



Commonwealth of Virginia  
Virginia Information Technologies Agency

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

Date: March 9, 2010

Contract #: VA-100111-KSTD

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: KST Data Inc.  
19672 Player Court  
Ashburn, VA 20147

FIN: 33-0416872

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Term: January 7, 2010 – January 6, 2012

Awarded Brands: Dell, Hewlett-Packard, IBM

Payment: Net 30 days

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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 #1  
TO  
CONTRACT NUMBER VA-100111-KSTD  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
KST DATA, INC.**

This MODIFICATION #1 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and KST DATA, INC., hereinafter referred to as "Contractor" relating to the modification of the above Contract. This Modification #1 is hereby incorporated into and made an integral part of Contract VA-100111-KSTD (the Agreement), as modified.

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

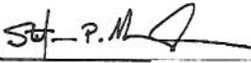
“The Discount Percentage for each Market Basket Configuration (Tower, Rack and Blade) applies only to that specific configuration and or model. If a modification is made to any one configuration or a different model is selected, it is acceptable for the Contractor’s Discount Percentage to change to reflect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

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

KST DATA, INC.

BY: 

NAME: Stefan Mandanis

TITLE: Director of Sales

DATE: March 1, 2010

COMMONWEALTH OF VIRGINIA

BY: 

NAME: GREGORY H. SCARCE

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

KST Data Inc

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**HARDWARE AND MAINTENANCE CONTRACT  
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## 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 KST Data, Inc. ("Supplier"), a corporation headquartered at 3699 Wilshire Blvd Los Angeles CA, 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 successful delivery to the designated ship to location (Receipt), as specified in the applicable order.

#### B. Agent

Any third party independent agent of any Authorized User.

#### C. 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.

#### 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 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. 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.

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

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

#### G. 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.

#### H. Operating Condition

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

#### I. Party

Supplier, VITA, or any Authorized User.

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**J. 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.

**K. Receipt (of Product)**

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

**L. Requirements**

The functional, performance, operational, compatibility, Acceptance testing criteria 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.

**M. Response Time**

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

**N. 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.

**O. Software Publisher**

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

**P. Supplier**

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

**Q. 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 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.

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**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 Nonprocurement Programs, VITA may immediately terminate this Contract, in whole or in part, for breach. VITA shall provide written notice to Supplier of such termination and Supplier shall provide 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 all 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 period 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

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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 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 this Contract number, the Authorized User's order number, the part number, a description of the Product shipped and the quantity shipped. Each package in any shipment shall 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 Acceptance.

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

#### **B. Late Delivery**

Supplier hereby acknowledges and agrees that failure to deliver the Product ordered in strict accordance with the agreed upon delivery schedule determined in accordance with this Section shall constitute a material breach of this Contract resulting in damages to the ordering Authorized User, the total sum of which would be impracticable or difficult to ascertain as of the Effective Date of this Contract. As an estimate of the minimum amount of damages such Authorized User will suffer, Supplier agrees to credit the Authorized User an amount equal to one percent (1%) of the total purchase price, for each day that the Product is undelivered or unoperational for a period of thirty (30) days following the agreed upon delivery date. If the delay lasts longer than thirty (30) days, the Authorized User may immediately cancel the order and collect as late delivery

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damages one percent (1%) of the total purchase price. Any credit due the Authorized User will be applied to the next periodic invoice.

In addition, in the event the Supplier fails for any reason to deliver 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 oral or 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 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 difference in cost between the original contract price and the Authorized User's cost to cover from the alternate source. In no event shall any Authorized User be held to pay Supplier any costs incurred by Supplier, including but not limited to ordering, marketing, manufacturing, or delivering the item(s) which are subject of such Authorized User 's notice of breach. Notwithstanding the foregoing, the Authorized User reserves any and all other remedies available at law or in equity.

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

(To be determined prior to contract execution)

**D. Product Installation**

Unless otherwise agreed, Supplier shall provide the initial installation of all Product at no additional charge. Installation shall 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. If such Authorized User installs the Product, Supplier shall 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 fifteen (15) days, or within such other period as set forth in the applicable order, after Receipt 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\\_102008.pdf](http://www.doa.virginia.gov/Admin_Services/CAPP/CAPP_Topics/20335_Meals_Lodging_102008.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 five (5) days following the Acceptance testing period, the Product(s) shall be deemed Accepted.

**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 seven (7) 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 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; (ii) issue a "partial Acceptance" of the

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Product with an equitable adjustment in the price to account for such deficiency; or (iii) conditionally accept the applicable Product while reserving its right to revoke Acceptance if timely correction is not forthcoming. Failure of a Product to meet, in all material respects, the Requirements after the second set of acceptance tests may constitute a default by Supplier. In the event of such default, the Authorized User may, at its sole discretion, terminate its order, in whole or in part, for the Product and any Services to be provided thereunder by Supplier.

**G. Product Discontinuation**

During the term of this Contract, if any Product listed on Exhibit C is discontinued and Supplier does not offer a substitute acceptable to VITA, Supplier shall, for each Authorized User who purchased the discontinued Product, continue to meet such Authorized User's needs for the discontinued Product for not less than thirty-six (36) months. Additionally, Supplier shall make available to the Authorized User maintenance parts for discontinued Product for five (5) years from the date of such discontinuation. In every event, Supplier will provide any Authorized User with 120 days advance written notice of its intent to discontinue any Product type previously ordered by such Authorized User.

**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 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. In addition, Supplier agrees to provide, for a period of five (5) years from the date of the last purchase, spare parts and components at the cost set forth in Exhibit C, including those solely sourced by Supplier, to enable any Authorized User or its designated third-party maintenance provider to provide full maintenance and repair of the Product.

**2. Timeliness and Price**

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

**B. Engineering Changes and Product Modification**

For each Authorized User that purchased Product, Supplier agrees to document and provide to such Authorized User any and all planned engineering changes to the Product ninety (90) days prior to incorporation. All engineering changes which affect the safety of the Product ("Safety Changes") or the ability of the Product to meet the published specifications ("Performance Changes"), shall be made at no cost to the Authorized User. Supplier shall install all Safety Changes and Performance Changes within thirty (30) days after issuance of the engineering change order by the Product manufacturer. If such engineering changes affect Product processing or operating capability, they shall be scheduled at the Authorized User's request as to time and at the Authorized User's option. The Authorized User shall have the option to waive/pre-approve all other engineering changes planned by Supplier on the Product delivered or planned for delivery to the Authorized User.

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**C. Training**

The Product purchase price includes all costs for the training of one trainer at the ordering Authorized User's designated 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 new/certifiable as new 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 five (5) years from the expiration of the initial Warranty Period of the last unit of any given Product type provided by Supplier to such Authorized User. Thereafter, Supplier shall advise such Authorized User of its intent to discontinue either certain parts or maintenance services for any Product type ordered by the Authorized User.

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

**E. Inventory Record**

Supplier shall maintain, 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**

Supplier shall maintain, 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: (i) installation/ relocation/ removal/ modifications; (ii) remedial actions; (iii) preventive actions; (iv) any additional services not covered by warranty or maintenance. 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.

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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. Requests for additional services shall only be approved for payment by the Authorized User when a Product Service Record is included with the applicable invoice.

## **6. WARRANTY AND REMEDY**

### **A. Supplier**

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

### **B. Ownership**

Supplier is the owner of the Product or otherwise has the right to grant to 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. Compatibility**

Supplier warrants that each Product provided hereunder is, and shall continue to be, data, program, and upward compatible with any other Product available or to be available from Supplier within the same family of Products so that data files created for each Product can be utilized without adaptation of the other Products, and so that programs written for the Product shall operate on the next generation of Products, and not result in the need for alteration, emulation, or other loss of efficiency for a period of not less than three (3) years.

### **E. 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 be fit for the particular purposes 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;
- ii). The Product shall be free of defects in material, design and workmanship;
- iii). Upon delivery, the Product shall be new and in Operating Condition and shall have all released engineering changes released to date already installed;

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- 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.

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

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

#### **G. Warranty Services**

During the warranty period of thirty-six (36) months, or as specified in the applicable order, 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 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.

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 shall not respond to calls for service from any other source without prior written approval of Authorized User's agreement administrator designated on the relevant order.

##### **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.

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**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, for a period of not less than twelve (12) months beginning on the date of Acceptance, 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 System Software in accordance with the Requirements:

a) New Releases

Supplier's responsibilities related to new releases of System Software and Documentation are described in Exhibit D.

b) Coverage

Supplier's offerings and responsibilities related to coverage for telephonic and written consultation in connection with use, problems, and operation of the System Software are described in Exhibit D.

c) Response and Restore Times

Supplier's response and restore times related to use, problems, and operation of the System Software, and Authorized User's associated remedies, are described in Exhibit D.

d) Software Evolution

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

If Supplier or Software Publisher reduces or replaces functionality contained in a licensed System Software product and provides the same or substantially similar functionality as or within a separate or renamed System Software product, then the Commonwealth or the Authorized User shall be entitled to license such System Software product at no additional license or maintenance fee, and subject to the terms and conditions herein.

If Supplier or Software Publisher releases an option, future System Software product or other release that has substantially the same functionality as the Software products provided under this Contract, and Software Publisher and/or Supplier ceases to provide

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maintenance for the older System Software product, then Supplier shall offer the Commonwealth or the Authorized User the option to exchange licenses for such replacement System Software product or function at no additional charge.

#### **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, including System Software, conform, in all material respects to the Requirements, within thirty (30) days following notification by an Authorized User, Supplier shall, at such Authorized User's request, either (i) replace the non-conforming Product or (ii) accept return of the non-conforming Product and return all monies paid by such Authorized User for the returned 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**

At least sixty (60) days prior to the expiration of the Warranty Period, Supplier shall notify the Authorized User, and the Authorized User, at its sole discretion, may order from Supplier Maintenance Services, including System Software Maintenance for a period of one (1) year (Maintenance Coverage Period) and for the annual fee identified in Exhibit C. Supplier warrants that it shall make Maintenance Services available for all the Product, including System Software, listed in Exhibit C, or which are components of Products listed in Exhibit C, for a period of at least five (5) years from the expiration of the initial Warranty Period of any Product provided to an Authorized User pursuant to this Contract. 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**

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 shall not respond to calls for service from any other source without prior written approval of Authorized User's agreement administrator designated on the relevant order.

##### **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

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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.

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

Option 2: Co-termination of MCP, TBD based on Supplier proposal. [end Option 2]

**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. 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.

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## 8. On-site Maintenance Services

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

## 9. System Software Maintenance

During the MCP and as part of the standard Maintenance Services offering, Supplier shall provide the following Maintenance Services (including unlimited telephonic support and all necessary travel and labor) without additional charge to any Authorized User to maintain the System Software in accordance with the Requirements:

### a) New Releases

Supplier's responsibilities related to new releases of System Software and Documentation are described in Exhibit D.

### b) Coverage

Supplier's offerings and responsibilities related to coverage for telephonic and written consultation in connection with use, problems, and operation of the System Software are described in Exhibit D.

### c) Response and Restore Times

Supplier's response and restore times related to use, problems, and operation of the System Software, and any associated remedies, are described in Exhibit D.

### d) Software Evolution

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

If Supplier or Software Publisher reduces or replaces functionality contained in a licensed System Software product and provides the same or substantially similar functionality as or within a separate or renamed System Software product, then the Commonwealth or the Authorized User shall be entitled to license such System Software product at no additional license or maintenance fee, and subject to the terms and conditions herein.

If Supplier or Software Publisher releases an option, future System Software product or other release that has substantially the same functionality as the Software products provided under this Contract, and Software Publisher and/or Supplier ceases to provide maintenance for the older System Software product, then Supplier shall offer the Commonwealth or the Authorized User the option to exchange licenses for such replacement System Software product or function at no additional charge.

## 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, including the System Software, conform, in all material respects, to the Requirements within thirty (30) days following notification by an Authorized User, Supplier shall, at such Authorized User's request, either (i) provide a replacement Product at no additional cost to the Authorized User, or (ii) accept return of the Product and return all monies paid by such Authorized User (a) for Maintenance Services for the returned Product, including System Software, pro-rated on a monthly basis as of the date the Authorized User reported the non-conformity and (b) for the Product, including System Software, pro-rated on a monthly basis as of the date the Authorized User reported the non-conformity and based on the average life of the Product.

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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.

## **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.

System Software licensed by Software Publisher - Supplier shall provide System Software for Product. Such System Software is licensed directly from the Software Publisher through the end user licensing agreement (EULA), as amended, attached hereto as Exhibit E.

### **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.

## **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

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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:

- 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.

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 Nonprocurement Programs.

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

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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. 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 agreement 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. Payment for Maintenance Services shall be annually in arrears unless otherwise stated herein. 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). Product serial number, if any
- iii). Quantity, charge and extended pricing for each Product and/or Service item
- iv). Applicable order date
- v). Ship date
- vi). Ship-to location contact name
- vii). This Contract number and the applicable order number
- viii). Supplier's Federal Employer Identification Number (FEIN).

Supplier shall submit separate invoices for the Maintenance charges (detailing the Product types and quantities by Authorized User site), for billable additional services, and for any installation

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services, including the appropriate Product Service Record or other agreed upon written instrument. 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.

Product shipped without the applicable Documentation may not meet Acceptance criteria, and payment shall not be due until after the required Documentation is provided.

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

**G. Universal Service Fund**

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

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

**11. REPORTING**

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

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

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

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

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

**12. STEERING COMMITTEE**

In order to facilitate mutually beneficial contractual relationships with suppliers, VITA has procedures for establishing a steering committee ("Steering Committee"), which 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 order issued pursuant to this Contract.

**13. COMPETITIVE PRICING**

Supplier warrants and agrees that each of the charges, economic or product terms or warranties granted pursuant to this Contract are comparable to or better than the equivalent charge, economic or product term or warranty offered to any commercial or government customer of Supplier. If Supplier enters into any arrangement with another customer of Supplier or with an Authorized User to provide Software or Services under more favorable prices, as the prices may be indicated on Supplier's current U.S. and International price list or comparable document, then this Contract shall be deemed amended as of the date of such other arrangements to incorporate those more favorable prices, and Supplier shall immediately notify VITA of such change.

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## 14. CONFIDENTIALITY

### A. Treatment and Protection

Each Party shall (i) hold in strict confidence all Confidential Information of any other Party, (ii) use the Confidential Information solely to perform or to exercise its rights under this Contract, and (iii) not transfer, display, convey or otherwise disclose or make available all or any part of such Confidential Information to any third-party. However, 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

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

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

## 15. INDEMNIFICATION AND LIABILITY

### A. Indemnification

Supplier agrees to indemnify, defend and hold harmless the Commonwealth, VITA, any Authorized User, their officers, directors, agents and employees (collectively, "Commonwealth's Indemnified Parties") from and against any and all third party claims, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, assessments, fines (whether criminal or civil), judgments, settlements, expenses (including attorneys' and accountants' fees and disbursements) and costs (each, a "Claim" and collectively, "Claims"), incurred by, borne by or asserted against any of Commonwealth's Indemnified Parties to the extent such Claims in any way relate to, arise out of or result from: (i) any intentional or willful conduct or negligence of any employee, agent, or subcontractor of Supplier, (ii) any act or omission of any employee, agent, or subcontractor of Supplier (iii) breach of any representation, warranty or covenant of Supplier contained herein, (iv) any defect in the Product or Services, or (v) any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Product or Services. Selection and approval of counsel and approval of any settlement shall be accomplished in accordance with all applicable laws, rules and regulations

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For state agencies the applicable laws include §§ 2.2-510 and 2.2-514 of the Code of Virginia. In all cases the selection and approval of counsel and approval of any settlement shall be satisfactory to VITA or the Authorized User against whom the claim has been asserted.

In the event that a Claim is commenced against any of Commonwealth's Indemnified Parties alleging that use of the 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 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.

#### **B. Liability**

Except for liability with respect to (i) any intentional or willful misconduct or negligence of any employee, agent, or subcontractor of Supplier, (ii) any act or omission of any employee, agent, or subcontractor of Supplier, (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's liability shall be limited to twice the aggregate value of the Products and Services provided under this Contract. Supplier agrees that it is fully responsible for all acts and omissions of its employees, agents, and subcontractors, including their gross negligence or willful misconduct.

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

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

Supplier agrees to 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

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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 or Personal information by the Supplier or an employee or agent of Supplier shall constitute a breach of its obligations under this Section and the Contract.

Supplier shall immediately notify VITA and Authorized User, if applicable, of any Breach of Unencrypted and Unredacted Personal Information, as those terms are defined in Virginia Code 18.2-186.6, and other personal identifying information, such as insurance data or date of birth, provided by VITA or Authorized User to Supplier. Supplier shall provide VITA the opportunity to participate in the investigation of the Breach and to exercise control over reporting the unauthorized disclosure, to the extent permitted by law.

Supplier shall indemnify, defend, and hold the Commonwealth, VITA, the Authorized User, their officers, directors, employees and agents harmless from and against any and all fines, penalties (whether criminal or civil), judgments, damages and assessments, including reasonable expenses suffered by, accrued against, or charged to or recoverable from the Commonwealth, VITA, the Authorized User, their officers, directors, agents or employees, on account of the failure of Supplier to perform its obligations pursuant this Section.

## **17. 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.

## **18. 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.

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**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. 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. In no event shall Supplier's remedies include the right to terminate any license or support services hereunder.

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**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, 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 for that termination, and in addition an Authorized User may terminate any order affected by such postponement or delay.

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

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

In no event shall the Supplier 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, should Supplier hire an employee of VITA who has substantially worked on any project covered by this Contract without prior written consent, the Supplier shall be billed for fifty percent (50%) of the employee's annual salary in effect at the time of termination.

**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
- 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

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, and Exhibit E

An Authorized User and Supplier may enter into an ordering agreement pursuant to this Contract. To the extent that such ordering agreement, or order issued hereunder, include any terms and

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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.

# Hardware and Maintenance Contract

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

Supplier

By: Stefan Mandanis  
(Signature)

Name: Stefan Mandanis  
(Print)

Title: Director of Sales

Date: December 23, 2009

Address for Notice:

19672 Player Court

Ashburn, VA 20147

Attention: Contracts

VITA

By: George Coulter  
(Signature)

Name: GEORGE COULTER  
(Print)

Title: CIO

Date: 1-11-2010

Address for Notice:

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Attention: Contract Administrator



# EXHIBIT A

## 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.

### A. General

	Requirements	A	B
1.	In order to sell/service the entire Commonwealth of Virginia, will you be incorporating	Y	<a href="#">KST Data Inc. a Small Business and certified Virginia SWaM has a proven record of accomplishment within the Commonwealth of Virginia and other public sector entities across the United States. KST has demonstrated a history of success in supporting State, Local Government and Education across all aspects of Information</a>



	Requirements	A	B
	subcontractors or alliances? Please provide the details of your plan.		<p>Technology. KST’s strategic relationships with leading-edge partners enable VITA timely access to advanced-technology products and services. In today’s fast-moving business environment, success requires delivering on your vision more efficiently than ever before.</p> <p>Our vision for the VITA Program is to provide a common ‘market ready’ solution with standard business rules, workflow and processes that can be modified, while maintaining customer specific solutions in support of specific program and business unit requirements. We envision an environment that is current in both hardware and software technologies, allowing each agency, business unit or program to deploy advanced technologies in support of their requirements at a moments notice. Many initiatives today require substantial improvements in the infrastructure and we believe that with the focus that the VITA will put in place across the department and agencies, VITA will support the needs of its users in a more cost effective and efficient way. Our bundled solution and pricing approach reduces the up-front investment and infrastructure requirements, allowing VITA to have flexibility in delivering IT.</p> <p>Our solution leverages the infrastructure that we have built in the state in supporting our customers; this includes distribution and warehouse locations in Chantilly and Ashland, VA. We have also teamed with established and known small businesses in the Commonwealth, including ESI and Planit Technologies Group to offer a suite of related and optional services to deliver an end-to-end solution to your customers.</p> <p>KST will also be leveraging ESI, Planit Technology, and other partners to add ‘feet on the street’ to ensure that all locations across the state get both sales, technical and delivery resources to support them on a day-to-day basis. Upon award of this contract, KST will work with VITA and our partners to understand where we need to focus our resources across the state. We will build a complete team, lead by our Program Director, to ensure that each agency that wants to leverage our contract vehicle gets the appropriate level of support</p>
2.	VITA strongly encourages Suppliers to develop a catalog website that interfaces	Y	KST Data already provides a catalog website that can interface with eVA’s Ariba implementation. KST Data already publishes a punch out catalog via Ariba and Commerce One for our current customer base. We are currently processing thousands of transactions a month via our



PLANIT



	Requirements	A	B
	<p>with eVA. Can your company produce a punch-out catalog website?</p> <p>Refer to:</p> <p><a href="http://www.eva.virginia.gov/vendors/pages/catalogcreation.htm">http://www.eva.virginia.gov/vendors/pages/catalogcreation.htm</a></p>		<p>Ariba and Commerce One punch out catalog sites, including strategic customers such as Northrop Grumman, Lockheed Martin, Sony, and University of California system campuses to name a few.</p> <p>We understand that your eVA is based on the Ariba eCommerce engine. We can publish catalogs via CIF 3.0 or cXML. We have reviewed the eVA CIF 3.0 Specification document on the eVA website (<a href="http://www.eva.state.va.us/">http://www.eva.state.va.us/</a>), including the detailed specifications of the eVA CIF file according to the published specifications. KST can provide you with the required testing and production catalogs for validation and testing within 30 days from eVA's date of approval.</p> <p>Our catalog implementation includes full support for the following standards that make it easy for us to develop and implement a full round trip interface.</p> <p><i>cXML</i> -- (Commerce eXtensible Markup Language) is an open standard based on XML. This lightweight version of XML is designed for communicating information related to electronic commerce, such as catalog content, purchase orders, and order status.</p> <p><i>HTTPS</i> -- (Secure HyperText Transfer Protocol) to keep Internet communications secure. HTTPS incorporates RSA Security's Public Key Cryptosystem encryption scheme</p> <p><i>ORMS</i> – (Operating Resource Management System (Ariba ORMS™))  <i>Ariba ORMS is ARIBA's business-to-business eCommerce application targeting the Operating Resource Management (ORM) market.</i></p>
3.	Can your firm have a catalog website up, functioning and interfacing with eVA within 30 days of contract award?	Y	KST has already established such a catalog as part of our contract award for desktops and laptops.
4.	Will your firm have a dedicated account management team on this contract? Please provide details.	Y	Yes. The KST Data team understands program management, and is part of our core DNA. The KST Data Team has developed a program management methodology that ensures seamless program implementation, adherence to the statement of work, and consistency in service delivery. This methodology is based on the following key

	Requirements	A	B															
			<p>criteria:</p> <p><b>Program Organization</b>            The organization for the VITA Program will be structured uniquely to meet the customer needs and program requirements while providing a single point of contact with clear lines of responsibility. This will provide customer visibility and enable VITA to understand and participate in the full scope of program activities including:</p> <div data-bbox="781 709 1469 1129" style="border: 1px solid black; padding: 10px; margin: 10px auto; width: fit-content;"> <p style="text-align: center;"><b>Program Management Processes</b></p> <table border="0" style="width: 100%; border-collapse: collapse;"> <tr> <td style="border: 1px solid black; padding: 5px;">• Planning</td> <td style="border: 1px solid black; padding: 5px;">• Escalation Management</td> <td style="border: 1px solid black; padding: 5px;">• Quality Assurance</td> </tr> <tr> <td style="border: 1px solid black; padding: 5px;">• Risk Management</td> <td style="border: 1px solid black; padding: 5px;">• Change Management</td> <td style="border: 1px solid black; padding: 5px;">• Continuous Improvement</td> </tr> <tr> <td style="border: 1px solid black; padding: 5px;">• Measurement</td> <td style="border: 1px solid black; padding: 5px;">• Knowledge Management</td> <td></td> </tr> </table> <table border="0" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <tr> <td style="background-color: #2e7d32; color: white; padding: 10px; text-align: center; width: 33%;">Due Diligence</td> <td style="background-color: #2e7d32; color: white; padding: 10px; text-align: center; width: 33%;">Transition</td> <td style="background-color: #2e7d32; color: white; padding: 10px; text-align: center; width: 33%;">Service Delivery</td> </tr> </table> <table border="0" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <tr> <td style="border: 1px solid black; padding: 5px; width: 33%;"> <p style="text-align: center;"><b>Leadership</b></p> <ul style="list-style-type: none"> <li>• Business Case</li> <li>• Statement of Work</li> <li>• Transformation Roadmap</li> </ul> </td> <td style="border: 1px solid black; padding: 5px; width: 33%;"> <p style="text-align: center;"><b>Relationship</b></p> <ul style="list-style-type: none"> <li>• Communication</li> <li>• Customer Experience</li> </ul> </td> <td style="border: 1px solid black; padding: 5px; width: 33%;"> <p style="text-align: center;"><b>Governance</b></p> <ul style="list-style-type: none"> <li>• Executive</li> <li>• Operational</li> </ul> </td> </tr> </table> </div> <p style="text-align: center;"><i>Exhibit 3 – Program Management Processes</i></p> <p><b>Single Point of Contact</b>            A Program Manager will be assigned as the single point of responsibility directing all activities to ensure contract compliance and program success. This program manager will represent KST Data in all matters relating to the program including contractual, administrative, and technical issues. The program manager will communicate with VITA on requirements and status of activities, allocate the necessary resources, takes required personnel actions, and direct efforts of subcontractors and product suppliers to achieve the customer’s goals.</p> <p><b>Focus on Customer Satisfaction</b>            We understand that success depends on satisfying each and every customer. Our program activities will aim at meeting customer requirements and expectations. We will create an atmosphere of teamwork for VITA in which communication is open, honest, and continual, both among the KST Data members and between VITA management and end-users. More than any other single factor, this</p>	• Planning	• Escalation Management	• Quality Assurance	• Risk Management	• Change Management	• Continuous Improvement	• Measurement	• Knowledge Management		Due Diligence	Transition	Service Delivery	<p style="text-align: center;"><b>Leadership</b></p> <ul style="list-style-type: none"> <li>• Business Case</li> <li>• Statement of Work</li> <li>• Transformation Roadmap</li> </ul>	<p style="text-align: center;"><b>Relationship</b></p> <ul style="list-style-type: none"> <li>• Communication</li> <li>• Customer Experience</li> </ul>	<p style="text-align: center;"><b>Governance</b></p> <ul style="list-style-type: none"> <li>• Executive</li> <li>• Operational</li> </ul>
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	Requirements	A	B
			<p>sustained, frank communication is key to our ability to deliver quality service.</p> <p><b>Performance Monitoring and Tracking</b>  Our Program Manager will use formal procedures and best practices for monitoring program performance. The Program Manager will work closely with VITA to establish  Program milestones and monitor and track performance. Specific metrics to be tracked will be determined during Transition.</p> <p><b>Performance Measurement</b>  The KST Data Team believes strongly in measuring performance. Our philosophy is to measure at the required level to achieve optimum results. The KST Data management team will monitor metrics on a daily, weekly, and monthly basis to ensure we catch trends early and identify areas for improvement.</p> <p><b>Regular Status Reporting</b>  KST Data will adhere to the quality management principle of timely communications. Regular status reporting of program activities for the VITA program will be provided. Joint customer program reviews will be conducted on a scheduled basis. These reviews will serve the purpose of formally communicating program status, specific issues, recommended solutions and planned activities. They will also provide visibility and a venue for executive management interaction with program management. We see this opportunity to share information with our “key” customers. We believe these reviews will help keep VITA informed of our metric status and help understand what is going on in the environment.</p> <p>Stefan Mandanis – KST Director, Sales  Teresa Russell – KST Inside Sales  David Sprunger – KST IBM, Dell and Sun Technical Engineer  Johnny Archer – KST HP, Technical Engineer and Service Delivery Manager  Armando Tan – KST Operations  Mark Edson – KST VP, Sales</p>



	Requirements	A	B																						
5.	Will your firm have an account executive on this contract? Please provide details.	Y	<p>KST's Director of East Coast Sales, Stefan Mandanis, has the lead sales responsibility for VITA. KST Data will provide VITA with named regional sales and service personnel, along with Subject Matter Experts in the specific areas that VITA decides to engage KST, that will be supporting the contract, and also an inside sales and support team that is accessible via a toll free number, supported from 7am – 7pm daily. A more detailed account coverage model can be provided for your consideration.</p> <p>In addition, our partners ESI and PLANIT will have a primary account manager and additional account execs as needed. Both ESI and PLANIT have other account executives that currently do business with many state universities and local government organizations.</p>																						
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	<p>Our plan is to engage the various OEMs that we have strategic relationships with to develop marketing plans to promote their products, provide marketing support, create and deliver technical solutions to justify, and follow up on customer leads.</p> <p>Our team is committed to providing funding and marketing resources to support this contract. We can provide 'feet on the street resources' to meet with the various agencies and organizations, to educate the customer on the advantages of using the contract, and the tools that are available to them on using the contract.</p> <p>KST and PLANIT currently have 15 account executives focusing on Commercial, State, Local and Education across the Commonwealth.</p> <table border="1" data-bbox="704 1423 1528 1890"> <tbody> <tr> <td>▪ BAE Systems</td> <td>▪ Northrop Grumman Newport News Shipyard</td> </tr> <tr> <td>▪ Northrop Grumman / VITA</td> <td>▪ AMSEC</td> </tr> <tr> <td>▪ City of Newport News</td> <td>▪ City of Virginia Beach</td> </tr> <tr> <td>▪ City of Richmond</td> <td>▪ Colonial Williamsburg</td> </tr> <tr> <td>▪ County of Roanoke</td> <td>▪ Georgetown University</td> </tr> <tr> <td>▪ Hampton City Schools</td> <td>▪ Henrico County</td> </tr> <tr> <td>▪ Liberty University</td> <td>▪ Norfolk State University</td> </tr> <tr> <td>▪ Old Dominion University</td> <td>▪ Pittsylvania County Schools</td> </tr> <tr> <td>▪ Prince William County Public Schools</td> <td>▪ Sussex County Public Schools</td> </tr> <tr> <td>▪ University of Virginia</td> <td>▪ Virginia Commonwealth University</td> </tr> <tr> <td>▪ Virginia Community Colleges</td> <td>▪ Virginia Polytechnic</td> </tr> </tbody> </table>	▪ BAE Systems	▪ Northrop Grumman Newport News Shipyard	▪ Northrop Grumman / VITA	▪ AMSEC	▪ City of Newport News	▪ City of Virginia Beach	▪ City of Richmond	▪ Colonial Williamsburg	▪ County of Roanoke	▪ Georgetown University	▪ Hampton City Schools	▪ Henrico County	▪ Liberty University	▪ Norfolk State University	▪ Old Dominion University	▪ Pittsylvania County Schools	▪ Prince William County Public Schools	▪ Sussex County Public Schools	▪ University of Virginia	▪ Virginia Commonwealth University	▪ Virginia Community Colleges	▪ Virginia Polytechnic
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	Requirements	A	B												
			<p style="text-align: center;">Institute</p> <ul style="list-style-type: none"> <li>Washington and Lee University</li> </ul> <p style="text-align: center;"><i>Table 1 – Commercial, State, Local, and Education Executives</i></p> <p>Upon contract award, we will ensure that we have the right team in place to support any agency that would like to leverage the KST model and contract.</p>												
7.	Does your firm offer any product incentives, credits and or rebate programs? Please provide details.	Y	<p>KST agrees to extend a “Volume Rebate Plan” to encourage active usage of the contract agreement. The parties agree to negotiate details of the Plan within thirty-days (30) of formal award of an Agreement. At a high level, the plan provides the Commonwealth with a credit that may be used towards future purchases of equipment and is based on the following annual pre-tax net purchase schedule:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr style="background-color: #0000FF; color: white;"> <th style="text-align: left;">PURCHASE LEVEL</th> <th style="text-align: left;">REBATE PERCENTAGE</th> </tr> </thead> <tbody> <tr> <td>Less than \$4.9 million</td> <td>0%</td> </tr> <tr> <td>\$5 million to \$9.99 million</td> <td>0.5%</td> </tr> <tr> <td>\$10 million to \$14.99 million</td> <td>1.00%</td> </tr> <tr> <td>\$15 million to \$19.99 million</td> <td>1.25%</td> </tr> <tr> <td>\$20 million +</td> <td>1.50%</td> </tr> </tbody> </table> <p style="text-align: center;"><i>Table 2 – Annual Pre-Tax Purchase Schedule</i></p>	PURCHASE LEVEL	REBATE PERCENTAGE	Less than \$4.9 million	0%	\$5 million to \$9.99 million	0.5%	\$10 million to \$14.99 million	1.00%	\$15 million to \$19.99 million	1.25%	\$20 million +	1.50%
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\$15 million to \$19.99 million	1.25%														
\$20 million +	1.50%														

## 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	<p>The KST Data team will provide delivery and deployment data to VITA on a monthly basis that includes purchase information, types of systems, end user location, asset information (if available), property tag number (if available) on a per sector or location basis. We will work with VITA to prepare a standard template to present the information being requested. KST Data has a standard template, and would be open to work with VITA with any modifications requested.</p> <p>The KST Data team is already familiar with these reports and can</p>



provide them to VITA as requested, based on your specified intervals (weekly, monthly, and quarterly). Sample copies of the respective reports are attached:

**Example of Device Count Report –**

Shows the quantity and specific asset models as delivered, on behalf of each customer in the fulfillment of VITA Pos for the measured period of performance.

Sector	N-1 DT	N-2 DT	N-1 DT	N-2 DT	WS	N-2 M	N-2 Z	N-1 LT	N-2 LT	N-1 LT	N-2 LT	Tablet	Print	Mini	Advance	500W	15G	25G	17" CRT	19" CRT	
Corporate																					
VITA																					

*Exhibit 4 - Device Count Report*

**Example of History of Per Customer / Location Shipment Report (Monthly, Quarterly etc) -**



ASSET TAG NO	SERIAL NO	INVOICE NO	MODEL	DESCRIPTION	Status	Address	City	State
7400004	8M42428P	71857	519001	OC0-30030-001 HP ProLiant DL380 Rack Server	SHELLY W38711ACCT0918	3337 MEDICLON DRIVE LN 700	WYTHE	CA
7400005	8M42428P	71857	519001	OC0-30030-001 HP ProLiant DL380 Rack Server	SHELLY W38711ACCT0918	3337 MEDICLON DRIVE LN 700	WYTHE	CA
7400006	8M42428P	71857	519001	OC0-30030-001 HP ProLiant DL380 Rack Server	SHELLY W38711ACCT0918	3337 MEDICLON DRIVE LN 700	WYTHE	CA

*Exhibit 5 - Customer Location Shipment Report*  
**Example of Asset Serial Number Query Report (by PO, Ship to & Ship Date)**

SERIAL NUMBER	PO Number	SHIP DATE	PART NO	DESCRIPTION
720002389	001	10/1/2007 0:00	CT0-EMFAGAA-Y	HP PRO3500
720002389	001	10/1/2007 0:00	CT0-EMFAGAA-Y	HP PRO3500
720002389	001	10/1/2007 0:00	CT0-EMFAGAA-Y	HP PRO3500

*Exhibit 6 - Asset Serial Number Query Report*  
**Example of Spend by Product -**  
 In this report, we provide VITA with the spend dollars sorted by product, by customer and by each PO as delivered and shipped during the month being measured.



Exhibit 7 – Spend by Product

**Example of Delivery Activity Report (Shipment Details, Delivery Confirmation and Tracking Info) for PO Receiving Reconciliation**

Exhibit 8 – Delivery report for PO Receiving

**Example of Electronic Recycling Disposal Report**

In this report, we provide VITA with the amount of electronic recycling and disposal activities that we make on behalf of our customers, per PO basis. The type of devices that were ordered that



required eWaste payments. These are then used by VITA as part of its regulatory compliance reporting as needed to maintain its government reporting requirements.

Item No.	Date	Description	Purchase Order	Quantity	Price Per Unit	E-Waste Total
13D46-4231	03/17/07	HP 17 Laptop	CA 8-WASTE 8E7CY2D31 FEE	1	0.00	0.00
13D46-4236	03/17/07	HP 17 L10 Monitor	CA 8-WASTE 8E7CY2D31 FEE	2	0.00	0.00
13D46-4237	03/17/07	HP 17 L10 Monitor	CA 8-WASTE 8E7CY2D31 FEE	2	0.00	0.00
13D46-4238	03/17/07	HP 17 Laptop	CA 8-WASTE 8E7CY2D31 FEE	1	0.00	0.00
13D46-4239	03/17/07	HP 17 Laptop	CA 8-WASTE 8E7CY2D31 FEE	1	0.00	0.00
13D46-4240	03/17/07	HP 17 L10 Monitor	CA 8-WASTE 8E7CY2D31 FEE	1	0.00	0.00
13D46-4241	03/17/07	HP 17 L10 Monitor	CA 8-WASTE 8E7CY2D31 FEE	1	0.00	0.00
13D46-4242	03/17/07	HP 17 L10 Monitor	CA 8-WASTE 8E7CY2D31 FEE	1	0.00	0.00
13D46-4243	03/17/07	HP 17 L10 Monitor	CA 8-WASTE 8E7CY2D31 FEE	1	0.00	0.00
13D46-4244	03/17/07	HP 17 Laptop	CA 8-WASTE 8E7CY2D31 FEE	1	0.00	0.00
13D46-4245	03/17/07	HP 17 L10 Monitor	CA 8-WASTE 8E7CY2D31 FEE	1	0.00	0.00
13D46-4246	03/17/07	HP 17 Laptop	CA 8-WASTE 8E7CY2D31 FEE	1	0.00	0.00
13D46-4247	03/17/07	HP 17 Laptop	CA 8-WASTE 8E7CY2D31 FEE	1	0.00	0.00
13D46-4248	03/17/07	HP 17 Laptop	CA 8-WASTE 8E7CY2D31 FEE	1	0.00	0.00
13D46-4249	03/17/07	HP 17 Laptop	CA 8-WASTE 8E7CY2D31 FEE	1	0.00	0.00
13D46-4250	03/17/07	HP 17 Laptop	CA 8-WASTE 8E7CY2D31 FEE	1	0.00	0.00
13D46-4251	03/17/07	HP 17 Laptop	CA 8-WASTE 8E7CY2D31 FEE	1	0.00	0.00
13D46-4252	03/17/07	HP 17 Laptop	CA 8-WASTE 8E7CY2D31 FEE	1	0.00	0.00
13D46-4253	03/17/07	HP 17 Laptop	CA 8-WASTE 8E7CY2D31 FEE	1	0.00	0.00
13D46-4254	03/17/07	HP 17 Laptop	CA 8-WASTE 8E7CY2D31 FEE	1	0.00	0.00
13D46-4255	03/17/07	HP 17 Laptop	CA 8-WASTE 8E7CY2D31 FEE	1	0.00	0.00
13D46-4256	03/17/07	HP 17 Laptop	CA 8-WASTE 8E7CY2D31 FEE	1	0.00	0.00
13D46-4257	03/17/07	HP 17 Laptop	CA 8-WASTE 8E7CY2D31 FEE	1	0.00	0.00
13D46-4258	03/17/07	HP 17 Laptop	CA 8-WASTE 8E7CY2D31 FEE	1	0.00	0.00
13D46-4259	03/17/07	HP 17 Laptop	CA 8-WASTE 8E7CY2D31 FEE	1	0.00	0.00
13D46-4260	03/17/07	HP 17 Laptop	CA 8-WASTE 8E7CY2D31 FEE	1	0.00	0.00

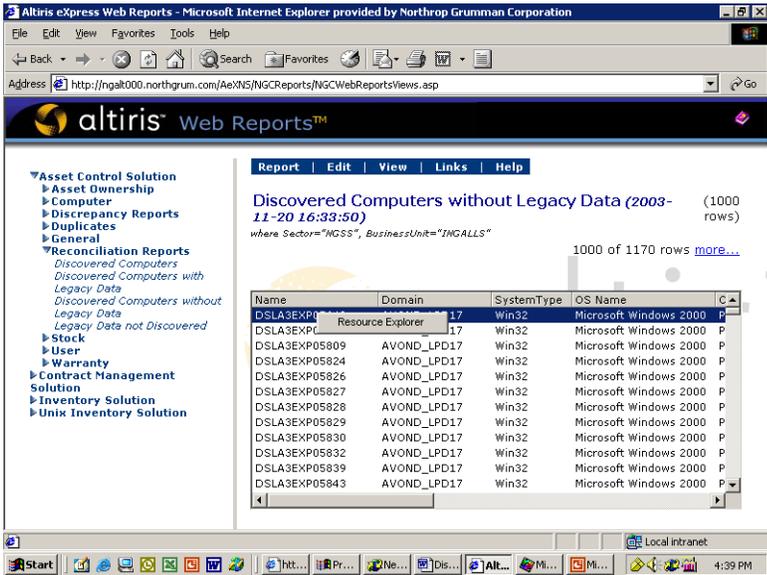
Exhibit 9 – Electronic Recycling Disposal Report

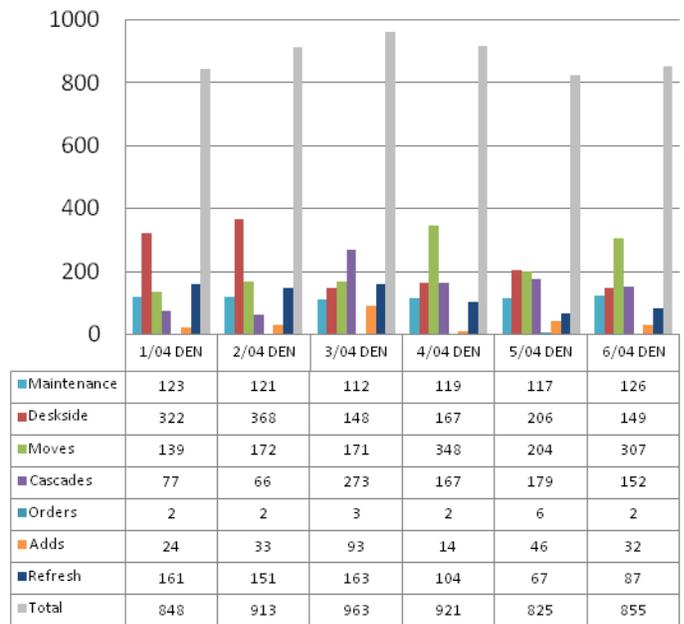
Example of Asset Tag / Serial Number Report by Customer

Item No.	Date	Description	Location
43 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
44 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
45 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
46 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
47 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
48 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
49 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
50 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
51 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
52 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
53 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
54 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
55 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
56 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
57 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
58 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
59 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
60 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
61 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
62 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
63 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
64 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
65 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
66 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
67 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
68 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
69 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
70 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
71 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
72 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
73 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
74 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
75 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
76 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
77 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
78 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
79 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
80 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
81 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
82 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
83 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
84 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
85 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
86 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
87 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
88 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
89 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
90 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
91 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
92 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
93 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
94 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
95 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
96 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
97 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
98 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
99 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO
100 AA 137979	4/7/2006	HP 17 Laptop	EL SEGUNDO

Exhibit 10 – Asset Tag/Serial Number Report

If a VITA customer is interested in assistance with information feeds that can be used to update their internal asset database (i.e. Altiris, Microsoft SMS, Unicenter, Tangram). We can provide them with the regular data feed based on shipments or provide a service to help them deploy and maintain an Altiris xPress Asset

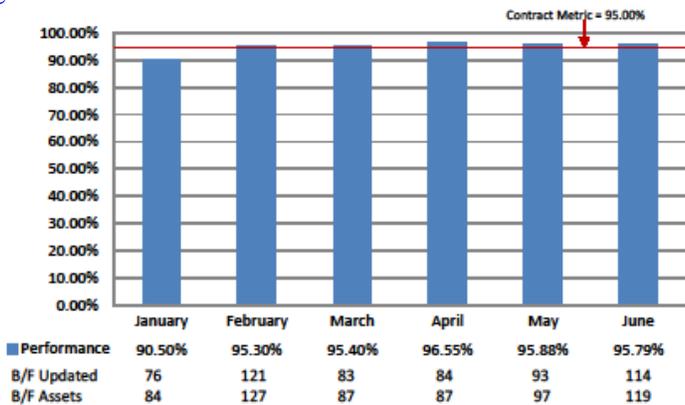
			<p>Management Database.</p> <p><b>Example of Altiris Asset Inventory Report by Customer</b></p>  <p><i>Exhibit 11 – Altiris Asset Inventory Report by Customer</i></p>
<p>2.</p>	<p>Does your firm maintain an electronic service log that is available to users on specific computer hardware? Please provide examples.</p>	<p>Y</p>	<p>KST Data manages a service log hosted on Microsoft SQL Server for all of the assets that we sell to our customers. This database includes all of the assets and related information as they are captured during the Integration and Configuration stage. It is available to external customers to query based on pre-agreed and pre-defined lookup capabilities. This allows customers to access their own data using standard report tools such as Crystal Reports.</p> <p>KST Data also provides the same capability on all of the Incident and Warranty Service Activities as logged via the KST Help Desk. This allows our customers to review service history, trends, based on their specific assets, trouble tickets, and related reports.</p> <p><b>KST Services Activity Summary Report (by Location):</b></p> <p>This report shows all of the contracted services that we are providing to a customer based on the category of services (Installs, Moves, Break Fix, Cascades etc)</p>



*Exhibit 12 – KST Services Activity Summary Report*

**KST Warranty Repair Summary Report (by Location):**

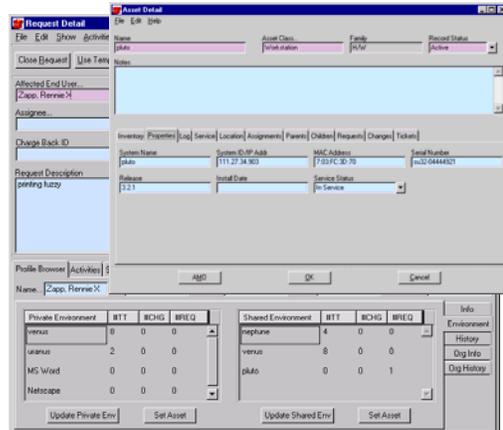
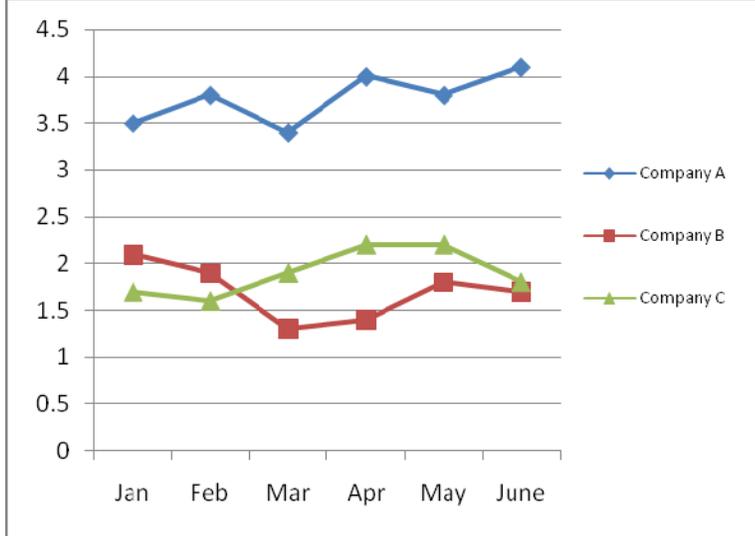
This report shows all of the warranty repair services that we are providing to a customer and if they were performed within the agreed service level metrics:



*Exhibit 13 – KST Warranty Repair Summary Report (by location)*

**KST Asset Detail Report (by Location):**

KST customers can initiate their own queries based on agreed upon access rules for their internal data reconciliation, or the results can be provided as part of a monthly or quarterly report sent to the customer.

			 <p style="text-align: center;"><i>Exhibit 14 – KST Asset Detail Report (by location)</i></p> <p>KST Data Trend Analysis comparison report from multiple customers</p>  <p style="text-align: center;"><i>Exhibit 15 – KST Data Trend Analysis</i></p>
<p>3.</p>	<p>Does your firm provide any additional reports that would be an added value to the Commonwealth? Please describe and provide examples.</p>	<p>Y</p>	<p>KST Data manages all of our information via SQL Database. We manage and track all of our activities, transactions and business via one common solution tool from our procurement, accounting, services tracking, and customer information management. This allows us with the flexibility to generate standard and custom reports for you based on your data requirements. We can provide you with all of the standard reports that we had previously</p>



described, along with design new report queries that certain customers have specific unique requirements. This highly customizable capability allows our customers to measure almost each activity in the lifecycle.

In general, we can classify the reports that we generally provide our customers in the following categories:

- Purchase and Transaction History
- Asset Information (Model, Serial, Configuration, Install Location)
- Services Activity (Installation, De-installation, Moves, Adds)
- Warranty Support Activity
- Trends (Procurement, Services)
- Recommendations on ‘Product Standards’
- Cost Savings Potential
- Product Information Based on Delimiters (i.e. Age, Type)

These reports can be as generic as all assets of a specific model and type, the price paid for them, and the locations that bought them during a specific time. An example is a data dump of all HP dc5700 Assets delivered to a location starting January 2007:

*Exhibit 16 – HP dc5700 Assets*

This next report is an example of a ‘Cost Savings Tracker’ where we help our customers manage their cost savings on the product prices that they pay before and after contract award:



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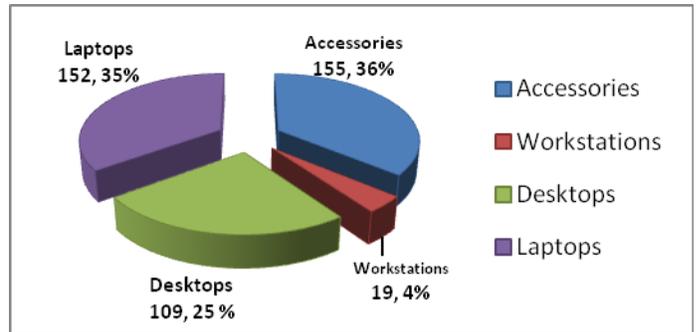
*Exhibit 17 – Cost Savings Tracker*

### 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	<p>KST Data would assign a dedicated Program Management team to support the VITA customer. The core part of the PM Team’s primary responsibility are to meet with the customer on a pre-agreed basis to report on:</p> <p><b>1. Example of History of Activity (Procurement Info, details)</b></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>Intellistation</th> <th>Total</th> <th></th> </tr> </thead> <tbody> <tr> <td>621910U (DSP Std.)</td> <td>M-Pro</td> <td>79</td> </tr> <tr> <td>621938U</td> <td>M-Pro</td> <td>11</td> </tr> <tr> <td>622138U / 622136U (DSP Std.)</td> <td>Z-Pro 2.8</td> <td>52</td> </tr> <tr> <td>6221 Custom</td> <td>Z-Pro 2.8 / 3.0</td> <td>27</td> </tr> </tbody> </table> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>Netvista</th> <th>Total</th> <th></th> </tr> </thead> <tbody> <tr> <td>830741U (N-1)</td> <td>P4-2.4 Ghz</td> <td>230</td> </tr> <tr> <td>830761U (N)</td> <td>P4-2.5 Ghz</td> <td>133</td> </tr> <tr> <td>830781U (N+1)</td> <td>P4-2.6 Ghz</td> <td>46</td> </tr> <tr> <td>8307E1U (N+2)</td> <td>P4-3 Ghz</td> <td>33</td> </tr> </tbody> </table> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>ThinkPac</th> <th>Total</th> <th></th> </tr> </thead> <tbody> <tr> <td>236681U (N-1)</td> <td>P4-1.8 Ghz</td> <td>51</td> </tr> <tr> <td>236686U (N)</td> <td>P4-2.0 Ghz</td> <td>205</td> </tr> </tbody> </table>	Intellistation	Total		621910U (DSP Std.)	M-Pro	79	621938U	M-Pro	11	622138U / 622136U (DSP Std.)	Z-Pro 2.8	52	6221 Custom	Z-Pro 2.8 / 3.0	27	Netvista	Total		830741U (N-1)	P4-2.4 Ghz	230	830761U (N)	P4-2.5 Ghz	133	830781U (N+1)	P4-2.6 Ghz	46	8307E1U (N+2)	P4-3 Ghz	33	ThinkPac	Total		236681U (N-1)	P4-1.8 Ghz	51	236686U (N)	P4-2.0 Ghz	205
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2653R3U (N+2)	A31P P4-2.0 Ghz	44

*Table 3 – History of Activity*



*Exhibit 18 – Laptops, Accessories, Workstations, Servers*

**2. New Product Transitions**

We would deliver the new product roadmap from our OEMs based on new offerings that would be available in the next 3 to 6 months, to work with the VITA customer in formulating a plan to test and evaluate the new products based on their applicability to the respective customer. As part of this planning activity, we would review refresh plans, imaging and software requirements, support requirements needed to support the products.

These meetings are needed so that KST can reserve and maintain the proper level of current and upcoming new models to satisfy the projected requirements of the customers.

KST will distribute OEM Transition Planning (TP) documents to assist VITA refresh and IT team leads in preparing for model transitions. This monthly document provides detailed product roadmaps, including planned transitions six months into the future, with product trends nine months out. The documents include product compatibility information, new product highlights, preloads and alliances, as well as channel and promotions.



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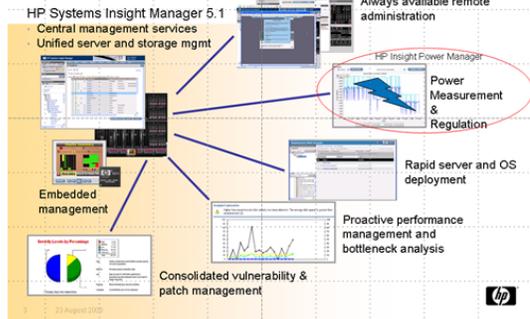


			<p>KST’s VITA offering will provide “workhorse” models within the OEM’s product lines that offer the same system (system board on down to the specific component level) for at least a nine-month period so that valued customers, such as VITA, may realize global product stability. This concept is a key strength for ensuring that a multi -OEM environment can be successful. KST will work with VITA to forecast consistent models with the longest lifecycle possible for VITA's rollout requirements based on market technology information from the OEM and the component manufacturers such as Intel (CPU), Seagate (Drives), etc.,. As faster processors, larger hard drives, and more efficient memory become the industry standard, KST will have to communicate with VITA on plans to refresh its line of computers to ensure our customers always have access to the latest technology.</p> <p>KST understands while these changes are necessary, they also create challenges for VITA. With strictly defined product standards, many of our customers need a crisp picture of where KST, in working with the OEMs, is going with our product lines in order to effectively manage their purchasing strategy. The objectives of our product transition plan process are to:</p> <ul style="list-style-type: none"> <li>▪ Communicate our future product directions and plans.</li> <li>▪ Document roadmaps to show the migration from current platforms to future products.</li> </ul> <p><b>3. OEM Briefings</b></p> <p>As part of the regular briefings that we present to the customer, we would include new products (complimentary and supplementary) that might be applicable to the customer. This would include product, services, software (i.e. management options) etc that can provide ‘incremental’ value to the customer in using, managing and maintaining their assets. This can also include training on specific tools, topics of</p>
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interest.

### Managing with efficient tools

Optimizing from chip to chiller



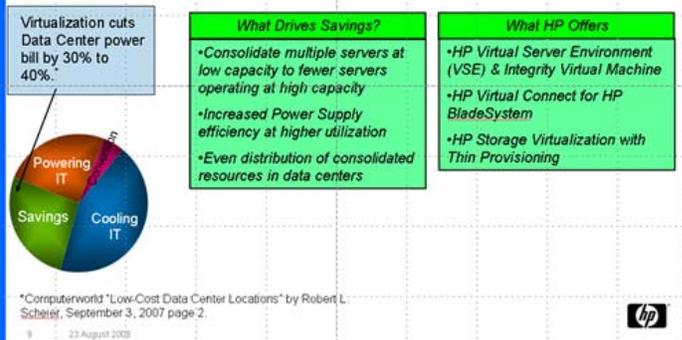
*Exhibit 21 – Management Options*

#### 4. Recommended Solutions (Value Add)

As part of the program review and briefing, we would also talk to the customer about new trends, technology, areas of potential cost savings, consolidation adoption, business value that we can provide to the customer:

### Optimizing Through Virtualization

Optimizing from chip to chiller



*Exhibit 22 – Optimizing through Virtualization*

		<div data-bbox="812 325 1510 850"> <h3>Energy-saving HP BladeSystem</h3> <p>Optimizing from chip to chiller</p> <p>HP BladeSystem reduces Power, Cooling, &amp; space Costs by 38%.</p> <p>Active Cool Fan 66% Less Power</p> <p>PARSEC "Make Every Gram Of Air Count"</p> <p>Dynamic Power Saver Over 90% Efficient</p> <p>Power &amp; Cooling Management</p> <p>4 23 August 2009 *Site Nomine Associates Feb 15, 2007</p> </div> <p data-bbox="893 871 1429 913"><i>Exhibit 23 – Energy-saving HP Blade System</i></p> <p data-bbox="803 976 1518 1092">KST Data is focused on helping our customers in all aspects of the product lifecycle, and can provide the related services that affect each phase of this lifecycle:</p> <div data-bbox="803 1123 1534 1533"> <table border="1"> <thead> <tr> <th>Planning</th> <th>Deployment</th> <th>Maintenance</th> </tr> </thead> <tbody> <tr> <td> <ul style="list-style-type: none"> <li>Assessment</li> <li>Program Planning and Design</li> <li>Integration Planning</li> <li>Performance Management</li> <li>Standards Management</li> <li>Image Development</li> </ul> </td> <td> <ul style="list-style-type: none"> <li>Custom Hardware Integration</li> <li>Software Image Integration</li> <li>Asset Tagging and Labeling</li> <li>Pre-Delivery and Staging</li> <li>Installation and Migration</li> <li>Recovery and Disposition</li> </ul> </td> <td> <table border="1"> <thead> <tr> <th>Asset Management</th> <th>Service Desk</th> <th>Field Service</th> </tr> </thead> <tbody> <tr> <td> <ul style="list-style-type: none"> <li>Asset Discovery</li> <li>Asset Tracking</li> <li>Software Use Analysis</li> <li>End-of-Life Reporting</li> </ul> </td> <td> <ul style="list-style-type: none"> <li>Multi-Vendor Hardware Technical Support</li> <li>Commercial Off-the-Shelf Software Support</li> <li>Custom Software Support</li> <li>Password Management</li> <li>Field Service Dispatch Management</li> <li>Remote Desktop Control and Online Tools</li> </ul> </td> <td> <ul style="list-style-type: none"> <li>Hardware Break/Fix Support</li> <li>Deskside Support</li> <li>Install/Move/Add/Change</li> <li>VIP Support</li> <li>Depot Repair Services</li> </ul> </td> </tr> </tbody> </table> </td> </tr> </tbody> </table> <p data-bbox="974 1564 1347 1606"><i>Exhibit 24 – Product Lifecycle</i></p> <p data-bbox="795 1617 1534 1879">The end to end supply chain model that KST has developed can be leveraged on an end to end basis in support of the requirements for each agency across the Commonwealth. The extent to which an agency wished to leverage KST's services offerings will be driven by the specific needs of the agency. Below is our view of the end to end model that drives the KST solutions.</p> </div>	Planning	Deployment	Maintenance	<ul style="list-style-type: none"> <li>Assessment</li> <li>Program Planning and Design</li> <li>Integration Planning</li> <li>Performance Management</li> <li>Standards Management</li> <li>Image Development</li> </ul>	<ul style="list-style-type: none"> <li>Custom Hardware Integration</li> <li>Software Image Integration</li> <li>Asset Tagging and Labeling</li> <li>Pre-Delivery and Staging</li> <li>Installation and Migration</li> <li>Recovery and Disposition</li> </ul>	<table border="1"> <thead> <tr> <th>Asset Management</th> <th>Service Desk</th> <th>Field Service</th> </tr> </thead> <tbody> <tr> <td> <ul style="list-style-type: none"> <li>Asset Discovery</li> <li>Asset Tracking</li> <li>Software Use Analysis</li> <li>End-of-Life Reporting</li> </ul> </td> <td> <ul style="list-style-type: none"> <li>Multi-Vendor Hardware Technical Support</li> <li>Commercial Off-the-Shelf Software Support</li> <li>Custom Software Support</li> <li>Password Management</li> <li>Field Service Dispatch Management</li> <li>Remote Desktop Control and Online Tools</li> </ul> </td> <td> <ul style="list-style-type: none"> <li>Hardware Break/Fix Support</li> <li>Deskside Support</li> <li>Install/Move/Add/Change</li> <li>VIP Support</li> <li>Depot Repair Services</li> </ul> </td> </tr> </tbody> </table>	Asset Management	Service Desk	Field Service	<ul style="list-style-type: none"> <li>Asset Discovery</li> <li>Asset Tracking</li> <li>Software Use Analysis</li> <li>End-of-Life Reporting</li> </ul>	<ul style="list-style-type: none"> <li>Multi-Vendor Hardware Technical Support</li> <li>Commercial Off-the-Shelf Software Support</li> <li>Custom Software Support</li> <li>Password Management</li> <li>Field Service Dispatch Management</li> <li>Remote Desktop Control and Online Tools</li> </ul>	<ul style="list-style-type: none"> <li>Hardware Break/Fix Support</li> <li>Deskside Support</li> <li>Install/Move/Add/Change</li> <li>VIP Support</li> <li>Depot Repair Services</li> </ul>
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			<p style="text-align: center;"><b>Supply chain and service delivery integration drives down TCO</b></p>
<p>2.</p>	<p>Does your firm provide installation services? Please provide details.</p>	<p>Y</p>	<p>KST has a full breadth of services that are available to our clients, based on the specific needs of the organization. KST delivers these services using our own resources along with our strategic partners that we use in providing national geographic presence, based on customer’s service requirements. KST is teamed with several services partners that can provide local resources to provide a full end-to-end one-stop solution.</p> <p>Below is the end to end support model that KST has developed for our clients. It will be up to each agency to decide the extent to which they want to leverage our services alternatives.</p> <p style="text-align: center;"><b>Supply chain and service delivery integration drives down TCO</b></p> <p>KST services offerings include, but are not limited to the</p>



		<p>following:</p> <p><b>Server Services</b></p> <ul style="list-style-type: none"> <li>• Acquisition and ongoing support of the server environment</li> <li>• Equipment evaluation</li> <li>• Order placement and tracking</li> <li>• Post-support</li> <li>• User training</li> <li>• Server strategies</li> <li>• Governance models</li> <li>• Deployment and support of server solutions</li> <li>• Personalized ordering portal</li> <li>• Asset Management</li> <li>• Customizable catalogue of offerings</li> <li>• Streamlined web ordering solution</li> <li>• Delivery of a wide range of OEM products</li> <li>• Asset Tagging</li> <li>• Imaging</li> </ul> <p><b>Maintenance Support Services</b></p> <ul style="list-style-type: none"> <li>• Preventive monitoring and maintenance</li> <li>• Diagnostic and support activities</li> <li>• e-mail, live chat, telephone, and remote delivery</li> <li>• Hot on-site sparing</li> <li>• Remote depot support</li> <li>• Warranty reimbursement</li> </ul> <p><b>Industry Infrastructure Services</b></p> <ul style="list-style-type: none"> <li>• Lower cost model for managing the infrastructure needs of our industry specific clients</li> <li>• Unique solutions to eliminate waste</li> </ul> <p><b>Network Services</b></p> <ul style="list-style-type: none"> <li>• Installation</li> <li>• Configuration</li> <li>• VOIP</li> <li>• Adds/Moves/Changes</li> <li>• Asset Management</li> <li>• Off-the-shelf, customized, or 'On Demand' network solutions</li> <li>• Unique financial and flexible service models</li> </ul> <p><b>Server and Storage Solutions</b></p>
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		<ul style="list-style-type: none"> <li>• Installation</li> <li>• Configuration</li> <li>• Wiring</li> <li>• Deployment</li> <li>• Asset Management</li> <li>• Develop and integrate support models</li> <li>• Buffer capacity on datacenter floor</li> <li>• “On Demand” offerings</li> <li>• Financial offerings</li> </ul> <p><b>Installs-Moves-Adds-Changes</b></p> <ul style="list-style-type: none"> <li>• Transitional and evaluation equipment</li> <li>• Experienced and bonded personnel</li> <li>• Set up, move, integrate, or localize your environment</li> <li>• Planning, monitoring, and implementing large scale refresh projects</li> <li>• Ongoing maintenance and replacement of client assets</li> <li>• Procurement and maintenance to match existing environment</li> <li>• Upgrades to state-of-the-art equipment</li> <li>• Processes to ensure information is transitioned to the new system</li> <li>• Pre-field planning to verify telephony and data capability as well as furniture requirements</li> <li>• Coordination, scheduling, and implementation of a move</li> <li>• Post-support</li> <li>• End-user training for new technology</li> </ul> <p><b>Asset Tracking</b></p> <ul style="list-style-type: none"> <li>• Discovery auditing</li> <li>• Full and complete asset registry inclusive of chipset details, serial numbers, software versions, model numbers, user information, and asset numbers.</li> <li>• Licensing compliance</li> <li>• Application evaluation and license recovery</li> <li>• Identification and elimination of unauthorized or unused products and software</li> </ul> <p>Additionally, PLANIT, as one of our services partner for this response provides full service installation and support. PLANIT has a team of service technicians throughout the Commonwealth of Virginia. PLANIT coordinates all</p>
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			<p>installations using automated tools which schedules and tracks installations from beginning to end.</p> <p>PLANIT has facilitated larger installation projects using a three phased approach:</p> <ul style="list-style-type: none"> <li>• Scouting (discovery phase)</li> <li>• Migration (main installation phase)</li> <li>• Disposition (the secure removal and recycling of the replaced or legacy assets)</li> </ul>
3.	Is your firm willing to commit to service-levels agreements? If so, please refer to Appendix A.	Y	<p>KST Data would be willing to commit to service level agreements that include financial contract award / decrement language to ensure contract compliance. We have edited the table provided in the RFP to outline our recommended SLA's for VITA's consideration. Our support and maintenance support offerings include:</p> <ul style="list-style-type: none"> <li>▪ <b>7x24 Service Call Initiation (Call Center)</b> <ul style="list-style-type: none"> <li>○ (800) Phone #, Web Based Ticket / Portal Connection</li> </ul> </li> <li>▪ <b>Automated Service Call Escalation</b> <ul style="list-style-type: none"> <li>○ Management &amp; CCC notified periodically for unresolved calls</li> </ul> </li> <li>▪ <b>Asset Management</b> <ul style="list-style-type: none"> <li>○ Asset tool maintains customer profiles (equipment details, SLA, contacts, locations etc.)</li> <li>○ Captures &amp; tracks all service activity data</li> <li>○ Web Based Customer Call tracking</li> </ul> </li> <li>▪ <b>Service Call Reporting</b> <ul style="list-style-type: none"> <li>○ SLA and Trend Reports</li> <li>○ OEM Platform/Product Performance</li> </ul> </li> </ul>

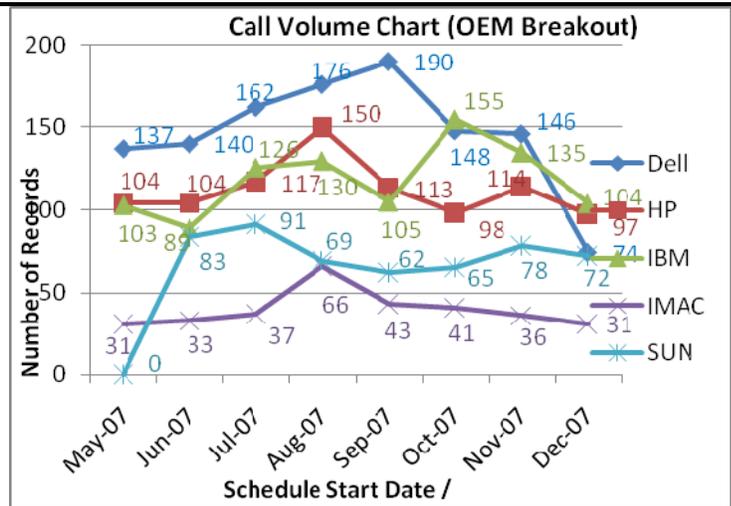


Exhibit 25 – Call Volume (OEM Breakout)

**Primary OEMs that we can provide Service Level Agreements are:**

UNIX®	Intel	NETWORK EQUIPMENT	NETWORK EQUIPMENT
<ul style="list-style-type: none"> <li>• SUN®</li> <li>• IBM®</li> <li>• P Series®</li> <li>• RS/6000®</li> <li>• HP 9000®</li> <li>• Compaq</li> <li>• Alpha® (VAX®)</li> </ul>	<ul style="list-style-type: none"> <li>• HP®</li> <li>• (Compaq)</li> <li>• Dell®</li> <li>• IBM®</li> </ul>	<ul style="list-style-type: none"> <li>• Cisco®</li> <li>• Nortel®</li> </ul>	<ul style="list-style-type: none"> <li>• STK®</li> <li>• Net App®</li> <li>• EMC Clarion®</li> <li>• ADIC®</li> <li>• ATL®</li> </ul>

Exhibit 26 – Primary OEMS

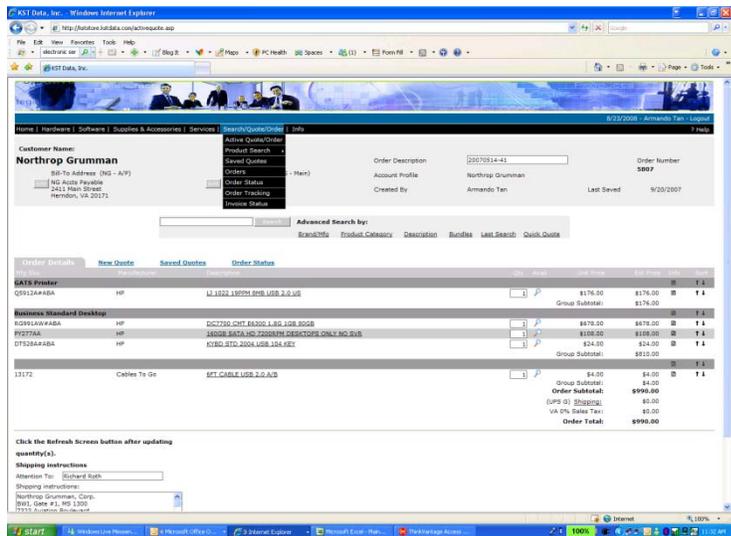
Your dedicated Technical Services Focal Point will be responsible for:

- Proactive technical support planning
  - Identify customer hardware, service & support opportunities
  - Match hp support alternatives with customer needs

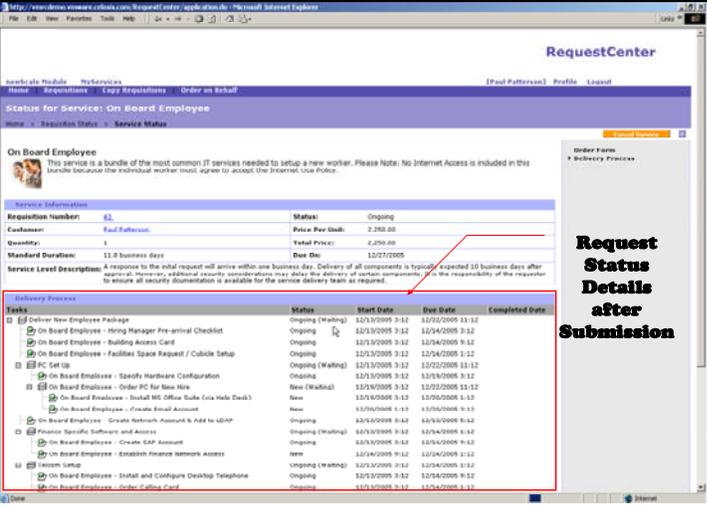


			<ul style="list-style-type: none"> <li>o Recommend appropriate training to Customer</li> <li>▪ Facilitate post-sale issues</li> <li>o Point of ownership on non-standard support issues</li> </ul>
4.	For security reasons, will your firm allow the user to keep a failed hard drive while receiving a new hard drive that is covered under warranty? Please provide details and pricing if necessary.		<p>KST Data is familiar with this requirement. KST can provide and deliver support contract and optional ‘uplifts’ that will allow customer to keep defective drives that fail during warranty or maintenance contract period. Our drive retention service program is available for all servers, laptops, workstations and servers. It is available as uplift per system. Typical price range is between \$20 - \$100 per system for the first 3 years.</p> <p><b>Defective Media Retention (DMR)</b> allows Customers to maintain possession of a failed disk drive component on which their sensitive data is stored.</p> <p>Customers are responsible for destroying the retained defective disk and/or ensuring that sensitive data is destroyed or remains secure.</p> <p>The customer must provide us with the serial number of the system and defective disk. Our database system will be the source of validation that the equipment was procured with the <b>DMR</b> support uplift.</p>
5.	Does your firm provide in-house quality assurance and testing processes for all hardware? Please provide details.		<p>Yes. Following the configuration of each server, a rigorous testing process is used to ensure that each device is working as expected. If during the QA process, a device is not working as expected, the device will be removed from the line to determine the necessary corrective action.</p>
6.	Do your service and maintenance technicians have and maintain current industry certifications? Please provide details and types of certifications.		<p>Yes. KST and overall team partners have certified technicians that are required to maintain a variety of industry certifications to include, but are not limited to: A+ Certifications, Microsoft and Cisco Certifications, Hewlett Packard, Lenovo, Dell and IBM Certification to list a few.</p>
7.	If you not the manufacturer or OEM certified to service/repair		<p>The KST Team is certified on all proposed OEM solutions.</p>



	units, have you partnered with an organization that is OEM certified for the devices that you are proposing? Please provide details.		
8.	Does your firm have an in-house order tracking system that can be accessed 24x7 by a user? Please provide details.	Y	<p>Yes. KST Data has the capability to allow all customers that place their orders via our on line web catalog to check the status on their orders, and obtain associated tracking information. The order details web page will include tracking and link to the carrier for all orders that have shipped. Orders that have not shipped will show a projected ETA ship date.</p>  <p><i>Exhibit 27 – Orders Details Web Page</i></p> <p>Dell orders placed via KST will be linked to the Dell Web Order Status Page for product delivery status:</p>



			 <p style="text-align: center;"><i>Exhibit 28 – Dell Web Order Status Page</i></p>
9.	Does your firm have the ability to deliver large quantities of equipment to multiple locations? Please describe your firm’s process and experience including delivery time and scheduling procedures.	Y	<p>Yes. KST Data, in conjunction with our service providers has its own trucks and can deliver large quantities of equipment within a matter of days to any location in Virginia. KST currently manages a substantial inventory of assets in our Virginia based warehouses, and can ensure that pre-forecasted or requirements that have defined need dates are available and staged in our VA based warehouses, that can be delivered to multiple locations. We have an ongoing contract with a local truck delivery provider (Dynamex <a href="http://www.dynamex.com">www.dynamex.com</a>) that maintains a fleet of over trucks in the VA corridor to deliver for us within VA.</p> <p>KST Data’s have full access to staging product inventory in several warehouses in Virginia. These warehouses include 100,000 square foot facility in Chantilly and also a smaller one in Virginia Beach Orders placed with processed and scheduled for delivery in our automated order entry system. Delivery times and scheduling is determined and outlined in our Customer (SLA’s) Service Level Agreements. Typical delivery service for products in stock is 1 – 2 business days from order placement.</p>
10.	Does your firm have a return policy? Please provide details.	Y	KST Data offers a standard returns policy which is not specific to any one manufacturer. Please see the following “KST Data Returns Policy” that covers the stock balancing process. Basically, you may return product (up to 30 days



			<p>from purchase) that is in restockable condition, but not to exceed a pre-negotiated percentage of your monthly purchase volume.</p> <p>A copy of our standard return policy is provided for your review. Please note that we also customize and create custom return policy based on the products that VITA is standardized on as it relates to the OEMs and product standards that the customers purchase, to reflect better return privileges that might be available to VITA. Our partner PLANIT has an RMA (Return Materials Process. A return authorization number is issued to a customer and the materials are either pickup up via our company trucks or by a common carrier issued call tag. Once received at PLANIT all RMA equipment and materials are processed in our Order Entry system and a replacement or a credit is issued to the customer depending on the order requirements.</p>
11.	Does your firm charge a re-stocking fee on returned equipment? Please provide details.	Y	<p>KST has provided the information on our response to the previous question on Return Policy. Additional information and details can be provided as it relates to specific OEM's return policies, as they might be slightly different.</p>
12.	Does your firm offer IT equipment disposal and recycling services? Please provide details.	Y	<p>The KST Data team, including our partners (Dell, HP, IBM, Sun, ESI, Planit and Maintech / Volt) offers a robust suite of asset disposition services. These solution that we refer to as 'Asset Recovery Solutions' include buyback and disposal options for your retired IT and other electronics equipment, such as PC's, monitors, printers, fax machines, MFPs, and servers. Our methods ensure safe and proper disposition of retired equipment. You can benefit from efficiencies in our documented processes developed from more than twenty (20) years of experience reselling and disposing of our own leasing portfolio as well as several OEM's retired IT equipment.</p> <p>We have years of global experience in refurbishment, remarketing and disposition of IT equipment, coupled with our financial strength and contractual protections, will ensure your disposition goals are met. As a team, we have focused its energies over the years in not only exceeding all global environmental regulations, but in minimizing the cost of asset disposition. This two pronged approach leads to our low cost</p>



		<p>and fully compliant offerings that utilize the OEM’s best practices to achieve efficiencies and reduce the hassle commonly associated with asset disposition. A successful disposition strategy requires the flexibility to respond to various situations based on factors such as the age and type of device requiring disposition. In response to this our team offers our clients several disposition options including;</p> <ul style="list-style-type: none"> <li>▪ Fixed Price Buyback</li> <li>▪ Pre-negotiated asset values based on date of return to one of our facilities.</li> <li>▪ Receive payment for assets within 45 days while we shoulder the risk of reselling.</li> <li>▪ Revenue Sharing Agreements</li> <li>▪ Employee Surplus Re-purchase programs</li> <li>▪ Consignment arrangement allows clients to take advantage of IBM’s remarketing and service capabilities.</li> <li>▪ Flat Fee Value Program</li> <li>▪ Further reduces the hassle of disposition by providing a simple per asset fee for buyback, disk overwrite and logistics services.</li> <li>▪ Certified Destruction based on an agreed upon compliance process</li> <li>▪ Provides environmentally sound disposal for assets that no longer have value.</li> </ul> <p><b>Optional Value Added Services:</b></p> <ul style="list-style-type: none"> <li>▪ Certified Data Destruction - We will provide disk overwrite on hard disk drives in compliance with Department of Defense 5220.22-M 3 pass standards.</li> <li>▪ Higher levels of disk overwrite also available.</li> <li>▪ Packaging and secure transportation services.</li> <li>▪ Moving existing surplus equipment at one site, and being able to move / migrate it to another site that might still have use for the equipment.</li> <li>▪ Government regulation compliant asset retirement and disposal services.</li> </ul>
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		<p>KST Data has been actively involved in performing similar services in public sector and government customers such as our IT Services work with BAE Systems, NG/VITA – Executive Agencies. JPL, NASA, Lockheed Martin, University of California, County of Los Angeles. In these contracts, we had to deliver processes that comply with the government property management and disposal requirements.</p> <p>KST also has existing teaming agreements that allow us to work with third-party ITAD (IT Asset Disposal) providers such as IBM Global Asset Recovery Services and Dell Solutions Group if we need more advanced data security services while European companies rate requirements or to meet certain regulatory mandates, such as the Waste Electrical and Electronic Equipment Directive (WEEE).</p> <p>Our team is familiar and have created our asset tracking and disposal processes that reflect and comply with Government regulation 52.245-1 where it defines and specifies how we account and provide for the incorporation of the right Policies and procedures for providing Government property to contractors, contractors’ use and management of Government property, and reporting, redistributing, and disposing of contractor inventory.</p> <p><b>“Government-furnished property”</b> means property in the possession of, or directly acquired by, the Government and subsequently furnished to the Contractor for performance of a contract.</p> <p><b>“Government property”</b> means all property owned or leased by the Government. Government property includes both Government-furnished and Contractor-acquired property.</p> <p>KST Data has been proactively developing our practice, reviewing and being up to date on government mandates and regulations in this area. We are continuously monitoring and improving our practice based on emerging and changing</p>
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			<p>government standards. Our solution ARC center are ISO 9001 and 14001 certified and the site managers area required to have attended the National Property Management Association training, and subsequent refresher courses. As part of our practice, we have designed our program practice to support and be in compliance with:</p> <ul style="list-style-type: none"> <li>▪ End-of-life goals as established under E.O. 13101, “Greening the Government”</li> <li>▪ Department of Defense Specification 5220-22-M Data Wipe Destruction</li> </ul> <p>Some of the standard documentation that we provide our customers include:</p> <ul style="list-style-type: none"> <li>▪ <b>Certificates of Erasure</b></li> <li>▪ <b>Certificates of Destruction</b> (Department of Defense Specification 5220-22-M)</li> <li>▪ <b>Certificates of Recycling</b></li> </ul>
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>KST Data is committed to offering only Energy Star 4.0 compliance products as part of our recommended product standards to the VITA customer. Our current policy is to provide EPEAT Gold Certified products for Servers and Workstations, and EPEAT Silver Certified products for notebooks and tablets.</p> <p>We can provide the most current list of Energy Star systems that we would offer from the various OEMs that we are authorized to resale and support.</p>

**Exhibit C for Dell**

Intel/ AMD Based

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

	Unit Price (Provide a link to public site to verify this cost)	Discount % from Unit (see note #1 at bottom)	Unit Discounted Price
<b>A. Tower Server Offering</b>			
(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 505857805			
<b>Total Tower Offering</b>	<b>\$5,362</b>	<b>20%</b>	<b>\$4,289.60</b>
<b>B. Rack Server Offering</b>			
(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 505858837			
<b>Total Rack Offering</b>	<b>\$9,895</b>	<b>20%</b>	<b>\$7,916.00</b>
<b>C. Blade Server Offering</b>			
(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 505859859			
<b>Total Blade Offering</b>	<b>\$19,111</b>	<b>20%</b>	<b>\$15,288.80</b>

<b>D. Optional Services (see note #2 at bottom</b>	<b>Unit Price (Provide a link to public site to verify this cost)</b>	<b>Discount % (see note #3 at bottom)</b>	<b>Unit Discounted Price</b>	
Onsite Installation per hour (regardless of server type)	\$ 160.00	3%	\$155.20	*see note below
Data Migration per hour (regardless of server type)	\$ 160.00	3%	\$155.20	*see note below
Imaging per hour (regardless of server type)	\$ 160.00	3%	\$155.20	*see note below
Configuration per hour (regardless of server type)	\$ 160.00	3%	\$155.20	*see note below
Tower Server Cost for 4th year Onsite Parts and Labor Warranty (Next Business Day)	\$ 399.00	3%	\$387.03	
Tower Server Cost for 5th year Onsite Parts and Labor Warranty (Next Business Day)	\$ 300.00	3%	\$291.00	
Rack Server Cost for 4th year Onsite Parts and Labor Warranty (Next Business Day)	\$ 150.00	3%	\$145.50	
Rack Server Cost for 5th year Onsite Parts and Labor Warranty (Next Business Day)	\$ 469.00	3%	\$454.93	
Blade Server Cost for 4th year Onsite Parts and Labor Warranty (Next Business Day)	\$ 399.00	3%	\$387.03	
Blade Server Cost for 5th year Onsite Parts and Labor Warranty (Next Business Day)	\$ 300.00	3%	\$291.00	

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/slq/weekly/dellpricereport.pdf>

**Tower Server Offering**

**QUOTE #:**

**505857805**

<b>GROUP: 1</b>	<b>QUANTITY: 1</b>	<b>SYSTEM PRICE: \$4,396.84</b>	<b>GROUP TOTAL: \$4,396.84</b>
Base Unit:	T710 Tower Chassis for Up to Sixteen 2.5-Inch Hard Drives (224-5945)		
Memory:	16GB Memory (4x4GB), 1066MHz Dual Ranked RDIMMs for 2 Processors, Advanced ECC (317-1650)		
Monitor:	Embedded Broadcom, GB Ethernet NICS with TOE (430-1764)		
Video Card:	E5530 Xeon Processor, 2.4GHz 8M Cache, Turbo, HT, 1066MHz Max Mem (317-0258)		
Video Memory:	E5530 Xeon Processor, 2.4GHz 8M Cache, Turbo, HT, 1066MHz Max Mem (317-1217)		
Video Memory:	PowerEdge T610/T710 Heat Sinks for 2 Processors (317-0265)		
Hard Drive:	146GB 10K RPM Serial-Attach SCSI 2.5" Hot Plug Hard Drive (341-8715)		
Hard Drive Controller:	PERC 6/i SAS RAID Controller (341-9393)		
Floppy Disk Drive:	Performance BIOS Setting (330-3492)		
Operating System:	No Operating System (420-6320)		
Modem:	iDRAC6 Enterprise (467-8648)		
CD-ROM or DVD-ROM Drive:	DVD-ROM, SATA, Internal (313-6765)		
CD-ROM or DVD-ROM Drive:	Optical SATA for PowerEdge T610/T710 (330-4219)		
Documentation Diskette:	Dell Management Console (330-5280)		
Documentation Diskette:	Electronic System Documentation and OpenManage DVD Kit (330-4332)		
Additional Storage Products:	146GB 10K RPM Serial-Attach SCSI 2.5" Hot Plug Hard Drive (341-8715)		
Feature	RAID 5 for PERC 6/i Controller(Non-Mixed Drives) (341-9373)		
Feature	No Rails (330-4120)		
Service:	Basic: Business Hours (5x10) Next Business Day On Site Hardware Warranty Repair 2Year Extended (994-0742)		
Service:	Basic: Business Hours (5x10) Next Business Day On Site Hardware Warranty Repair Initial Year (994-5820)		
Service:	Dell Hardware Limited Warranty Plus On Site Service Extended Year (994-9248)		
Service:	Dell Hardware Limited Warranty Plus On Site Service Initial Year (994-9247)		
Service:	Basic support covers SATA Hard Drive for 1 year only regardless of support duration on the system (994-4019)		
Service:	DECLINED CRITICAL BUSINESS SERVER OR STORAGE SOFTWARE SUPPORT PACKAGE-CALL YOUR DELL SALES REP IF UPGRADE NEEDED (994-9259)		
Installation:	On-Site Installation Declined (900-9997)		
Misc:	1100 Watt Redundant Power Supply (330-4331)		
Misc:	146GB 10K RPM Serial-Attach SCSI 2.5" Hot Plug Hard Drive (341-8715)		
Misc:	Power Cord, NEMA 5-15P to C14,15 amp, wall plug, 10 feet / 3 meter (310-8509)		
Misc:	Power Cord, NEMA 5-15P to C14,15 amp, wall plug, 10 feet / 3 meter (310-8509)		

**Rack Server Offering**

**QUOTE #:**

**505858837**

<b>GROUP: 1</b>	<b>QUANTITY: 1</b>	<b>SYSTEM PRICE: \$8,113.90</b>	<b>GROUP TOTAL: \$8,113.90</b>
Base Unit:	R905 2x Quad Core Opteron 83782.4GHz, 4x512K Cache HyperTransport 1Ghz (224-3104)		
Processor:	R905 Upgrade to Four Quad CoreOpteron 8378 2.4GHz (311-9697)		
Memory:	32GB Memory, 8x4GB, 667Mhz Dual Ranked DIMMs (311-6432)		
Video Card:	TOE and iSCSI Offload features included with onboardNIC ports (311-8713)		
Hard Drive:	HD Multi-Select (341-4158)		
Operating System:	No Operating System (420-6320)		
CD-ROM or DVD-ROM Drive:	DVD-ROM Drive, Internal, SATA (313-5884)		
Sound Card:	PowerEdge R905 Active Bezel (313-6069)		
Speakers:	1X5 SAS Backplane, for 3.5 Inch SAS Hard Drives only PowerEdge R905 (341-6185)		
Documentation Diskette:	PowerEdge R905 Printed Documentation (330-0242)		
Documentation Diskette:	Dell Management Console (330-5280)		
Feature	PERC6i SAS RAID Controller Internal with Battery (341-6175)		
Feature	Internal PERC RAID Controller minimum 3 Drives in RAID 5 config (341-6177)		
Feature	PowerEdge 6x50 Rapid Rails for use in Dell Racks, Square Holes (310-6376)		
Service:	Basic: Business Hours (5x10) Next Business Day On Site Hardware Warranty Repair 2Year Extended (988-0072)		
Service:	Basic: Business Hours (5x10) Next Business Day On Site Hardware Warranty Repair Initial Year (988-4210)		
Service:	DECLINED CRITICAL BUSINESS SERVER OR STORAGE SOFTWARE SUPPORT PACKAGE-CALL YOUR DELL SALES REP IF UPGRADE NEEDED (990-5809)		
Service:	Dell Hardware Limited Warranty Plus On Site Service Initial Year (990-6017)		
Service:	Dell Hardware Limited Warranty Plus On Site Service Extended Year (990-6038)		
Installation:	On-Site Installation Declined (900-9997)		
Misc:	Power Cord, C13 to C14, PDU Style, 12 Amps, 2 meter, Qty 1 (330-3151)		
Misc:	Power Cord, C13 to C14, PDU Style, 12 Amps, 2 meter, Qty 1 (330-3151)		
Misc:	4x Broadcom NetXtreme II 5708 1GbE Onboard NICs with TOE (430-2713)		
	146GB 15K RPM Serial-Attach SCSI 3Gbps 3.5-in HotPlug HardDrive (341-6094) - Quantity 5		

TOTAL QUOTE AMOUNT:		\$15,671.02	
GROUP: 1	QUANTITY: 1	SYSTEM PRICE: \$9,226.12	GROUP TOTAL: \$9,226.12
Base Unit:	Blade Server Enclosure, No Blades, M1000E, PowerEdge (223-3244)		
Service:	Basic: Business Hours (5x10) Next Business Day On Site Hardware Warranty Repair 2 Year Extended (984-7882)		
Service:	Basic: Business Hours (5x10) Next Business Day On Site Hardware Warranty Repair Initial Year (985-3700)		
Service:	DECLINED CRITICAL BUSINESS SERVER OR STORAGE SOFTWARE SUPPORT PACKAGE-CALL YOUR DELL SALES REP IF UPGRADE NEEDED (989-0629)		
Service:	Dell Hardware Limited Warranty Plus On Site Service Extended Year(s) (989-0728)		
Service:	Dell Hardware Limited Warranty Plus On Site Service Initial Year (989-0747)		
Installation:	On-Site Installation Declined (900-9997)		
Misc:	Redundant Power Supplies (6x2360W), High Efficiency M1000E Blade Chassis (430-2623)		
	FLEX ADDRESS ENABLED (341-7140)		
	Redundant Chassis Management Controller, PowerEdge M1000E (311-7787)		
	No Operating System Media Kit (420-1908)		
	Dell OpenManage CD Kit for PowerEdge M905 Blade Server (330-1360)		
	Dell Management Console (330-5280)		
	Dell OpenManage CD Kit for PowerEdge M1000E Blade Server Chassis (310-9694)		
	Dell Management Console (330-5280)		
	Users Guide, PowerEdge M-Series Blades (330-4117)		
	Users Guide, PowerEdge M-Series Blades (330-4117)		
	Redundant GbE Pass-Through Modules, IO Bays 1+2, 3+4 or 5+6, M1000E (310-9704)		
	No I/O Modules, (I/O Bay Filler Panels, Qty 2) M1000E Blade Server Chassis (310-9711)		
	No I/O Modules, (I/O Bay Filler Panels, Qty 2) M1000E Blade Server Chassis (310-9711)		
	PowerEdge M-Series Blade Multipack Box Processor FamilyLabel, AMD (310-9953)		
	Rack Chassis w/Rapid Rails forDell, HPQ or other Square HoleRacks (310-9689)		
	DVD-ROM, 8x, External USB Black (313-4219)		
	Avocent Integrated KVM Analog Switch Module, PowerEdge M1000E Chassis (430-2628)		
	PDU, 24A, 208V, Three Phase Power, PowerEdge M1000E Chassis (3, 8FT Cords) (310-9691) - Quantity 2		
	Power Cords, QTY3, 2FT C19/C20 for M1000E Server Blade Chassis (330-0146) - Quantity 2		
	Blade Blanking Panel for PowerEdge M1000E Blade Server Chassis (310-9709) - Quantity 14		

GROUP: 2	QUANTITY: 1	SYSTEM PRICE: \$6,444.90	GROUP TOTAL: \$6,444.90
Base Unit:	M905 4x Quad Core Opteron 83782.4Ghz, 4x512K Cache HyperTransport 1Ghz (224-3779)		
Memory:	32GB Memory, 8x4GB, 667Mhz Dual Ranked DIMMs (311-9151)		
Hard Drive:	146GB 15K RPM Serial-Attach SCSI 3Gbps 2.5-in HotPlug Hard Drive (341-8971)		
Operating System:	No Operating System (420-6320)		
Mouse:	Onboard Broadcom 5709 Quad Port GbE NIC, TOE and ISCSI (311-9740)		
Documentation Diskette:	No Documentation (310-1972)		
Additional Storage Products:	146GB 15K RPM Serial-Attach SCSI 3Gbps 2.5-in HotPlug Hard Drive (341-8971)		
Software Disk Two:	No Operating System Media Kit (420-1908)		
Feature	Add-in PERC6/i with battery supporting 2 HDs SAS or SSD- RAID 1 Mirror (341-9592)		
Service:	Basic: Business Hours (5x10) Next Business Day On Site Hardware Warranty Repair 2 Year Extended (989-7912)		
Service:	Basic: Business Hours (5x10) Next Business Day On Site Hardware Warranty Repair Initial Year (990-0750)		
Service:	DECLINED CRITICAL BUSINESS SERVER OR STORAGE SOFTWARE SUPPORT PACKAGE-CALL YOUR DELL SALES REP IF UPGRADE NEEDED (991-5679)		
Service:	Dell Hardware Limited Warranty Plus On Site Service Initial Year (991-5957)		
Service:	Dell Hardware Limited Warranty Plus On Site Service Extended Year (991-6108)		
Installation:	On-Site Installation Declined (900-9997)		
Misc:	No OpenManage CD Kit (330-1361)		

**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	10%
Cisco Systems	20%
APC	20%
Emmerson Network Power (Liebert)	20%
Rack Solutions	20%
Emulex	20%
Qlogic	20%
Aten	10%
Avocent	10%
Belkin	30%
Cables To Go	50%
Intel	20%
Raritan	20%
Sun Thin Client	12%
Triplite	40%
US Robotics	20%
Xsigo Systems	20%

**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 C for HP**

Intel/ AMD Based

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

<b>A. Tower Server Offering</b>	<b>Unit Price (Provide a link to public site to verify this cost)</b>	<b>Discount % from Unit (see note #1 at bottom)</b>	<b>Unit Discounted Price</b>
(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)			
<b>Total Tower Offering</b>	5886	34%	3884.76
<b>B. Rack Server Offering</b>	<b>Unit Price (Provide a link to public site to verify this cost)</b>	<b>Discount % (see note #1 at bottom)</b>	<b>Unit Discounted Price</b>
(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)			
<b>Total Rack Offering</b>	16496	34%	10887.36
<b>C. Blade Server Offering</b>	<b>Unit Price (Provide a link to public site to verify this cost)</b>	<b>Discount % (see note #1 at bottom)</b>	<b>Unit Discounted Price</b>
(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)			
<b>Total Blade Offering</b>	20836	34%	13751.76
<b>D. Optional Services (see note #2 at bottom)</b>	<b>Unit Price (Provide a link to public site to verify this cost)</b>	<b>Discount % (see note #3 at bottom)</b>	<b>Unit Discounted Price</b>
Onsite Installation per hour (regardless of server type)	92	18%	75.44

Data Migration per hour (regardless of server type)	92	18%	75.44
Imaging per hour (regardless of server type)	65	18%	53.3
Configuration per hour (regardless of server type)	65	18%	53.3
Tower Server Cost for 4th year Onsite Parts and Labor Warranty (Next Business Day)	226	18%	185.32
Tower Server Cost for 5th year Onsite Parts and Labor Warranty (Next Business Day)	442	18%	362.44
Rack Server Cost for 4th year Onsite Parts and Labor Warranty (Next Business Day)	645	18%	528.9
Rack Server Cost for 5th year Onsite Parts and Labor Warranty (Next Business Day)	1263	18%	1035.66
Blade Server Cost for 4th year Onsite Parts and Labor Warranty (Next Business Day)	344	18%	282.08
Blade Server Cost for 5th year Onsite Parts and Labor Warranty (Next Business Day)	674	18%	552.68

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.

**HP Publicly Available Price List is available at:**

<http://welcome.hp.com/country/us/en/howtobuy.html>

Intel/ AMD Based

**Detailed Equipment Configuration / BOM**

<b>A. Tower Server Offering</b>	<b>Mfr Part No</b>	<b>Quantity</b>	<b>Description</b>
(2) Quad Core 2.4GHz	487928-001	1	HP ProLiant ML350 G6 Small Form Factor Tower High Performance Server includes
Minimum 2 Processor Sockets			*2 x Quad-Core Intel® Xeon® Processors E5530 (2.40GHz, 8M Cache, 80 Watts, 1066MHz)
16GB ECC Memory			*HP 12GB PC3-10600R 6x2GB 2Rank Memory
(3) 100GB Hot Plug SAS 15K Hard Drives			*Embedded P410i/512MB with battery (SAS Array Controller)
Dual embedded gigabit network adapters			*HP SATA DVD-ROM Drive
Raid 5 SAS Controller with battery backup			*Embedded NC326i Dual Port Gigabit Server Adapter
DVD ROM Drive			*2 x HP 750W CS HE Hot-Plug Power Supply
Redundant power supply	500656-B21	2	HP 2GB PC3-10600R 1x2GB 2Rank Memory
Integrated Server Management	504062-B21	3	HP 146GB 3G Hot Plug 2.5 SAS Dual Port 15,000 rpm Enterprise Hard Drive
3 Year Onsite Parts and Labor Warranty (Next Business Day)	515081-B21	1	Hot Plug Redundant Fan Kit
<b>Total Tower Offering</b>			
<b>B. Rack Server Offering</b>	<b>Mfr Part No</b>	<b>Quantity</b>	<b>Description</b>
(4) Quad Core 2.4GHz	438087-001	1	HP ProLiant DL580 G5 Rack Server standard config includes
Minimum 4 Processor Sockets			*2 Quad-Core Intel® Xeon® Processors E7330 (2.40GHz/2x3M 80W)
32GB ECC Memory			*HP Smart Array P400i/256 Controller (RAID 0/1/5)
(5) 140GB Hot Plug SAS 15K Hard Drives			*Dual embedded NC371i Multi-function Gigabit Network Adapters
Raid 5 SAS Controller with battery backup			*SlimLine DVD-ROM Drive (8x/24x) Option Kit
Dual Embedded Gigabit Network Adapters			*2 HP 1200W 12V Hotplug AC Power Supplies
Redundant Power Supply	438091-B21	2	Quad-Core Intel® Xeon® Processor E7330 (2.40GHz/2x3M 80W)
Integrated Server Management	397415-B21	4	HP 8GB Fully Buffered DIMM PC2-5300 2X4GB Memory
3 Year Onsite Parts and Labor Warranty (Next Business Day)	504062-B21	5	HP 146GB 3G Hot Plug 2.5 SAS Dual Port 15,000 rpm Enterprise Hard Drive
	462968-B21	1	HP 256MB P-Series Cache Module (for SA P212/ZM or P410/ZM Controllers)
	437572-2PS	1	2 x HP 1200W 12V Hotplug AC Power Supplies
<b>Total Rack Offering</b>			
<b>C. Blade Server Offering</b>	<b>Mfr Part No</b>	<b>Quantity</b>	<b>Description</b>
(4) Quad Core 2.4GHz	449316-B21	1	HP ProLiant BL680c G5 server blade standard config includes
Minimum 4 Processor Sockets			*Two Quad-Core Intel® Xeon® Processors E7330 (2.40GHz/2x3M 80W)
32GB ECC Memory			*HP 8GB Fully Buffered DIMM PC2-5300 4X2GB Memory
(2) 140GB Hot Plug SAS 15K Hard Drives			*Embedded Smart Array P400i/256MB cache SAS Array Controller
Integrated Raid Controller	449321-B21	2	Two Quad-Core Intel® Xeon® Processors E7330 (2.40GHz/2x3M 80W)



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.

**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 %
-----------------------

American Power Conversion	24%
Avocent	20%
Axis Communications	15%
Brocade Communications	15%
Cisco Systems	20%
Cables To Go	50%
Dell Equallogic	18%
Emerson Network Power (Liebert)	20%
EMC Storage (Clarion and Tape)	38%
Hitachi Data Systems Storage	30%
HP Openview Software Suite	35%
HP Storage	25%
IBM Storage (DS Storage and Tape)	35%
Network Appliance Storage	35%
Quantum ADIC	18%
Raritan	20%
Sun Storage	18%
Sun Thin Client	12%
Triplite	40%
Xsigo Systems	20%

**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.

**Exhibit C for IBM**

Intel/ AMD Based

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

<b>A. Tower Server Offering</b>	<b>Unit Price (Provide a link to public site to verify this cost)</b>	<b>Discount % from Unit (see note #1 at bottom)</b>	<b>Unit Discounted Price</b>
(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)			
<b>Total Tower Offering</b>	5673	35%	3687.45
<b>B. Rack Server Offering</b>	<b>Unit Price (Provide a link to public site to verify this cost)</b>	<b>Discount % (see note #1 at bottom)</b>	<b>Unit Discounted Price</b>
(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)			
<b>Total Rack Offering</b>	17478	35%	11360.7
<b>C. Blade Server Offering</b>	<b>Unit Price (Provide a link to public site to verify this cost)</b>	<b>Discount % (see note #1 at bottom)</b>	<b>Unit Discounted Price</b>
(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)			
<b>Total Blade Offering</b>	29576	35%	19224.4
<b>D. Optional Services (see note #2 at bottom)</b>	<b>Unit Price (Provide a link to public site to verify this cost)</b>	<b>Discount % (see note #3 at bottom)</b>	<b>Unit Discounted Price</b>
Onsite Installation per hour (regardless of server type)	92	18%	75.44

Data Migration per hour (regardless of server type)	92	18%	75.44
Imaging per hour (regardless of server type)	65	18%	53.3
Configuration per hour (regardless of server type)	65	18%	53.3
Tower Server Cost for 4th year Onsite Parts and Labor Warranty (Next Business Day)	267	18%	218.94
Tower Server Cost for 5th year Onsite Parts and Labor Warranty (Next Business Day)	507	18%	415.74
Rack Server Cost for 4th year Onsite Parts and Labor Warranty (Next Business Day)	1200	18%	984
Rack Server Cost for 5th year Onsite Parts and Labor Warranty (Next Business Day)	2280	18%	1869.6
Blade Server Cost for 4th year Onsite Parts and Labor Warranty (Next Business Day)	200	18%	164
Blade Server Cost for 5th year Onsite Parts and Labor Warranty (Next Business Day)	390	18%	319.8

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.

**IBM List Price is available to the public at:**

<http://www.ibm.com/products/shop/servers/us/en/>

## Appendix C v3

Intel/ AMD Based

### Detailed Equipment Configuration / BOM

<b>A. Tower Server Offering</b>	<b>Mfr Part No</b>	<b>Quantity</b>	<b>Description</b>
(2) Quad Core 2.4GHz	7837-AC1	1	IBM x3400 Server 1:7837 Model AC1
Minimum 2 Processor Sockets	2302	1	RAID Configuration Standard
16GB ECC Memory	2573	1	Tower Packaging - WW
(3) 100GB Hot Plug SAS 15K Hard Drives	2644	1	Fixed Power Base Mechanical, Tower Entry Models
Dual embedded gigabit network adapters	3571	1	ServeRAID-MR10i SAS/SATA Controller
Raid 5 SAS Controller with battery backup	3963	2	1GB DDR3-1333 1Rx8 LP RDIMM
DVD ROM Drive	3964	6	2GB DDR3-1333 2Rx8 LP RDIMM
Redundant power supply	4032	1	x3400 M2 SW GBM
Integrated Server Management	4154	1	Half-High SATA DVD-ROM
	4308	1	HS DASD EMC Filler
	4426	1	Addl Intel Xeon Processor E5530 4C (2.40GHz 8MB Cache 1066MHz 80w)
	5060	1	3.5-inch Hot-Swap SAS/SATA HDDs
	5162	3	146GB 15K 3.5-inch Hot-Swap SAS
	5652	1	Planar Base
	5864	1	ServeRAID-MR10i Li-Ion Battery
	6207	1	Line cord - 4.3M, 10A/125V, C13 to NEMA 5-15P (US)
	6952	1	Intel Xeon Processor E5530 4C (2.40GHz 8MB Cache 1066MHz 80w)
	7357	1	System Documentation and Software-US English
	7853	1	RAID 5 - Primary Array (SAS) - minimum of 3 HDDs required
	9066	1	Internal SAS RAID - Setup by IBM
<b>Total Tower Offering</b>	<b>5673</b>		
<b>B. Rack Server Offering</b>	<b>Mfr Part No</b>	<b>Quantity</b>	<b>Description</b>
(4) Quad Core 2.4GHz	7141-AC2	1	IBM x3950 M2 Server 1:7141 Model AC2
Minimum 4 Processor Sockets	1143	1	x3850 M2/x3950 M2
32GB ECC Memory	1991	1	IBM 1440W Redundant Power Supply
(5) 140GB Hot Plug SAS 15K Hard Drives	2113	1	Power Supply Filler
Raid 5 SAS Controller with battery backup	2565	1	System Packaging - WW
Dual Embedded Gigabit Network Adapters	2631	1	x3850 M2/x3950 M2 Base
Redundant Power Supply	2783	1	Upgrade CMA



	9738	2	BladeCenter 2900W Initial Power Supplies 1&2 w/Fan Pack
	9739	2	IBM BladeCenter H 2900W AC Addl Power Module 3 & 4 with Fan Pack
	6226	2	2.8m, 200-240V, Triple 16A IEC 320-C20 Power Cable
	9206	1	No Preload Specify
	1604	1	IBM BladeCenter KVM/Advanced Management Module
	4366	2	IBM BladeCenter Copper Pass-thru Module Cable
	4163	1	UltraSlim Enhanced SATA Multi-Burner
	6947	1	Base
	8089	1	IBM BladeCenter Copper Pass-thru Module in Bay 1
	919	2	Double Bay High Speed Filler Panel
	961	4	Switch Module Filler
Upgradeable to Ethernet Blade Switch and Fiber Channel Switch			
3 Year Onsite Parts and Labor Warranty (Next Business Day)			
<b>Total Blade Offering</b>	<b>29576</b>		

<b>D. Optional Services (see note #2 at bottom)</b>	<b>Mfr Part No</b>	<b>Quantity</b>	<b>Description</b>
Onsite Installation per hour (regardless of server type)			
Data Migration per hour (regardless of server type)			
Imaging per hour (regardless of server type)			
Configuration per hour (regardless of server type)			
Tower Server Cost for 4th year Onsite Parts and Labor Warranty (Next Business Day)	69P9513		IBM Service Pack Next Business Day Hardware Support, 4 Yr On Site
Tower Server Cost for 5th year Onsite Parts and Labor Warranty (Next Business Day)	96P2129		IBM Service Pack Next Business Day Hardware Support, 5 Yr On Site
Rack Server Cost for 4th year Onsite Parts and Labor Warranty (Next Business Day)	10N3069		IBM Service Pack Next Business Day Hardware Support, 4 Yr On Site
Rack Server Cost for 5th year Onsite Parts and Labor Warranty (Next Business Day)	10N3073		IBM Service Pack Next Business Day Hardware Support, 5 Yr On Site
Blade Server Cost for 4th year Onsite Parts and Labor Warranty (Next Business Day)	51J9079 (LS42), 69P9382 (Enclosure)		IBM Service Pack Next Business Day Hardware Support, 4 Yr On Site
Blade Server Cost for 5th year Onsite Parts and Labor Warranty (Next Business Day)	51J9083 (LS42), 96P2101 (Enclosure)		IBM Service Pack Next Business Day Hardware Support, 5 Yr On Site

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: This is for Yr 4 & 5 (5 Yrs Together)

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**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 %
-----------------------

American Power Conversion	24%
Avocent	20%
Axis Communications	15%
Brocade Communications	15%
Cisco Systems	20%
Cables To Go	50%
Dell Equallogic	18%
Emerson Network Power (Liebert)	20%
EMC Storage (Clarion and Tape)	38%
Hitachi Data Systems Storage	30%
HP Openview Software Suite	35%
HP Storage	25%
IBM Storage (DS Storage and Tape)	35%
Network Appliance Storage	35%
Quantum ADIC	18%
Raritan	20%
Sun Storage	18%
Sun Thin Client	12%
Tripplite	40%
Xsigo Systems	20%

**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.

## LICENSE AGREEMENT ADDENDUM

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 KST Data Inc. ("Supplier"), a business incorporated in Los Angeles, California, F.E.I.N. 33-041-6872, having its principal place of business at Los Angeles, are this day entering into a contract and, for their mutual convenience, the parties are using the standard form contract ("\_\_\_\_\_") provided by Supplier. This addendum, duly executed by the parties, is attached to and hereby made a part of Supplier's standard form contract and together shall govern the use of any and all \_\_\_(name of)\_\_\_ Software licensed by the Commonwealth under this agreement whether or not specifically referenced in the order document.

Supplier represents and warrants that it is a corporation authorized to do in Virginia the business provided for in this contract. If Supplier is not a U.S.-based entity, Supplier maintains a registered agent and a certification of authority to do business in Virginia.

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

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 granted by Supplier 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, such license shall be held by that public body.

As used herein, the term "contract" shall mean the Supplier's standard form contract and any and all exhibits and attachments thereto. The term(s) "Customer," "You," and/or "you," as used in the contract, shall mean, as applicable, VITA, the Commonwealth, any Authorized User, or any of their officers, directors, agents or employees.

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

1. Requiring or stating that the terms of the Supplier's standard form contract shall prevail over the terms of this addendum in the event of conflict;
2. Requiring the application of the law of any state other than the Commonwealth of Virginia in interpreting or enforcing the contract or requiring or permitting that any dispute under the contract be resolved in any court other than a circuit court of the Commonwealth of Virginia;
3. Renewing or extending the contract beyond the initial term or automatically continuing the contract period from term to term;
4. Requiring that the contract be "accepted" or endorsed by the home office or by any other officer subsequent to execution by an official of VITA before the contract is considered in effect;
5. Delaying the acceptance of the contract or its effective date beyond the date of execution;
6. Requiring any total or partial compensation or payment for lost profit or liquidated damages by VITA, the Commonwealth, any Authorized User, or their officers, directors, employees or agents if the contract is terminated before its ordinary period;

7. Permitting termination by Supplier of the contract or the licenses granted thereunder, or permitting suspension of services by Supplier, except pursuant to an order from a court of competent jurisdiction;
8. Defining "perpetual" license rights to have any meaning other than license rights that exist in perpetuity unless otherwise terminated in accordance with the applicable provisions of the contract;
9. Permitting unilateral modification of the contract by Supplier;
10. Permitting modification or replacement of the contract pursuant to any new release, update or upgrade of Software or subsequent renewal of maintenance. If Supplier provides to any Authorized User an update or upgrade subject to additional payment, such Authorized User shall have the right to reject such update or upgrade;
11. Requiring purchase of a new release, update, or upgrade of Software or subsequent renewal of maintenance in order for the Commonwealth, VITA, or any Authorized User to receive or maintain the benefits of Supplier's indemnification of the Commonwealth, VITA, or such Authorized User against any claims of infringement on any third-party intellectual property rights;
12. Imposing any interest charge(s) contrary to that specified by §2.2-4347 et seq. of the Code of Virginia;
13. Requiring the Commonwealth, VITA, or any Authorized User to maintain any type of insurance either for the benefit of the Commonwealth, VITA, or such Authorized User or for Supplier's benefit;
14. Granting Supplier a security interest in property of the Commonwealth, any Authorized User, or any of their officers, directors, employees or agents;
15. Requiring the Commonwealth, VITA, any Authorized User, or any of their officers, directors, employees or agents to indemnify or to hold harmless Supplier for any act or omission;
16. Establishing a presumption of severe or irreparable harm to Supplier by the actions or inactions of VITA or any Authorized User;
17. Limiting or adding to the time period within which claims can be made or actions can be brought;
18. Limiting selection and approval of counsel and approval of any settlement in any claim arising under the contract and in which the Commonwealth, VITA, any Authorized User, or any of their officers, directors, employees or agents is a named party;
19. Binding the Commonwealth, VITA, any Authorized User, or any of their officers, directors, employees or agents to any arbitration or to the decision of any arbitration board, commission, panel or other entity;
20. Obligating the Commonwealth, VITA, any Authorized User, or any of their officers, directors, employees or agents to pay costs of collection or attorney's fees;
21. Limiting the liability of Supplier for property damage or personal injury;
22. Requiring any dispute resolution procedure(s) other than those in accordance with §2.2-4363 et seq. of the Code of Virginia;
23. Prohibiting the Commonwealth, VITA, or any Authorized User from transferring or assigning to any entity the contract or any license to Software pursuant to the contract;
24. Permitting Supplier to assign, subcontract, delegate or otherwise convey the contract, or any of its rights and obligations thereunder, to any entity without the prior written consent of VITA except as follows: Supplier may assign all or any of its rights and obligations to a third party as a result of a merger or acquisition or sale of all or substantially all of its assets to such third party provided assignee agrees in writing to be bound by the terms and conditions set forth in the contract and provided such third party is a U.S.-based entity or maintains a registered agent and a certification of authority to do business in Virginia, or to an affiliate of Supplier, provided Supplier remains liable for affiliate's compliance with the terms and conditions set forth in this Contract;

25. Granting Supplier or an agent of Supplier the right to audit or examine the books, records, or accounts of VITA or any Authorized User;
26. Permitting Supplier to access any Commonwealth or Authorized User records or data, except pursuant to court order;
27. Permitting Supplier to use any information provided by the Commonwealth or any Authorized User except for Supplier's own internal administrative purposes;
28. Requiring the Commonwealth, VITA, or any Authorized User to limit its rights or waive its remedies at law or in equity, including the right to a trial by jury; and
29. Bestowing any right or incurring any obligation that is beyond the duly granted authority of the undersigned representative of VITA to bestow or incur on behalf of the Commonwealth of Virginia.

The parties further agree as follows:

30. The contractual provisions at the following URL are mandatory provisions, required by law or by VITA, that are hereby incorporated by reference:  
<http://www.vita.virginia.gov/uploadedFiles/SCM/StatutorilyMandatedTsandCs.pdf>
31. The terms and conditions in documents posted to the aforereferenced URL are subject to change pursuant to action by the legislature of the Commonwealth of Virginia or a change in VITA policy. 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 URL periodically.
32. The contractual claims provision §2.2-4363 of the Code of Virginia is also incorporated by reference.
33. 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.
34. Supplier shall comply with all applicable federal, state, and local laws, regulations, and ordinances.
35. The Commonwealth does not waive its sovereign immunity or its immunity under the Eleventh Amendment.
36. The Commonwealth is tax exempt and shall not be responsible for payment of taxes, duties, or penalties.
37. Supplier warrants that it is the owner of the Software or otherwise has the right to grant to all Authorized Users the license to use the Software granted hereunder without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party.
38. Supplier agrees to indemnify, defend and hold harmless the Commonwealth, VITA, any Authorized User, their officers, directors, agents and employees ("Commonwealth's Indemnified Parties") from and against any and all third party claims, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, fines, judgments, settlements, expenses (including attorneys' and accountants' fees and disbursements) and costs (each, a "Claim" and collectively, "Claims"), incurred by, borne by or asserted against any of Commonwealth's Indemnified Parties to the extent such Claims in any way relate to, arise out of or result from: (i) any intentional or willful conduct or negligence of any employee or subcontractor of Supplier, (ii) any act or omission of any employee or subcontractor of Supplier, (iii) breach of any representation, warranty or covenant of Supplier contained herein, (iv) any defect in the Software, or (v) any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Software. 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.

39. Any Authorized User may rely on independent contractors, acting on behalf of such Authorized User, to perform functions requiring the use of and access to the Supplier's Software. Nothing in the Supplier's standard form contract shall limit such third parties' from using or accessing the Software in order to perform such functions. If any invention, work of authorship, or confidential information is developed exclusively by an employee, consultant, contractor, or subcontractor of an Authorized User during the performance of Services by Supplier, Supplier shall have no ownership claim to such invention, work of authorship, or confidential information.
40. Nothing in this contract shall be construed as conveying any rights or interest in Commonwealth or Authorized User data to Supplier.
41. The currency which shall be used for this contract is United States Dollars. Any claim which may arise hereunder shall be settled in United States Dollars.
42. Any travel expenses incurred by Supplier in the course of performing the services must be pre-approved by the appropriate Authorized User and shall be reimbursed at the then-current per diem rates published by the Virginia Department of Accounts.
43. All payment obligations under this contract are subject to the availability of federal, state, and/or local appropriations for this purpose. In the event of non-appropriation of funds for the items under this contract, VITA may terminate, in whole or in part, this contract or any order, for those goods or services for which funds have not been appropriated. This may extend to the renewal of maintenance services for only some of the licenses granted by Supplier. Written notice will be provided to the Supplier as soon as possible after legislative action is completed. There shall be no time limit for termination due to termination for lack of appropriations.
44. An Authorized User may require that Supplier personnel submit to a criminal background check prior to performance of any services under this contract.

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

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

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

**Supplier**

**VITA**

By:   
(Signature)

By:   
(Signature)

Name: Stefan Mandanis  
(Print)

Name: GEORGE COULTER  
(Print)

Title: Director, Sales

Title: CIO

Date: September 13, 2009

Date: 1-11-2010

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

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

Signature: 

Printed Name: Stefan Mandanis

Organization: KST Data Inc

Date: September 13, 2009

## **EXHIBIT G AWARDED BRANDS**

- Dell
- HP
- IBM



# **Information Technology Services Contract**

between

The Virginia Information Technologies Agency

on behalf of

The Commonwealth of Virginia

and

**KST Data Inc.**

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## 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 KST Data Inc ("Supplier"), a corporation headquartered at 3699 Wilshire Blvd Los Angeles CA 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 installation of servers and their associated devices 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 conformance with the Requirements as determined by the Authorized User in the applicable Statement of Work.

#### 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, Acceptance testing criteria 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, including provision to the Authorized User of any Deliverable, by Supplier under this Contract. 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 G (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, or jointly by Supplier and an Authorized User(s) in the performance of this Contract. Work Product shall not include configuration of software.

**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 Nonprocurement Programs, VITA may immediately terminate this Contract, in whole or in part, for breach. VITA shall provide written notice to Supplier of such termination and Supplier shall provide 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.

**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 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 period 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. 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.

By operation of this Contract, any SOW resulting in a commitment of any individual employee or contractor of Supplier, whether employed by Supplier or a contractor or subcontractor of Supplier, for more than one thousand (1,000) hours of work during any six (6) month period or of any such individual employee or contractor for more than eight (8) months in any twelve (12) month period shall 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.

### 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 C 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 H), 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 thirty (30) 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 sixty (60) 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 G. 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 five (5) days following the Acceptance testing period, the Service 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 seven (7) days of the appropriate Authorized User's written notice of non-conformance, or as otherwise agreed between such Authorized User and Supplier in the applicable SOW. Should Supplier fail 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; (ii) issue a "partial

Acceptance” of the Service with an equitable adjustment in the price to account for such deficiency; or (iii) conditionally accept the applicable Service while reserving its right to revoke Acceptance if timely correction is not forthcoming. Failure of a Service to meet, in all material respects, the Requirements after the second set of acceptance tests may constitute a default by Supplier. In the event of such default, the Authorized User may, at its sole discretion, terminate its order or SOW, in whole or in part, for the Services to be provided thereunder by Supplier.

## **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 pre-existing work 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 pre-existing work 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 source code, object code, executables, 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 pre-existing rights 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 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.

**6. SUPPLIER PERSONNEL**

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

Supplier shall take such steps as may be 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. Failure of Supplier to perform in accordance with such obligations may be deemed a default of this Contract or of the applicable SOW.

**D. Subcontractors**

Supplier shall not use subcontractors to perform the Services unless specifically authorized 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 subcontract any Services pursuant to such order or SOW to any subcontractor that is a party excluded from Federal Procurement and Nonprocurement 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 the Services have been successfully performed for a non-related third-party without significant problems due to the Services or Supplier.

### D. Performance

- i). All Services shall be performed with care, skill and diligence, consistent with or above 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 fit for the particular purposes 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 Services and Deliverables and is aware that all Authorized Users are relying on Supplier's skill and judgment in providing the Services and Deliverables;
- iii). The documentation which Supplier is required to provide under this Contract shall be sufficient in detail and content to allow a user to understand and fully utilize the Deliverables without reference to any other materials or information.

### E. Malicious Code

Supplier has used its best efforts through quality assurance procedures to ensure that there are no computer viruses or undocumented features in any of the media or means used to deliver the Services. Supplier has used the best available means to scan any media on which Deliverables are provided to the Authorized User.

### F. Limited Warranty Period and Remedy

During the warranty period of ninety (90) days, 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 make the Service/Deliverable conform, in all material respects, to the Requirements within ten (10) days 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

Any training or documentation necessary for an Authorized User to have full benefit of the Service shall be deemed included in the scope of the applicable SOW unless expressly excluded.

## 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.

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. Should Supplier be unable to respond to the RFQ due, for example, to resource constraints, Supplier shall notify Authorized User in writing of its inability to perform the work requested by such Authorized User, and provide the reasons for such inability to perform, prior to the due date for the submission of quotes in response to the RFQ. Supplier's repeated failure to provide a quote in response to an RFQ may be grounds for termination of this Contract.

### 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.

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 Nonprocurement Programs.

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

### C. Purchase Price and Price Protection

[Exhibit C](#) 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 accepted and in accordance with the milestone payment schedule, if any, in the applicable order. 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 milestone payment schedule, if any, in the applicable SOW; if such SOW does not include a milestone payment schedule, Supplier shall invoice after all Deliverables or Services have been accepted by the ordering Authorized User. No invoice shall include any costs other than those identified in the executed order or SOW, 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 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
- v). Supplier's Federal Employer Identification Number (FEIN).

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 or milestones have met Acceptance criteria. 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 milestone payment schedule. 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, 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. 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 after Acceptance.

#### **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](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 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](#).

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

## 11. STEERING COMMITTEE

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

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

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

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

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

## **12. COMPETITIVE PRICING**

Supplier warrants and agrees that each of the charges, economic or product terms or warranties granted pursuant to this Contract are comparable to or better than the equivalent charge, economic or product term or warranty being offered to any commercial or government customer of Supplier. If Supplier enters into any arrangements with another customer of Supplier to provide Services under more favorable prices, as the prices may be indicated on Supplier's current U.S. and International price list or comparable document, then this Contract shall be deemed amended as of the date of such other arrangements to incorporate those more favorable prices, and Supplier shall immediately notify VITA of such change.

## **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 termination or expiration of this Contract or upon the earlier request of the disclosing Authorized User, Supplier shall (i) at its own expense, (a) promptly return to the disclosing Authorized User all tangible Confidential Information (and all copies thereof except the record required by law) of the disclosing Authorized User, or (b) upon written request from the disclosing Authorized User, destroy such Confidential Information and provide the disclosing Authorized

User with written certification of such destruction, and (ii) cease all further use of the Authorized User's Confidential Information, whether in tangible or intangible form.

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

**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, or 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, penalties (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, (ii) any act or omission of any employee, agent, or subcontractor of Supplier, (iii) breach of any representation, warranty or covenant of Supplier contained herein, (iv) any defect in the Services or Deliverables provided by Supplier, or (v) any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Services or Deliverables. Selection and approval of counsel and approval of any settlement shall be accomplished in accordance with all applicable laws, rules and regulations. For state agencies the applicable laws include §§ 2.2-510 and 2.2-514 of the Code of Virginia. In all cases the selection and approval of counsel and approval of any settlement shall be satisfactory to VITA or the Authorized User against whom the claim has been asserted.

In the event that a Claim is commenced against any of Commonwealth's Indemnified Parties alleging that use of any Deliverable 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 Services or Deliverables, 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 Services or Deliverables, or any component thereof; or (b) replace or modify such infringing Services or Deliverables, or any component thereof, with non-infringing products or services satisfactory to VITA. And in addition, Supplier shall provide any Authorized User with comparable temporary replacement deliverables and services, or reimburse VITA or any Authorized User for the reasonable costs incurred by VITA or such Authorized User in obtaining alternative products and services in the event such Authorized User cannot use the affected Deliverable or benefit from the affected Services. 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 Services or Deliverable, 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.

#### **B. Liability**

Except for liability with respect to (i) any intentional or willful misconduct or negligence of any employee, agent, or subcontractor of Supplier, (ii) any act or omission of any employee, agent, or subcontractor of Supplier, (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's liability shall be limited to twice the aggregate value of the Services and Deliverables provided under this Contract. 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. INSURANCE**

In addition to the insurance coverage required by law as specified in the URL identified in the Incorporated Contractual Provisions section of this Contract, Supplier shall carry errors and omissions insurance coverage in the amount of \$1,000,000 per occurrence.

#### **16. 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 or Personal information by the Supplier or an employee or agent of Supplier shall constitute a breach of its obligations under this Section and the Contract.

Supplier shall immediately notify VITA and Authorized User, if applicable, of any Breach of Unencrypted and Unredacted Personal Information, as those terms are defined in Virginia Code 18.2-186.6, and other personal identifying information, such as insurance data or date of birth, provided by VITA or Authorized User to Supplier. Supplier shall provide VITA the opportunity to participate in the investigation of the Breach and to exercise control over reporting the unauthorized disclosure, to the extent permitted by law.

Supplier shall indemnify, defend, and hold the Commonwealth, VITA, the Authorized User, their officers, directors, employees and agents harmless from and against any and all fines, penalties (whether criminal or civil), judgments, damages and assessments, including reasonable expenses

suffered by, accrued against, or charged to or recoverable from the Commonwealth, VITA, the Authorized User, their officers, directors, agents or employees, on account of the failure of Supplier to perform its obligations pursuant this Section.

## **17. IMPORT/EXPORT**

In addition to compliance by Supplier with all export 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.

## **18. 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. 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, 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, 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 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, 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 those Supplier records that relate to the Services rendered or the amounts due Supplier for such Services under this Contract. VITA's right to audit shall be limited as follows:

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

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, should Supplier hire an employee of an Authorized User who has substantially worked on any project covered by this Contract without prior written consent, the Supplier shall be billed for fifty percent (50%) of the employee's annual salary in effect at the time of termination.

**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 G Statement of Work (SOW) Template
- iii). Exhibit C Service Fees
- iv). Exhibit F Certification Regarding Lobbying
- v). Exhibit H Change Order Template (Service Fees)

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 C.

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.

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: Stefan Mandanis

(Signature)

Name: Stefan Mandanis

(Print)

Title: Director of Sales

Date: 01/07/2010

Address for Notice:

19672 Player Court

Ashburn, VA 20147

Attention: Contracts

VITA

By: George Coulter

(Signature)

Name: GEORGE COULTER

(Print)

Title: CIO

Date: 1-11-2010

Address for Notice:

\_\_\_\_\_

\_\_\_\_\_

Attention: Contract Administrator