



Commonwealth of Virginia
Virginia Information Technologies Agency

**HARDWARE & MAINTENANCE CONTRACT
&
INFORMATION TECHNOLOGY SERVICES (Optional Use) CONTRACT**

Date: December 18, 2013

Contract #: VA-100111-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: David Carlson
Voice: 866-537-0706 x5139184
Fax: 512-283-1235
Email: david_carlson@dell.com

Term: January 11, 2014 – March 31, 2014

Awarded Brand: Dell

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
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 #4
TO
CONTRACT NUMBER VA-100111-DELL
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
DELL MARKETING, L.P.**

This MODIFICATION #4 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "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 #4 is hereby incorporated into and made an integral part of Contract VA-100111-DELL (the Agreement), as modified.

Modification #4 allows for an extension to the above referenced contract

**The term of the contract is extended under the same terms for the period beginning
January 11, 2014 through March 31 2014.**

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-100111-DELL and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

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

DELL MARKETING, L.P.

BY: _____

NAME: Cynthia B. Radel, GPC

TITLE: Contract Manager

DATE: 12-03-13

COMMONWEALTH OF VIRGINIA

BY: _____

NAME: DANA B. SMITH

TITLE: DIRECTOR FINANCE ADMINISTRATION

DATE: 12-5-13



COMMONWEALTH of VIRGINIA

Samuel A. Nixon, Jr.
Chief Information Officer
E-mail: cio@vita.virginia.gov

Virginia Information Technologies Agency

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

TDD VOICE -TEL. NO.
711

December 4, 2012

Dell Marketing L.P.
Attn: Frank Plemons

Per Section 3.A. ("Term and Termination") of contract VA-100111-DELL, The Virginia Information Technologies Agency has elected to exercise its option to renew the contract for one year, from January 11, 2013 through January 10, 2014. Should you have any questions, please feel free to contact me.

Respectfully,
Doug Crenshaw
Strategic Sourcing Manager
Virginia Information Technologies Agency
(804) 416-6160

**MODIFICATION #3
TO
CONTRACT NUMBER VA-100111-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-100111-DELL (the Agreement), as modified.

Modification #3 allows for an extension to the above referenced contract

**The term of the contract is extended under the same terms for the period beginning
January 11, 2012 through January 10, 2013.**

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-100111-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. *Ashleigh Lane*

BY: _____

NAME: Ashleigh Lane

TITLE: Public Contract Manager

DATE: 12/07/2011

COMMONWEALTH OF VIRGINIA

BY: *Dana B. Smith*

NAME: *Dana B. Smith*

TITLE: *Director, Finance & Administration*

DATE: *12-15-11*

**MODIFICATION #2
TO
CONTRACT NUMBER VA-100111-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-100111-DELL (the Agreement), as modified.

Exhibit A (Service Requirements) from the Information Technology Services Contract is no longer associated with VA-100111-DELL.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-100111-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. *Ashleigh Lane*
BY: _____
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 #1
TO
CONTRACT NUMBER VA-100111-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-100111-DELL (the Agreement), as modified.

Modification #1 replaces note #1 in Exhibit C with the following:

"The Discount Percentage for each Market Basket Configuration (Tower, Rack and Blade) applies only to that specific configuration and or model. If a modification is made to any one configuration or a different model is selected, it is acceptable for the Contractor's Discount Percentage to change to reflect the new configuration/model."

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-100111-DELL and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

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

DELL MARKETING, L.P.

BY: 

NAME: Lauren D. McCosham

TITLE: Contract Manager

DATE: 3/08/2010

COMMONWEALTH OF VIRGINIA

BY: 

NAME: Gregory H. Scearce

TITLE: Strategic Sourcing Specialist

DATE: 3.8.2010



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**

1. PURPOSE	5
2. DEFINITIONS	5
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)	6
K. Requirements	6
L. Response Time	6
M. Service	6
N. Software Publisher	6
O. Supplier	6
P. System Software	6
3. TERM AND TERMINATION	6
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
4. DELIVERY, INSTALLATION AND ACCEPTANCE	8
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
5. PRODUCT SUPPORT AND ADDITIONAL SERVICES	10
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	11
F. Product Service Record	11
G. Additional Services	11
6. WARRANTY AND REMEDY	11
A. Supplier	11
B. Ownership	11
C. Supplier Viability	11
D. Product	12

E. Product Performance Data	12
F. Warranty Services	12
1. Product Covered	13
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	14
7. MAINTENANCE SERVICES	14
A. Ordering	14
B. Renewal	14
C. Services	15
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
8. SCOPE OF USE	15
9. SOFTWARE LICENSE	16
D. Authorized User Compliance	16
E. No Subsequent, Unilateral Modification of Terms by Supplier (“Shrink Wrap”)	16
10. ORDERS AND COMPENSATION	16
A. Supplier Quote and Request for Quote	16
B. Orders	17
C. Purchase Price and Price Protection	17
D. Supplier-Sponsored Product Promotions	18
E. Invoice Procedure	18
F. Purchase Payment Terms	18
11. REPORTING	19
A. Supplier’s Report of Sales and Industrial Funding Adjustment	19
B. Small Business Participation	19
12. COMPETITIVE PRICING	19
13. CONFIDENTIALITY	20
A. Treatment and Protection	20
B. Exclusions	20
C. Return or Destruction	20
14. INDEMNIFICATION AND LIABILITY	20
A. Indemnification	20
B. Liability	21

15. SECURITY COMPLIANCE	22
16. BANKRUPTCY	22
17. GENERAL PROVISIONS	22
A. Relationship Between VITA and Authorized User and Supplier	22
B. Incorporated Contractual Provisions	23
C. Compliance with the Federal Lobbying Act.	23
D. Governing Law	23
E. Dispute Resolution	23
F. Advertising and Use of Proprietary Marks	23
G. Notices	24
H. No Waiver	24
I. Assignment	24
J. Captions	24
K. Severability	24
L. Survival	24
M. Force Majeure	24
N. Remedies	24
O. Right to Audit	24
P. Offers of Employment	25
Q. Contract Administration	25
R. Entire Contract	25

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 January 7, 2010 ("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 shall include support services.

G. Operating Condition

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

H. Party

Supplier, VITA, or any Authorized User.

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

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_102009.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.

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 Mean Time Between Failure
- 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 Brand

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 and Exhibit F

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.

V1.1

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

Supplier

By: 
(Signature)

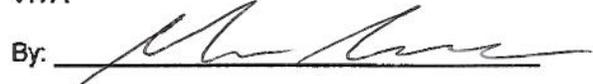
Name: Lesley Braun

(Print)

Title: Senior Contracts Consultant

Date: 12/30/09

VITA

By: 
(Signature)

Name: GEORGE COULTER

(Print)

Title: CIO

Date: 1-11-2010

Address for Notice:

Dell Marketing LP

One Dell Way RR 8-07

Round Rock, Texas 78682

Attention: Public Contract Manager

Address for Notice:

Attention: Contract Administrator

Exhibit A



Detailed Description of Proposed Solution(s)

5. FUNCTIONAL AND TECHNICAL REQUIREMENTS

Suppliers are 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 should 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 should 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.

Response:

A. General

	Requirements	A	B
1.	In order to sell/service the entire Commonwealth of Virginia, will you be incorporating subcontractors or alliances? Please provide the details of your plan.	Y	Dell will partner with the below SWAM certified vendors to help meet Services requirements.
2.	VITA strongly encourages Suppliers to develop a catalog website that interfaces with eVA. Can your company produce a punch-out catalog website? Refer to: http://www.eva.virginia.gov/vendors/pages/catalogcreation.htm	Y	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.
3.	Can your firm have a catalog website up, functioning and interfacing with eVA within 30 days of contract award?	Y	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.
4.	Will your firm have a dedicated account management team on this contract?	Y	Account Manager, Inside Sales Representative, Software Account Executive, Technical Sales



	Requirements	A	B
	Please provide details.		Representative, Systems Consultant, Services Account Managers, Contracts Specialist. The dedicated VITA account team is identified following this table.
5.	Will your firm have an account executive on this contract? Please provide details.	Y	There will be one or more field account executives for State & Local Government, Higher Education and K-12 customers within the Commonwealth of Virginia.
6.	Does your firm have the marketing ability and resources to promote this contract to schools, universities, local and state agencies? Please provide marketing plan and examples of marketing tools.	Y	Dell can utilize different forms of marketing to keep customer awareness of Dell products and events at each locality.
7.	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.

The VITA Account Team

Account Executive

Name: *Tim Wilkinson*

Office Phone: 717-503-7700

Email Address: tim_wilkinson@dell.com

Your account executive keeps an eye on the big picture for you, overseeing your day-to-day account activities and consulting with you on longer-term strategic technology decisions. Your account executive is responsible for:

- Assisting you with technology planning
- Providing strategic information on Dell, our products, and the industry in general
- Supplying you with updates on all Dell products and services

Inside Sales Representative

Name: Chris Heldorfer

Office Phone: 1 800-981-3355x7267884

Email Address: chris_heldorfer@dell.com

As your personal point-of-contact when you need to be in touch with Dell, the sales representative on your team is responsible for:

- Getting the answers to your questions and providing support
- Helping you match the appropriate technologies and Dell systems to your needs
- Providing price quotes and handling order placement for you
- Setting up your online Premier Dell.com website for online ordering



Inside Sales Manager

Name: Brian Wilson

Office Phone: 512-656-3002

Email Address: brian_wilson@dell.com

The inside sales manager manages a team of sales representatives in your region. The sales manager is responsible for assisting their sales representatives to drive closure to customer needs and requests made outside of normal day-to-day business operations.

Regional Sales Manager

Name: Katie Driscoll

Office Phone: 703-628-6164

Email Address: katie_driscoll@dell.com

The regional sales manager oversees all Dell sales operations in your region to make sure that you have the best experience possible. The regional sales manager also provides assistance with specialized and high-priority sales calls and is available for consultation on a case-by-case basis

Pre Award Contracts Manager

Name: Lesley Braun

Phone: 800-727-1100 x 7287854

Email Address: Lesley_braun@dell.com

Your VITA Contract Manager manages the details of the program contract.

Services Account Executive

Name: Stuart White

Phone: 443-846-1149

Email: stuart_white@dell.com

Your VITA Services Account Executive coordinates professional services including deployment, support and consulting.



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	Asset Tagging and Inventory Management reporting either by Customer Factory Integration strategy or Premier.com. Please see an overview of option detailed in Supporting Documentation section.
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"> •Service Parts Shipping Performance •Next Business Day, On-Site Service Performance •4-Hour On-Site Service Performance •Other Service Call Counts •Line of Business Breakdown •Service Parts Performance Trend •Next Business Day, On-Site Service Trend •Call Age Analysis Trend •Next Business Day, On-site Please see the Appendix section for some sample report snapshots.
3.	Does your firm provide any additional reports that would be an added value to the Commonwealth? Please describe and provide examples.	Y	Reporting Capabilities Dell has the capability to provide VITA with customer-specific reports. These reports are generated according to the information you specifically need and are available in several standard formats. Examples of reports available to VITA include: <ul style="list-style-type: none"> • Product and Shipping information • Service Issues and Statistics • Purchase Order Number • Warranty Expiration Date • Manufacturer and Model Number • Monthly and Year to Date Usage Reports • Serial Number and Invoice



			<p>Reporting</p> <ul style="list-style-type: none"> System and Service History Reports (details regarding these reports follow immediately)
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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	<p>Enterprise Installation Services</p> <p>Enterprise environments can face demanding and complex installation challenges. As part of Dell's built-to-order model, we recommend that you take advantage of our on-site Enterprise Installation services to enjoy the maximum benefits of your new Dell hardware. By leaving the installation process to us, you reduce implementation time, make efficient use of your employees' skills and reduce Total Cost of Ownership by saving your internal resources. Our experience and expertise ensures a smooth installation process with reduced risk of error.</p> <p>Our modular suite of installation services allows you to customize the right service package to implement your new systems quickly and efficiently. We provide on-site installation of all PowerEdge components, PowerEdge clusters, PowerEdge racks, PowerConnect switches, PowerVault storage systems and Dell EMC Direct Attach Storage and Storage Area Network solutions.</p>
3.	Is your firm willing to commit to service-levels agreements? If so, please refer to Appendix A.	Y	Please see completed Appendices portion of the response.



<p>4.</p>	<p>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 and pricing if necessary.</p>	<p>Y</p>	<p>As an optional Service; Keep Your Hard Drive (KYHD) program.</p> <p>It's simple. Report any hard drive failure (covered by *limited warranty (*www.dell.com) to Dell technical support to find out if a replacement hard drive is needed. If needed, we will replace the hard drive, at no additional charge, using same-day or next-business-day delivery, depending on the service contract purchased. Under KYHD, you keep the failed drive and any sensitive data contained on it, thus maintaining ultimate control over your organization's information assets.</p>
<p>5.</p>	<p>Does your firm provide in-house quality assurance and testing processes for all hardware? Please provide details.</p>	<p>Y</p>	<p>Dell performs an extended test on all server and storage systems, lasting more than four hours. Our burn-in procedure differs from most, in that we burn in VITA's configured system. Dell conducts an initial test of each configured system to ensure that the system was assembled correctly and functions properly. We then perform an extended test comprising two 2-hour cycles, testing all assemblies, options, and drives in a diagnostics loop.</p> <p>The burn-in/testing for configured server systems depends on specific configurations. It may take up to thirty-six hours for the two-part extended tests and an additional twelve hours for the network test in which the systems are tested in the Client Server mode.</p> <p>Dell concludes testing with an operational check to ensure that the system is operational and that the software was installed correctly.</p>
<p>6.</p>	<p>Do your service and maintenance technicians have and maintain current industry certifications? Please provide details and types of certifications.</p>	<p>Y</p>	<p>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</p>



			<p>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.</p>
7.	<p>If you not the manufacturer or OEM certified to service/repair units, have you partnered with an organization that is OEM certified for the devices that you are proposing? Please provide details.</p>	NA	<p>Dell is the Original Equipment Manufacture.</p>
8.	<p>Does your firm have an in-house order tracking system that can be accessed 24x7 by a user? Please provide details.</p>	Y	<p>Delivery Tracking Mechanism - Online Order Status and Order Watch</p> <p>Dell, through our extensive online services, offers order and delivery tracking through Order Status and Order Watch, as detailed below.</p> <p>Order Status (Password Protected)</p> <p>Try our industry leading online order status tool. Simply choose between single and multiple orders and provide either your order number or customer number. Twenty-four hours a day, seven days a week, you can track your order through Dell Computer's order management system. This is real-time information, updated continuously – it is like having a window onto our factory floor.</p>
9.	<p>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.</p>	Y	<p>To meet the unique needs of customers like VITA, Dell proposes leveraging our Custom Fulfillment Services (CFS formerly known as AMC) where we handle unique customer requests that are not easily managed through Dell's standard channels. CFS provides complex configuration services to our customers that greatly simplify large scale deployments.</p> <p>The core offerings of CFS include post-manufacturing services, like delivery management, personalization and asset management, datacenter management, and hardware/software configuration. These services focus on preparing shipments (including complex</p>



			hardware/software testing and configuration) for delivery based on a customer's unique receiving environment and the overall management of shipments from receipt of a purchase order to delivery at the final customer destination.
10.	Does your firm have a return policy? Please provide details.	Y	<p>Dell values its relationship with you, and offers you the option to return most products you purchase directly from Dell. You may return eligible products for a credit or a refund of the purchase price paid, less shipping and handling and any applicable restocking fees.</p> <p>Please visit for full details http://www.dell.com/content/topics/global.aspx/policy/en/policy?c=us&l=en&s=gen&~section=018#total</p>
11.	Does your firm charge a re-stocking fee on returned equipment? Please provide details.	Y	Please see #10 response above.
12.	Does your firm offer IT equipment disposal and recycling services? Please provide details.	Y	<p>Dell Asset Recovery Services provides the logistics and processing capabilities to recover, resell, or recycle owned or leased computer equipment in a manner compliant with local regulatory guidelines (EPA, WEEE). Fast, affordable, and easy to use, ARS provides your company with a safe and environmentally friendly method to recycle or dispose of your used computer equipment. This includes desktops, notebooks, servers, storage, networking, monitors, printers, projectors, and computer peripherals such as keyboards and mice from any manufacture.</p>
13.	Does your firm adhere to Energy Star 4.0 energy efficiency standards for computer hardware products? Please provide list of qualified products.	Y	<p>Dell partnered with the U.S. Environmental Protection Agency (EPA) to develop its energy-efficiency specification for servers, released in May 2009. Dell was the first major vendor to certify entire platforms to meet the exact performance per watt requirements of this program for servers. The Dell PowerEdge R710 and R610 server platforms have qualified for the Energy Star specification. The</p>



			Energy Star label means the systems are energy efficient and environmentally friendly.
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**EXHIBIT C
Appendix C v3**

Intel/ AMD Based

**Market Basket Configuration
Only fill in Yellow Shaded Cells**

Pricing is to include the Industrial Funding Adjustment (see Section 8 of RFP), eVA fees and all FOB Destination Charges

A. Tower Server Offering	Unit Price (Provide a link to public site to verify this cost)	Discount % from Unit (see note #1 at bottom)	Unit Discounted Price
(2) Quad Core 2.4GHz			
Minimum 2 Processor Sockets			
16GB ECC Memory			
(3) 100GB Hot Plug SAS 15K Hard Drives			
Dual embedded gigabit network adapters			
Raid 5 SAS Controller with battery backup			
DVD ROM Drive			
Redundant power supply			
Integrated Server Management			
3 Year Onsite Parts and Labor Warranty (Next Business Day)			
Quote 505855410			
Total Tower Offering	\$ 5,362	25%	\$4,021.50
B. Rack Server Offering	Unit Price (Provide a link to public site to verify this cost)	Discount % (see note #1 at bottom)	Unit Discounted Price
(4) Quad Core 2.4GHz			
Minimum 4 Processor Sockets			
32GB ECC Memory			
(5) 140GB Hot Plug SAS 15K Hard Drives			
Raid 5 SAS Controller with battery backup			
Dual Embedded Gigabit Network Adapters			
Redundant Power Supply			
Integrated Server Management			
3 Year Onsite Parts and Labor Warranty (Next Business Day)			
Quote 505856020			
Total Rack Offering	\$ 9,895	25%	\$7,421.25
C. Blade Server Offering	Unit Price (Provide a link to public site to verify this cost)	Discount % (see note #1 at bottom)	Unit Discounted Price
(4) Quad Core 2.4GHz			
Minimum 4 Processor Sockets			
32GB ECC Memory			
(2) 140GB Hot Plug SAS 15K Hard Drives			
Integrated Raid Controller			
2 Integrated Gigabit Network Adapters			
(2) Gigabit Ethernet Pass-Thru Modules			
Enclosure (Fully Powered and Fully Fanned)			
Upgradeable to Ethernet Blade Switch and Fiber Channel Switch			
3 Year Onsite Parts and Labor Warranty (Next Business Day)			
Quote 505856479			
Total Blade Offering	\$ 19,111	25%	\$14,333.25

D. Optional Services (see note #2 at bottom)	Unit Price (Provide a link to public site to verify this cost)	Discount % (see note #3 at bottom)	Unit Discounted Price	
Onsite Installation per hour (regardless of server type)	\$ 160	0%	\$ 160	*see note b
Data Migration per hour (regardless of server type)	\$ 160	0%	\$ 160	*see note b
Imaging per hour (regardless of server type)	\$ 160	0%	\$ 160	*see note b
Configuration per hour (regardless of server type)	\$ 160	0%	\$ 160	*see note b
Tower Server Cost for 4th year Onsite Parts and Labor Warranty (Next Business Day)	\$ 399	25%	\$299.25	
Tower Server Cost for 5th year Onsite Parts and Labor Warranty (Next Business Day)	\$ 300	25%	\$225.00	
Rack Server Cost for 4th year Onsite Parts and Labor Warranty (Next Business Day)	\$ 399	25%	\$299.25	
Rack Server Cost for 5th year Onsite Parts and Labor Warranty (Next Business Day)	\$ 300	25%	\$225.00	
Blade Server Cost for 4th year Onsite Parts and Labor Warranty (Next Business Day)	\$ 399	25%	\$299.25	
Blade Server Cost for 5th year Onsite Parts and Labor Warranty (Next Business Day)	\$ 300	25%	\$225.00	

Note #1 - The discount proposed for each category (Stand-Alone, Rack and Blade) is the minimum discount level for that category during the term of the contract. The discount is not limited to this configuration. Suppliers may offer higher discounts but may not go below proposed discount level.

Note #2 - Section D is optional for suppliers. If a supplier wishes to offer the items listed in section D, supplier is to fill-out all areas to be considered for award. Suppliers can win both sections (Servers and Optional Services) but cannot win just Optional Services.

Note #3 - The discount proposed for each optional service is the minimum discount level for that service during the term of the contract. Suppliers may offer higher discounts but may not go below proposed discount level.

**Note: All Services opportunities are custom scoped based on specific customer needs. The Services provided in Category D are a list of sample services and sample prices. Listed services are representative services and are not all inclusive of the services Dell can provide. All Services Dell offers (Dell Services & 3rd party Services) are available in category D. Please contact your Dell sales representative for assistance on scoping a services engagement.*

The discount level provided in each category (A,B,C,D) are minimum discount levels. Dell reserves the right to price specific opportunities greater than the minimum discount level listed above. This pricing will be strictly limited to the specific purchase in question, and will not impact or change the discount level offered by Dell.

Retail Price List can be found at the following link:
<http://ftpbox.us.dell.com/slg/weekly/dellpricereport.pdf>

Pricing for ALL additional add-on devices that are offered are to include the Industrial Funding Adjustment (see Section 8 of RFP), eVA fees and all FOB Destination Charges (no exceptions)

Manufacturer (see note #1)

Minimum Discount
%

Brocade Communications	0%
Cisco Systems	0%
APC	0%
Emmerson Network Power (Liebert)	0%
Rack Solutions	0%
Emulex	0%
Qlogic	0%
Aten	0%
Avocent	0%
Blekin	0%
Cables To Go	0%
Intel	0%
Raritan	0%
Triplite	0%
US Robotics	0%
Xsigo Systems	0%

Note #1 - Suppliers are to list manufacturers that they wish to propose in column "A" that will supply add-on devices for the proposed servers. (APC, Kendall Howard, etc.) Suppliers are then to enter the minimum discount in column "B" for that manufacturer. The proposed discount will be the minimum discount level for that manufacturer for the life of the contract. Proposed manufactures and their associated add-ons can only be purchased at the time of sale with the server. Routers and Switches that are specific to Blade servers can only be purchased at time of sale. Other router and switches are not to be part of this contract.

Note: Dell has the right to add additional "Add-On devices" Manufacturers during the term of the contract.

As noted above, the Minimum discount level for the "Add-On devices" is a Minimum of 0%.

Dell reserves the right to price specific opportunities greater than the minimum discount level listed above. This pricing will be strictly limited to the specific purchase in question, and will not impact or change the discount level offered by Dell.

Retail Price List can be found at the following link:
<http://ftpbox.us.dell.com/slg/weekly/dellpricereport.pdf>

EXHIBIT F: 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 of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal Contract, grant, loan, or cooperative agreement.
- ii). If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- iii). The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and Contracts under grants, loans and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

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

Signature:



Printed Name:

Lesley Braun

Organization:

Dell Marketing, L.P.

Date:

12/30/09

EXHIBIT G
AWARDED BRAND

- Dell



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

1.	PURPOSE AND SCOPE	4
2.	DEFINITIONS	4
	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
3.	TERM AND TERMINATION	5
	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
4.	SERVICES	7
	A. Nature of Services and Engagement	7
	B. Statement of Work (SOW)	7
	C. Change Orders	7
	D. Acceptance	7
	E. Cure Period	7
5.	RIGHTS TO WORK PRODUCT	7
	A. Work Product	8
	B. Ownership	8
	C. Pre-existing Work	8
	D. Return of Materials	8
6.	SUPPLIER PERSONNEL	9
	A. Selection and Management of Supplier Personnel	9
	B. Supplier Personnel Supervision	9
	C. Key Personnel	9
	D. Subcontractors	9
7.	GENERAL WARRANTY	9
	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
8.	TRAINING AND DOCUMENTATION	10
9.	ORDERS AND COMPENSATION	10
	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 January 7, 2010 ("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_102009.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.

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.

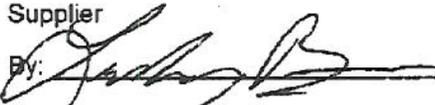
Any modification to an SOW that extends the period of performance beyond one (1) year or increases the value of such SOW above US\$100,000 shall, absent the prior written approval of VITA, be voidable by VITA, in its sole discretion. If an SOW is voided by VITA, such SOW shall no longer be binding on 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: 
(Signature)

Name: Lesley Braun
(Print)

Title: Senior Contracts Consultant

Date: 12/30/09

Address for Notice:

Dell Marketing LP

One Dell Way RR 8-07

Round Rock, Texas 78682

Attention: Public Contract Manager

VITA

By: 
(Signature)

Name: GEORGE COULTER
(Print)

Title: CIO

Date: 1-11-2010

Address for Notice:

Attention: Contract Administrator