHNOLOGIES	0.00%

SYNCFUSION	0.00%
SYNCSORT	0.00%
SYNERCARD	0.00%
SYNERGIS TECHNOLOGIES	0.00%
SYNERGY	0.00%
SYNTELLECT	0.00%
SYNTEVO GMBH	0.00%
SYNTHESIS	0.00%
SYRACUSE TIME & ALARM CO	0.00%
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TENTH PLANET	0.00%
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TERMINAL DESIGN	0.00%
TERRAGO TECHNOLOGIES	0.00%
TERRAPIN SOFTWARE	0.00%
TERRAPIN SOFTWARE	0.00%
TESTOUT!	0.00%
TETHYS SOLUTIONS	0.00%
TETRAD	0.00%
TEXAS IMPERIAL SOFTWARE	0.00%
TEXAS INSTRUMENTS	0.00%
TEXTHELP	0.00%
TGRMN SOFTWARE	0.00%
THARO SYSTEMS	0.00%
THAWTE USA	0.00%
THE CENTER FOR DATA QUALITY	0.00%
THE HIVE GROUP	0.00%
THE MARCOM GROUP	0.00%
THE OMEGA GROUP	0.00%
THE OMNI GROUP	0.00%
THE PORTLAND GROUP	0.00%
THE POWER XCHANGE	0.00%
THE SCO GROUP	0.00%
THE SOLUTION CAFE	0.00%
THE STATIONARY OFFICE (TSO)	0.00%
THE THIAGI GROUP	0.00%
THE WARREN GROUP	0.00%
THERMOANALYTICS	0.00%
THIN CLIENT COMPUTING	0.00%
THINK-CELL SOFTWARE GMBH	0.00%
THINKGEO	0.00%
THINKMAP	0.00%
THINPATH SYSTEMS	0.00%
THINPRINT	0.00%
THINSTALL	0.00%
THOMAS S KLISE CO	0.00%
THOMSON MICROMEDEX	0.00%
THOMSON SCIENTIFIC	0.00%
THOMSON SOFTWARE	0.00%
THORNSOFT DEVELOPMENT	0.00%
THURSBY SOFTWARE	0.00%
THURSBY SOFTWARE SYSTEMS	0.00%
TIE COMMERCE	0.00%
TIME VALUE SOFTWARE	0.00%
TITUS LABS	0.00%
TIVOLI ASSOCIATES	0.00%

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TMACHINES	0.00%
TMS SOFTWARE	0.00%
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TOLIS GROUP	0.00%
TOM SNYDER PRODUCTIONS	0.00%
TOOLBOOKDEVELOPER.COM	0.00%
TOOLFARM	0.00%
TOOLS4EVER	0.00%
TOON BOOM	0.00%
TOP LAYER	0.00%
TOPOFUSION	0.00%
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TOPWIZ SOFTWARE	0.00%
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TRACK STAR INTERNATIONAL	0.00%
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TREE AGE SOFTWARE	0.00%
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TUMBLEWEED COMMUNICATIONS	0.00%
TURBOCAD	0.00%
TURBONOTE	0.00%
TYLER SECURITY	0.00%
TYLER TECHNOLOGIES MUNIS DIVISION	0.00%
UB-04 SOFTWARE	0.00%
UC4 SOFTWARE	0.00%
ULEAD SYSTEMS	0.00%
ULTIMED FOR WINDOWS 1.5	0.00%

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UNICA	0.00%
UNICOM SYSTEMS	0.00%
UNICON GROUP LTD	0.00%
UNIFUND	0.00%
UNIQUE COMPUTER INC.	0.00%
UNISYS	0.00%
UP TIME SOFTWARE	0.00%
UPSCENE	0.00%
UPTODATE	0.00%
US POSTAL SERVICE AIS PRODUCTS	0.00%
USA BLUE BOOK	0.00%
USABLENET	0.00%
UTIMACO	0.00%
UTIMACO SAFEWARE	0.00%
VA SOFTWARE	0.00%
VADAR SYSTEMS	0.00%
VALE SOFTWARE	0.00%
VALU-TEK COMPUTER RESOURCES	0.00%
VANDYKE TECHNOLOGIES	0.00%
VANGUARD INTEGRITY PROFESSIONALS	0.00%
VARA SOFTWARE	0.00%
VBRICK	0.00%
VEEAM SOFTWARE	0.00%
VEECO METROLOGY	0.00%
VELARO	0.00%
VENTANA SYSTEMS	0.00%
VENTURA SOFTWARE	0.00%
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VERIZON WIRELESS	0.00%
VERSATERM	0.00%
VERSATILE SYSTEMS	0.00%
VERTICAL MOON	0.00%
VERTUS	0.00%
VERYPDF	0.00%
VES	0.00%
VIASERV	0.00%
VIDEOREDO	0.00%
VIEMU	0.00%
VIEWER CENTRAL	0.00%

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VIRTUAL IRON SOFTWARE	0.00%
VIRTUAL TOWN HALL	0.00%
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VISIMATION	0.00%
VISIONARY SOLUTIONS	0.00%
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VISUAL LEARNING SYSTEMS	0.00%
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WALKER FX	0.00%
WALLACE WIRELESS	0.00%
WALLS & ASSOCIATES	0.00%
WASHINGTON & RICE	0.00%
WASP	0.00%
WASP BARCODE TECHNOLOGIES	0.00%
WASSERMAN MEDICAL PUBLISHERS	0.00%
WATCHFIRE	0.00%
WATCHGUARD	0.00%
WATERFORD TECHNOLOGIES	0.00%
WATERLOO HYDROGEOLOGIC	0.00%
WATERMARK	0.00%
WAVECREST COMPUTING	0.00%
WAVELINK	0.00%
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WAYPOINT	0.00%
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WEBMETHODS	0.00%
WEBROOT SOFTWARE	0.00%
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WEBSIO	0.00%
WEBSPY	0.00%
WEBSUPERGOO	0.00%
WEBSURVEYOR	0.00%
WEBTRENDS	0.00%
WEIRD SOLUTIONS	0.00%
WELCOM	0.00%
WELLNOMICS LIMITED	0.00%
WEONLYDO	0.00%
WESTBAY ENGINEERS LTD	0.00%
WESTCON	0.00%
WESTTEK	0.00%
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WHITESMOKE INC.	0.00%
WHITETOWN SOFTWARE	0.00%
WHOLETOMATO	0.00%
WILDPACKETS	0.00%
WILSON WINDOW WARE	0.00%
WIN.RAR GMBH	0.00%
WINAGENTS	0.00%
WINBATCH	0.00%
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WINIMAGE	0.00%
WINISO	0.00%
WINMAGIC	0.00%
WINNOVATIVE	0.00%
WINTASK	0.00%
WINTERNALS	0.00%
WINTERTREE	0.00%
WINWAY	0.00%
WINZERO CUSTOM SOLUTIONS	0.00%
WINZIP COMPUTING	0.00%
WIREDRED SOFTWARE	0.00%
WOLFRAM RESEARCH	0.00%
WONDERSHARE SOFTWARE	0.00%
WONDERWARE	0.00%
WOODSTONE CONSULTING	0.00%
WORD MAGIC	0.00%
WORKLOSS DATA INSTITUTE	0.00%
WORKSHARE TECHNOLOGY	0.00%

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WORKLOSS DATA INSTITUTE	0.00%
WORKSHARE TECHNOLOGY	0.00%

WORLD LANGUAGE RESOURCE	0.00%
WORLD SOFTWARE	0.00%
WORLD SYNC	0.00%
WYSE TECHNOLOGY	0.00%
X LINK	0.00%
X1 TECHNOLOGIES	0.00%
X2MAX SOFTWARE	0.00%
X32 GROUP	0.00%
XACTWARE	0.00%
XARA GROUP LTD	0.00%
XCEED SOFTWARE	0.00%
XCELEON TECHNOLOGIES	0.00%
XCENTRIC TECHNOLOGY & CONSULTING	0.00%
XENSE LIMITED	0.00%
XENSOURCE	0.00%
XEROX IMAGING SYSTEMS	0.00%
XILINX	0.00%
XILISOFT	0.00%
XOCHI MEDIA	0.00%
XPERT IMAGE	0.00%
XPRESS SOFTWARE	0.00%
X-RITE	0.00%
XSTREAM SOFTWARE	0.00%
XTREMESOFT	0.00%
XTS INC.	0.00%
XYTHOS SOFTWARE	0.00%
YES SOFTWARE	0.00%
YNOTLEARN	0.00%
YOKOGAWA CORP C/O TECREP	0.00%
YON SOFTWARE	0.00%
YOSEMITE TECHNOLOGIES	0.00%
YOUNGZSOFT	0.00%
YRRID SOFTWARE	0.00%
ZABKAT	0.00%
ZAXWERKS	0.00%
ZEALLSOFT MULTIMEDIA	0.00%
ZEBRA TECHNOLOGIES	0.00%
ZEND	0.00%
ZENECA/MICROSOFT/ICL	0.00%
ZEON	0.00%
ZEPHYR DEVELOPMENT	0.00%
ZIP CODE DOWNLOAD	0.00%
ZIX	0.00%
ZOOMERANG	0.00%

WORLD LANGUAGE RESOURCE	0.00%
WORLD SOFTWARE	0.00%
WORLD SYNC	0.00%
WYSE TECHNOLOGY	0.00%
X LINK	0.00%
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ZEON	0.00%
ZEPHYR DEVELOPMENT	0.00%
ZIP CODE DOWNLOAD	0.00%
ZIX	0.00%
ZOOMERANG	0.00%

**EXHIBIT E: CERTIFICATION REGARDING LOBBYING**

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

- i). No Federal appropriated funds have been paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee or an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal Contract, grant, loan, or cooperative agreement.
- ii). If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- iii). The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and Contracts under grants, loans and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

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

Signature: *\* Lesley Brawn*  
Printed Name: Lesley Brawn  
Organization: Deer Marketing US  
Date: 6/27/09

*\* To the best of my knowledge & belief*



# **Information Technology Services Contract**

Between

The Virginia Information Technologies Agency

on behalf of

The Commonwealth of Virginia

and

Dell Marketing LP

**INFORMATION TECHNOLOGY SERVICES CONTRACT  
TABLE OF CONTENTS**

<b>1. PURPOSE AND SCOPE</b>	<b>4</b>
<b>2. DEFINITIONS</b>	<b>4</b>
A. Acceptance	4
B. Agent	4
C. Authorized Users	4
D. Confidential Information	4
E. Deliverable	4
F. Party	4
G. Requirements	4
H. Service	4
I. Statement of Work (SOW)	5
J. Supplier	5
K. Work Product	5
<b>3. TERM AND TERMINATION</b>	<b>5</b>
A. Contract Term	5
B. Termination for Convenience	5
C. Termination for Breach or Default	5
D. Termination for Non-Appropriation of Funds	6
E. Effect of Termination	6
F. Transition of Services	6
G. Contract Kick-Off Meeting	6
H. Contract Closeout	6
<b>4. SERVICES</b>	<b>7</b>
A. Nature of Services and Engagement	7
B. Statement of Work (SOW)	7
C. Change Orders	7
D. Acceptance	7
E. Cure Period	7
<b>5. RIGHTS TO WORK PRODUCT</b>	<b>7</b>
A. Work Product	8
B. Ownership	8
C. Pre-existing Work	8
D. Return of Materials	8
<b>6. SUPPLIER PERSONNEL</b>	<b>9</b>
A. Selection and Management of Supplier Personnel	9
B. Supplier Personnel Supervision	9
C. Key Personnel	9
D. Subcontractors	9
<b>7. GENERAL WARRANTY</b>	<b>9</b>
A. Ownership	9
B. Supplier's Viability	9
C. Supplier's Past Experience	9
D. Performance	10
E. Malicious Code	10
F. Limited Warranty Period and Remedy	10
<b>8. TRAINING AND DOCUMENTATION</b>	<b>10</b>
<b>9. ORDERS AND COMPENSATION</b>	<b>10</b>
A. Request for Quote	10
B. Order	11
C. Purchase Price and Price Protection	11

D. Invoice Procedures	11
E. Purchase Payment Terms	12
F. Reimbursement of Expenses	12
10. REPORTING	12
A. Supplier's Report of Sales and Industrial Funding Adjustment	12
B. Small Business Participation	13
11. STEERING COMMITTEE	13
12. COMPETITIVE PRICING	13
13. CONFIDENTIALITY	13
A. Treatment and Protection	13
B. Exclusions	14
C. Return or Destruction	14
D. Confidentiality Statement	14
14. INDEMNIFICATION AND LIABILITY	14
A. Indemnification	14
B. Liability	15
15. SECURITY COMPLIANCE	15
16. IMPORT/EXPORT	16
17. GENERAL PROVISIONS	16
A. Relationship Between VITA and Authorized User and Supplier	16
B. Incorporated Contractual Provisions	16
C. Compliance with the Federal Lobbying Act	17
D. Governing Law	17
E. Dispute Resolution	17
F. Advertising and Use of Proprietary Marks	17
G. Notices	17
H. No Waiver	17
I. Assignment	17
J. Captions	18
K. Severability	18
L. Survival	18
M. Force Majeure	18
N. Remedies	18
O. Right to Audit	18
P. Offers of Employment	18
Q. Contract Administration	19
R. Entire Contract	19

## INFORMATION TECHNOLOGY SERVICES CONTRACT

THIS INFORMATION TECHNOLOGY SERVICES CONTRACT ("Contract") is entered into by and between the Virginia Information Technologies Agency (VITA) pursuant to §2.2-2012 of the Code of Virginia and on behalf of the Commonwealth of Virginia (hereinafter referred to as "VITA"), and Dell Marketing LP ("Supplier"), a Texas Limited Partnership headquartered at One Dell Way, Round Rock, Texas 78682 to be effective as of February 2, 2009 ("Effective Date").

### 1. PURPOSE AND SCOPE

This Contract sets forth the terms and conditions under which Supplier shall provide such services as defined in Section 2H ("Services") to the Authorized Users.

### 2. DEFINITIONS

#### A. Acceptance

Successful performance of the Services at the location designated in the applicable Statement of Work, or completed and successful Acceptance testing in accordance with Section 4D.

#### B. Agent

Any third party independent agent of any Authorized User.

#### C. Authorized Users

All public bodies, including VITA, as defined by §2.2-4301 and referenced by §2.2-4304 of the Code of Virginia.

#### D. Confidential Information

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

#### E. Deliverable

The tangible embodiment of the Services, including the development or creation of Work Product, performed or provided by Supplier as identified in the applicable Statement of Work.

#### F. Party

Supplier, VITA, or any Authorized User.

#### G. Requirements

The functional, performance, operational, compatibility, and other parameters and characteristics of the Service(s) and Deliverables as set forth in Exhibit A and the applicable Statement of Work and such other parameters, characteristics, or performance standards that may be agreed upon in writing by the Parties.

#### H. Service

Any work performed or service provided, broadly classified as installation/de-installation, maintenance, support, training, migration, and optimization of products offered or supplied; including provision to the Authorized User of any Deliverable, by Supplier under this Contract, such Services include but are not limited to: warranty services, maintenance, installation, de-installation, factory integration (software or equipment components), asset management, recycling/disposal, training and certification, software as a service ("SAAS"), pre-implementation design, disaster recovery planning and support, service desk/helpdesk, and any other directly related technical support service required for the effective operation of a product offered or supplied. Service includes the discovery, creation, or development of Work Product, if any.

**I. Statement of Work (SOW)**

Any document in substantially the form of Exhibit B (describing the deliverables, due dates, assignment duration and payment obligations for a specific project, engagement, or assignment for which Supplier shall be providing Services to an Authorized User), which, upon signing by both Parties, shall be deemed a part of this Contract.

**J. Supplier**

Means the Supplier and any of its Affiliates (i.e., an entity that controls, is controlled by, or is under common control with Supplier).

**K. Work Product**

Inventions, combinations, machines, methods, formulae, techniques, processes, improvements, software designs, computer programs, strategies, specific computer-related know-how, data and original works of authorship (collectively, the "Work Product") discovered, created, or developed by Supplier specifically for the Authorized User, or jointly by Supplier and an Authorized User(s) in the performance of this Contract. Work Product shall not include configuration of software, any deliverable based on Supplier's pre-existing intellectual properties, or any non-customer specific deliverable ("Utilities").

**3. TERM AND TERMINATION**

**A. Contract Term**

This Contract is effective and legally binding as of the Effective Date and, unless terminated as provided for in this section, shall continue to be effective and legally binding for a period of two (2) years. VITA, in its sole discretion, may extend this Contract for up to three (3) additional one (1) year periods after the expiration of the initial two (2) year period. VITA will issue a written notification to the Supplier stating the extension period, not less than thirty (30) days prior to the expiration of any current term. Performance of an order or SOW issued during the term of this Contract may survive the expiration of the term of this Contract, in which case all terms and conditions required for the operation of such order or SOW shall remain in full force and effect until Services pursuant to such order or SOW have met the final Acceptance criteria of the applicable Authorized User.

**B. Termination for Convenience**

VITA may terminate this Contract, in whole or in part, or any order or SOW issued hereunder, in whole or in part, or an Authorized User may terminate an order or SOW, in whole or in part, upon not less than thirty (30) days prior written notice at any time for any reason.

**C. Termination for Breach or Default**

VITA shall have the right to terminate this Contract, in whole or in part, or any order or SOW issued hereunder, in whole or in part, or an Authorized User may terminate an order or SOW, in whole or in part, for breach and/or default of Supplier. Supplier shall be deemed in breach and/or default in the event that Supplier fails to meet any material obligation set forth in this Contract or in any order or SOW issued hereunder.

If VITA deems the Supplier to be in breach and/or default, VITA shall provide Supplier with notice of breach and/or default and allow Supplier fifteen (15) days to cure the breach and/or default. If Supplier fails to cure the breach as noted, VITA may immediately terminate this Contract or any order or SOW issued hereunder, in whole or in part. If an Authorized User deems the Supplier to be in breach and/or default of an order or SOW, such Authorized User shall provide Supplier with notice of breach and/or default and allow Supplier fifteen (15) days to cure the breach and/or default. If Supplier fails to cure the breach and/or default as noted, such Authorized User may immediately terminate its order or SOW, in whole or in part. Any such termination shall be deemed a Termination for Breach or a Termination for Default. In addition, if Supplier is found by a court of competent jurisdiction to be in violation of or to have violated 31 USC 1352 or if Supplier becomes a party excluded from Federal Procurement and Non-procurement Programs, VITA may immediately terminate this Contract, in whole or in part, for breach. VITA shall provide written notice to Supplier of such termination and Supplier shall provide written notice to VITA if

Supplier is charged with violation of 31 USC 1352 or if federal debarment proceedings are instituted against Supplier.

**D. Termination for Non-Appropriation of Funds**

All payment obligations under this Contract are subject to the availability of legislative appropriations at the federal, state, or local level, for this purpose. In the event of non-appropriation of funds, irrespective of the source of funds, for the items under this Contract, VITA may terminate any order or SOW, in whole or in part, or an Authorized User may terminate its order or SOW, in whole or in part, for those goods or services for which funds have not been appropriated. Written notice will be provided to the Supplier as soon as possible after legislative action is completed. The Authorized User shall be responsible for payment for any Services performed prior to the Supplier's receipt of the notice of funding termination or availability.

**E. Effect of Termination**

Upon termination, neither the Commonwealth, nor VITA, nor any Authorized User shall have any future liability except for Deliverables accepted by the Authorized User or Services rendered by Supplier and accepted by the Authorized User prior to the termination date.

In the event of a Termination for Breach or Termination for Default, Supplier shall accept return of any Deliverable that was not accepted by the Authorized User(s), and Supplier shall refund any monies paid by any Authorized User for such Deliverable, and all costs of de-installation and return of Deliverables shall be borne by Supplier.

**F. Transition of Services**

Prior to or upon expiration or termination of this Contract and at the request of VITA, Supplier shall provide all reasonable assistance as VITA or an Authorized User may reasonably require to transition Services to any other supplier with whom VITA or such Authorized User contracts for provision of services identical or similar to the Services provided by Supplier pursuant to this Contract. This obligation may extend beyond expiration or termination of the Contract for a reasonable period of time not to exceed six (6) months. In the event of a termination for breach and/or default of Supplier, Supplier shall provide such assistance at no charge or fee to VITA or any Authorized User; otherwise, Supplier shall provide such assistance at the hourly rate or a charge agreed upon by Supplier and VITA or an Authorized User.

**G. Contract Kick-Off Meeting**

Within 30 days of Contract award, Supplier may be required to attend a contract orientation meeting, along with the VITA contract manager/administrator, the VITA and/or other CoVa Agency project manager(s) or authorized representative(s), technical leads, VITA representatives for SWaM and Sales/IFA reporting, as applicable, and any other significant stakeholders who have a part in the successful performance of this Contract. The purpose of this meeting will be to review all contractual obligations for both parties, all administrative and reporting requirements, and to discuss any other relationship, responsibility, communication and performance criteria set forth in the Contract. The Supplier may be required to have its assigned account manager as specified in Section 6.0 and a representative from its contracts department in attendance. The time and location of this meeting will be coordinated with Supplier and other meeting participants by the VITA contract manager.

**H. Contract Closeout**

Prior to the contract's expiration date, Supplier may be provided contract close out documentation and shall complete, sign and return to VITA Supply Chain Management within 30 days of receipt. This documentation may include, but not be limited to: Patent/Royalty Certificate, Tangible Property/Asset Certificate, Escrow Certificate, SWaM Reports Completion Certificate, Sales Reports/IFA Payments Completion Certificate, and Final Payment Certificate. Supplier is required to process these as requested to ensure completion of close-out administration and to maintain a positive performance reputation with the Commonwealth of Virginia.

#### 4. SERVICES

##### A. Nature of Services and Engagement

This Contract is optional use and non-exclusive and all Authorized Users may, at their sole discretion, receive benefits from third party suppliers of services similar to, or in competition with, services provided by Supplier.

##### B. Statement of Work (SOW)

All Services shall be performed at the times and locations set forth in the applicable SOW and at the rates set forth in Exhibit D herein. Unless VITA issues a written authorization for a time and materials type SOW, any SOW shall be of a fixed price type but may, with the written approval of VITA, contain a cost-reimbursable line item(s) for pre-approved travel expenses. For time and materials type SOWs, Supplier personnel shall maintain daily time records of hours and tasks performed, which shall be submitted or made available for inspection by the Authorized User upon forty-eight (48) hours advance written notice.

##### C. Change Orders

All changes to the Services to be provided pursuant to any given SOW must be described in a written change request (template provided as Exhibit C), which includes any appropriate adjustments to the SOW. Either Party to an SOW may issue a change request that will be subject to written approval of the other Party before it becomes part of this Contract. In no event shall any SOW or any modification thereto require the Supplier to perform any work beyond the scope of this Contract as such scope is defined in Exhibit A hereto.

##### D. Acceptance

Service(s) shall be deemed accepted when the Authorized User determines that such Service(s) meets the Requirements set forth in the applicable SOW. If applicable, Supplier shall be responsible for ensuring that any individual Deliverable functions properly with any other Deliverable provided pursuant to the SOW. Should a previously Accepted Deliverable require further modification in order to work properly with any other Deliverable, Supplier shall be responsible for all costs associated with such modification.

Authorized User shall commence Acceptance testing within fifteen (15) days, or within such other period as set forth in the applicable SOW, after receipt of the Service. Acceptance testing will be no longer than fifteen (15) days, or such longer period as may be agreed in writing between Authorized User and Supplier, for each Deliverable or for the first instance of each Service type set forth in Exhibit B. Supplier agrees to provide to the Authorized User such assistance and advice as the Authorized User may reasonably require, at no additional cost, during such Acceptance testing. Authorized User shall provide to Supplier written notice of Acceptance upon completion of installation and successful Acceptance testing. Should Authorized User fail to provide Supplier written notice of successful or unsuccessful Acceptance testing within fifteen (15) days of the date of invoice, the Service(s) shall be deemed Accepted.

##### E. Cure Period

Supplier shall correct any non-conformities identified during Acceptance testing and re-submit such non-conforming Service for re-testing within a reasonable amount of time of the appropriate Authorized User's written notice of non-conformance, or as otherwise agreed between such Authorized User and Supplier in the applicable SOW. Should Supplier fail to take reasonable steps to cure the non-conformity or deliver a Service which meets the Requirements, the Authorized User may, in its sole discretion: (i) reject the Service in its entirety, and any Service rendered unusable due to the non-conforming Service, and recover amounts previously paid hereunder for all such Services; or (ii) issue a "partial Acceptance" of the Service with a mutually agreed upon equitable adjustment in the price to account for such deficiency.

#### 5. RIGHTS TO WORK PRODUCT

If Authorized User is a state agency, board, commission, or other quasi-political entity of the Commonwealth of Virginia or other body referenced in Title 2.2 of the Code of Virginia, any license to Utilities shall be held by, and all rights in, title to, and ownership of Work Product shall vest with the

Commonwealth. If Authorized User is a locality, municipality, school, school system, college, university, local board, local commission, or local quasi-political entity, any license to Utilities shall be held by, and all rights in, title to, and ownership of Work Product shall vest with that public body.

**A. Work Product**

VITA and Supplier each acknowledge that performance of this Contract may result in Work Product. The Parties shall document all Work Product specifications and such specifications shall be made an incorporated exhibit to this Contract. Supplier agrees that it shall promptly and fully disclose to the Commonwealth or the Authorized User any and all Work Product generated, conceived, reduced to practice or learned by Supplier or any of its employees, either solely or jointly with others, during the term or performance of this Contract, which in any way relates to the business of the Commonwealth, VITA, or any Authorized User. Supplier further agrees that neither Supplier nor any of Supplier's employees, contractors, agents or subcontractors, nor any party claiming through Supplier or Supplier's employees, shall, other than in the performance of this Contract, make use of or disclose to others any proprietary information relating to the Work Product. All Services performed hereunder shall include delivery of all Work Product and documentation. Supplier shall at no time deny access to the Work Product, regardless of form, by the Commonwealth or the Authorized User.

**B. Ownership**

Supplier agrees that, whether or not the Services are considered "works made for hire" or an employment to invent, all Work Product discovered, created or developed under this Contract shall be and shall remain the sole and exclusive property of the Commonwealth of Virginia and its assigns or the Authorized User and its assigns. Except as specifically set forth in writing and signed by both VITA and Supplier, or Authorized User and Supplier, Supplier agrees that the Commonwealth or the Authorized User shall have all rights with respect to any Work Product discovered, created or developed under this Contract without regard to the origin of the Work Product.

If and to the extent that Supplier may, under applicable law, be entitled to claim any ownership interest in the Work Product, Supplier hereby irrevocably transfers, grants, conveys, assigns and relinquishes exclusively to the Commonwealth or the Authorized User any and all right, title and interest it now has or may hereafter acquire in and to the Work Product under patent, copyright, trade secret and trademark law in perpetuity or for the longest period otherwise permitted by law. If any moral rights are created, Supplier waives such rights in the Work Product. Supplier further agrees as to the Work Product to assist the Commonwealth or the Authorized User in every reasonable way to obtain and, from time to time, enforce patents, copyrights, and other rights and protection, and in protecting trade secrets, with respect to such Work Product, and to that end, Supplier and its employees shall execute all documents for use in applying for and obtaining such patents, copyrights, and other rights and protection with respect to such Work Product, as the Commonwealth or the Authorized User may reasonably request, together with any assignments thereof to the Commonwealth or the Authorized User or entities designated by the Commonwealth or the Authorized User.

**C. Pre-existing Work**

If and to the extent that any Utilities are embodied or reflected in the Service Deliverables, Supplier hereby grants to the Commonwealth or the Authorized User an irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to (i) use, modify, transmit, execute, reproduce, display, perform, distribute copies of and prepare derivative works based upon such pre-existing rights and any derivative works thereof, and (ii) authorize others to do any or all of the foregoing. It is expressly understood that "perpetual" license rights shall commence upon delivery of the Service Deliverables and shall exist in perpetuity unless otherwise terminated in accordance with the applicable provisions of the Contract.

**D. Return of Materials**

Upon request after termination of this Contract, Supplier shall immediately return to VITA or the appropriate Authorized User all copies, in whatever form, of any and all Confidential Information, Work Product and other properties provided by VITA or such Authorized User, which are in

Supplier's possession, custody or control, or certify in writing that all such documentation and copies thereof have been destroyed.

## **6. SUPPLIER PERSONNEL**

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

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

### **B. Supplier Personnel Supervision**

Supplier acknowledges that Supplier or any of its agents, contractors, or subcontractors, is and shall be the 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.

### **C. Key Personnel**

An SOW may designate certain of Supplier's personnel as Key Personnel or Project Managers. Supplier's obligations with respect to Key Personnel and Project Managers shall be described in the applicable SOW.

### **D. Subcontractors**

Supplier may use subcontractors to perform the Services unless specifically prohibited in writing to do so by the Authorized User. If an order or SOW issued pursuant to this Contract is supported in whole or in part with federal funds, Supplier shall not knowingly subcontract any Services pursuant to such order or SOW to any subcontractor that is a party excluded from Federal Procurement and Non-procurement Programs. In no event shall Supplier subcontract any Services to any subcontractor which is debarred by the Commonwealth of Virginia or which owes back taxes to the Commonwealth and has not made arrangements with the Commonwealth for payment of such back taxes.

## **7. GENERAL WARRANTY**

With respect to the Services provided by Supplier, Supplier represents and warrants the following:

### **A. Ownership**

Supplier has the right to provide the Services, including Deliverables, without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party.

### **B. Supplier's Viability**

Supplier warrants that it has the financial capacity to perform and continue to perform its obligations under this Contract; that Supplier has no constructive or actual knowledge of an actual or potential legal proceeding being brought against Supplier that could materially adversely affect performance of this Contract; and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction.

### **C. Supplier's Past Experience**

Supplier warrants that it has successfully provided the Services and/or services similar to for a non-related third-party on other occasions.

#### **D. Performance**

- i). All Services shall be performed with care, skill and diligence, consistent with applicable professional standards currently recognized in its profession, and Supplier shall be responsible for the professional quality, technical accuracy, completeness and coordination of all plans, information, specifications, Deliverables and Services furnished under this Contract;
- ii). Services pursuant to a particular Request for Proposal ("RFP"), quote, or Request for Quote (RFQ), and any associated Deliverables shall be designed to fit the specific requirements and environment as outlined in an applicable SOW to meet the needs of an Authorized User requesting such quote or issuing such RFQ.
- iii). The Services and Deliverables shall meet or exceed the Requirements;
- iv). The documentation which Supplier is required to provide under this Contract shall be sufficient in detail and content to allow a user/programmer of reasonable skill standard in the industry to understand and fully utilize the Deliverables without reference to any other materials or information.

#### **E. Malicious Code**

As applicable, Supplier agrees to use commercially available virus protection software and quality assurance procedures to prevent any computer viruses or undocumented features in any of the media or means used to deliver the Services. Supplier agrees to use standard industry means to scan any media on which Deliverables are provided to the Authorized User.

#### **F. Limited Warranty Period and Remedy**

During the warranty period, if any, or as specified in the applicable SOW, Supplier warrants that the Services shall meet or exceed the Requirements. Supplier shall correct, at no additional cost to any Authorized User, all errors identified during the warranty period that result in a failure of the Services to meet the Requirements. If Supplier is unable to take reasonable steps to make the Service/Deliverable conform, in all material respects, to the Requirements within a reasonable amount of time following written notification by an Authorized User, Supplier shall, at such Authorized User's request, accept return of such Deliverable and any other related Deliverable(s) rendered unusable, and return all monies paid by such Authorized User for the non-conforming Services and Deliverable and such other related Deliverable(s) rendered unusable.

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

### **8. TRAINING AND DOCUMENTATION**

If Authorized User requires special training, such training or documentation necessary for an Authorized User to have full benefit of the Service shall be included in the applicable SOW.

### **9. ORDERS AND COMPENSATION**

#### **A. Request for Quote**

Authorized Users of this Contract, depending on the complexity of services required and/or each supplier's available resources have the option to select one or more suppliers to provide type of services. In addition, an Authorized User may determine that a competitive process is required to ensure it receives the best value. In either or both of such circumstances, the Authorized User may, at its sole discretion, use a Request for Quote (RFQ) process to obtain services identical or similar to those provided by Supplier pursuant to this Contract.

If responding to an RFQ, Supplier shall respond to the RFQ by providing a quote, including an estimated total price, and, if requested by the Authorized User, a proposal and documentation of the qualifications of the individual(s) proposed for providing services to the Authorized User. In no event shall Supplier's quote exceed Supplier's Contract pricing.

## **B. Order**

Supplier is required to accept any order placed by an Authorized User through the eVA electronic procurement website portal ([eVA Home Page](#)). eVA is the Commonwealth of Virginia's e-procurement system. State agencies, as defined in §2.2-2006 of the Code of Virginia, shall order through eVA. All other Authorized Users are encouraged to order through eVA, but may order through the following means:

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

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

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

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

## **C. Purchase Price and Price Protection**

Exhibit D sets forth the fees and the appropriate Commonwealth discounts. Fees shall not increase and discounts shall not decrease for a period of not less than two (2) years from the Effective Date. No such increase shall exceed the lesser of three percent (3%) or the annual increase in the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, All Items, not seasonally adjusted, as published by the Bureau of Labor Statistics of the Department of Labor (<http://www.bls.gov/cpi/home.htm>), for the effective date of the increase compared with the same index one (1) year prior. Any such change in price shall be submitted in writing in accordance with the above and shall not become effective for sixty (60) days thereafter. Supplier agrees to offer price reductions to ensure compliance with the Competitive Pricing Section.

## **D. Invoice Procedures**

For an order with a period of performance not expected to exceed one (1) month, Supplier shall remit each invoice to the "bill-to" address provided with the order promptly after all Deliverables or Services have been performed or in accordance the applicable SOW. For a time and materials type SOW with a period of performance expected to exceed one (1) month, Supplier shall submit invoices to the ordering Authorized User monthly in arrears, unless otherwise specified in such SOW. For a fixed price type SOW, Supplier shall invoice in accordance with the applicable SOW. No invoice shall include any costs other than those identified in the SOW, which costs shall be in accordance with Exhibit D. Without limiting the foregoing, all shipping costs are the Supplier's responsibility except to the extent such charges are identified in Exhibit D, or as noted in any executed order or SOW referencing this Contract. Any cost reimbursable work performed or expenses incurred by Supplier prior to the effective date of the order shall not be billed to or reimbursed by the Authorized User. Invoices issued by the Supplier shall identify at a minimum:

- i). Deliverable or Service type, or project milestone, and description
- ii). Quantity, charge and extended pricing for each Deliverable and/or Service item or milestone; or, for a time and materials type order or SOW, the name(s) of the assigned employee(s), the hourly rate(s), and the number of hours worked;
- iii). Applicable order date or SOW date

iv). This Contract number and the applicable order number

Any terms included on Supplier's invoice shall have no force or effect and will in no way bind VITA or any Authorized User.

**E. Purchase Payment Terms**

Supplier is responsible for the accuracy of its billing information. Supplier agrees not to issue invoices hereunder until Services have been performed in accordance with the mutually agreed SOW. Charges for Services accepted more than ninety (90) days prior to receipt of a valid invoice may not be paid, except in accordance with a the SOW.

If there are any disputed items, the appropriate 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 such Authorized User, provide such Authorized User with documentation to support the charge. If such charges remain in dispute, such dispute shall be resolved in accordance with the Dispute Resolution section of this Contract. All payment terms are net 30 days after Invoice.

**F. Reimbursement of Expenses**

If allowable pursuant to an Authorized User's SOW, such Authorized User shall pay, or reimburse Supplier, for all reasonable and actual travel-related expenses for greater than thirty (30) miles from portal to portal incurred by Supplier during the relevant period; provided, however, that such Authorized User shall only be liable to pay for Supplier's travel-related expenses, including transportation, meals, lodging and incidental expenses, that have been authorized by such Authorized User in advance and which will be reimbursable by such Authorized User at the then-current per diem amounts as published by the Virginia Department of Accounts ([http://www.doa.virginia.gov/Admin\\_Services/CAPP/CAPP\\_Topics/20335\\_Meals\\_Lodging\\_102007.pdf](http://www.doa.virginia.gov/Admin_Services/CAPP/CAPP_Topics/20335_Meals_Lodging_102007.pdf)), or a successor URL(s).

All reimbursed expenses will be billed to the Authorized User on a pass-through basis without any markup by Supplier. At Authorized User's request, Supplier shall provide copies of receipts for all travel expenses over US\$30.00.

**10. REPORTING**

**A. Supplier's Report of Sales and Industrial Funding Adjustment**

By the 10th business day of every month, the Supplier shall submit the "Supplier Monthly Report of Sales". A template showing the format in which the report is to be submitted and contact information for submission is available at [VITA:Supplier / Vendor Reporting Requirements](#). The report shall be submitted via electronic mail to the VITA IFA Coordinator and shall report total sales (defined for purposes of this report as all invoiced payments received by Supplier from all Authorized Users) for this Contract during the preceding month. Supplier shall be responsible for submitting the monthly report of sales even if Supplier has had no sales (i.e., a \$0.00 total sales value) for the reporting period.

The Supplier shall submit the Industrial Funding Adjustment (IFA) payment for the period covered by such "Supplier Monthly Report of Sales" within thirty (30) days after submitting the "Supplier Monthly Report of Sales". The IFA payment is equal to two percent (2%) of total sales reported during the relevant month.

The IFA payment shall be submitted to VITA, Attention VITA Controller in the form of a check or electronic payment, made payable to the Treasurer of Virginia. The IFA payment shall reference this Contract number, "report amounts", and "report period" and shall be accompanied by a copy of the relevant "Supplier Monthly Report of Sales". Contact information for submission of IFA payments is available at [VITA:Supplier / Vendor Reporting Requirements](#).

VITA shall provide written notice to Supplier of any failure to comply with reporting, payment and distribution requirements of this section, and Supplier shall have a reasonable amount of time to cure such reporting discrepancies. Repeated failure to cure such discrepancies within a reasonable amount of time may result in default of the Contract.

## **B. Small Business Participation**

Supplier and VITA agree to meet promptly after the Effective Date of this Contract to discuss the participation of Virginia Department of Minority Business Enterprise (DMBE)-certified Small Businesses as subcontractors and second-tier suppliers under this Contract.

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

In addition, by the 10th business day of every month, Supplier shall submit to VITA the Small Business Subcontracting Monthly Report (template to be provided). Supplier's report should include spend on all Supplier's contracts with second-tier suppliers which provide products or services under this Contract. The report should specify the amount of such spend provided to small businesses. Supplier shall submit the report to [SWaM@vita.virginia.gov](mailto:SWaM@vita.virginia.gov).

## **11. STEERING COMMITTEE**

In order to facilitate mutually beneficial contractual relationships with suppliers, VITA has procedures for establishing a steering committee ("Steering Committee"), consisting of senior management personnel, including personnel involved in the contractual relationship, from VITA and Supplier.

Roles of the Steering Committee include but are not limited to a) identifying potential issues which may arise during the performance of a contract, b) discussing and assigning roles and responsibilities, c) establishing methods for quickly resolving potential disputes, d) setting rules for communication and decision making, e) monitoring and measuring the business relationship between the parties, and f) acting as a final decision board for escalated problems.

A meeting of the Steering Committee is intended to be a forum for brainstorming and sharing ideas, emphasizing respect, cooperation, and access, with the end goal of developing relationships to avoid conflict. A facilitator may, but is not required to, conduct a meeting of the Steering Committee.

A Steering Committee for this Contract will be formed at VITA's option. Meetings may be held at any time during the Contract term, should VITA, at its sole discretion, determine that a meeting(s) would be beneficial to the contractual relationship, and Supplier agrees to participate in such meeting(s). In addition, Supplier may at any time submit a written request to VITA for a meeting of the Steering Committee, which VITA will not unreasonably deny.

Supplier shall ensure the availability of the appropriate personnel to meet with the VITA contract management team. Additional Steering Committee meetings involving representatives from VITA, the Supplier, and an Authorized User may be required prior to or during performance on any specific Statement of Work issued pursuant to this Contract.

## **12. COMPETITIVE PRICING**

Supplier warrants and agrees that the pricing pursuant to this Contract is comparable to pricing offered to other similarly situated government customers of Supplier purchasing the same or substantially similar quantities of similar Services under similar terms and conditions. If Supplier enters into any arrangements with another similarly situated government customer of Supplier to provide the same or substantially similar quantities of similar Services under similar terms and conditions at more favorable prices, then VITA may request that this Contract be amended as of the date of such other arrangements to incorporate those more favorable prices.

## **13. CONFIDENTIALITY**

### **A. Treatment and Protection**

Each Party shall (i) hold in strict confidence all Confidential Information of any other Party, (ii) use the Confidential Information solely to perform or to exercise its rights under this Contract, and (iii) not transfer, display, convey or otherwise disclose or make available all or any part of such Confidential Information to any third-party. However, a Party may disclose the Confidential Information as delivered by Supplier to subcontractors, contractors or agents of such Party that are bound by non-disclosure contracts with such Party. Each Party shall take the same measures to protect against the disclosure or use of the Confidential Information as it takes to

protect its own proprietary or confidential information (but in no event shall such measures be less than reasonable care).

#### **B. Exclusions**

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

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

#### **C. Return or Destruction**

Upon the request of the disclosing Authorized User, Supplier shall (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.

#### **D. Confidentiality Statement**

All Supplier personnel, contractors, agents, and subcontractors performing Services pursuant to this Contract shall be required to sign a confidentiality statement or non-disclosure agreement. Any violation of such statement or agreement shall be deemed a breach of this Contract and may result in termination of the Contract or any order or SOW issued hereunder.

### **14. INDEMNIFICATION AND LIABILITY**

#### **A. Indemnification**

Supplier agrees to indemnify, defend and hold harmless the Commonwealth, VITA, any Authorized User, their officers, directors, agents and employees (collectively, "Commonwealth's Indemnified Parties") from and against any and all third party claims, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, assessments, fines (whether criminal or civil), judgments, settlements, expenses (including attorneys' and accountants' fees and disbursements) and costs (each, a "Claim" and collectively, "Claims"), incurred by, borne by or asserted against any of Commonwealth's Indemnified Parties to the extent such Claims in any way relate to, arise out of or result from: (i) any intentional or willful **misconduct** or negligence of any employee, agent, or subcontractor of Supplier working within the scope of or coincident with their employment on customer's premises and for a specific customer engagement or service, (ii) any act or omission of any employee, agent, or subcontractor of Supplier resulting in personal injury (including death) or damage to real tangible property; (iii) any defect in a Product resulting in personal injury (including death) or damage to real tangible property; (iv) any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Supplier's Product or Services; **(v) any claim that Supplier did not have the legal right to provide an Authorized User with a non-supplier product;** or (vi) the failure of Supplier to perform its obligations pursuant to the Section entitled 'Security Compliance.' 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. To the extent permitted by law, the Commonwealth, VITA, and any Authorized User shall be responsible for their own acts or omissions.

In the event that a Claim is commenced against any of Commonwealth's Indemnified Parties alleging that use of the Supplier's Product or any Product component or that the provision of Services under this Contract infringes any third party's intellectual property rights and Supplier is of the opinion that the allegations in such Claim in whole or in part are not covered by this indemnification provision, Supplier shall immediately notify VITA and the affected Authorized User(s) in writing, via certified mail, specifying to what extent Supplier believes it is obligated to defend and indemnify under the terms and conditions of this Contract. Supplier shall in such event protect the interests of the Commonwealth's Indemnified Parties and secure a continuance to permit VITA and the affected Authorized User(s) to appear and defend their interests in cooperation with Supplier as is appropriate, including any jurisdictional defenses VITA or the affected Authorized User(s) may have.

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

With respect to any claim that Non-supplier product(s) infringes upon another person's or entity's patent, copyright, trade secret or other intellectual property rights in the United States, Supplier agrees to pass through to the appropriate Authorized User any rights to indemnification protection for which Supplier currently or subsequently has an agreement in place with the potentially infringing equipment manufacturer/entity.

#### **B. Liability**

Supplier shall have unlimited liability with respect to (i) any intentional or willful misconduct or negligence of any employee, agent, or subcontractor of Supplier, (ii) any independent act or omission of any employee, agent, or subcontractor of Supplier not at the direction of an Authorized User, (iii) claims for bodily injury, including death, and real and tangible property damage, (iv) Supplier's indemnification obligations, (v) Supplier's confidentiality obligations, and (vi) Supplier's security compliance obligations. Supplier agrees that it is fully responsible for all acts and omissions of its employees, agents, and subcontractors, including their gross negligence or willful misconduct.

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

#### **15. SECURITY COMPLIANCE**

Supplier agrees to take reasonable steps to comply with all applicable provisions of the then-current Commonwealth of Virginia security procedures, published by the Virginia Information Technologies

Agency (VITA) and which may be found at (<http://www.vita.virginia.gov/library/default.aspx?id=537#securityPSGs>) or a successor URL(s), as are pertinent to Supplier's operation. Supplier further agrees to comply with all applicable provisions of the relevant Authorized User's then-current security procedures as are pertinent to Supplier's operation and which have been supplied to Supplier by such Authorized User. Supplier shall also comply with all applicable federal, state and local laws and regulations. For any individual Authorized User location, security procedures may include but not be limited to: background checks, records verification, photographing, and fingerprinting of Supplier's employees or agents. Supplier may, at any time, be required to execute and complete, for each individual Supplier employee or agent, additional forms which may include non-disclosure agreements to be signed by Supplier's employees or agents acknowledging that all Authorized User information with which such employees and agents come into contact while at the Authorized User site is confidential and proprietary. Any unauthorized release of proprietary information by the Supplier or an employee or agent of Supplier shall constitute a breach of this Contract. VITA and Authorized Users acknowledge that additional security procedures may result in additional costs.

## **16. IMPORT/EXPORT**

Supplier acknowledges that the Services sold under this Agreement, are subject to the customs and export laws and regulations of the United States ("U.S.") and of those of other countries in which they may be performed and Supplier agrees to abide by those laws and regulations. VITA requires that any data deemed "restricted" or "sensitive" by either federal or state authorities, must only be collected, developed, analyzed, or otherwise used or obtained by persons or entities working within the boundaries of the United States.

## **17. GENERAL PROVISIONS**

### **A. Relationship Between VITA and Authorized User and Supplier**

Supplier has no authority to contract for VITA or any Authorized User or in any way to bind, to commit VITA or any Authorized User to any agreement of any kind, or to assume any liabilities of any nature in the name of or on behalf of VITA or any Authorized User. Under no circumstances shall Supplier, or any of its employees, hold itself out as or be considered an agent or an employee of VITA or any Authorized User, and neither VITA nor any Authorized User shall have any duty to provide or maintain any insurance or other employee benefits on behalf of Supplier or its employees. Supplier represents and warrants that it is an independent contractor for purposes of federal, state and local employment taxes and agrees that neither VITA nor any Authorized User is responsible to collect or withhold any federal, state or local employment taxes, including, but not limited to, income tax withholding and social security contributions, for Supplier. Any and all taxes, interest or penalties, including, but not limited to, any federal, state or local withholding or employment taxes, imposed, assessed or levied as a result of this Contract shall be paid or withheld by Supplier or, if assessed against and paid by VITA or any Authorized User, shall be reimbursed by Supplier upon demand by VITA or such Authorized User.

### **B. Incorporated Contractual Provisions**

The then-current contractual provisions at the following URL are mandatory contractual provisions, required by law or by VITA, and that are hereby incorporated by reference:

<http://www.vita.virginia.gov/uploadedFiles/SCM/StatutorilyMandatedTsandCs.pdf>

The contractual claims provision §2.2-4363 of the Code of Virginia and the required eVA provisions at <http://www.vita.virginia.gov/uploadedFiles/SCM/eVATsandCs.pdf> are also incorporated by reference.

The then-current terms and conditions in documents posted to the aforementioned URLs are subject to change pursuant to action by the legislature of the Commonwealth of Virginia, change in VITA policy, or the adoption of revised eVA business requirements. If a change is made to the terms and conditions, a new effective date will be noted in the document title. VITA shall take reasonable efforts to notify Supplier of any applicable changes, but Supplier is advised to check the URLs periodically.

**C. Compliance with the Federal Lobbying Act**

Supplier's signed certification of compliance with 31 USC 1352 (entitled "Limitation on use of appropriated funds to influence certain Federal Contracting and financial transactions") or by the regulations issued from time to time thereunder (together, the "Lobbying Act") is incorporated as Exhibit E hereto.

**D. Governing Law**

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

**E. Dispute Resolution**

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

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

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

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

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

Supplier shall not use the name of VITA or any Authorized User'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 of VITA or an Authorized User without receiving the prior written consent of VITA or the Authorized User.

**G. Notices**

Any notice required or permitted to be given under this Contract shall be in writing and shall be deemed to have been sufficiently given if delivered in person, or if deposited in the US mails, postage prepaid, for mailing by registered, certified mail, or overnight courier service addressed to the addresses shown on the signature page. VITA or Supplier may change its address for notice purposes by giving the other 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 VITA and Supplier. Supplier may not assign, subcontract, delegate or otherwise

convey this Contract or any of its rights and obligations hereunder, to any entity without the prior written consent of VITA, in which such consent shall not be unreasonably withheld, and any such attempted assignment or subcontracting without consent shall be void. VITA may assign this Contract to any entity, so long as the assignee agrees in writing to be bound by the all the terms and conditions of this Contract.

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

**J. Captions**

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

**K. Severability**

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

**L. Survival**

The provisions of this Contract regarding License, Rights To Work Products, Warranty, Confidentiality, Liability and Indemnification, and the General Provisions shall survive the expiration or termination of this Contract.

**M. Force Majeure**

No Party shall be responsible for failure to meet its obligations under this Contract if the failure arises from causes beyond the control and without the fault or negligence of the non-performing Party. If any performance date under this Contract is postponed or extended pursuant to this section for longer than thirty (30) calendar days, VITA, by written notice given during the postponement or extension, may terminate Supplier's right to render further performance after the effective date of termination without liability or fault to Supplier for that termination, and in addition an Authorized User may terminate any order or SOW affected by such postponement or delay.

**N. Remedies**

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

**O. Right to Audit**

VITA reserves the right to audit its purchase orders and associated invoices submitted under this Contract. VITA's right to audit shall be limited as follows:

- i). On annual basis during the term of this Contract and up to three (3) years from Service performance date;
- ii). May be performed at Supplier's premises, during normal business hours at mutually agreed upon times; and
- iii). Excludes access to Supplier cost information.

The Supplier shall not have the right to audit, or require to have audited, VITA or any Authorized User.

**P. Offers of Employment**

During the first twelve (12) months of the Contract, Supplier will not actively solicit and knowingly hire an employee of an Authorized User who has substantially worked on any project covered by this Contract without prior written consent. Supplier's normal advertising to the public and/or disclosure to recruiters of employment openings is not restricted or affected by this provision. This prohibition is limited to this specific contract only.

**Q. Contract Administration**

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

**R. Entire Contract**

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

- i). Exhibit A Service Requirements
- ii). Exhibit B Statement of Work (SOW) Template
- iii). Exhibit C Change Order Template
- iv). Exhibit D Service Fees
- v). Exhibit E Certification Regarding Lobbying

This Contract, its Exhibits, and any prior non-disclosure agreement constitute the entire agreement between VITA and Supplier and supersede any and all previous representations, understandings, discussions or agreements between VITA and Supplier as to the subject matter hereof. Any and all terms and conditions contained in, incorporated into, or referenced by the Supplier's Proposal shall be deemed invalid. The provisions of the Virginia Department of General Services, Division of Purchases and Supply Vendor's Manual shall not apply to this Contract or any order or SOW issued hereunder. This Contract may only be amended by an instrument in writing signed by VITA and Supplier. In the event of a conflict, the following order of precedence shall apply: this Contract document, Exhibit A, any individual SOW, Exhibit D, and any individual ordering agreement between an Authorized User and Supplier pursuant to this Contract.

Any modification to an SOW that extends the period of performance beyond one (1) year or increases the value of such SOW above US\$100,000 shall, absent the prior written approval of VITA, be voidable by VITA, in its sole discretion. If an SOW is voided by VITA, such SOW shall no longer be binding on either Party and all obligations with respect to such SOW shall expire. [Note: period of performance may be shorter than one (1) year, but not greater, and dollar values may be lower than \$100,000 but not greater.

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

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

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

Supplier

By: Lesley Brann  
(Signature)

Name: Lesley Brann  
(Print)

Title: Sr. Contracts Consultant

Date: 1/27/09

Address for Notice:

DLU Marketing LP  
One DLU Way RR 8-07  
Round Rock TX 78682

Attention: [Redacted]

VITA

By: [Signature]  
(Signature)

Name: James T. Roberts  
(Print)

Title: Director Finance & Administration

Date: 2-02-09

Address for Notice:

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

Attention: Contract Administrator