



Commonwealth of Virginia  
Virginia Information Technologies Agency

**STATEWIDE PRINTER/WIDE FORMAT DEVICE**

Date: March 18, 2013

Contract #: VA-101029-DELL

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

Contractor: Dell Marketing L.P.  
One Dell Way  
Round Rock, TX 78682

FIN: 74-2616805

Contact Person: Justin A Hansen  
Voice: 800-981-3355 x5139380  
Email: [justin\\_a\\_hansen@dell.com](mailto:justin_a_hansen@dell.com)

Term: March 1, 2013 – April 30, 2013

Payment: Net 30 days

For Additional Contract Information, Please Contact:

Virginia Information Technologies Agency  
Supply Chain Management

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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.





## *COMMONWEALTH of VIRGINIA*

### **Virginia Information Technologies Agency**

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TDD VOICE -TEL. NO.  
711

February 14, 2013

Frank Plemons  
Dell Marketing L.P.

Per Section 3.A. ("Term and Termination") of contract VA-101029-DELL, The Virginia Information Technologies Agency has elected to exercise its option to extend the contract, from March 1, 2013 through April 30, 2013. Should you have any questions, please feel free to contact me.

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



## *COMMONWEALTH of VIRGINIA*

### **Virginia Information Technologies Agency**

Samuel A. Nixon, Jr.  
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September 26, 2012

Frank Plemons  
Dell Marketing L.P.

Per Section 3.A. ("Term and Termination") of contract VA-101029-DELL, The Virginia Information Technologies Agency has elected to exercise its option to renew the contract, from October 29, 2012 through February 28, 2013. Should you have any questions, please feel free to contact me.

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



# **Statewide Printer/Wide Format Device Information Technology Contract**

between

The Virginia Information Technologies Agency

on behalf of

The Commonwealth of Virginia

and

Dell Marketing LP

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**STATEWIDE PRINTER/WIDE FORMAT DEVICE INFORMATION TECHNOLOGY  
CONTRACT**

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## STATEWIDE PRINTER/WIDE FORMAT DEVICE HARDWARE AND MAINTENANCE CONTRACT

THIS STATEWIDE PRINTER/WIDE FORMAT DEVICE TECHNOLOGY CONTRACT ("Contract") is entered into by and between the Virginia Information Technologies Agency (hereinafter referred to as "VITA"), pursuant to §2.2-2012 of the Code of Virginia and on behalf of the Commonwealth of Virginia, and Dell Marketing LP ("Supplier"), a Texas Limited Partnership headquartered at One Dell Way, Round Rock, TX 78682, to be effective as of October 29, 2010 ("Effective Date").

### 1. PURPOSE

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

### 2. DEFINITIONS

#### A. Acceptance

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

#### B. Authorized Users

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

#### C. Confidential Information

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

#### D. Maintenance Level

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

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

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

#### F. Maintenance Services (or Maintenance)

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

#### G. Operating Condition

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

#### H. Party

Supplier, VITA, or any Authorized User.

#### I. Product

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

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**J. Receipt (of Product)**

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

**K. Requirements**

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

**L. Response Time**

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

**M. Service**

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

**N. Software Publisher**

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

**O. Supplier**

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

**P. System Software**

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

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

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

**B. Termination for Convenience**

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

**C. Termination for Breach or Default**

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

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event that Supplier fails to meet any material obligation set forth in this Contract or in any order issued hereunder.

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

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

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

**E. Effect of Termination**

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

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

**F. Transition of Services**

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

**G. Contract Kick-Off Meeting**

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

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time and location of this meeting will be coordinated with Supplier and other meeting participants by the VITA contract manager.

**H. Contract Closeout**

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

**4. DELIVERY, INSTALLATION AND ACCEPTANCE**

**A. Delivery Procedure**

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

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

**B. Late Delivery**

Supplier hereby acknowledges and agrees that failure to deliver the Product ordered in strict accordance with the mutually agreed upon delivery schedule determined in accordance with this Section may result in damages to the ordering Authorized User, the total sum of which would be impracticable or difficult to ascertain as of the Effective Date of this Contract. If the delay lasts longer than thirty (30) days, the Authorized User may cancel the order with written notice.

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

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which are subject of such Authorized User 's notice of breach. Notwithstanding the foregoing, the Parties reserve any and all other remedies available at law or in equity.

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

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

**D. Product Installation**

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

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

**E. Product Acceptance**

Product shall be deemed accepted when the ordering Authorized User determines that such Product successfully operates in accordance with the Requirements. Such Authorized User shall commence Acceptance testing within a reasonable amount of time, or within such other period as set forth in the applicable order, after Receipt/installation of the Product. Acceptance testing will be no longer than fifteen (15) days, or such longer period as may be agreed in writing between Authorized User and Supplier. Supplier agrees to provide to the Authorized User such assistance and advice as the Authorized User may reasonably require, at no additional cost, during such Acceptance testing, other than pre-approved travel expenses incurred which are reimbursable by the Authorized User at the then-current per diem amounts as published by the Virginia Department of Accounts. Any such travel expenses must be pre-approved by the Authorized User and shall be reimbursable by such Authorized User at the then-current per diem amounts as published by the Virginia Department of Accounts ([http://www.doa.virginia.gov/Admin\\_Services/CAPP/CAPP\\_Topics/20335\\_Meals\\_Lodging\\_102009.pdf](http://www.doa.virginia.gov/Admin_Services/CAPP/CAPP_Topics/20335_Meals_Lodging_102009.pdf), or a successor URL(s)). Authorized User shall provide to Supplier written notice of Acceptance upon successful Acceptance testing. Should Authorized User fail to provide Supplier written notice of successful or unsuccessful Acceptance testing within fifteen (15) days of the date of invoice, the Product(s) shall be deemed Accepted. However, the right to accept or reject Products is not the only remedy that Authorized User shall have with respect to product return, as Authorized Users may return Products within the terms of Suppliers applicable satisfaction and return policy.

**F. Cure Period**

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

**G. Product Discontinuation**

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

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provide any Authorized User with advance notice of its intent to discontinue any Product type previously ordered by such Authorized User.

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

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

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

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

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

Supplier agrees to make the above-referenced documentation, training and spare parts and components available within thirty (30) days following receipt of a written request, and at a price set forth in Exhibit C, such price not to exceed Supplier's published price list, or the fair market value. In addition, Supplier agrees to sell Product, as set forth in Exhibit C attached hereto, to any Authorized User's third-party maintenance provider under contract with such Authorized User, at the prices as set forth in Exhibit C, for the sole purpose of supporting the Authorized User's installed inventory. Supplier agrees to document and provide to all Authorized Users in a timely manner any and all revisions to information and parts and components lists as they are developed or supplied by Supplier.

### **B. Engineering Changes and Product Modification**

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

### **C. Training**

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

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

Supplier agrees to make available spare parts and the Maintenance Services identified in the Maintenance Services section herein and Exhibit D hereto for each Product type ordered by an Authorized User. For any products under service contract, Supplier shall advise such Authorized User of its intent to discontinue either certain parts or maintenance services for any Product type ordered by the Authorized User. Spare parts may be manufacturer certified refurbished parts carrying manufacturer warranties.

Supplier shall notify the Authorized User prior to the effective date of any such discontinuance, and shall provide to the Authorized User the opportunity to purchase spare parts in a quantity adequate to support its installed base. Should Supplier advise the Authorized User of its intent to discontinue certain parts for any Product type ordered by the Authorized User, the Authorized User has the option to request and Supplier has the obligation to provide, all documentation required to ensure ongoing support, including full maintenance and repair by the Authorized User or its designated third-party maintenance provider within thirty (30) days prior to the discontinuance date.

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### **E. Inventory Record**

Upon request by the Authorized User, Supplier shall provide, at no additional cost, a record of all units of Product covered under warranty/maintenance by type, quantity and location, including the end date for each unit's Warranty Period or maintenance term ("Inventory Record"). Product quantities and types may vary as Product is added or deleted from coverage, and Authorized User shall notify Supplier in writing of any Product relocated, added, or removed from service. Upon such notification, Supplier shall amend the Inventory Record to reflect such relocation, addition, or deletion of Product. Supplier shall provide, at no additional cost, a copy of the most current Inventory Record to any Authorized User upon request.

### **F. Product Service Record**

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

### **G. Additional Services**

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

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

## **6. WARRANTY AND REMEDY**

### **A. Supplier**

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

### **B. Ownership**

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

### **C. Supplier Viability**

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

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#### **D. Product**

Supplier warrants the following with respect to the Product:

- i). Product pursuant to a particular Request for Proposal (RFP), quote, or Request for Quote (RFQ), shall meet the requirements as specified by VITA in the RFP and in this Contract and, if applicable, by the authorized User requesting such quote or issuing such RFQ, and Supplier is possessed of superior knowledge with respect to the Product and is aware that Authorized Users are relying on Supplier's skill and judgment in providing the Product; The Product shall be free of defects in material, design and workmanship;
- ii). Upon delivery, the Product shall be new and in Operating Condition and shall have all released engineering changes released to date already installed;
- iii). Each Product delivered hereunder shall function in conformance with the Requirements;
- iv). No engineering change made to the Product or System Software revisions shall degrade the performance of the Product to a level below that defined in the applicable Request for Proposal, and in the Product manufacturer's published specifications;
- v). Upon delivery, all System Software shall be at the current release level unless otherwise requested by the ordering Authorized User; and
- vi). The System Software shall not knowingly contain any embedded device or code (e.g., time bomb) that is intended to obstruct or prevent any Authorized User's use of the System Software, nor shall Supplier disable any Authorized User's use of such System Software through remote access or otherwise. If the System Software contains authorization codes allowing access to a data base or other software, Supplier warrants that such codes shall be perpetual and non-expiring.

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

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

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

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

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

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

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

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

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**1. Product Covered**

Exhibit C lists all Product types covered under warranty.

**2. Preventive Maintenance**

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

**3. Remedial Maintenance**

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

**4. Replacement Parts**

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

**5. Spares**

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

**6. Notification and Correction of Defects**

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

**7. One-year Depot Warranty**

Supplier's depot warranty offerings and responsibilities are described in Exhibit D.

**8. On-site Warranty**

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

**9. System Software Warranty**

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

a) Service Packs and/or Service Pack Components

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

b) Coverage

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

**10. Remedies**

In addition to any remedies described in Exhibit D, if Supplier is unable to make the Product, conform, in all material respects to the Requirements, within thirty (30) days following notification by an Authorized User, Supplier shall, at such Authorized User's request, replace the non-conforming Product.

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

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

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

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

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

## **7. MAINTENANCE SERVICES**

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

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

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

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

### **A. Ordering**

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

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

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

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

### **B. Renewal**

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

### **C. Services**

Maintenance Services shall be as follows:

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**1. Product Covered**

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

**2. Preventive Maintenance**

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

**3. Remedial Maintenance**

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

**4. Replacement Parts**

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

**5. Spares**

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

**6. Notification and Correction of Defects**

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

**7. Advanced Replacement Services**

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

**8. On-site Maintenance Services**

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

**9. Escalation Procedures**

TBD based on Supplier proposal.

**10. Remedies**

In addition to any remedies described in Exhibit D, if Supplier is unable to make the Product, conform, in all material respects, to the Requirements within thirty (30) days following notification by an Authorized User, Supplier shall, at such Authorized User's request, provide a replacement Product at no additional cost to the Authorized User.

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

**8. SCOPE OF USE**

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

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## 9. SOFTWARE LICENSE

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

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

### D. Authorized User Compliance

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

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

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

## 10. ORDERS AND COMPENSATION

### A. Supplier Quote and Request for Quote

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

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

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

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

## **B. Orders**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 11. REPORTING

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

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

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

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

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

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

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

### B. Small Business Participation

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

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

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

## 12. COMPETITIVE PRICING

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

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## 13. CONFIDENTIALITY

### A. Treatment and Protection

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

### B. Exclusions

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

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

### C. Return or Destruction

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

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

## 14. INDEMNIFICATION AND LIABILITY

### A. Indemnification

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

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(vi) the failure of Supplier to perform its obligations pursuant to the Section entitled 'Security Compliance.' Selection and approval of counsel and approval of any settlement shall be accomplished in accordance with all applicable laws, rules and regulations. For state agencies the applicable laws include §§ 2.2-510 and 2.2-514 of the Code of Virginia. In all cases the selection and approval of counsel and approval of any settlement shall be satisfactory to VITA or the Authorized User against whom the claim has been asserted. To the extent permitted by law, the Commonwealth, VITA, and any Authorized User shall be responsible for their own acts or omissions.

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

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

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

## **B. Liability**

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, and (v) Supplier's confidentiality obligations, Supplier's liability shall be limited to twice the aggregate value of Products, Software 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**

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**CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE PARTY, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS.**

**15. SECURITY COMPLIANCE**

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

**16. BANKRUPTCY**

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

**17. GENERAL PROVISIONS**

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

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

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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.

## **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.

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**G. Notices**

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

**H. No Waiver**

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

**I. Assignment**

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

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

**J. Captions**

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

**K. Severability**

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

**L. Survival**

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

**M. Force Majeure**

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

**N. Remedies**

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

**O. Right to Audit**

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

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

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

**P. Offers of Employment**

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

**Q. Contract Administration**

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

**R. Entire Contract**

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

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

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

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

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

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

Supplier

By: [Signature]  
(Signature)

Name: Lisley Braun  
(Print)

Title: Sr Contracts Consultant

Date: 10/12/2010

VITA

By: [Signature]  
(Signature)

Name: SAM NIXON  
(Print)

Title: CIO OF THE COMMONWEALTH

Date: 10.29.2010

Address for Notice:

Dell Marketing LP  
One Dell Way RLS-29  
Round Rock TX 78682

Attention: Public Contract Manager

Address for Notice:

11751 MEADOWVILLE LN  
CHARSTON VA 23836

Attention: Contract Administrator

## EXHIBIT A RFP Section 5 - Detailed Solution

### A. General

	Requirements	A	B
1.	You have agreed that your company can sell/service the entire Commonwealth of Virginia. Please describe the details on how this will be accomplished.	N/A	
2.	You have agreed that your company can sell/service the entire Commonwealth of Virginia. Will you be incorporating subcontractors or alliances? If yes, please describe.	Y	Dell may partner with various diverse subcontractors when architecting optional service solutions for our customers and many of those partners are classified as small, women, or minority owned (M/WBE). We have supplied SWaM vendor information in our subcontracting plan.
3.	VITA strongly encourages Suppliers to develop a catalog website that interfaces with eVA. Will your company be able to produce a punch-out catalog website? (Refer to <a href="http://www.eva.virginia.gov/vendors/pages/catalogcreation.htm">http://www.eva.virginia.gov/vendors/pages/catalogcreation.htm</a> ) Please provide either screen shots or a link to serve as an example.	Y	Premier.Dell.com is your customized procurement portal. Your organization's Premier.Dell.com website will include purchasing and asset management reports and tools that will help VITA better track and manage your assets.
4.	Will your company be able to have the catalog website up and functioning within 30 days of contract award?	Y	Dell has the functionality to build VITA'S Premier site with your



	Requirements	A	B
			specifications to meet your standards.
5.	<p>If requested by the user, will the supplier be able to provide a loaner if the proposed equipment will be out of operation for more than 24 hours? If so, please describe details.</p>	Y	<p>Next Business Day Printer Exchange Service operates from the date of delivery. We can place a service technician at your location after completion of the support procedures and consistent with the standards listed below (including a problem diagnosis service via website or telephone).</p> <p>For the duration of the service period, we provide a parts and labor service. On expiry of the service period, a chargeable 'Out of Warranty' service is available, for some Dell non-networked printers only.</p> <p><b>What you get</b></p> <p>Dell's Next Business Day Printer Exchange Service includes the following standard support features:</p> <p>30-Day Getting Started Assistance</p> <p>24/7</p>



EXHIBIT A RFP Section 5 - Detailed Solution

	Requirements	A	B
			<p>Comprehensive Online Support</p> <p>Telephone Technical Support</p> <p>Next Business Day Printer Exchange Service</p> <p><b>30-Day Getting Started Assistance</b></p> <p>To help “get started”, for the first 30 days after delivery Dell provides telephone technical support, installation and configuration advice on:</p> <ul style="list-style-type: none"> <li>*Dell manufactured printers</li> <li>*Dell supplied external peripheral</li> <li>*Dell supplied printer drivers and set-up utilities</li> </ul> <p>After 30 days from the delivery date, general usage and "how to" questions are not supported.</p> <p><b>24/7 Online Support</b></p> <p>Dell offers free online assistance at <a href="http://support.euro.dell.com">http://support.euro.dell.com</a> . This includes e-mail support. Most support</p>



EXHIBIT A RFP Section 5 - Detailed Solution

	Requirements	A	B
			<p>questions can be answered with Dell's on-line problem-diagnosis tools and information resources. These include:</p> <p>Access to much of the same reference material used by Dell technicians in 12 languages, including problem-diagnosis tools, troubleshooting information and frequently asked questions</p> <p>Information on your individual printer, accessed by keying in your service tag number</p> <p>Drivers, utilities and registration for update notification</p> <p>Discussion group with other customers and Dell technical professionals</p> <p><a href="#">Telephone Technical Support</a></p> <p>If you have a problem with your Dell printer and cannot resolve it using our on-line support, contact Dell technical support for problem diagnosis.</p>



	Requirements	A	B
			<p>Telephone support is a fast and efficient way to assess a problem your printer may have and determine the best and fastest way to resolve it.</p> <p>Telephone support will always be provided free of charge for any issues related to your statutory rights as a consumer. It is available Monday-Friday during local business hours, excluding weekends and public national holidays. Calls to Dell's telephone technical support line are charged at local national rates.</p> <p><b>Resolving the problem</b></p> <p>Dell will provide a unit exchange service only if it has been established that the problem cannot be solved by recommended troubleshooting procedures and a Dell Representative agrees that a unit exchange would resolve the issue. An exception to this will be made if you have</p>



EXHIBIT A RFP Section 5 - Detailed Solution

	Requirements	A	B
			<p>special needs or disabilities. You are responsible for any paper or ink expense incurred during diagnostic tests.</p> <p><u>The Next Business Day Printer Exchange Service[1] can dispatch a replacement printer to your location the following business day, in exchange for the faulty printer, after completion of telephone-based troubleshooting and subject to parts availability.</u></p> <p><u>If the call is logged before 17:00 Monday-Friday, the printer will be exchanged during the next working day. The replacement unit will be new or reconditioned and will be functionally equivalent or better than your original printer.</u></p> <p>[1] Availability of service and response-time estimates may vary according to the remoteness or accessibility of product location.</p>



	Requirements	A	B
6.	<p>Are you able to respond to customer request for service within 8 business hours? Please provide detail on how this will be accomplished.</p>	Y	<p>8-Hour On-Site Service *</p> <p>Technician usually arrives on-site within 8 hours after completion of phone-based troubleshooting.</p> <p>Available 7 days/week, 24 hours/day - including holidays.</p> <p>Available within defined 8 hour response locations.</p> <p>Available on select Dell OEM products only.</p> <p>Emergency dispatch in parallel with troubleshooting available for Mission Critical Severity Level 1.</p>
7.	<p>Is your firm willing to commit to service-level agreements? If so please refer to Appendix A and fill in the yellow shaded areas.</p>	?	<p>Dell understands VITA's requirement to ensure that product and service quality is excellent. Dell is prepared to work with VITA to show that we have quality processes and programs in place. The Service Levels as stated in the VITA Request for Proposal may be difficult and expensive to</p>



	Requirements	A	B
			<p>measure and track; whereas we believe there are more cost effective ways to state service levels that are meaningful and achievable. Our proposal fully supports the intent and spirit of VITA's need to document and manage quality, but we request the opportunity to work with VITA to further refine which metrics are tracked, how they are measured, and what the remedies would be. Dell has an excellent record in working with customers to achieve the highest service levels possible.</p>
8.	<p>Does your solution offer 8:00 am – 5:00 pm EST Hardware and Software support? Please provide details.</p>	Y	<p>Printer Gold Technical Support provides an advanced level of telephone support at a dedicated toll-free number, 24 hours a day, 7 days a week, 365 days a year — designed to provide you with faster problem resolution.</p>
9.	<p>Do service technicians have and maintain current industry certifications? Please provide details and types of certifications.</p>	Y	<p>Dell technicians have an internal support staff with the following range of relevant industry</p>



	Requirements	A	B
			certifications: A+, Network+, Microsoft Certified Professional (MCP), Microsoft Certified Systems Engineer, Red Hat Certified Engineer (RHCE), Certified Novell Engineer (CNE), Cisco Certified Network Associate (CCNA), EMC Proven Professional, etc. Technicians receive ongoing training based on industry updates from Dell's suppliers, in addition to all Dell system launches/refreshes.
10.	Does your solution have an in-house order tracking system that can be accessed 24 x7 by a user? Please provide details.	Y	Delivery Tracking Mechanism - Online Order Status and Order Watch Dell, through our extensive online services, offers order and delivery tracking through Order Status and Order Watch, as detailed below. Order Status (Password Protected) Try our industry leading online order status tool. Simply choose between single and multiple orders and provide either



	Requirements	A	B
			<p>your order number or customer number. Twenty-four hours a day, seven days a week, you can track your order through Dell Computer's order management system. This is real-time information, updated continuously – it is like having a window onto our factory floor.</p>
11.	<p>Does your solution charge a re-stocking fee on returned equipment? Please provide details.</p>	Y	<p>Restocking Fees: Unless the product is defective or the return is a direct result of a Dell error, Dell may charge a restocking fee of up to 15% of the purchase price paid, plus any applicable sales tax.</p>
12.	<p>Does your firm have the marketing ability and resources to promote this contract to schools, universities, local and non-Executive Branch state agencies? Please provide marketing plan and examples of marketing tools.</p>	Y	<p>In promoting VITA's products and services, Dell can help in several important ways. Dell conducts a joint advertising campaign with corporate customers and welcomes the opportunity to investigate a joint marketing effort with VITA.</p> <p>Several</p>



	Requirements	A	B
			<p>publications, such as the Dell Insider, which reach thousands of Dell customers, can educate potential VITA customers on your products and services. The Dell Insider runs customer success stories and customer advertisements.</p> <p>Our Account Team will be happy to explore additional options best suited for fulfilling VITA's marketing and promotional needs.</p>
13.	<p>Does your solution provide an inventory management system that tracks items such as beginning/end lease date, dates payments received, location of device, serial number, etc.? If so, please describe.</p>		<p>Dell can assist VITA with tactical tools helpful in tracking assets and managing inventory.</p> <p>Dell provides the following support services:</p> <ul style="list-style-type: none"> <li>Asset Tagging and Reporting</li> <li>Robust Reporting Via a Customized, Secured Premier.Dell.com Page</li> <li>DMI Compliant Hardware</li> <li>Software Tools</li> <li>Dell's IT Assistant</li> <li>Other Options – Leveraging Third-</li> </ul>



	Requirements	A	B
			Party Industry-Leaders
14.	Each Public Body may have multiple agreements for devices. When processing P-Cards or payments for invoices with multiple agreements, how do you manage the equipment fulfillment at the end of the lease agreement term, to include termination of invoicing and equipment pickup. Please describe.	N/A	
15.	<p>Will your company provide leasing as an option? If so, please provide your leasing documents in Microsoft Word format.</p>	Y	<p>Dell Financial Services L.L.C. (DFS) is a wholly owned subsidiary of Dell Inc. ("Dell") (NASDAQ:DELL) and, as such, has the financial strength, integrity and integrated lease process with Dell to deliver unparalleled leasing services to Dell's customers.</p> <p>DFS was created to assist Dell's customers in the management of their asset acquisition and rotation needs while lowering Total Cost of Ownership. DFS' success is attributed to the incorporation of Dell's direct model philosophy and the strong relationships we have developed with our valued customers. Because DFS was founded with Dell's customers in mind, your company is assured of a solution to</p>



	Requirements	A	B
			<p>simplify the process of acquiring and financing technology.</p> <p><b>Please see the Appendices for required leasing documents, however they are only available in PDF format.</b></p>
16.	<p>Once a lease agreement has been completed and the Authorized User does not wish to keep the equipment, please describe the process on notification, scheduling of pickup, etc.</p>	N/A	
17.	<p>Does your solution provide the ability for Authorized Users to trade-in devices for credit against new purchase/lease agreements? If so, please describe.</p>	Y	<p>Dell is making it even easier for customers to responsibly recycle unwanted electronics. Through its extensive recycling options for consumers, small and medium businesses, large enterprises and governments worldwide, Dell reached its goal to recycle 275 million pounds of equipment ahead of schedule. The company was the first IT vendor to set product recovery goals in 2004, completed the rollout of its global recycling program in 2006 and remains the</p>



EXHIBIT A RFP Section 5 - Detailed Solution

	Requirements	A	B
			<p>only company in its industry to offer a free worldwide recycling program for consumers.</p> <p>Dell expanded its U.S. Reconnect recycling partnership with Goodwill Industries, bringing the total number of participating Goodwill retail stores to more than 1,000 nationwide. The program is free for consumers who want to responsibly recycle any brand of unwanted computer equipment.</p> <p>Dell launched Dell Exchange, a free online trade-in system that enables U.S. customers to help keep unwanted electronics out of landfills by exchanging them for Dell gift cards. The trade-in option, which has been a pilot program since November 2008, is now available to U.S. customers at <a href="http://www.dell.com/tradein">www.dell.com/tradein</a>.</p>



	Requirements	A	B
18.	<p>Does your proposed equipment meet the currently U.S. Environmental Protection Agency's and Department of Energy's Energy Star guidelines? If no, please explain.</p>	Y	<p>Dell helped lead the effort to develop the Electronics Products Environmental Assessment Tool (EPEAT), in collaboration with a multi-stakeholder group.</p> <p>As a leader in providing environmentally responsible products and services, Dell is one of the first manufacturers to register products with EPEAT.</p>
19.	<p>Does your solution have the ability to use recycled paper? If so, please describe.</p>	Y	<p>Our commitment to progress toward our paper stewardship goals is reflected by the following actions:</p> <p>Dell established baseline starting points and set time-bound goals and benchmarks for reducing the use of virgin fiber, eliminating the purchase of wood and fiber from endangered forests, increasing the use of recycled and alternative fiber, and increasing the use of wood and fiber independently certified as sustainable. The preference is for</p>



	Requirements	A	B
			<p>Forest Stewardship Council (FSC)-certified wood and fiber</p> <p>We report annually on our environmental progress and release this information publicly. We are committed to increased transparency and stakeholder participation</p> <p>We encourage innovation in our paper supply chain to improve our environmental performance and that of other catalogue producers.</p>
20.	<p>Does your solution provide for escalation procedures for hardware/maintenance issues and when Authorized User's are not satisfied with the attention they are receiving? If so, please describe.</p>	Y	<p>Technical Support Escalation Process</p> <p>Dell's award-winning technical support is available 24 hours a day, 7 days a week. Should VITA experience an issue with one of your Dell systems, the resolution process begins when you contact our online support.</p> <p>When you place a call to Dell Technical Support, your call</p>



EXHIBIT A RFP Section 5 - Detailed Solution

	Requirements	A	B
			<p>is immediately placed in one of our main technical support queues. We route calls within Dell to the next available technician through use of specific 800 numbers or via service and support options from a customized 800 number.</p> <p>Dell Service and Support Customer representatives answer all incoming calls on a first-come, first-serve basis. However, when an escalation issue arises, the severity of the problem dictates the order in which we answer a call.</p> <p>The first technician you speak to is a Level 1 technician. He or she gathers the required information from the caller including the system ID (Service Tag) number and a description of the problem. The technician gathers and stores the information in our databases which</p>



EXHIBIT A RFP Section 5 - Detailed Solution

	Requirements	A	B
			<p>is the primary tool for tracking the service history of each Dell manufactured unit. Level 1 technicians are fully qualified to resolve almost all of the issues our customer's experience. Using a multitude of tools and knowledge base aids, your Dell technician is able to diagnose and resolve service &amp; support issues.</p> <p>If the problem VITA is experiencing requires a more advanced level of support or if you are not satisfied with the solution or comfortable with the course of troubleshooting, the Level 1 technician escalates your issue to a Level 2 technician. At this point the Level 2 technician leverages additional tools in conjunction with their expertise to attempt to resolve the escalated issue. In the event that the Level 2 technician does not resolve your issue, the Level 2 technician takes ownership of the</p>



EXHIBIT A RFP Section 5 - Detailed Solution

	Requirements	A	B
			<p>issue for further research and/or escalation. If necessary, L2 technicians engage dedicated engineering resources, internal to Dell, or collaborate with third parties to solve the problem.</p> <p>The next key technician involved in issue escalation is the Service Delivery Manager (SDM) in the case of Gold or Platinum Plus Enterprise Support. After the Level 2 technician has exhausted available resources and has not yet resolved the issue, a SDM is involved. The SDMs are advanced level technical resources who will work with VITA, vendors, manufacturers, and engineers to bring issue resolution to fruition. If VITA encounters a problem with policies, procedures, or are simply not satisfied with the level of support you receive, you can request that</p>



EXHIBIT A RFP Section 5 - Detailed Solution

	Requirements	A	B
			<p>Resolution Expert Center (REC) technician handle your issue. These technicians engage required resources as necessary to solve the customer's issue.</p> <p>On-Site Service</p> <p>If required, Dell may need to dispatch an on-site technician, parts, or both to VITA's location. For desktops and most laptops that require an on-site service call, Dell ships the required part(s). We dispatch a technician to pick up and deliver the part(s), then replace the defective part(s) and ship the defective part(s) back to Dell. For servers or other systems under a 4-hour contract, Dell dispatches technicians to pull the appropriate parts from the remote stocking facilities. We have escalation procedures built into the process to ensure we meet our contracted response times.</p>



**B. Reports**

	Requirements	A	B
1.	Can you provide quarterly reports to customers detailing products that have been placed in any of their locations? (provide examples)	Y	<p>Via your Premier.Dell.com website, Comprehensive Purchase History Reports let VITA view and save detailed information about VITA's orders over the past 13 months. The various reports include information about purchase order numbers, order numbers, order dates, invoice dates, ship dates, SKU numbers and descriptions, quantities, amount and status.</p> <p>Online reports are available through Premier.Dell.com. The five standard Premier reports include:</p> <p>Order Summary – For each individual order, this report displays Order Number, Order Date, Customer Number, P.O. Number, Ship-to Address, and Order Amount.</p> <p>Product Summary – This report provides a summary of your purchases by product family such as desktops, laptops, peripherals, servers, storage and workstations.</p> <p>Locations – This report pulls orders by your Ship-to addresses.</p> <p>Customer Number – Your customer number and customer name are able to be consolidated in this report.</p> <p>Service Tag Summary – For each Dell Service Tag, this report displays Warranty Information, Order Number, Product Description, and Estimated Ship Date.</p>
2	Can you maintain an electronic service log that is available to customers on specific copiers/printers? (provide examples)	Y	<p>Premier.com</p> <p>Get instant answers to your technology questions from an extensive database collected from Dell technicians, service providers, and customers. You can search by:</p> <p>Keywords</p>



			<p>Product Type</p> <p>Service Tag</p> <p>Document Number</p> <p>Document Date</p> <p>My System List</p> <p>Create, manage, and customize a list of your Dell systems with system-specific details from one convenient location or export your list for use in Excel.</p> <p>My System Details</p> <p>Gain easy access to system configuration, service contract information, and service call status details by system service tag. Retrieve a list of your company's systems by customer number or order number and add them to your My Systems List.</p> <p>Keep up to date on the status of your open service calls. Register for Service Call Watch to receive e-mail updates on your service incidents.</p>
3..	Can you provide any additional reports that would be an added value to the Commonwealth? Please describe and provide examples.	Y	<p>Customized Reports</p> <p>Premier's customizable reports let VITA tailor reports to your requirements. Depending on your needs, you can add up to six custom fields in a report, including the Dell service tag, type of system, and current warranty status. Premier also offers the flexibility to save as many as 20 customized report formats for ongoing use.</p>

**C. Security**

	Requirements	A	B
1.	<p>If a hard drive needs to be replaced, or the device has a hard drive and is being returned to the Supplier, will Supplier comply as a service provider under section "Statement of ITRM Requirements for the Removal of Commonwealth Data from Electronic Media" from VITA's Security Policy located at (<a href="http://www.vita.virginia.gov/uploadedFiles/Library/PSGs/Data_Removal_Standard_514_03%2010_07_2008_r3.pdf">http://www.vita.virginia.gov/uploadedFiles/Library/PSGs/Data_Removal_Standard_514_03%2010_07_2008_r3.pdf</a>). If so, please describe.</p>	Y	<p>While you never anticipate a hard drive failure, sometimes the unexpected happens. Dell's Hard Drive Data Recovery Service gives customers of all sizes – from small businesses to large public companies and government agencies – the opportunity to recover data from a failed hard drive. The service includes:</p> <p>Attempted data recovery from a</p>



		<p>failed hard drive in dust-free clean room environments (if necessary) while the system is in warranty. The failed drive is carefully dismantled, examined and processed.</p> <p>Use of a dust-free clean room environment when necessary to rebuild the drive in order to recover data.</p> <p>Multiple options for customers to receive recovered data. Options include a USB key or USB hard drive.</p> <p>Access to the Dell Data Protection portal, a secure, password-protected online resource used to monitor the status of your data recovery.</p> <p>This comprehensive service is available globally for hard drives on select Dell PowerEdge, OptiPlex, Precision, Latitude and Vostro computer systems while under warranty. The Hard Drive Data Recovery Service is not available for RAID hard drives. It can be deployed for systems with Microsoft Windows or Linux operating systems.</p> <p>The Hard Drive Data Recovery service entitles you to return the failed HDD for hard drive data recovery. Dell will attempt to recover as much data as possible from the HDD. The shipping cost will be covered by Dell for you to return the failed HDD to attempt recovery.</p> <p>Once the failed HDD arrives at the regionally based recovery lab, the process for recovery is initiated. Registration details of your job are added to the customer portal at <a href="http://www.dell.com/dataprotectionportal">www.dell.com/dataprotectionportal</a> .</p> <p>During the recovery attempt process, you can log on to the portal to see current status of the job. An update will be posted within 48 hours of receiving the HDD.</p> <p>Upon completion of the recovery attempt, the status is updated on the portal to reflect whether data</p>
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			<p>was recoverable. If so, you will see the list of files that were recovered. Recovered data is then placed on specified media and shipped back to you in an encrypted format.</p> <p>Simply call Dell technical support when you experience a problem or suspect a hard drive failure. If the Dell technician determines that the hard drive has experienced a problem that is covered by Dell's Limited Hardware Warranty, Dell will ship a replacement hard drive to you in accordance with your service level agreement (for example, 4-hour or next business-day delivery). Once you have sent your failed hard drive to our Data Protection Services lab, any recovered data will be returned to you as quickly as possible.</p> <p>If you have not purchased the Dell ProSupport Certified Data Destruction Service or Keep Your Hard Drive Service on the failed HDD, we will dispose of the failed HDD.</p> <p>If you have purchased Keep Your Hard Drive, then the failed drive will be returned to you.</p> <p>If you have purchased Dell's Certified Data Destruction Service, Dell will destroy the hard drive and send certification of destruction to you in compliance with the Certified Data Destruction Service.</p>
2.	<p>If the device uses non-volatile memory to store data, will those systems automatically erase the data after each job is complete or does the user have to perform a specific task? Again, please refer to VITA's Security Policy regarding non-volatile memory.</p>	Y	<p>Devices without hard drives are erase jobs after each print. in other words it uses a print queue</p>



Exhibit C

Appendix C BW Lasers

Segment	Evaluation Model	List	Percentage Off List	One Year of Maintenance, Next Business Day Exchange (Does not include Toner)	Purchase Price	Publicly Available site showing list price
27	1130	119.00	25.00%	0.00	89.25	<a href="http://www.dell.com/peripherals/Dell-Laser-Printers/cp.aspx?refid=1130">http://www.dell.com/peripherals/Dell-Laser-Printers/cp.aspx?refid=1130</a>
28	1130n	179.00	25.00%	0.00	134.25	<a href="http://www.dell.com/peripherals/Dell-Laser-Printers/cp.aspx?refid=1130n">http://www.dell.com/peripherals/Dell-Laser-Printers/cp.aspx?refid=1130n</a>
29	2230d	199.00	25.00%	0.00	149.25	<a href="http://www.dell.com/peripherals/Dell-Laser-Printers/cp.aspx?refid=2230d">http://www.dell.com/peripherals/Dell-Laser-Printers/cp.aspx?refid=2230d</a>

Segment	Minimum Copies Per Minute	Minimum Paper sources (excluding bypass)	Minimum Paper capacity (excluding bypass)	Minimum Memory	Energy Star Compliant	Minimum Warranty (Next business day exchange)	Connectivity Type
27	0 - 15	1	100	8 MB	Yes	One Year	USB
28	16 - 25	1	150	16 MB	Yes	One Year	USB
29	26 - 40	1	200	32 MB	Yes	One Year	USB

**Accessories for Segment 27**  
 Vendor is provide a percentage off list (list must be publicly available)  
 Vendors proposed price must be 10% or more  
 10% off List

**Accessories for Segment 28**  
 Vendor is provide a percentage off list (list must be publicly available)  
 Vendors proposed price must be 10% or more  
 10% off List

**Accessories for Segment 29**  
 Vendor is provide a percentage off list (list must be publicly available)  
 Vendors proposed price must be 10% or more  
 10% off List

\*\*\*\*\*Ink/Toner cannot be included as a standard accessory. DGS has established contracts for ink and toner.  
 \*\*\*\*VITA will allow ink/toner to be purchased only at the time of the sale of the device.

**Dell Pricing Note: Accessories Discount of 10% off of list is only valid for the models offered for Segment 27, 28 & 29.**

### Appendix C (Color Lasers)

Segment	Evaluation Model	List	Percentage Off List	One Year of Maintenance, Next Business Day Exchange (Does not include Toner)	Purchase Price	Publicly Available site showing list price
30	1230c	229.00	30.00%	0.00	160.30	<a href="#">ipherals/Dell-Color-Laser-Printers/cp.aspx?re</a>
31	2130cn	349.00	30.00%	0.00	244.30	<a href="#">ipherals/Dell-Color-Laser-Printers/cp.aspx?re</a>
32	3130cn	549.00	30.00%	0.00	384.30	<a href="#">ipherals/Dell-Color-Laser-Printers/cp.aspx?re</a>

Segment	Minimum Copies Per Minute	Minimum Paper sources (excluding bypass)	Minimum Paper capacity (excluding bypass)	Minimum Memory	Energy Star Compliant	Minimum Warranty (Next business day exchange)	Connectivity Type
30	0 - 15	1	100	8 MB	Yes	One Year	USB
31	16 - 25	1	150	16 MB	Yes	One Year	USB
32	26 - 40	1	200	32 MB	Yes	One Year	USB

**Accessories for Segment 30**  
 Vendor is provide a percentage off list (list must be publicly available)  
 Vendors proposed price must be 10% or more  
 10% off List

**Accessories for Segment 31**  
 Vendor is provide a percentage off list (list must be publicly available)  
 Vendors proposed price must be 10% or more  
 10% off List

**Accessories for Segment 32**  
 Vendor is provide a percentage off list (list must be publicly available)  
 Vendors proposed price must be 10% or more  
 10% off List

\*\*\*\*Ink/Toner cannot be included as a standard accessory. DGS has established contracts for ink and toner.  
 \*\*\*\*VITA will allow ink/toner to be purchased only at the time of the sale of the device.

**Dell Pricing Note: Accessories Discount of 10% off of list is only valid for the models offered for Segment 27, 28 & 29.**

## 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: \_\_\_\_\_

Wesley Bain

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

Dev Marketing Co

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

10/14/2010

EXHIBIT G  
AWARDED BRANDS/CATEGORIES

**Category**

B/W Lasers  
Color Lasers

**Manufacturer Represented**

Dell  
Dell